

**Jeremy Bentham's
Theory of Representative Democracy**

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This dissertation is submitted for the degree of Doctor of Philosophy.

This thesis is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Preface and specified in the text. I further state that no substantial part of my thesis has already been submitted, or, is being concurrently submitted for any such degree, diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. It does not exceed the prescribed word limit for the relevant Degree Committee.

Jeremy Bentham's Theory of Representative Democracy

There is a renewed interest in the concept of representation and its relationship to democracy, both in political theory and the history of political thought. Yet, despite the fact that he is one of the few thinkers to theorise representative democracy as his preferred form of government explicitly, Jeremy Bentham is conspicuously absent from current scholarly work in these fields. This thesis contends that Bentham put forward an original, realist theory of representative democracy that ought to be taken seriously. Chapter I sets out the primary historiographical frames through which Bentham has been viewed, and why these have led to a negative appraisal of his political thought. Chapter II suggests why this negative assessment is unjustified and argues that the key to understanding the sophistication of his theory of representative democracy is to grasp his notion of the people as a “useful fictitious entity” – a theoretical perspective that set out in his mind both the limits of popular politics and the primary challenges to be addressed in political theory. Chapter III considers Bentham’s understanding of representative government as a positive good and a consequence of the nature of the people, but as pathologically liable to tend towards tyranny in and of itself. Chapter IV sets out why Bentham believed popular self-rule was an unrealistic, defective, and anarchical solution to the pathological tendencies of representation. Chapter V outlines Bentham’s theory of realist democracy, based on a dualistic relationship between the people and their rulers, popular sovereignty and the continuous influence of public opinion, and designed to mitigate the twin evils of anarchy and tyranny. Chapter VI considers the contemporary relevance of Bentham’s theory of representative democracy, particularly to the school of political realism. A concluding Chapter places Bentham in several scholarly debates taking place today around the history of political thought, the nature of political realism, and the concept of representation.

James Vitali

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Table of Contents

<i>Abstract</i>	<i>iii</i>
<i>Preface</i>	<i>vi</i>
<i>Dedication</i>	<i>viii</i>
<i>Introduction</i>	<i>1</i>
Notable Absences	1
The Historical Bentham and Bentham in Political Theory	12
Outline of the Thesis	20
<i>Chapter I</i>	<i>26</i>
Historiographical Frames	26
Voluntarism vs Rationalism	28
Bentham as a Voluntarist	33
Bentham as a Rationalist	42
Bentham's Representative Democracy <i>Against</i> Voluntarism and Rationalism	48
<i>Chapter II</i>	<i>51</i>
Fictions	51
Golden Mountains	53
Ambiguities	65
Utility, Truth and Fictions in Politics	72
The People	82
<i>Chapter III</i>	<i>85</i>
Undemocratic Representation	85
The Inevitability of Representation	86
The Desirability of Representation	90
Sinister Interest and the Pathological Nature of Representative Government	99
Popular Vulnerability	109
<i>Chapter IV</i>	<i>114</i>
Unrealistic Democracy	114
Popular Self-Government and the Delegate Model of Representation	116
Democracy in France	125
Democracy in America	135
Utilitarianism, Reform and Revolution	139
<i>Chapter V</i>	<i>151</i>
Realist Democracy	151
Deputies	152
Sovereignty	157

Public Opinion	165
The Tyranny of the Majority	177
<i>Chapter VI</i>	184
Bentham and Contemporary Political Theory	184
The People and Popular Politics	186
Fictions	190
Populism and Technocracy as Pathology	195
A Realistic Theory of Public Opinion	203
<i>Conclusion</i>	213
Jeremy Bentham's Theory of Democratic Representation?	213
<i>Bibliography</i>	226

Preface

This dissertation is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Preface and specified in the text. It is not substantially the same as any that I have submitted, or is being concurrently submitted, for a degree or diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. I further state that no substantial part of my dissertation has already been submitted, or is being concurrently submitted, for any such degree, diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. It does not exceed the prescribed word limit for the relevant Degree Committee.

With that out of the way, I want to take the opportunity to record my sincere gratitude to a number of people who have supported me during my time in Cambridge. Mike Kenny has been a wonderful supervisor, and he is in many ways the only reason I got the opportunity to study for a PhD. He convinced me to take on the challenge and helped to make it practically possible for me to do so. For that I will always be grateful. Thank you to my advisor, Duncan Bell, for his comments on drafts throughout, and to Philip Schofield at University College London, who has been generous with his counsel since I first started writing about Bentham. This doctoral project would not have been possible without the hard work he has carried out with the Bentham Project. My thanks too go to Matt Sleat, who taught me a great deal about the school of political realism.

I would also like thank a number of institutions that have been central to my time in Cambridge: to my college, Christ's, which has provided me with the most nurturing and supportive community that anyone could possibly wish to be a part of; to the Cambridge Trust, who in conjunction with Christ's have funded my

studies here; to the Department of Politics and its faculty, who took my ideas seriously when I may not have done so myself; and to the Cambridge Union and Cambridge University Cricket Club, which have constituted most welcome distractions from handwritten eighteenth and nineteenth century manuscripts these past three years.

I am fortunate enough to have a brilliant group of friends who in their own ways have been critical to the completion of this project. To Connor, Tom, Laura and Phil – most of my important initial findings were made whilst reading at our home on Mill Road. Thank you for taking me in. To Jack, Aneesh and Ross – I will always be grateful for the time we had together at 6 Victoria Street, and for the debates we engaged in at our dinner table. To Phoebe the philosopher - thank you for always dragging me back to first principles. To Keir - you have been a marvellous interlocutor and proofreader; I look forward to reciprocating. To Leti - the time we have spent together since we met has been an immense source of happiness for me and has made the final year of my PhD one of great joy. And to Dhruv and Pete - thank you for letting me stay in Cambridge for a little while longer. Most importantly, I have also been blessed with a wonderful family that have encouraged my intellectual pursuits for as long as I can remember. In particular, I'd like to thank Julie, Robert and William – my parents and brother. This dissertation is dedicated to you.

This dissertation is indeed the result of my own work, and any errors or misinterpretations are my own.

Dedication

For my parents - Julie and Robert - and my brother - William. Thank you for all you
have done for me.

Introduction

Notable Absences

For some time, the primary lens through which scholars have understood contemporary forms of politics and their genesis has been that of democracy. The story of political modernity has been the story of the rise, spread and maturation of democratic forms of government.¹ The versions of democracy that we see and inhabit today are of course *representative* democracies. But representation has tended to be seen simply as a facilitative tool that has made it possible for societies to realise the more important goal of democratic governance; in other words, representation is understood as a mechanism through which the people can indirectly achieve their own self-government. Nonetheless in recent decades, there has been a “renewed interest in the concept of representation”, as some in the field of political thought have become dissatisfied with the account of our politics that follows from viewing recent history and contemporary politics through the lens of democracy.² As a number of scholars have asserted, it is *representation*, not democracy, that is the decisive idea in modern politics; “ours are democratic forms of representation: democracy qualifies the foundational idea of representation”.³ This “representative turn” has been a most significant development, not just in the historical field, but in political theory too.⁴

¹ John Dunn, *Setting the People Free: The Story of Democracy, Second Edition* (Princeton, 2019).

² Sofia Nasstrom, “Where is the Representative Turn Going?”, *European Journal of Political Theory*, Vol.10(4) (2011) p.502.

³ David Runciman, *Confronting Leviathan: A History of Ideas* (London, 2021) p.51; Monico Brito Vieira and David Runciman, *Representation* (Cambridge, 2008) p.5.

⁴ See William Selinger, *Parliamentarism: From Burke to Weber* (Cambridge, 2019); Gregory Conti, *Parliament and the Mirror of the Nation: Representation, Deliberation, and Democracy in Victorian Britain* (Cambridge, 2019); David Runciman, “The Paradox of Political Representation”, *The Journal of Political Philosophy*, Vol.15(1) (2007) pp.93-114.

The representative turn has also led to a fascinating reappraisal of a host of historical thinkers, particularly their understanding of the concept of representation and its relationship with democratic forms of government. Lucia Rubinelli, for example, has looked to Emmanuel Sieyès for an “original and alternative account” of representative government and the relationship between the people, their representatives and the state that does not rely on what she takes to be an unconstructive political concept in popular sovereignty.⁵ Nadia Urbinati, in her effort to demonstrate that representation and democracy are not antagonistic or incompatible- that representative democracy is not an “oxymoron” but that the two components are actually coterminous and share a genealogy- has turned to Condorcet for a theory of representative democracy that recognises the possibility of a “circulation of judgement and opinion” between the people and their rulers. Urbinati also engages with Thomas Paine, who she contends best articulates the idea that representation allows democracy to “surpass” itself.⁶ Self-declared political realists, worried at the prospects of the populist assault on representative institutions, have instead appealed to a “trustee” model of representation to be found in the work of thinkers like James Madison and Edmund Burke - one in which it is advocated that the judgement of representatives be relatively independent of their electors (although of course, Burke and Madison were not advocates of representative *democracy*, so much as representative government).⁷

Paine, Burke, Madison, Sieyès, Condorcet (to a degree) - the invocation of these figures in the debates about representative democracy is unsurprising. They wrote during the birth pangs of what we now consider to be modern representative democracy, and they were all acutely interested in the question of what the

⁵ Lucia Rubinelli, “How to think beyond sovereignty: On Sieyès and constituent power”, *European Journal of Political Theory*, vol.18(1) (2019) pp.47-67.

⁶ Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago, 2006) esp. pp.162-175 & 176-222.

⁷ Christopher Achen and Larry Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton, 2016), p.88.

relationship between the body of the people and their rulers should be. However, Jeremy Bentham, the utilitarian philosopher who unlike Madison, Sieyès or Burke *explicitly* theorised representative democracy as his preferred type of political society, is strikingly absent from political theoretical accounts on the subject. Bentham was of the same generation as many of these thinkers mentioned above. Born in 1748 (a couple of years prior to the publication of the first editions of Diderot and D'Alembert's *Encyclopédie*), Bentham was in his prime years during the American and French Revolutions, and he wrote prodigiously on the subjects of representation, democracy, government and rights. Many of these often-cited theorists were his immediate contemporaries - indeed, Sieyès, with whom he corresponded, was born in the same year as Bentham (and he died only a short time after Bentham). Bentham too had strong views on representative democracy: what political problems it was designed to address, what it was in fact capable of, and what the proper relationship between rulers and ruled should be in this political form. Why then is Bentham so absent from scholarly discussions about representative democracy? Why is he so infrequently discussed as a serious thinker on the subject?

First, utilitarianism has experienced a general fall from grace in political philosophy since the final decades of the twentieth century. A particularly salient factor in this development has been the hegemony of Rawlsian approaches in the field since the publication in 1971 of *A Theory of Justice*.⁸ Rawls was critical of utilitarianism's basic inability to give weight to distributive principles like equality or liberty, because they must always come at the expense of maximising happiness; utilitarian "good", Rawls contended, is severed from "right", and this makes utilitarianism as a philosophical system illiberal.⁹ Even earlier, and before the development of the modern field of The History of Political Thought, utilitarianism was beginning to be pigeon-holed as a blunt and unsophisticated way of

⁸ John Rawls, *A Theory of Justice* (Oxford, 1999).

⁹ Paul Kelly, *Utilitarianism and Distributive Justice: Jeremy Bentham and the Civil Law* (Oxford, 1990) p.75.

approaching politics. In the 1950s, Eric Stokes wrote that scholars frequently overlook the English Utilitarians because they are considered “solely as abstract moral and political theorists”, rather than as thinkers concerned with the practicalities of representative democracy as a specific political form.¹⁰ Before then, Henry Sidgwick made the same charge about Bentham specifically - that his ethical utilitarianism did not offer any sort of guidance on how the messy and contingent world of politics works.¹¹ It is probable that the decline of utilitarianism in political philosophy has simultaneously contributed to the general lack of interest in Bentham’s views on representation and democracy.

Another problem is the style and format in which Bentham wrote, and the availability of published editions of his work. His prose is renowned for being at times monotonous and exhausting, and his handwriting is entirely impenetrable on occasions. And whilst he wrote thousands and thousands of pages of manuscript (60,000 sheets of which can be found in the library of University College London, and more still are housed at the British Library), he published little in the form of coherent, digestible treatises.¹² This latter task was left to his executors and various intellectual allies, who did a more or less good job of editing and publishing Bentham’s work. The issues that come out of this way of working are not only that Bentham’s work is difficult to read and interpret first-hand, but that it is also challenging to tell whether what has been published by Bentham’s executors is a fair reflection of what Bentham actually thought or intended for his writings. In particular, the first edited collection of Bentham’s writings, John Bowring’s *Works of Jeremy Bentham* published between 1838 and 1843, is widely recognised to have been an especially poor piece of editorial work; as one commentator in the *Edinburgh Review* put it, the *Works* were “incomplete, incorrect, and ill arranged”, with “large

¹⁰ Eric Stokes, *The English Utilitarians and India* (Oxford, 1959) p.vii.

¹¹ Henry Sidgwick, “Bentham and Benthamism in Politics and Ethics”, in *Essays on Ethics and Method*, ed. Marcus Singer (Oxford, 2000) pp.195-218.

¹² David Liebermann, “From Bentham to Benthamism”, *The Historical Journal*, vol.28(1) (1985) pp.199-224.

omissions” and the views of the writer “buried out of sight - typographically interred”.¹³ In Thomas Peardon’s eyes, “few men had been so badly served by their literary executors as was Bentham... it is one of the intellectual crimes of the nineteenth century that so many of Bentham’s books should lie entombed in the dismal Bowring collection”.¹⁴ It is now also acknowledged that another editor, Etienne Dumont, who was responsible for the dissemination of Bentham’s ideas in France, was somewhat innovative in his editorial work. In 1802, Bentham (who could be very funny at times), remarked to his friend Samuel Romilly that he was “impatient” to read a forthcoming translation of his writing by Dumont, because he had “a great curiosity to know what his own opinions are”.¹⁵ The very state of Bentham’s writings make it difficult to mount a sustained defence of Bentham’s works; much is not published, and when it is, it is either poorly edited or perhaps challenging to work out if it contains the original thoughts of Bentham, or those of his editors.

This particular problem with Bentham scholarship is gradually being overcome by the work of the Bentham Project at University College London, the institution for which Bentham is considered the intellectual and spiritual founder. James Burns, John Dinwiddy, Frederick Rosen and most recently Philip Schofield have overseen the production of a new collected edition of Bentham’s work, and a number of important monographs on Bentham’s political thought have come out of this editorial work. As a consequence of the Bentham Project, as Stephen Engelmann and Jennifer Pitts put it, “a new Jeremy Bentham” is being “unearthed” from the manuscripts, and this figure is in plenty of areas “gradually displacing the received Bentham of pre-revisionist research”.¹⁶ Nevertheless, one area in which it does not

¹³ William Empson, ‘Jeremy Bentham’. *Edinburgh Review: Or Critical Journal*, Vol.78 (1843) p.516.

¹⁴ Thomas Peardon, “Bentham’s Ideal Republic”, in *Jeremy Bentham: Ten Critical Essays*, ed. Bikhu Parekh (Abingdon, 2010) p.121.

¹⁵ Samuel Romilly, *The Life of Samuel Romilly Written by Himself with a Selection from His Correspondence* (London, 1842) p.405.

¹⁶ Stephen Engelmann and Jennifer Pitts, “Bentham’s ‘Place and Time’”, *The Tocqueville Review*, vol.32(1) (2011) p.43

seem to be shifting established opinion is in scholarship on representation and democracy. The availability of research materials thus cannot be the only reason that Bentham remains relatively absent in accounts of representative democracy.

There is a more substantive factor that helps explain why Bentham is not generally seen as a particularly enlightening or incisive theorist of representative democracy, and that is that, from the 1830s through to the present, he has often been fundamentally misunderstood. A number of political theorists and thinkers have assigned to Bentham a set of political objectives which he did not advocate. Curiously, historiographical interpretations of Bentham's theory of representative democracy have bifurcated into two camps: the first considers him to be a proponent of a "voluntarist" approach, in which the purpose of representative democracy is to instantiate as far as possible the literal self-rule of the people. A second camp argues instead that Bentham put forward a "rationalist" theory of representative democracy, in which government in the common interest is conceived of as a broadly scientific business that ought to be evacuated of popular involvement and left to a relatively autonomous, technically proficient elite.¹⁷ As a consequence of these interpretations, Bentham has been mischaracterised not only by his critics, but also by those that have used him to substantiate their own normative positions. On the one hand, he has provided a convenient straw man for both critics of a reductive, aloof and impersonal utilitarian vision of politics as an exercise in management, and more prominently for critics of a participatory vision of democratic politics that has been variously censured for being dangerous, naïve, and unrealistic. Bentham appears in some accounts as the archetypical proponent of a utopian "classical" theory of democracy in which the people literally rule themselves by expressing

¹⁷ The concepts of "voluntarism" and "rationalism" are Pierre Rosanvallon's, and I have found them to be a particularly helpful way of framing discussions about the place of the people in representative democracy. Rosanvallon traces these two ideological standpoints to the French Revolution and the start of the nineteenth century, when the distance between "the people" as a political principle and a "sociological" reality was brought into stark relief. See Pierre Rosanvallon, *Democracy Past and Future*, ed. Samuel Moyn (New York, 2006).

their will to proxies, and in others as an exemplary political elitist, wary of popular involvement in politics.¹⁸ On the other hand, in the last seven years, two different authors have positioned Bentham as an advocate of a democratic system based upon an activist sovereign people that issue mandates to their delegates and as a champion of a technocratic politics based on “nudging” respectively.¹⁹ There is a patent tension between these diverging historiographical views.

What do these interpretations have to do with Bentham’s omission from the literature on representative democracy? Most contemporary theorists have argued that representative democracy is a desirable alternative to the models of representation advanced by voluntarism and rationalism. These latter two perspectives present “thin” theories of the relationship between the people and their rulers; voluntarism holds that representatives ought to be totally dependent on their electors, whereas rationalism contends that the political elite should be ultimately independent of the people. Theorists of representative democracy as a distinct political form, however, argue that its strength lies in a dualism that cuts across the binary presented by voluntarism and rationalism. Hanna Pitkin suggests that the dilemma that voluntarism and rationalism posit - what she labels the “mandate-independence controversy” - basically misses the point of representative democracy, which is that it is a political form in which representatives are *both* dependent and independent, and in which the people *both* rule and are subject to rule. This has to do with the paradox thrown up by the etymology of representation itself. Something “represented” must “be made present in some sense while not being present literally or fully in fact”.²⁰ In the case of representative democracy, it is not a choice *between*

¹⁸ Joseph Schumpeter, *Capitalism, Socialism and Democracy* (London, 1976) esp. pp.250-56; John Dinwiddy, “The Classical Economists and the Utilitarians”, in *Western Liberalism: A History in Documents from Locke to Croce*, eds. EK Bramsted and KJ Melhuish (New York, 1978) pp.12-25.

¹⁹ Compare Filimon Peonidis, *Democracy as Popular Sovereignty* (Plymouth, 2013); Stephen Engelmann, “Nudging Bentham: indirect legislation and neo-liberal politics”, *History of European Ideas*, Vol.43(1) (2017) pp.70-82.

²⁰ Hanna Pitkin, “Commentary: The Paradox of Representation”, *Nomos X, Representation*, eds. Roland Pennock and John Chapman (New York, 1968) p.41.

representation as putting into effect the rule of the people (as making the people present) or representation as ensuring the rule of those with the best “judgement” (as making the people absent). The “substance of the activity of representing”, for Pitkin, consists broadly in both; in a representative democracy, governors should be relatively free to govern, but they should do so in a context in which the represented are “conceived as capable of action and judgement”, and in which they drive policies.²¹

Pitkin’s account is of course infused with her own normative predispositions, and though she believes that a democratic theory of representation requires a belief that the people can have a coherent political identity before their being represented, this is far from a consensus point.²² Nonetheless, her point that there is a dualism to representative democracy is one that has proved persuasive. Bernard Manin has described representative government, based on the institution of election, as a regime type in which “elites and ordinary citizens alike can find what they want”, and that this might be one factor in its “exceptional stability” as a way of organising politics.²³ More recently, Urbinati has argued that representative democracy can neither be understood as a second best proxy for the direct rule by the people, nor as a way of simply selecting those best placed to govern independently on behalf of all, but as something distinctive in itself. She emphasises the “circularity” of representative democracy, and the “continuum of influence and power” that it creates between rulers and ruled.²⁴ David Runciman has articulated this doubleness or dualism as a useful “ambiguity”; representative democracy, he contends,

is an idea that secures its authority by its ability to obscure the answer to the question of who rules. The members of the demos both do and do not rule...

²¹ Hanna Pitkin, *The Concept of Representation* (Berkeley, 1967), p.155.

²² Monica Brito Vieira, “Performative Imaginaries: Pitkins versus Hobbes on Political Representation”, in *Reclaiming Representation*, ed. Monica Brito Vieira (New York, 2017) pp.25-49.

²³ Bernard Manin, *The Principles of Representative Government* (Cambridge, 1997) p.156.

²⁴ Urbinati, *Representative Democracy*, p.16.

given that they are subject to political authority at the same time as being the authors of it. The idea of representation, which is the linchpin of modern politics, makes it possible for the people both to be present and absent from the moment of political decision-making: our representatives *decide* for us and they decide for *us*. This inherent ambivalence is extremely useful: it prevents politics from having to arrive at moments of ultimate choice that may become moments of irreparable conflict.²⁵

For its defenders, representative democracy is a complex and composite political form that helps transcend the reductive visions of political representatives as either passive delegates or detached elites, and that produces a space in which a productive relationship between the people and their government might develop. *It is for this reason that Bentham has largely been excluded from theoretical discussions of representative democracy: primarily, he has been thought to have advanced thin, binary understandings of representative relationships - either the voluntarist or rationalist conceptualisations - to which representative democracy is considered as an altogether superior alternative.*

However, these different interpretations of Bentham are based on a mistaken reading of his political thought. A central assertion of this thesis is that Bentham was committed to an essentially dualistic vision of representative democracy, based on a complex relationship between rulers and those they ruled. The key to understanding this dualism in Bentham's thinking is his theorisation of the people and their role in representative democracy: Bentham considered "the people" to be a useful fictitious entity. This conception has two parts: Bentham thought that the people were *fictitious*, in that they were not a real, collective actor or agent in politics; but he also thought that they were a *useful*, in that the idea of the people in politics was worth keeping and might be productive of the political ends that he sought. Bentham's

²⁵ David Runciman, "Political Theory and Real Politics in the Age of the Internet", *The Journal of Political Philosophy*, Vol.25(1) (2017) p.12.

relationship with fictions and fictitious entities is complicated and will be given considerable attention in what follows. He is usually seen as the great scourge of fictionality, and there is a degree of truth in this image; as a young man at least, he was a vociferous critic of legal fictions, which he believed clouded the workings of the law to the detriment of those for which it is supposed to function.²⁶ But his normative stance on fictions in politics was neither straightforward nor simply antagonistic, and Bentham thought that *fictitious entities* were positively beneficial.

That Bentham considered the people to be a fictitious entity renders his approach to representative democracy *orthogonal* to that of the voluntarist and rationalist perspectives. Bentham rejected the possibility of instantiating popular self-rule, since the people were fictitious and could not rule themselves, but simultaneously, he also rejected the idea that the people had no political role in a representative democracy. Bentham, like many of the contemporary theorists mentioned above, considered representative democracy as an alternative to these thin theories of the relationship between the people and their rulers. In fact, Bentham saw the tendencies embodied by what I have called voluntarism and rationalism - towards more literal popular self-rule and elite detachment respectively - as political pathologies: inherent, competing tendencies in politics that representative democracy as a specific type of regime can help overcome. Bentham believed that "corruption", or the tendency for political elites to serve their own interests at the expense of the people as a whole, was endemic to representative government, and that this necessitated making rulers somewhat dependent on those they ruled over to guard against tyranny. Yet at the same time, Bentham also perceived another pathological, anarchical tendency in the calls for literal popular self-rule, because such calls failed to take into account the inescapable fact that government itself can only ever be of the many by the few. These two pathologies for Bentham related to the nature of the people; because they were fictitious, they could never rule

²⁶ Jeremy Bentham, *A Comment on the Commentaries and a Fragment on Government*, eds. JH Burns and HLA Hart (Oxford, 1977) pp.411-2n.

themselves, but this equally made them vulnerable to those who were capable of wielding political power. Nonetheless, the notion of the fictitious people was useful because it could have a constraining effect on the activities of governors. The dualism at the heart of Bentham's conception of the people explains why he has been understood as both a proponent of voluntarism and rationalism; he was interested in *both* the ways that rulers could be made dependent on the people *and* the ways in which they might be freed to govern with a considerable degree of discretion. The problem with interpreting Bentham as *either* a voluntarist *or* a rationalist is that these are only partial perspectives on his political thought.

Recognising that Bentham's representative democracy was based on the people as a fictitious entity is critical for a comprehensive account of his political thought; it set the parameters for his politics, delineating for him what the people could do, what they could not do, and indeed what a political regime ought to do. It also defined the principal problem that, for Bentham, representative democracy was designed to address: that the people's fictitiousness meant they were perpetually vulnerable to the misrule of their governors, and that a system that could check such misrule was therefore required. *Contra* those that imagine him to be advocating a voluntarist understanding, Bentham did not view representative democracy as a system that would instantiate the self-rule of the people. It was instead a form of government that would protect the people from *being* misruled.

That Bentham considered the people a fictitious entity helps us explain the different stances that he took on a number of developments that took place at the end of the eighteenth century and the start of the nineteenth century. As we shall see, it was why he rejected the Jacobinism of the French Revolution but came to endorse the American Republic, despite the fact that they both adopted the language of natural rights that he so detested. In the former case, the French revolutionaries had sought to transcend the basic realities of politics by attempting to make the people governors themselves, but such a project was doomed to fail because the fictional people could never live up to the expectations of them that underpinned the

Jacobin enterprise. The American Republic, in contrast, recognised the basic political distinction between the ruling few and the ruled many, and sought to modulate the relationship between these two groups rather than eliminate it altogether. This overrode his concern that the arguments in favour of the republic had been founded upon what he considered to be faulty reasoning. It was also why he was on the opposite side of the argument from Benjamin Constant, François Guizot, and later his protégé John Stuart Mill on the question of popular sovereignty. Whilst these early liberals rejected the sovereignty of the people *because* they were a fictional, Bentham, in his mature political writings, argued that the fictional people should be invested with sovereignty as a security against their misrule. Finally, it helps to explain the constitutional design that Bentham eventually settled on late in life: a representative democracy based on the fictitious people invested with sovereignty and buttressed by a system of other securities against misrule, but also with considerable independence for political rulers to govern on their behalf. This was to be a regime with a considerable degree of “creative tension”, in which a dialogical relationship between the people and their governors would be possible.²⁷ And it is a theoretical account that does not fit neatly into either a voluntarist or a rationalist rendering of Bentham’s political thought.

The Historical Bentham and Bentham in Political Theory

Why has Bentham’s political thought been so frequently misunderstood? One of the challenges of this thesis is that it targets so many different scholarly interpretations of Bentham. It challenges those that see him as a voluntarist or participatory democrat, as well as those who see him as rationalist political elitist. And it

²⁷ Frederick Rosen, *Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code* (Oxford, 1983) p.176-7; and Philip Schofield, “Jeremy Bentham on Freedom of the Press, Public Opinion, and Good Government”, *Scandinavica*, Vol.58(2) (2019) p.42.

challenges not only critics but advocates of Bentham who have understood him in these ways too. If I am right, then how have so many people got Bentham wrong? One crucial point to be addressed is the influence of Mill on the historical image of Bentham. As will be discussed in greater detail in Chapter I, Mill has shaped the understanding of Bentham handed down to posterity, and in particular his 1838, essay which sought to stake out grounds for why Mill's own utilitarianism was an improvement on his mentor's, helped construct the caricature of Bentham that has developed. Moreover, issues with the availability of Bentham's manuscript material have made it difficult for an alternative interpretation that might challenge Mill's to emerge. Mill was motivated to offer a reductive account of Bentham's vision of politics in order to highlight what made his own superior, and that account has proved difficult to dislodge. Partly then, Bentham has so often been misunderstood because of the influence of Mill on the historiography coupled with the difficulty of accessing the primary source material that might be the basis of an alternate reading.

Mill speaks in that 1838 essay about the "one-sided" nature of Bentham's political outlook, but ironically, and as I suggest above, one of the other key problems with lots of Bentham scholarship has been its partial nature. This is my second point, and it qualifies the criticisms I make throughout the thesis: much of the scholarship that I subject to criticism is credible and offers accurate accounts of *parts* of Bentham's work. But the key point is that they are partial views, and when taken alone are prone to be misleading. Scholars have discussed Bentham's views on the people or on the role of political elites, and they have discussed them accurately, but they often failed to join these dimensions of his thought up. But if, as I argue, the dualism of Bentham's theory of representative democracy is its very essence, then this failure distorts proper understanding of his work.

A final reason for the recurrent misreading of Bentham's political thought is the apparent desire to integrate it within a unified theory of his work. Much of the literature on Bentham has frequently tried to read his political thought through his writing on other topics, like philosophy and jurisprudence. However, another key

contention of this thesis is that Bentham saw politics as a distinctive domain of human activity, possessing its own dynamics and logic that would inflect utility calculations. The desire to provide a master theory that encompasses all his views and incorporate them into a cohesive and coherent whole is obviously in tension with an approach that seeks to separate out Bentham's specific beliefs about politics from those on other subjects. Utility of course was Bentham's concern everywhere and anywhere, and this should qualify any claim for the particularity of the political sphere within his thought. Nevertheless, this thesis seeks to make clear that utility calculations operated very differently in the political context compared to the philosophical, for example. Bentham has also been misunderstood, then, because people have failed to recognise that he believed the utility principle to operate in politics in a highly unique and idiosyncratic way; politics was not merely another undifferentiated place for the implementation of his philosophical utilitarianism.

Partly, this thesis has a historical motivation, which is to provide a more balanced account of Bentham's theory of representative democracy - one that is true to the objectives and intentions that Bentham himself actually possessed in drawing up blueprints for this type of regime. The last significant study on the subject was Frederick Rosen's *Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code*, published in 1983. This is an impressive book that picks up elements of Bentham's political thought that others have overlooked or ignored. Much of what Rosen has written decisively influenced parts of this thesis - in particular, his rejection of the view that Bentham saw representative democracy as simply the way to instantiate government by the people. However, there are some shortcomings too in Rosen's work, and it is these that this thesis seeks to address. For one, Rosen's account is a political-theoretical one, and in it, Bentham's political thought is isolated and abstracted, rather than placed in the nexus of ideas and arguments that were circulating at the time that he was writing. As one reviewer of the book put it, "though Dr Rosen is a fine expositor, and complete master of his subject, he is a political theorist, impatient of those 'contextualists' who seek to

explain a work by putting it in its historical setting".²⁸ Since 1983, some important historical accounts of Bentham have been produced, including Emmanuelle de Champ's *Enlightenment and Utility* and Philip Schofield's *Utility and Democracy*, both of which offer contextual analyses that have greatly enriched our understanding of what debates Bentham himself thought he was contributing to at the time.²⁹ This thesis has sought to incorporate these historical studies into its arguments. Moreover, Rosen does not discuss Bentham's notion of fictions and fictitious entities and how they apply to democratic politics, which I believe is the key to unlocking Bentham's theoretical insights on representative democracy. Finally, Rosen is concerned primarily with Bentham's *Constitutional Code*, which he began drafting towards the end of his life in 1822 (and never completely finished). Whilst this is Bentham's most comprehensive attempt to draft a constitution for a representative democracy, I want to suggest that many of the major principles that informed his later writings can be found in important earlier works. In fact, tracing Bentham's developing political thought over time, particularly with regards to fictions and "sinister interest", is vital to grasping why Bentham came to advocate the vision of representative democracy that he did. Plugging these gaps will be one of the aims of what follows.

I want to add a brief note on how I approach Bentham's political thought in this thesis. As the foregoing has suggested, the *way* that Bentham wrote poses a unique set of challenges to scholars of his work: he wrote a lot, over a very long time, on a range of subjects and in difficult handwriting, yet published very little himself. Some Bentham specialists have distinguished quite strongly between an "early Bentham" of the *Fragment on Government* who was effectively a Francophile Enlightenment *philosophe*, and a "later Bentham" of the *Constitutional Code* who was a

²⁸ Chris Church, "Review", *English Historical Review* Vol.101(398) (1986) p.267.

²⁹ Emmanuelle de Champs, *Enlightenment and Utility: Bentham in French, Bentham in France* (Cambridge, 2015); Philip Schofield, *Utility and Democracy: The Political Thought of Jeremy Bentham* (Oxford, 2006).

committed Philosophical Radical and agitator for Parliamentary reform. These scholars have often drawn attention to moments of change or “transition” or “conversion” in Bentham’s opinions and stances, and the discontinuities in his writing.³⁰ Others have looked to “reconstruct” Bentham’s thought in order to offer a coherent, consistent philosophical outlook across all of his work.³¹ Some have looked to contextualise his writing at particular historical moments and supplement his manuscripts with correspondence to build a picture of his thought at any given time, whilst others have looked to a single treatise for an authoritative account of his views.³²

This thesis is based on a different methodological approach. First and foremost, it rejects the idea that a single authoritative Benthamite theory can be deduced across his work on the law, politics and philosophy. In fact, this thesis is based on a very different premise: that Bentham saw politics as a unique and distinctive domain of human endeavour, and that therefore his political views cannot be deduced straightforwardly from his legal and philosophical opinions. Secondly, this thesis will look to engage with political work across Bentham’s life, rather than being confined to a single published tract. To try to discern Bentham’s vision of politics by reading a single treatise is a flawed approach, because this is simply not how he worked. Instead, the approach in what follows has been to take Bentham’s comments on concrete political questions that he addressed and to extrapolate his political thought from there. Whilst he did not lay out an explicit political theory in any single place, Bentham did have an incisive understanding of politics, and what he had to say on the subject was laden with theoretical sophistication. Finally, by focusing Bentham’s understanding of politics as a unique

³⁰ Compare Schofield, *Utility and Democracy*, pp.78-83; & John Dinwiddy, “Bentham’s Transition to Political Radicalism, 1809-10”, *Journal of the History of Ideas*, Vol.36(4) (1975) pp.683-700.

³¹ Oren Ben-Dor, *Constitutional Limits and the Public Sphere: A Critical Study of Bentham’s Constitutionalism* (Portland, 2000).

³² Compare De Champs, *Enlightenment and Utility*; & Rosen, *Jeremy Bentham and Representative Democracy*.

realm of human behaviour, I offer a framing for his political thought that recognises both change and continuity. There were a set of principles that Bentham adopted in his earliest writing that informed his generally realist disposition throughout his life, but his views on politics were also shaped decisively by contemporary events - most notably the American and French Revolutions, and his more personal encounters with the “sinister interests” of the English political establishment.

However, this thesis is not simply an exercise in historical rectitude. Whilst I want to offer a more accurate account of Bentham’s political thought, I also want to assert strongly that Bentham offers a way of thinking about representative democracy that may be useful today. Bentham should be brought back into conversations about representative democracy not just because it is historically valuable to recognise his commentary on the subject, but because Bentham in fact offered a way of thinking about representative democracy that might be helpful in addressing certain contemporary political challenges. One reason why Bentham’s theory is so interesting is because its realism offers a potentially helpful way of thinking about representative democracy. Bentham has frequently been seen as a typical political idealist – as possessing a pre-political, philosophical conception of the good which he applied uncritically and uncomplicatedly to the political realm.³³ The universalising language in which he spoke about utility lends itself to this reading. But as will be argued, Bentham’s utilitarianism and his conception of politics was far more nuanced and sophisticated than is often recognised. Bentham was not only “pragmatic” in the sense that he was sensitive to the facts of politics and sought to match his utilitarian ideals with realities. He was also substantively realist in the political-theoretical sense of the word: he saw politics, as mentioned above, as a distinctive domain of human activity; he recognised the centrality of power and its ascendancy over truth and reasoning in politics; he believed that stable political orders were a prerequisite for the pursuit of any other political value

³³ Bernard Williams, *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Princeton, 2005) p.2.

or end, and that therefore anarchy constitutes the summum malum of politics; and he was sensitive to the non-rational dimensions of human motivation.³⁴ His political proposals in his mature constitutional writings then were schemes for “realist democracy”, and they were based on a realistic appraisal of the capacities of the people as a collective actor, as well as the primary threats that face a representative democratic polity. On this latter point, Bentham believed that a realistic theory of democracy must recognise that it is the elites who wield power that we should be most worried about, not the people as a whole. The people as a collective, Bentham argued, are not capable of wielding the power to tyrannise. It is the tyranny of rulers that remains the key threat to be contained in a representative democracy, because it is they who *act* on behalf of the people, and they who can in practice tyrannise. This is the fundamental fault line that opens up between Bentham and the other key utilitarian theorist of representative democracy, Mill. And though Bentham was certainly aware of the potential defects of majoritarian politics, in a world of priorities, it was the tyranny of the governors that he thought we should be most wary of.³⁵ Importantly, realism does not necessarily imply cynicism. Realists do not believe that democracy is meaningless or mythical. They simply believe that the reasons why this political form is valuable are different to those found in idealised accounts of democracy as popular self-rule. Bentham was not cynical about democracy - far from it. But he did have a very different conception of its value from

³⁴ Political realism is not a unitary or monolithic school of thought, and there is considerable variation across different types of realists, as will be discussed in Chapter IV. Unlike “harder” realists or those who embrace a *realpolitik* vision that considers the gaining and maintaining of power to be the only proper end in politics, Bentham did believe there was a place for morality in politics. This aligns him with “softer” realists like Max Weber, who recognise a place for convictions in the political domain, but who also emphasise the importance of responsibility in pursuing those convictions politically. On the subject of political realism in political theory, compare: William Galston, “Realism in Political Theory”, *European Journal of Political Theory*, Vol.4(4) (2010) pp.385-411; Matt Sleat, “Realism, Liberalism and Non-Ideal Theory Or, Are there Two Ways to do Realistic Political Theory?”, *Political Studies*, Vol.64(1) (2016) pp.27-41; Alison McQueen, “Political Realism and Moral Corruption”, *European Journal of Political Theory*, Vol.19(2) (2020) pp.141-161. For different perspectives, see Matt Sleat (ed.), *Politics Recovered: Realist Thought in Theory and Practice* (New York, 2018).

³⁵ Filimon Peonidis, “Jeremy Bentham’s ‘Unusually Liberal’ Representative Democracy”, *History of European Ideas*, Vol.37(4) (2011) pp.451-2.

other, more idealistic theorists of democratic government. Bentham might thus help us to think differently about why it is worthwhile organising our political societies democratically.

More profoundly, by accessing Bentham's work through a realist political lens, we might be able to draw rather different lessons from him about democratic politics than the ones that are typically gleaned. Through this alternative, realist reading, counsel on the political function of the people, of the place of fictions in democratic politics and on the importance of public opinion can all be obtained from Bentham's writing. Moreover, Bentham offers potential guidance on two contemporary political phenomena, populism and technocracy. Populism and technocracy, it will be contended, represent analogues of the flawed voluntarist and rationalist visions of politics that Bentham thought himself to be responding to. He spoke the same language that defines the populist and technocratic discourses - of the ruling few and the ruled many as the basic political classes through which representative democracy ought to be understood. But he presented an approach to representative democracy that is *orthogonal* to populism and technocracy - to the notion that government should be *either* the institutionalisation of popular self-rule, *or* that it should be a technical activity guided by the wise and intelligent. Bentham's vision of representative democracy as a way of organising politics based on securing the people from misrule cuts across the binary that populism and technocracy presents, and it can help provide a robust defence of representative democracy against these ideological viewpoints.

Sensitivity to historical context is vital for understanding ideas because ideas are contingent on their temporal circumstances. But that shouldn't mean we wrap the history of political thought in cotton wool and study it as merely an object of curiosity. Ideas need to be used with historical subtlety, but they still need to be used and deployed to address the political problems that our societies face. The history of political thought provides an extensive library of different responses to political dilemmas that, yes, fundamentally depend on historical context for their particular

inflections and significance, but that also present “relatively constant” challenges to human communities over time.³⁶ Mark Bevir has called these types of challenges “perennial problems”- questions that any political society must confront. This is not to say that there are necessarily perennial answers to those questions, but only that each political community must offer their own particular response to such questions.³⁷ These might be questions like “what should the relationship between the ruled and their rulers be?” or “what is the political function of the people?”. Bentham is relevant to the present political moment because the ideas he engaged with and the challenges he imagined himself to be responding to have contemporary equivalents. And furthermore, his take on representative democracy offers a persuasive alternative to that of some of the other historical figures who continue to be utilised in political theoretical arguments today. The point is, though, that history and political theory are not necessarily in tension with each other; as Greg Conti puts it “the more history, the better the laboratory. The more fine-grained our historical knowledge, the more urgently and clearly the arguments, problems and debates of the past can speak to current dilemmas and questions”.³⁸

Outline of the Thesis

This thesis has seven chapters. Chapter I establishes the predominant historiographical views of Bentham’s political thought with particular regard to his conception of “the people” and their role in politics and representative institutions, and it suggests a link between these views and the neglect of his theory in the literature on representative democracy. I suggest that there are two basic

³⁶ Pierre Rosanvallon, *Democracy Past and Future*, p.76.

³⁷ Mark Bevir, “Are there Perennial Problems in Political Theory?”, *Political Studies*, Vol.42 (1994) pp.662-75.

³⁸ Conti, *Parliament the Mirror of the Nation*, p.6.

perspectives on Bentham that are predominant in the field of political thought: that he was either a voluntarist who advocated the instantiation of popular self-rule, or a proponent of rationalism and an independent political elite in possession of specific technical knowledge. Further, it will be argued that these prevailing opinions about Bentham overlook a central element in his work: that he considered the people to be a useful fictitious entity, and that this makes his account of the people's political role orthogonal to that put forward in the voluntarist and rationalist theoretical frameworks respectively. This intellectual ground clearing is important, because the two dominant theoretical perspectives to be outlined have commanded such influence in the literature on Bentham, to the detriment of a full understanding of his work.

Chapter II offers an account of Bentham's understanding of fictions and how they work in politics and seeks to complicate the rather crude interpretation advanced by C.K Ogden in *Bentham's Theory of Fictions*. The title that Ogden used for his study broadly fails to disaggregate the various classes and categories that Bentham used to discuss a range of similar but distinctive entities, such as fictitious entities, fictions, and fallacies. Though he himself considered his primary intellectual debts as being to Locke, Helevetius and d'Alembert, I argue that on this topic Bentham fits into another lineage of thinkers who have considered what fictions are and how they work in the political domain, including Thomas Hobbes and David Hume. Furthermore, an attempt will be made to complicate Bentham's evaluation of fiction, and this will engage with the central normative concept in Benthamite political thought - utility. Whilst he certainly rejected a number of specific fictions, his was not a purely philosophical objection, and Bentham did see utility in a number of fictions. His views also changed considerably over time. Importantly, Bentham imagined the people to be a fictitious entity, rather than a fiction, and this had a significant bearing on what he considered to be their function in politics.

Chapter III is an effort to understand Bentham's views on representation, which he saw as an ineradicable element of politics itself. Bentham *did* consider

politics as a kind of profession, which ought to be left to those with the technical proficiency to govern effectively. Representation to some extent was a positive good, because it was most likely to produce good government. However, Bentham came to see a pathological tendency in representative government towards corruption and the misrule of the people. This tendency was a product of a number of structural factors, which included the basic self-interestedness of individuals, the inexorable distinction between the governing few and the governed many, and the effects of these two factors when they interact in the political realm. His views on this issue are best understood through his theory of sinister interest and “interest-begotten prejudice”, and his “discovery” of sinister interest marked a critical juncture in Bentham’s developing political thought. The misrule of the people that derived from sinister interests was the problem which Bentham sought to address with representative democracy, and he realised that to mitigate misrule, some sort of political role needed to be afforded to the people.

Chapter IV considers what Bentham took to be a defective solution to the problem of sinister interest and misrule that arise in representative government: “unrealistic democracy”. This Bentham understood to be the effort to collapse the elementary political distinction between the ruling few and the ruled many, and to make the many literally rulers themselves. Such an attempt, he thought, was tantamount to a project for anarchy. I consider Bentham’s contrasting response to the French and American Revolutions, as well as his views on mandated representation - the idea that delegates should be furnished with binding instructions by their constituents. Often, Bentham’s rejection of the French Revolution is taken to simply be a rejection of the discourse of natural rights; however, his objection had far more to do with his intuition that the French revolutionaries had badly misunderstood the nature of the people and what role they were capable of performing in politics. I also discuss aspects of Bentham’s realism, including his preference for constituted authority, his emphasis on the importance of timing in politics, and his scepticism about Jacobinism. Finally, I also

consider what Bentham took to be an unrealistic account of political founding in the notion of a pre-political people imposing contractual obligations on their rulers, and his alternative, Humean theory of government as founded upon the opinion of the governed.

Bentham's rejection of unrealistic democracy did not mean that he had given up on democracy itself, however. Chapter V will consider his proposals for "realist democracy" - a representative democracy based on government by deputies with sufficient aptitude, popular sovereignty and a system of securities against misrule. He continued to believe that government was an enterprise to be undertaken by the few on behalf of the many. In this, Bentham was not unique. But what distinguished him from many other notable theorists in the early nineteenth century is that he argued that sovereignty should reside with the people. Constant and Guizot in particular recognised that the people were essentially a fiction, and they rejected the placing of sovereignty with them because they believed such a course of action was a recipe for majority tyranny. This was the same concern that Mill was to pick up later in the century. Bentham disagreed. He argued that since the people were fictitious, and thus basically incapable of action themselves, placing sovereignty with them was unlikely to *facilitate* tyranny, but could instead offer the people a basic security *against* it. In this too, Bentham demonstrates his realism; the purpose of placing sovereignty with the people was not - as Mill characterises his argument - for reasons of "logical ratiocination", or because the people were more likely to discern "truth", but because doing so provided the people with a security against being misruled.³⁹ Furthermore, I pay particular attention to the place of public opinion in Bentham's political thought as a realistic instrument for the constraining of rulers. Of course, Bentham saw the limitations to majoritarian politics. But he deemed the tyranny of rulers a more proximate and more significant threat. Finally, I compare and contrast his political thought with that of James Madison, who is

³⁹ Rosen, *Jeremy Bentham and Representative Democracy*, p.38.

more frequently held up as an exemplar of a realistic approach to representative government.

Chapter VI proposes that Bentham's work might be instructive when thinking about representative democracy today. It will be suggested that a defective historical understanding of Bentham's thought has not only obscured his relevance to contemporary political theory generally, but also to political realists specifically. In particular, Bentham tells us a lot about the capacities of the people as a political actor, the continued role of fictions in politics, the ramifications of populist and technocrat strains of thought in contemporary politics, and the function of public opinion. What I hope to make clear is that in all these areas, Bentham advances unique yet discernibly realist perspectives that contemporary practitioners would profit greatly from engaging with. Particularly when it comes to his understanding of the relationship between truth and utility and the purpose of public opinion, Bentham provides powerful arguments that can help fortify contemporary realist approaches to representative democracy.

In the concluding chapter I summarise the core arguments of the thesis, before suggesting some key lessons that Bentham can impart to us on the purpose of representative democracy. In short, Bentham offers a *realistic* model of representative democracy based on a complex and dualistic relationship between the people and their rulers. His version of democratic politics is heterodox to that put forward by voluntarism and rationalism and their contemporary strains in populism and technocracy respectively. The originality of his model centres around his conceptualisation of the people. In response to those who assert that politics is about finding the "right" answers to policy questions and that the people are fundamentally incapable of doing this, Bentham reminds us that the purpose of making the people sovereign is not to derive more objectively correct policy decisions, but to secure people from misrule. To consider popular sovereignty through the lens of truth and objectivity is to miss the point. And in response to those who say that representative democracy should be tantamount to collective,

popular self-rule, Bentham reminds us that the people as a collective entity are fictitious and can never in point of fact rule. Representative democracy was one particular way of being ruled for Bentham, not an alternative to the rule of the many by the few. This conception of the people as a fictitious entity thus helps to create a space in which governors could govern, but in such a way that they would not become entirely detached from the people that they are meant to serve.

Chapter I

Historiographical Frames

It would be an understatement to say that Bentham is not generally well regarded by theorists of representative democracy. For instance, in a 1990 essay, Hanna Pitkin argued that: “Jeremy Bentham has not yet received the criticism that he deserves”.⁴⁰ Though this particular essay was more directly concerned with what she described as the “slipperiness” of his ideas - the fact that they are in her words “capable of being (almost) all things to (almost) all people” - it is symbolic that Pitkin, perhaps the foremost twentieth century scholar on political representation, was so disdainful of Bentham as a thinker.⁴¹ More recently, in their book on representation, Monica Brito Vieira and David Runciman have suggested that looking to Bentham for guidance on representative democracy is ill-advised, because he was deeply suspicious of representative government itself.⁴² Equally as telling as these generally unfavourable views is the *absence* of any consideration of Bentham’s theoretical perspectives in the work of most scholars working on the subject of representative democracy and political representation. As noted in the introduction, an array of Bentham’s contemporaries in England, on the Continent and in the early American Republic have been invoked as guides to this particular type of political regime, but Bentham is conspicuously disregarded. The silence, in this case, is deafening.

This is in large part because Bentham’s thinking on this subject is frequently supposed to manifest understandings of the people and their role in government to which representative democracy is posited as a putative alternative. Bentham has

⁴⁰ Hanna Pitkin, “Slippery Bentham: Some Neglected Cracks in the Foundation of Utilitarianism”, *Political Theory*, Vol.18(1) (1990) p.104.

⁴¹ *Ibid*, p.127. Pitkin’s *The Concept of Political Representation* is the seminal twentieth-century study on political representation.

⁴² Vieira and Runciman, *Representation*, p.46.

frequently (and puzzlingly) been conceived of as *both* a “voluntarist” and a “rationalist” thinker by various scholars: as either a thinker that promoted an unrealistic and unrealisable version of popular self-government, or as a proponent of rational, undemocratic and elite government in the interest of some hypostatized common good. Principally, these two schemas for understanding Bentham’s political thought centre on his conception of “the people” and their role in politics; the voluntarist image of Bentham suggests he imagined the people to be a “real” political actor capable of expressing its will and either executing it itself or mandating representatives to do so on its behalf. The rationalist image of Bentham suggests instead that he rejected the notion of the people as a political actor and denied them any place in politics at all, preferring the government of those with the requisite “aptitude” and competence. Yet for most theorists of representative democracy, voluntarism and rationalism are narrow ideological perspectives which fail to recognise the complexity of this composite form in which the people are both present and absent in decision-making, and in which governors are both dependent on and independent of the people as a whole.⁴³ That Bentham is associated with these two unsatisfactory approaches to politics may not be entirely surprising; Bentham used the same language that voluntarists and rationalists use, discussing politics primarily in terms of the basic distinction between the people and their rulers or the “elites”.⁴⁴ However, Bentham’s conception of the *relationship* between these two groups was neither voluntarist nor rationalist in nature.

This chapter will examine these divergent historiographical images of Bentham, before suggesting that they display an underlying theoretical commonality, which is that they both fundamentally misunderstand Bentham’s conception of the people. Bentham did not endorse the voluntarist vision of the people as a political actor capable of governing itself, but nor did he believe that the people were a myth that we ought simply to discard in favour of rational

⁴³ Hanna Pitkin, *The Concept of Representation*, pp.144-67.

⁴⁴ Rosen, *Jeremy Bentham and Representative Democracy*, p.13.

government by the few. Bentham's conception of the people was something altogether different.

Voluntarism vs Rationalism

How might we understand different ideological perspectives on politics? One plausible way would be as different standpoints on the role of the people in political decision making, and this makes sense especially in the case of democratic polities; etymologically, democracy stems from the ancient Greek words *demos*, which means people, and *kratos*, which means power. Democracy, then, is defined principally in terms of the political role it arrogates to the people.⁴⁵ In the case of the ancient Greeks, *demokratia* meant the literal rule by the people - the people's role in ancient democracies like that of Athens was literally to congregate together and to rule themselves.⁴⁶ But for democracy in its modern iterations, in which a particular configuration of the few rules on behalf of relatively large, diverse and dispersed populations, the question of the place of the people in politics is rather more complicated. What conjugation of the few should rule? Does democracy mean that the people themselves literally rule, or does it mean that the few that actually wield power do so in the interests of the people? In a modern, *representative* democracy, what should the relationship between the people and their representatives be? All of these subsidiary questions relate to the basic one of how far and in what way should the people be involved in the actual business of government.

⁴⁵ Frederick Rosen, *Philosophical Ideas in Politics: Bentham, Blair and Beyond. 73rd Conway Memorial Lecture* (London, 2006).

⁴⁶ Ross Harrison, *Democracy* (London, 1993). As Harrison points out, the case of Ancient Greece is somewhat more complex; the *Ecclesia*, or the Assembly, was open to all citizens, but political decision-making power was also invested in less popular institutions like the Council and the Courts. p.14-33.

There exist differing responses to the question of popular involvement in politics amongst theorists of representative democracy itself. These perspectives have been framed in various ways: as the difference between “mandated” representation - where the people compel their delegates to deliver on their express will - and “independent” representation - where representatives are relatively autonomous in the business of governing in the interest of the political community; as “direct” democracy - in which the people assemble to self-govern - versus “indirect” versions of democracy - where the people appoint individuals to govern on their behalf because of the practical inconveniences of doing so themselves; and as “populist” renderings of democracy - where government is good to the extent that it enables the people to govern themselves - versus “technocratic” understandings in which a political elite are insulated from popular pressure in order that they can make decisions in the interest of some objective, common good.⁴⁷ This latter formulation has proved the most popular in contemporary political discourse, but its use implies a relatively short term perspective on the dilemma of popular involvement in politics. Populism in particular is frequently seen as a response to a specific version of democracy - *liberal* democracy - which developed in the nineteenth century and has become the hegemonic form in the twentieth and twenty-first centuries.⁴⁸ Populists, its theorists argue, reacted to the “cartelisation” of political parties in recent history, which have become increasingly distant from the people that they are meant to act on behalf of, and the solution that they advocate is to increase popular involvement in politics.⁴⁹ Populism as a movement is generally

⁴⁷ Compare Pitkin, *The Concept of Representation*, pp.144-67; Bernard Manin, *The Principles of Representative Government*, pp.8-93; Chris Bickerton and Carlo Invernizzi Accetti, “Populism and Technocracy: Opposites or Compliments?”, *Critical Review of International Social and Political Philosophy*, Vol.20(2) (2017) pp.186-206.

⁴⁸ See Stephan Rummens, “Populism as a Threat to Liberal Democracy”, in *The Oxford Handbook of Populism*, eds. Cristobal Rovira Kaltwasser, Paul Taggart, Paulina Ochoa Espejo and Pierre Ostiguy (Oxford, 2017) pp.555-71.

⁴⁹ Chris Bickerton and Carlo Invernizzi Accetti, “Populism and Technocracy”, in *The Oxford Handbook of Populism*, eds. Cristobal Rovira Kaltwasser, Paul Taggart, Paulina Ochoa Espejo and Pierre Ostiguy (Oxford, 2017) pp.333-35.

traced back to the Populist Party that contested elections in the United States in the 1890s at the earliest, whilst technocracy is usually seen as an even more recent response to the rise of populism.⁵⁰

However, the question of popular involvement in politics is not a recent quandary raised by contemporary developments but goes to the very core of democracy itself as a specific type of government. It concerns the nature of “the people” - what they are capable of doing, and what role they might therefore be able to perform in a democratic polity. More specifically, it concerns the *ambiguity* of the people as an ill-defined political actor that was introduced historically in the context of revolution and upheaval at the end of the eighteenth century.

Pierre Rosanvallon offers a different way of conceptualising the approaches to the role of the people in democratic politics, and he theorises two ideological perspectives on the question which he labels “voluntarism” and “rationalism”.⁵¹ For Rosanvallon, the starting point for these perspectives is the vagueness and uncertainty of the people as an idea itself; though the people (and their centrality) is the defining political principle of a democratic polity, the sociological reality of the people is that they are *introuvable* - they exist nowhere in any definite sense, and can only ever take “debatable form”.⁵² The notion of the people implies cohesiveness, unity and homogeneity, but the people are in point of fact heterogenous, diverse and plural. The people are both “imperious” and “vague”, argues Rosanvallon, and their basically paradoxical nature determined the development of modern representative democracies in the early modern period and continues to pose a dilemma to the citizens of such polities today.⁵³

⁵⁰ Duncan Kelly, “Populism and the History of Popular Sovereignty”, in *The Oxford Handbook of Populism*, eds. Cristobal Rovira Kaltwasser, Paul Taggart, Paulina Ochoa Espejo and Pierre Ostiguy (Oxford, 2017) p.329.

⁵¹ Rosanvallon, *Democracy Past and Future*, pp.14-22.

⁵² *Ibid*, p.37.

⁵³ *Ibid*, p.79.

The instability of the category of “the people” gave birth in Rosanvallon’s mind to a set of pathologies that recurrently confront representative democracies. The first of these pathological responses he terms “voluntarism”, and its response to the ambiguous nature of the people is to pursue their reification and concretisation as a political actor, to seek a correspondence between the sociological reality of the people and the political principle of their unity, and to secure a perfect identity between the people and their rulers.⁵⁴ Voluntarism is broadly a participatory rendering of democracy in which the people are imagined to be the rulers - in which the many rule themselves either literally, or by instructing proxies to implement a really-existing popular political will. Rosanvallon associates voluntarism in particular with the deleterious efforts to transcend the contradiction and equivocality of the sovereign people that were manifest in the logic of the Terror, of Robespierre, and of Saint-Just.⁵⁵ The second pathological response that Rosanvallon describes is “rationalism”, which represents a rejection of the very idea of the people as a political actor on the basis that the political principle can never conform with sociological reality; given that the people as a collective are incoherent - they are always effervescent and can never themselves speak with one voice - rationalists aver that we should do away with any suggestion that they should be involved with the business of governing. Rosanvallon associates rationalism with the early French liberal reaction in the early nineteenth century to the excesses of the Revolution, and more specifically with Benjamin Constant and François Guizot.⁵⁶

To extrapolate, then, voluntarism is an ideology that is centred on the sanctity of the people as a coherent actor capable of expressing a collective will and implementing it either through proxies or directly. It sees the people as wholly able to govern itself. Rationalism by contrast denotes a political order based on the pursuit of some hypostatised truth or rationality by those best placed to do so - or

⁵⁴ *Ibid*, pp.14-5

⁵⁵ *Ibid*, pp.92-7.

⁵⁶ *Ibid*, pp.117-26.

rule by experts. Voluntarists promote a participatory model for democratic politics, whereas rationalists are anti-participatory, and argue that the people should be broadly excluded from the scientific activity of governing. If “good” politics in the voluntarist reckoning is that which makes the people themselves rulers, then good rationalist politics is that which is in conformity with some abstract notion of truth. And this is best pursued without the direct involvement of the people.⁵⁷

Rosanvallon considers both voluntarism and rationalism as pathologies because they are born out of a basic hostility to the paradox that lies at representative democracy’s core: that of the people and their uncertain place in politics. A number of contemporary theorists have argued similarly that representative democracy is a complex and composite political form that belies the simplifications of the role of the people that are implied in voluntarism and rationalism. Arguably, the people are not literally rulers themselves, but nor are they excluded from politics altogether. As Pitkin puts it, representative democracy relies on the idea that the people are somehow present and absent from political decision-making *simultaneously*.⁵⁸ Voluntarism and rationalism might otherwise be thought of as “thin” theories of the relationship between the people and their governors in a representative democracy; or as Pitkin puts it, they are both “right” in some way, but only ever “half right”.⁵⁹

I will return to the question of representative democracy’s duality in a later chapter. Nonetheless, voluntarism - understood as an approach to politics which promotes the self-government of the people via active participation in government - and rationalism - understood as an alternative approach that advocates the exclusion of the people from government and the relative independence of governors to pursue an objective notion of the common good - provide useful frameworks for

⁵⁷ Bickerton and Accetti, “Populism and Technocracy: Opposites or Compliments?”, pp.195-200; Pierre Rosanvallon, *Democratic Legitimacy* (Princeton, 2011) p.2.

⁵⁸ Pitkin, “Commentary: The Paradox of Representation”, p.41.

⁵⁹ Pitkin, *The Concept of Representation*, p.91.

understanding the differing ways in which Jeremy Bentham's theory of representative democracy has been understood.

Bentham as a Voluntarist

There is a narrative that Bentham offered something along the lines of a voluntarist theory of representative democracy, and this narrative has its origins with John Stuart Mill. The question of the relationship between Bentham and his effective intellectual heir is a vexed one. On a personal level, it is well known that Mill's father, James, was a close friend and intellectual ally of Bentham's, and Bentham himself was the younger Mill's godfather. In terms of their intellectual relationship, for Martha Nussbaum, Bentham's Utilitarianism, which perpetrated a "dogmatic simplicity" on important philosophical questions like the nature of happiness, effectively *obscured* and overshadowed the work of Mill, who deviated from his intellectual forefather by developing a far more nuanced version of utilitarianism.⁶⁰ Bentham, Nussbaum seems to imply, has drowned out Mill's more sophisticated contribution to utilitarian political thought. The reality, though, is that something closer to the complete reverse is true: our historical understanding of Bentham has to a remarkable extent been the invention of his intellectual successors, and in particular, of Mill.

In fact, one might plausibly argue that one of the defining interpretations of Bentham bequeathed to posterity - that he was an advocate for voluntarist democracy - can be traced back to a single essay Mill wrote six years after the former's death.⁶¹ Mill's 1838 article on Bentham in the *London and Westminster Review*

⁶⁰ Martha Nussbaum, "Mill between Aristotle and Bentham", *Daedalus*, Vol.133(2) (2004) pp.60-8.

⁶¹ In fact, Michael James suggests that the origins of the voluntarist interpretation of Bentham's work go back even further: to James Mackintosh's article in the *Westminster Review* in 1818. See Michael

- a mouthpiece for the Philosophical Radicals - has been described by two scholars as “perhaps the single most influential source for shaping Bentham’s later reputation, and it put its author on the way to outshining his mentor”.⁶² The early part of the essay reads like a eulogy; Mill describes Bentham as one of the “seminal minds of England” and “the great *subversive*, or, in the language of continental philosophers, the great *critical*, thinker of his age and country”.⁶³ “To Bentham”, he remarked:

more than to any other source might be traced the questioning spirit, the disposition to demand the why of everything, which had gained so much ground and was producing such important consequences in these times. The more this assertion is examined, the more true it will be found. Bentham has been in this age and country the great questioner of things established. It is by the influence of the modes of thought with which his writings inoculated a considerable number of thinking men, that the yoke of authority has been broken, and innumerable opinions, formerly received on tradition as incontestable, are put upon their defence, and required to give an account of themselves.⁶⁴

Bentham was not merely a “negative” philosopher in Mill’s mind though; not only did he expose error and fallacy, but he also positively built a framework for approaching philosophical and moral questions. And whilst Mill advised that we ought to reject Bentham’s specific “opinions”, he added that we ought wholeheartedly to recognise the merits of his “method of detail”.⁶⁵

James, “Public Interest and Majority Rule in Bentham’s Democratic Theory”, *Political Theory*, Vol.9(1) (1981) pp.49-64.

⁶² Engelmann and Pitts, “Bentham’s ‘Place and Time’”, p.45.

⁶³ John Stuart Mill, “Bentham”, in *The Collected Works of John Stuart Mill, Vol. X: Essays on Ethics, Religion, and Society*, ed. John Robson (London, 1985) p.79.

⁶⁴ *Ibid*, p.78.

⁶⁵ *Ibid*, p.87.

Quite quickly, however, the tone of the piece changes from one of praise to one of criticism, as Mill begins to distance himself from Bentham and to stake out grounds for arguing why his own utilitarianism was a vast improvement. Firstly, Mill argued that Bentham's "determination to create a philosophy wholly out of the materials furnished by his own mind"- to reason purely from first principles - made him blind to other points of view, to other schools of thought and, most importantly, to the realities of human experience.⁶⁶ Additionally, Bentham's approach was weakened by "the incompleteness of his own mind as a representative of universal human nature".⁶⁷ Bentham was, Mill suggested, devoid of a certain "imagination" - the faculty of conceiving "the absent as if it were present, the imaginary as if it were indeed real". His thinking was therefore "wholly empirical; and the empiricism of one who has had little experience", and this gave a somewhat unreal, utopian tinge to Bentham's work.⁶⁸ As the utilitarian who understood the emotive power of art and poetry, who was capable of distinguishing the higher pleasers from the lower ones and who was attentive to experience, Mill portrayed himself as the thinker more in touch with the reality of human existence. Though not "useless", Bentham's conception of human nature was so "one-sided" as to make it an entirely unsuitable basis upon which to build an ethical system.⁶⁹

The most pertinent criticisms that Mill levelled at Bentham, though, were *political*, and they concerned his conception of the place of the people in politics and his advocacy (later in life) of representative democracy. "There are three great questions in government", Mill contended:

⁶⁶ *Ibid*, p.91.

⁶⁷ *Ibid*.

⁶⁸ *Ibid*, p.92. Thomas Macaulay levelled this same criticism at the English Utilitarians more generally, including Mill's father James. He said of them that "they surrender their understandings... to the meanest and most abject sophisms, provided these sophisms come before them disguised with the externals of demonstration. They do not seem to know that logic has its illusions as well as rhetoric - that a fallacy may lurk in a syllogism as well as a metaphor". "Mill's 'Essay on government': Utilitarian Logic and Politics". *Edinburgh Review*, Vol.49 (1829) pp.159-89.

⁶⁹ *Ibid*, p.109.

First, to what authority is it for the good of the people that they should be subject? Secondly, how are they to be induced to obey that authority? The answers to these two questions vary indefinitely, according to the degree and kind of civilization and cultivation already attained by a people, and their peculiar aptitudes for receiving more. Comes next a third question, not liable to so much variation, namely, by what means are the abuses of this authority to be checked?⁷⁰

Bentham, he went on, was only interested in the third and final question, and the answer he gives to it is “responsibility” - to make rulers absolutely dependent on the people, and specifically, on the majority conceived of as a cohesive political actor. This was to give the people - or the majority - remarkable power, Mill noted, and to make rulers “compatible with entire subservience” to the will of the people.⁷¹ “But is this fundamental doctrine of Bentham’s political philosophy an universal truth?”, asked Mill. “Is it, at all times and places, good for mankind to be under the absolute authority of the majority of themselves? ... Is it, we say, the proper condition of man, in all ages and nations, to be under the despotism of Public Opinion?”⁷² For Mill, of course, it was not, and he saw in Bentham’s political thought the seeds of majority tyranny.

An important assumption of Mill’s argument was that he believed Bentham considered the people *capable* of tyrannising in the first place. That is, that they were collectively capable of articulating a will, and of “riveting the yoke” of their opinion “round the neck of all public functionaries”.⁷³ The language Mill uses in his passages on Bentham’s political thought concern the giving of power and agency to the people and enabling them to effectively govern themselves through functionaries.

⁷⁰ *Ibid*, p.106.

⁷¹ *Ibid*.

⁷² *Ibid*, p.107.

⁷³ *Ibid*, p.108

He speaks of the people securing “absolute power over men’s bodies”.⁷⁴ For Mill to be concerned about the role that Bentham intended to give to the people, he had to assume that Bentham also imagined the people to be capable of performing such a role. Mill worried about the self-rule of the people, and worried too that such a rule would not restrict itself to the political sphere but would extend indefinitely into the private sphere of people’s opinions, beliefs and tastes.⁷⁵

Mill presented a powerful interpretation of Bentham’s political thought as containing the kernels of a “voluntarist” vision of democratic politics, or what Rosen has otherwise labelled the “majoritarian fallacy” - that is, “a view of democracy which consists of direct rule by the majority of the people through their representatives”.⁷⁶ It is an approach to democratic politics that imagines the people as a collective capable of forming some common or popular will independently of their being represented, and that the people can straightforwardly articulate their will to a set of delegates in order for them to implement it. Rosen suggests there is a “positive” and “negative” version of the majoritarian fallacy. The positive version “depicts democracy as a way of aggregating the desires and preferences of the majority of the people which are then enacted into law by a majority of the elected representatives” and suggests that “democracy is good in so far as it successfully and efficiently translates the preferences of the greatest number of the people into law and government policy”. The negative version is that which Mill sees in the work of Bentham - of democracy as “democratic despotism” or “the tyranny of the majority”.⁷⁷ In both cases, it is assumed that “the people” are a political actor capable of governing and indeed tyrannising.

⁷⁴ *Ibid.* p.107.

⁷⁵ *Ibid.*: “it is chimerical to suppose that whatever has absolute power over men’s bodies will not arrogate it over their minds— will not seek to control (not perhaps by legal penalties, but by the persecutions of society) opinions and feelings which depart from its standard; will not attempt to shape the education of the young by its model, and to extinguish all books, all schools, all combinations of individuals for joint action upon society, which may be attempted for the purpose of keeping alive a spirit at variance with its own”.

⁷⁶ Rosen, *Philosophical Ideas in Politics*, p.7.

⁷⁷ *Ibid.*, p.8.

Mill's critique of Bentham also reflects a considerable schism that opened up between Bentham and liberal constitutionalists in the eighteenth and nineteenth centuries. Mill's concern about the power of the people to tyrannise draws on two features of Bentham's work on constitutional arrangements for representative democracy: his prescription for the absolute "supremacy" or sovereignty of the people, and what he called the "omnicompetence" of the legislature.⁷⁸ In practice for Mill, these prescriptions would embolden the people to demand that their representatives implement their will, and it would also make the legislature capable of doing exactly that. Such a view ran against the arguments made by early liberals for checks, balances and constraints to reduce the power of governments, and particularly of democratic ones.⁷⁹ And it is these two prescriptions - for popular sovereignty and an omnicompetent parliament - that form the basis for the claim that Bentham endorsed a form of voluntarism.

Not only has the paucity of published Bentham material made the task of providing any sort of historiographical challenge to Mill's interpretation extremely difficult indeed, but the view of Bentham as advancing the logic of the majoritarian fallacy has been remarkably popular amongst both political theorists and Bentham specialists. As Rosen has pointed out elsewhere, Joseph Schumpeter casts Bentham as an exemplar of majoritarian fallacy logic in *Capitalism, Socialism and Democracy*. Schumpeter posits a "classical doctrine of democracy" that developed in the eighteenth century and which Bentham and the other "utilitarian fathers" were early proponents of. This classical doctrine was formatted by the idea that "the democratic method is that institutional arrangement for arriving at political decisions which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will".⁸⁰ This is an

⁷⁸ Jeremy Bentham, *Constitutional Code, Vol. I*, eds. Frederick Rosen and JH Burns (Oxford, 1993). pp.25,41.

⁷⁹ Peardon, "Bentham's Ideal Republic", p.127.

⁸⁰ Schumpeter, *Capitalism, Socialism and Democracy*, p.250-2.

effective paraphrasing of Rosen's majoritarian fallacy, and Schumpeter himself was highly critical of this articulation of democratic politics; such a theorisation was *naïve* on two counts: it was naïve to imagine that any sort of objectively defined common good could actually exist, and it was naïve to imagine that the people themselves could ever be capable of actually expressing it. The purpose of democracy for him was not to institutionalise popular self-rule, but to ensure the effective and relatively peaceful selection of a governing elite. Schumpeter's critique of the classical doctrine was to have a considerable effect on a long list of political theorists writing on the topic of democracy, including Robert Dahl and Giovanni Sartori.⁸¹

More recently, the Benthamite view of politics has been criticised for being "unrealistic". In *Democracy for Realists*, Christopher Achen and Larry Bartels take many of Schumpeter's criticisms of Bentham and the classical doctrine of democracy and re-articulate them in the language of political realism. On this score, Bentham appears as an advocate of "populist" democracy, which relies on a high degree of popular participation in the political process to guide decision-making in order that it conforms to popular will. Achen and Bartels are scathing of what they consider to be a "romantic" or "folk theory" of democracy, and they juxtapose this utopian theory to one which focuses on the realities of human nature - the tendency towards factions, the importance of group identity in the assessment of interests, and the necessity of elite political leadership rather than mass popular participation.⁸² "It is time", they argue, "to set Jeremy Bentham aside and bring James Madison back in".⁸³

Finally, it is not only Bentham critics that have advanced this reading of his work. Filimon Peonidis, who has written extensively on Bentham, has argued for a theory of democracy based on a mandate model of representation in which political representatives would be bound by the instructions of their electors, and in which

⁸¹ Carole Pateman, *Participation and Democratic Theory* (Cambridge, 1970) pp.2-19.

⁸² Achen and Bartels, *Democracy for Realists*, p.2-4.

⁸³ *Ibid*, p.230. Bentham and Madison are far closer in their understanding of politics than Achen and Bartels suggest. This subject will be covered later in chapter five.

the people could participate further in political decision-making through institutions like mandatory referenda.⁸⁴ This is a theory of democracy in which the people literally *rule* themselves, either directly through referenda or indirectly through proxies bound to carry out their express will. And in defending this theory, Peonidis suggested that Bentham - who he groups with Jean-Jacques Rousseau - was supportive of a vision of democracy as popular self-rule via mandation.⁸⁵ Again, Peonidis appears to assume that Bentham reserved a central role for the people as an actor themselves in democratic government. James Crimmins, another Bentham specialist, argues that:

we ought not to under value the participatory inclusiveness of the democratic society [Bentham] envisaged. Contemporary participatory theorists argue that it is not only beneficial to the community by producing better outcomes, it is also of significant benefit in enhancing the liberty of the individual, construed in terms of the individual's control over his own life... Bentham's terminology is different, but suggests similar benefits.⁸⁶

Oren Ben-Dor also concludes that Bentham believed in a basically voluntarist conception of the role of the people. Ben-Dor has theorised in Bentham what he terms a "split" concept of sovereignty, which prescribes that for something to be sovereign it must issue imperative commands *and* be habitually obeyed. On this basis, Ben-Dor suggests that Bentham advocated a political regime in which the body of the people are "constantly engaged" in the task of defining themselves the remit of their representatives, and that there was a strongly "participatory dimension" to Bentham's political thought.⁸⁷

⁸⁴ Peonidis, *Democracy as Popular Sovereignty*, p.60.

⁸⁵ *Ibid*, p.54.

⁸⁶ James Crimmins, *Utilitarian Philosophy and Politics: Bentham's Later Years* (London, 2011) p.154.

⁸⁷ Ben-Dor, *Constitutional Limits and the Public Sphere*, pp.52,56.

What all of these interpretations have in common is the supposition that Bentham anticipated a high degree of popular participation in the political process; that he thought the people were capable of formulating a collective will and of either implementing it themselves or alternatively of instructing proxies to implement it on their behalf; and that democracy was good insofar as it effectively and accurately reflected popular will. As Carole Pateman has suggested, Bentham has for modern political theorists represented the archetypal advocate of a voluntarist, participatory theory of democracy, and a convenient strawman for the many critics of such an approach.⁸⁸ And as Peonidis and Ben-Dor demonstrate, it is not only critics of Bentham that have made this assumption.

Clearly, the accounts outlined above are not equivalents of each other; Mill worried about Bentham's theory because he thought it might enable the people to tyrannise minorities, whereas Schumpeter criticises Bentham because, in reality, the people are *not* capable of acting coherently. These are somewhat different positions: Mill is arguing that Bentham is dangerous, whilst Schumpeter is arguing that he is naïve. And Mill and Schumpeter are making entirely different arguments to that put forward by Peonidis. Nonetheless, all of the accounts mentioned here share the assumption that Bentham imagined the people to be a coherent entity capable more or less of acting itself, and that he was an advocate of democracy because he believed it the form of government most likely to instantiate the popular will. It is because of this that he has frequently been understood as a voluntarist, participatory theorist of democratic politics.

⁸⁸ Pateman, *Participation and Democratic Theory*, p.19.

Bentham as a Rationalist

In his *Rationalism in Politics*, Michael Oakeshott suggested that Bentham fits into a long lineage of “rationalists” who thought that politics should be ordered around some universally-valid notion of truth; Bentham’s rationality or utility was for Oakeshott “an eternal and a universal quality”; something rescued from the world of irrational individuals and “mere opinion” and set in a world of reason and “certainty”. And in its pursuit of a “purely speculative idea”, it overlooked the realities of habit, custom and individual experience that give human existence meaning.⁸⁹ In this, Bentham was the very opposite of an “English empiricist”, and had far more in common with the misguided, idealistic French *philosophes*.⁹⁰

Bentham has been widely interpreted as a sort of rationalist political thinker, and this has provided the main rival historiographical image to the voluntarist one set out above. Crimmins suggests that this is an “authoritarian view”, which emphasises the illiberal tendencies in Bentham’s political thought and his preference for “principled or structured interventionism rooted in the enlightenment project to construct rationally grounded institutions and policies to educate, condition and/or direct humankind to the end of optimizing personal and public well-being”.⁹¹ The line of interpretation that Crimmins conceptualises can also be credibly articulated

⁸⁹ Michael Oakeshott, *Rationalism in Politics, and other essays* (London, 1962) p.25.

⁹⁰ Oakeshott later revised this view and emphasised instead the continuities between Bentham’s thinking and that of David Hume. See de Champs, *Enlightenment and Utility*, p.8.

⁹¹ This “authoritarian view”, Crimmins argues, contends in the historiography with a more liberal, “individualist view” that seeks to explain the “the meaning and place of ‘liberty’” in his writing, as well as its “individualist premises... pointing out that he intended laws to be modelled to facilitate individuals in the pursuit of happiness in ways they, rather than the legislator, deem appropriate”. Of course, Crimmins’ dichotomy does not map on to the one that is being advanced here; I am distinguishing between those scholars that see a popular, participatory element to Bentham’s thought and those that suggest he wanted to vacate politics of such popular elements, whereas the liberal-authoritarian division is more focused on *who* decides what is an individual’s interest; a certain type of liberal could conceivably argue against popular involvement in politics, so long as they were able to choose what was in their own self-interest. James Crimmins, “Contending Interpretations of Bentham’s Utilitarianism”, *Canadian Journal of Political Science*, Vol.29(4) (1996) pp.751-56.

in terms of a rationalist reading of Bentham, one that sees him promoting a vision of politics emptied of popular involvement and defined by the managerial government of experts. In particular, John Dinwiddy and Stephen Engelmann have advocated this understanding of his work, and they have drawn on two specific strands in his writing to substantiate their arguments - Bentham's manuscripts on penal laws and panopticon, and his theory of indirect legislation.

Dinwiddy recognises the individualistic streak in Bentham; of course, in his *Deontology*, he had argued unequivocally that "every man is a better judge of what is conducive to his own well-being than any other man can be".⁹² It is clear that a basic psychological assumption of Bentham's was that what men and women actually seek in life is pleasure or happiness, and also that his basic value judgement was happiness amounted to the only thing that could be judged as a good in itself.⁹³ Nevertheless, the argument changes for Bentham at a political level; whilst it was an individual's happiness and his or her own capacity to reason as to what was most conducive to it that rooted his view of private ethics, Bentham believed that the "maximisation of aggregate happiness" was the only end "which could be reasonable and acceptable for a society at large".⁹⁴ And when it came to maximising aggregate happiness, Bentham believed that certain people were better at performing this task than others. Dinwiddy argues that Bentham's toleration for individual preference and opinion "applied essentially to men's *private* as distinct from their social activities" (the *Deontology* was predominantly concerned with the former), and that when it came to political decision for the community as a whole, in order to promote maximal happiness, "Bentham was prepared ...to countenance a large degree of control and manipulation" by an independent political elite.⁹⁵ As Bentham himself put it, that the "uncoerced and unenlightened propensities and

⁹² Jeremy Bentham, *Deontology, together with A Table of the Springs of Action and Article on Utilitarianism*, ed. Amnon Goldworth (Oxford, 1983) p.131.

⁹³ John Dinwiddy, "The Classical Economists and the Utilitarians", p.20.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, pp.20-1.

powers of individuals are not adequate to the end without the controul and guidance of the legislator is a matter of fact of which the evidence of history, the nature of man, and the existence of political society are so many proofs".⁹⁶

The defining metaphor in Dinwiddy's mind for Bentham's political thought is his *Panopticon*, a prison facility that would be designed to condition the behaviour of inmates by creating the impression that they were under constant surveillance. His designs for *Panopticon* were based on what Bentham called the "inspection principle", which held that "the more constantly the persons to be inspected are under the eyes of the persons who should inspect them, the more perfectly will the purpose of the establishment have been attained".⁹⁷ Importantly, what amounted to the "purpose of the establishment" was to be at the discretion of its managers and administrators. Bentham imagined that this inspection principle could be applied much more generally than simply in prisons, though; he thought it would be effective in workhouses, manufactories, hospitals, and even *schools*.⁹⁸

In Bentham's mind, education - which he considered to be a branch of government - was the key tool at the disposal of the legislator to "adjust people's inclinations and behaviour to the requirements of the greatest happiness", and "the conditioning process Bentham envisaged for the young was to involve relentless supervision and discipline", as with the inmates in his Panopticon.⁹⁹ In his writings on the subject, he seemed to anticipate the criticisms that his scheme was likely to receive, and his response appears to be a distinctly rationalist one: opponents, he thought, might contend that his plan for surveillance-wrought conditioning was one of "constructing a set of machines under the similitude of men", to which he retorted

⁹⁶ Jeremy Bentham, 'Institute of Political Economy', in *Jeremy Bentham's Economic Writings, Vol.III*, ed. Werner Stark (London, 1952) p.311.

⁹⁷ Jeremy Bentham, "Panopticon" in *The Works of Jeremy Bentham, Vol. IV*, ed. John Bowring (Edinburgh, 1838-43) pp.40-67.

⁹⁸ *Ibid*, p.64. Bentham's Panopticon scheme provides the central metaphor for the disciplinary techniques of modern society that Michel Foucault writes about in *Discipline and Punish* (London, 2019). The panopticon, he writes, is the manifestation of the "deindividuation" and "automatising" of power in modernity.

⁹⁹ Dinwiddy, "The Classical Economists and the Utilitarians", p.21.

“call them machines: so they were but happy ones, I should not care”.¹⁰⁰ Dinwiddy argues that, “in some respects... the approach which Benthamism most accurately foreshadowed was the social engineering of the Fabians”, but equally it could be argued that Benthamism was a rationalist vision of politics, one in which experts manage a polity where the people have very little involvement in deciding what courses of action the government should pursue or in the actual business of governing itself.¹⁰¹

Engelmann draws on a different body of evidence to substantiate his rationalist interpretation of Bentham, and that is his writing on indirect legislation. In an essay entitled “Of Indirect Means of Preventing Crimes”, Bentham defines the difference between “direct” and “indirect” legislation:

Some actions are hurtful: what ought to be done to prevent them? The first reply which presents itself to all the world is - *prohibit such actions; punish them*. This method of combatting offences is the most simple, and the first adopted; and every other method of attaining the same end is a refinement in art and, so to speak, its transcendental part. This part consists in providing a train of legislative proceedings for the prevention of offences, by acting principally upon the inclinations of individuals, for the purpose of diverting them from evil, and impressing on them the direction most useful to themselves and others. The first method of combating offences, by *punishments*, constitutes *direct* legislation. The second method of combating them, *by means which prevent them*, constitutes what may be called the *indirect* branch of legislation.¹⁰²

¹⁰⁰ Bentham, “Panopticon”, p.64.

¹⁰¹ Dinwiddy, “The Classical Economists and the Utilitarians”, p.25; See also Mary Mack, “The Fabians and Utilitarianism”, *Journal of the History of Ideas*, Vol.16(1) (1955) pp.76-88.

¹⁰² Jeremy Bentham, “Of Indirect Means of Preventing Crimes”, in *The Works of Jeremy Bentham*, Vol. I, ed. John Bowring (Edinburgh, 1838-43) p.533.

Examples of indirect legislation for Bentham included those things that addressed political problems in a more covert, less transparent way; for example, in the case of tackling the evils of the Catholic Church and excessively high market prices, rather than confronting the problem head on, Bentham thought that introducing free competition would produce an incentive structure that would in turn have “greater force in restraining and reforming... than all... positive laws”.¹⁰³

A telling metaphor that Bentham used in his writing on the subject of legislation was that of waging war. Direct legislation was comparable to frontal assaults against enemy positions, whereas indirect legislation was the equivalent of guerrilla warfare:

In direct legislation the evil is attacked in front: in indirect legislation it is attacked by oblique methods. In the first case, the legislator declares open war with the enemy; he hoists his signals, he pursues, he fights hand to hand with him, and he mounts his batteries in his presence, in open day. In the second case, he does not announce his designs; he opens his mines, he consults his spies; he seeks to prevent hostile designs, and to keep in alliance with himself those who might have secret intentions hostile to him.¹⁰⁴

Again, in *Of the Limits of the Penal Branch of Jurisprudence*, Bentham says:

Legislation is a state of war: political mischief is the enemy... direct legislation [is] a formal attack made with the main body of [the legislator's] forces, in the open field: indirect legislation [is] a secret plan of connected and long-

¹⁰³ *Ibid*, p.534.

¹⁰⁴ *Ibid*, p.533.

concerted operations, to be executed in the way of stratagem or petite guerre.¹⁰⁵

The main point for Engelmann is that Bentham saw all legislation as “tactical” - as a means to secure a pre-determined end.¹⁰⁶ In the case of indirect legislation, the purpose is to produce a “choice architecture” that will condition people’s behaviour in ways conducive to the end sought by the architects. This leads on to a more specifically political point, which is that such a perspective on indirect legislation lends itself to a particular, rationalist understanding of the purpose of government: if government is responsible for the happiness of the ruled, it might be justified in diverting the behaviour of individuals, not just through direct legislation and the issuance of penalties for actions deemed unproductive of aggregate happiness, but also by incentivising and motivating (by providing “pleasures and pains in prospect” for) certain conduct.¹⁰⁷

The contemporary term for this legislative approach is “nudging”, and Engelmann himself specifically describes Bentham’s project as one of empowering governors to nudge individuals into more desirable behaviour.¹⁰⁸ Engelmann draws parallels between his theory of indirect representation and the theoretical work of Cass Sunstein and Richard Thaler - authors of the influential *Nudge: Improving Decisions About Health, Wealth, and Happiness* - and whilst Engelmann (and indeed Sunstein himself) makes a cogent case for why we might think that nudging could plausibly be argued to be *liberal*, the affinities between nudging and a rationalist view of politics - one in which a managerial, technically proficient political elite

¹⁰⁵ Jeremy Bentham, *Of the Limits of the Penal Branch of Jurisprudence*, ed. Philip Schofield (Oxford, 2010) p.233. The manuscripts for this piece were written in the 1780s and were intended as a continuation of *An Introduction to the Principles of Morals and Legislation*, itself an introduction for Bentham’s penal code project.

¹⁰⁶ Stephen Engelmann, “‘Indirect Legislation’: Bentham’s Liberal Government”, *Polity*, Vol.35(3) (2003) p.372.

¹⁰⁷ Crimmins, “Contending Interpretations of Bentham’s Utilitarianism”, p.763.

¹⁰⁸ Stephen Engelmann, “Nudging Bentham: Indirect Legislation and (Neo-)Liberal Politics”, *History of European Ideas*, Vol.43(1) (2017) pp.70-82.

govern relatively independently of the people, and in which the people have a very minimal role in government to the extent that it is not essential that they need even be aware of the instruments being used to control them - are clear. The assumption behind this perspective is that the irrationality of individuals and the incoherence of the people is a problem, to which independent governance by experts is an effective answer. And in his writing on indirect legislation, Engelmann believes that Bentham subscribed to such a perspective on politics.

Bentham's Representative Democracy *Against* Voluntarism and Rationalism

There is a case to be made that voluntaristic and rationalist approaches to politics are structurally related and that therefore it makes more sense to see these two approaches as “compliments” of each other rather than opposed polarities.¹⁰⁹ Indeed, as was noted earlier, voluntarism and rationalism as Rosanvallon conceived of them are related to the same feature of representative democracy: the ambiguity of the notion of the people. Nonetheless, on the question of popular participation, the distinction between voluntarism and rationalism seems plain: voluntarism has a participatory view that the people ought in some way to govern themselves, whereas rationalism believes that effective government requires that the people be as far as possible excluded. Is Bentham, therefore, more credibly read as an advocate of the voluntarist or the rationalist position?

Bentham's position on the role of the people in politics is more accurately described as *orthogonal* to that advanced by voluntarism and rationalism. The renderings of Bentham as either a voluntarist or a rationalist involve fundamental misunderstandings of how he conceived of the people and depend on a caricatured

¹⁰⁹ See Bickerton and Accetti, “Populism and Technocracy: Opposites or Compliments?”, pp.186-206.

view of his political thought. Bentham did not believe that representative democracy was a political form that ought to manifest the literal self-rule of the people; Schumpeter and Achen and Bartels have pigeonholed him as a proponent of a democratic doctrine which places great emphasis on the political participation of the people, but as Pateman has pointed out, “the notion of a ‘classical theory of democracy’ is a myth”, and Bentham for one never saw popular participation as a primary political good in itself. However, *nor* did he understand representative democracy to be a type of polity in which a political elite, insulated and independent from the people, should go about the business of governing on behalf of the people but not in communication with them. Indeed, representative democracy was conceptualised by him as designed to help address the very problem of excessively independent and detached political elites. There was something naïve, Bentham came to believe, about the views *either* that purely reasonable governance by an educated elite or popular self-rule would result in government in the common interest, and these political models were likely to have highly undesirable consequences in the real world. As will be discussed further in chapter three, Bentham saw some basic tendencies in representative government that necessitated constraints on rulers. We might say that the voluntarist and rationalist interpretations are partial, half views, which pick up on aspects of Bentham’s thought, but which are misleading when taken in isolation.¹¹⁰ And because the dualism of Bentham’s approach is absolutely essential to it, these partial interpretations amount to misinterpretations.

The case that will be advanced in the rest of this thesis is that Bentham thought that the people were a “useful fictitious entity”, and this fundamentally determined his understanding of how politics works in practice, and thus his normative stance on what a good polity would and indeed could look like too. There is a duality to the notion of the people as a useful fictitious entity in Bentham’s

¹¹⁰ Indeed, Oakeshott described the proponent of Rationalism as only “half knowledge, and consequently, he will never be more than half right”. Oakeshott, *Rationalism and Politics*, pp.30-31.

political thought: he believed that they were not a real agent or actor, but fictitious; yet he also believed that the fictitious people were a *useful* - something worth keeping and something productive of the political ends that he sought. The voluntarist and rationalist renderings of Bentham fail to recognise the dualism in his approach to the people.

Both the fact that Bentham was sceptical of the idea that the people could literally govern themselves and his conviction that political rulers needed to be rendered dependent on the people somehow will be given attention in subsequent chapters. However, we first need to delve into what it means to say that Bentham thought of the people as a “useful fictitious entity”, because grasping this point is key to understanding his entire political theory. The next chapter will deal with Bentham’s conception of fictions as they relate to real entities, non-entities and fictitious entities, as well as the central place of utility in his political thought.

Chapter II

Fictions

The earliest mention of the people as a concept in Bentham's writing can be found in his *An Introduction to the Principles of Morals and Legislation*. Published in 1780 and intended to be the first part of an introduction for his more comprehensive penal code, the *Introduction* provides an early theoretical exposition of Bentham's utilitarianism. It also contains a passage relevant to the discussion at hand. In chapter one, Bentham is looking for a way to describe the collectivity that composes a political community, and he settled on this formulation:

The interest of the community is one of the most general expressions that can occur in the phraseology of morals: no wonder that the meaning of it is often lost. When it has a meaning, it is this. *The community is a fictitious body, composed of the individual persons who are considered as constituting as it were its members.*¹¹¹

The people - that is, the political community that is composed by a group of individuals - is a "fictitious body", argued Bentham. But what does this mean? Bentham was critical throughout his life of ambiguous or "inconstant" language and dedicated much of his work to devising more precise terminology with which to discuss politics, philosophy and jurisprudence.¹¹² Indeed, the *Fragment* itself is a scathing critique of just a few pages of William Blackstone's *Commentaries on the Laws of England*, and their use of words and concepts that "chop and change their several

¹¹¹ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, eds. JH Burns and HLA Hart (London, 1970) p.12 [my emphasis].

¹¹² David Runciman, *Political Hypocrisy: the Mask of Power from Hobbes to Orwell and Beyond* (Princeton, 2006) pp.116-141.

significations".¹¹³ Bentham, then, would not have engaged with the language of fictitiousness without thinking seriously about what it signified and denoted.

Nonetheless, as one scholar has put, Bentham's writings on the nexus of ideas that includes "fictions", "fictitious entities", and fictitiousness constitute a veritable "labyrinth". His main work in this area can be found in a series of manuscripts that have been published in a variety of different locations - in *Chrestomathia*, in his writing on *Ontology, Logic, Language*, in *Preparatory Principles* and in some scattered comments in the *Introduction*.¹¹⁴ Taken as a whole, these contributions present

a confusing picture. There are many presentations of the same, or similar, points, not all obviously consistent with one another... none of the work is finished in quite the way that one would like; either it is a fragmentary intrusion in something which is basically about something else, or else it is manuscript draft unrevised by its author.¹¹⁵

The confusion on the subject has been amplified by C.K Ogden's influential but misleadingly titled *Bentham's Theory of Fictions*.¹¹⁶ As Philip Schofield has argued, Bentham did not really have a theory of fictions, so much as a "theory of real and fictitious entities", and to confuse a Benthamite fiction with a fictitious entity is to gravely misunderstand the significant differences Bentham saw between these two things.¹¹⁷ That is not to say, however, that Bentham did not think at length about *fictions*, as I will argue. Rather, it is to say that to properly understand what he

¹¹³ Bentham, *A Comment on the Commentaries and a Fragment on Government*, p.426.

¹¹⁴ Ross Harrison, *Bentham* (London, 1999) p.48.

¹¹⁵ *Ibid.*

¹¹⁶ CK Ogden, *Bentham's Theory of Fictions* (Abingdon, 1932). As Nomi Stolzenburg puts it, "it could justly be said that it was Ogden who wrote Bentham's Theory of Fictions", not Bentham himself. See Nomi Stolzenburg, "Bentham's Theory of Fictions. A 'Curious Double Language'", *Cardozo Studies in Law and Literature*, Vol.11(2) (1999) p.229.

¹¹⁷ See Philip Schofield, "Jeremy Bentham on Utility and Truth", *History of European Ideas*, Vol.41(8) (2015) p.1128.

imagined to be distinctive about fictions, one needs to have a grasp of what Bentham thought distinguished them from fictitious entities.

As is so often the case with Bentham's political thought, classification and categorisation are all-important. This chapter will look to disentangle a range of related concepts in Bentham's work, like fictions, fictitious entities, "non-entities" and "fabulous entities". They are all different, and establishing their differences will go a long way in helping us to ascertain how Bentham conceptualised the people and their role in a political society. The chapter will then go on to examine Bentham's normative stances on fictions in politics, and his understanding of the relationship between truth and utility in politics. Ultimately, Bentham considered the people to be a *sort* of fictitious entity, and a particularly *useful* one at that.

Golden Mountains

Bentham is regularly compared to or associated with the political philosopher Thomas Hobbes. For some time, it was assumed that their connection was an explicit one: in the late nineteenth century, Henry Sidgwick described Bentham as Hobbes's "more inventive successor", whilst more recently, Gerald Postema has contended that Bentham was a "careful student of Hobbes", and John Plamenatz has said that Bentham wrote largely in the "shadow" of the seventeenth century thinker.¹¹⁸ James Crimmins, however, has challenged this interpretation, citing Quentin Skinner's work on historiographical "mythologies", and suggesting that it might be anachronistic to impose a formal association between the two thinkers.¹¹⁹ "Bentham

¹¹⁸ Sidgwick, "Bentham and Benthamism in Politics and Ethics", pp.213-14; Gerald Postema, *Bentham and the Common Law Tradition* (Oxford, 1989) pp.325-2; John Plamenatz, *The English Utilitarians* (Oxford, 1958) p2,10.

¹¹⁹ James Crimmins, "Bentham and Hobbes; An Issue of Influence", *Journal of the History of Ideas*, Vol.63(4) (2002) p.686; See also Quentin Skinner, "Meaning and Understanding in the History of Ideas", *History and Theory* Vol.8(1) (1969) pp.3-53.

was never reticent to acknowledge the writings of those who had had an impact upon the development of his thought” - people like Helvétius, John Locke and d’Alembert - argues Crimmins, but “with the exception of five scattered asides in a vast volume of published and unpublished writing, Bentham never discussed the work of Hobbes in any meaningful way”.¹²⁰

Nonetheless, and as Crimmins notes himself, there is one very credible way in which Bentham and Hobbes are linked, and that is in their shared concern with issues of language. In manuscript pages written in the 1770s, Bentham remarked that “it is the knowledge of the true signification of words, says Helvétius after Hobbes, that distinguishes one man in point of understanding from another”¹²¹. Bentham was certainly more open about his intellectual debts to Helvétius, and there are reasons why Bentham might have wished to play down his connections to “the beast of Malmesbury”. In fact, when it came to Bentham’s views on language and ontology, many other important intellectual influences have been noted in his work. Ross Harrison has suggested that John Locke’s treatment of the relationship between “simple” and “complex” ideas was decisive in Bentham’s political thinking.¹²² Indeed, as Bentham wrote in the 1770s: “a digest of the Laws is a work that could not have been executed with advantage before Locke and Helvétius had written: the first establishing a test of perspicuity for ideas; the latter establishing a standard of rectitude for actions”.¹²³ Emmanuelle de Champs, moreover, has pointed to another important intellectual debt that Bentham owed to Jean le Rond d’Alembert - co-editor of the *Encyclopédie* alongside Denis Diderot; the ontological terminology for different types of entities that Bentham eventually settled on was explicitly used by

¹²⁰ Crimmins, “Bentham and Hobbes”, p.687.

¹²¹ Jeremy Bentham, *Preparatory Principles*, eds. Douglas Long and Philip Schofield (Oxford, 2016) p.320; Crimmins, “Bentham and Hobbes”, p.696.

¹²² Harrison, *Bentham*, pp.47-76.

¹²³ Jeremy Bentham, “Memoirs of Jeremy Bentham, Including Autobiographical Conversations and Correspondence”, *The Works of Jeremy Bentham*, Vol. X, ed. John Bowring (Edinburgh, 1838-43) p.70.

d'Alembert in his "Preliminary Discourse" to the *Encyclopédie*.¹²⁴ Paying deference to the likes of Diderot, d'Alembert and Helvétius made sense to a man who was consciously trying to position himself within the cosmopolitan, international Republic of Letters.¹²⁵

Whilst this is all undoubtedly true, I want to show that Bentham was also positioning himself in relation to another lineage of thinkers that had engaged with the issue of imprecise language, and two of the most significant individuals in this lineage for him were Hobbes and David Hume. Hobbes, Hume, and later Bentham were all interested in the complex question of reality and existence, and all chose to discuss this question with reference to a specific, curious example: that of "golden mountains". In the case of Hobbes, the relevant passages are to be found in his 1640 treatise *The Elements of Law* and concern the issue of how one might categorise the idea of a golden mountain. Hobbes's ontology divides things into "natural", "artificial" and "fictitious" entities. Natural entities are those things that exist in the *rerum natura*, independently of human beings. In this sense, both artificial and fictitious entities share a juxtaposition to natural ones in that they do not exist independently of human agency.¹²⁶ However, artificial entities are considerably different to fictitious ones for Hobbes. For him, an artificial entity, though not natural, can still exist in the material world; something like a chair, which is a human artifice, is still tangible and exists "out there".¹²⁷ But how, then, to classify a "golden mountain"? It does not exist anywhere, strictly speaking; it only exists in the minds and imaginations of humans. Hobbes labels this type of entity "fictional":

¹²⁴ Champs, *Enlightenment and Utility*, p.46-8. Bentham said that d'Alembert was "the first to bring to view... the distinction between names of real entities and names of fictitious entities". In 1776, Bentham settled on the French terms "êtres réels" and "êtres fictifs", and these were the terms that d'Alembert himself used. Jeremy Bentham, *Chrestomathia*, eds. MJ Smith and WH Burston (Oxford, 1993) pp.257, 273n.

¹²⁵ See de Champs, *Enlightenment and Utility*, pp.1-17.

¹²⁶ Etymologically, this is unsurprising; fiction derives from the Latin *finere*, which means to fashion, form or contrive.

¹²⁷ Robin Douglass, "The Body Politic 'Is a Fictitious Body': Hobbes on Imagination and Fiction", *Hobbes Studies*, Vol.27(1) (2014) pp.141-2.

As when the water, or any liquid thing moved at once by divers movements, receiveth one motion compounded of them all; so also the brain or spirits therein, having been stirred by divers objects, composeth an imagination of divers conceptions that appeared singly to the sense. As for example, the sense sheweth us at one time the figure of a mountain, and at another time the colour of gold; but the imagination afterwards hath them both at once in a golden mountain. From the same cause it is, there appear unto us castles in the air, chimeras, and other monsters which are not in rerum natura, but have been conceived by the sense in pieces at several times. And this composition is that which we commonly call FICTION of the mind.¹²⁸

Fictions, then, are images formed in the mind, and exist only there. But this is not quite the same as to say that fictions, those things that exist in the imagination alone, are not *real*; for as he says elsewhere:

Let no-one interrupt that 'mere imagination' is nothing; for imaginary motions, inasmuch as they are imaginary, do not have the existence they seem to have. In someone imagining, however, they are real, for 'the imagination of motion' is the same as motion in him who imagines.¹²⁹

For Hobbes, this concept of fictional entities provided the theoretical substance for his famous claim that the state is a *persona ficta* - a fictional person.¹³⁰ That is, the state

¹²⁸ Thomas Hobbes, *The Elements of Law Natural and Politic*, ed. Ferdinand Tonnies (Cambridge, 1928) p.8.

¹²⁹ Thomas Hobbes, *Thomas White's 'De Mundo' Examined*, trans. Harold Whitmore Jones (London, 1976) iv.2.

¹³⁰ The most significant contributions to the debate over the precise nature of Thomas Hobbes's State have come from Quentin Skinner, David Runciman and most recently Sean Fleming. Compare Quentin Skinner, "Hobbes and the Purely Artificial Person of the State", *The Journal of Political Philosophy*, Vol.7(1) (1999) pp.1-29; David Runciman, "What Kind of Person is Hobbes's State? A Reply to Skinner", *The Journal of Political Philosophy*, Vol.8(2) (2000) pp.268-78; Sean Fleming, "Two

does not literally exist *anywhere*; it is a figment of the mind. But that does not make it inconsequential - we attribute actions and responsibility to the state, it can declare war and issue currency, and it can compel the actions of humans individually and collectively.¹³¹ This is not to say that the existence or significance of a fiction like the state is not *fragile*; in fact, this was a perennial worry for Hobbes: that since the fictional person of the state he devised as the way of underwriting stable political order existed only in the minds of individuals, it was always at risk of being unravelled.¹³² Indeed, this was why Hobbes devoted so much time in *Leviathan* in particular to providing his concept of the state with metaphors that would reify it in the minds of his readers: he employed images of the state as a “machine” or a great towering person - a “mortal God” - as depicted in the frontispiece of the book.¹³³ Fictions for Hobbes constituted fragile entities of the mind that nonetheless impinge significantly on the actions of real humans.

David Hume, whose work Bentham engaged with more explicitly, was similarly concerned with the problem of how to classify a golden mountain but framed the problem differently. Primarily, Hume was concerned with showing that the ideas and images in our head are not autonomous creations of the mind, but stem from worldly experience. “We may divide”, Hume argues in his *Enquiry Concerning Human Understanding*, “all the perceptions of the mind into two classes of species, which are distinguished by their different degrees of force and vivacity”. These are, he suggests, “thoughts or ideas” and “impressions”.¹³⁴ The latter he believes to be “all the more lively”, but importantly too, ideas really are rooted in sensory experience:

Faces of Personhood: Hobbes, Corporate Agency and the Personality of the State”, *European Journal of Political Theory*, Vol.20(1) (2021) pp.5-26.

¹³¹ See Sean Fleming, *Leviathan on a Leash: A Theory of State Responsibility* (Princeton, 2020).

¹³² Douglass, “The Body Politic “Is a Fictitious Body”, p.142.

¹³³ *Ibid*, p.143; Also see Yaron Ezrahi, *Imagined Democracies: Necessary Political Fictions* (Cambridge, 2012) p.20-1.

¹³⁴ David Hume, *An Enquiry Concerning Human Understanding*, ed. Peter Millican (Oxford 2007) pp.12-13

But though our thought seems to possess this unbounded liberty, we shall find, upon a nearer examination, that it is really confined within very narrow limits, and that all this creative power of the mind amounts to no more than the faculty of compounding, transposing, augmenting, or diminishing the materials afforded us by the senses and experience. When we think of a golden mountain, we only join two consistent ideas, gold, and mountain, with which we were formerly acquainted...In short, all the materials of thinking are derived either from our outward or inward sentiment: the mixture and composition of these belongs alone to the mind and will.¹³⁵

A fiction for Hume, as it is for Hobbes, is a collection of images that, in their specific arrangement, exists only in the mind. But both too made the *empiricist* claim that the raw materials which fictions are composed of are found in our experiences of the material, real world. A golden mountain may be a fiction, but it is not the product of pure, *a priori* reasoning. It is the conjoining of two “consistent” ideas - “gold” and “mountain” - in the mind. And moreover, to say that a golden mountain is a fiction is not quite to say that it does not exist, for it has some existence, even if it is only in the minds of individuals.

Bentham agreed with much that Hobbes and Hume said, and he too specifically discussed the issue of a golden mountain. Ideas, he argued, like the golden mountain:

we know, have no existence in reality: but will it be said that they are not even imagined? that they have not so much as an existence in the mind? I answer, by no means; in the mind, doubtless they have existence: that is in the

¹³⁵ *Ibid*, p.13.

mind they do appear. To the mind, ideas corresponding to these names are often present.¹³⁶

Indeed, as a young man, Bentham was deeply perturbed by visitations in his sleep by ghosts and “spiritual beings”.¹³⁷ Bentham recognised it made no sense to say that these fictions are simply not *real*, because they had consequences for the experiences that constitute our reality. Bentham *really was* scared of ghosts as an adolescent. The criticism of Mill’s that we observed in the last chapter - that Bentham was incapable of understanding the effects of the imagination on human beings - is thus clearly wide of the mark.¹³⁸ However, in one very important way, Bentham believed there to be a fatal flaw in Hobbes’s and Hume’s understanding of real and fictional beings, and that was their inability to distinguish between different types of fictional entities. As Bentham himself put it, “there is a difference between such factitious ideas as that of a golden mountain, a chimera; and such as that of a disposition, a power, a quality etc”.¹³⁹ Conceptualising the differences between these various types of fictional things was a central theme in his writing on ontology and language.

Perhaps the most important distinction in Bentham’s mind was that between a fiction and a fictitious entity, but it is worth digging slightly deeper into his “ontological zoo” to flesh this distinction out.¹⁴⁰ First and foremost, Bentham delineated a category of noun substantives called “real entities”. In some ways, these real entities were similar to Hume’s “impressions” mentioned above, but Bentham sub-divided them further into “perceptible” and “inferential” variants. Perceptible real entities were capable of being apprehended through the senses, but inferential

¹³⁶ Bentham, *Preparatory Principles*, p.170.

¹³⁷ Philip Schofield, *Utility and Democracy*, pp.1-9; Ogden, *Bentham’s Theory of Fictions*, p.xi-xvi.

¹³⁸ Mill, “Bentham”, p.92; see p.35 above. “Preach to the eye”, Bentham wrote, “if you would preach with efficacy. By that organ through the medium of the imagination, the judgement of the bulk of mankind may be led and moulded almost at pleasure”. Jeremy Bentham, “Rationale of Judicial Evidence”, in *The Works of Jeremy Bentham, Vol.VI*, ed. John Bowring (Edinburgh, 1838-43) p.321.

¹³⁹ University College London Library, Bentham Papers, box 69, folio 52.

¹⁴⁰ Harrison, *Bentham*, p.56.

real entities had to have their existence “inferred through a chain of reasoning”. Whether someone was convinced of the existence of such an inferential real entity, however, was “a matter of individual persuasion or belief”; if someone remained unconvinced of the inferred existence of some thing, Bentham thought that thing might be termed a “non-entity” or a “fabulous entity”.¹⁴¹

Where do fictitious entities and fictions fit into this schema? Bentham was not always consistent with his terms, and as we shall see, the way in which he deployed concepts was frequently a function of the context in which he was deploying them. However, Benthamite fictions do fit relatively straightforwardly into his category of fabulous entities. Fictions are those things that are not capable of being perceived by the senses nor inferred through a chain of reasoning - non-entities - but to which reality is ascribed by those that entertain it. Elsewhere in his piece on “Logic”, Bentham says that a fiction is the act of dressing up some non-reality in the “garbs” of a reality and placing it upon the same “level”.¹⁴² In a further nod to the intellectual debt he owed to Hume and Hobbes, Bentham added that fabulous entities or fictions were “image[s] delineated in the mind by the name and accompanying description”.¹⁴³ Fictitious entities were somewhat different in Bentham’s formulation. They do not “raise up in the mind any correspondent images”, and nor were they supposed to be perceptible.¹⁴⁴ Instead, Bentham thought of them as a sort of tool on which language depended in order to discuss reality. They were, in other words, a sort of necessity: fictitious entities are “that instrument without which, though of itself it is nothing, nothing can be said, and scarce any thing can be

¹⁴¹ I am indebted to Schofield’s excellent chapter in *Utility and Democracy* on “Real and Fictitious Entities”, pp.1-27.

¹⁴² University College London Library, Bentham Papers, box 102, folio 23.

¹⁴³ Jeremy Bentham, “Essay on Logic”, in *The Works of Jeremy Bentham, Vol.VIII*, ed. John Bowring (Edinburgh, 1838-43) p.262.

¹⁴⁴ *Ibid*, p.263.

done”.¹⁴⁵ “To language then - to language alone - it is that fictitious entities owe their existence - their impossible, yet indispensable existence”, Bentham affirmed.¹⁴⁶

Fictitious entities included those things - like relations, situations, faculties or powers - that we speak of as if they existed, even though they cannot be perceived. They are:

One of those sorts of objects which, in every language, must for the purposes of discourses be spoken of as existing - be spoken of in the same manner as those objects which really have existence, and to which existence is seriously meant to be ascribed, are spoken of - objects of the existence of which a serious persuasion is seriously intended to be produced - but without any such design as that of producing any such persuasion as that of their possessing each for itself any separate, or strictly speaking any real, existence.¹⁴⁷

As Runciman summarises this rather (typically) complicated passage of Bentham’s, fictitious entities are “a kind of shorthand, or shortcut to the truth”.¹⁴⁸ Fictitious entities, as opposed to fictions in Bentham’s schema, could always be understood with reference to real entities – that is, whilst a fictitious entity might be a “shortcut”, it would remain possible for someone to take the longer route and explain the notion in terms of its relation to real entities. Bentham labelled the technique of doing this “paraphrasis”:

By the word paraphrasis may be designated that sort of exposition which may be afforded by transmuting into a proposition having for its subject some real

¹⁴⁵ University College London Library, Bentham Papers, box 102, folio 21.

¹⁴⁶ University College London Library, Bentham Papers, box 102, folio 23.

¹⁴⁷ University College London Library, Bentham Papers, box 102, folio 24.

¹⁴⁸ Runciman, *Political Hypocrisy*, p.132.

entity, a proposition which has not for its subject any other than a fictitious entity.¹⁴⁹

An example Bentham used to illustrate his understanding of fictitious entities and paraphrasis was the notion of an obligation:

An obligation (viz. the obligation of conducting himself in a certain manner) is incumbent on a man (i.e. is spoken of as incumbent on a man) in so far as, in the event of his failing to conduct himself in that same manner, pain or loss of pleasure is considered as about to be experienced by him.

It was characteristic of a non-entity, however, that they could *not* be explicated in terms of real entities. And to reiterate the point, Bentham says that “to distinguish them from those fictitious entities which, so long as language is in use among human beings, never can be spared, *fabulous entities* may be the name employed for the real designation of the other class of unreal entities”.¹⁵⁰ A golden mountain, to return to where we started this discussion, cannot reasonably be considered a fictitious entity - its existence is not necessary for the operation of language, and when people speak of a something chimerical like a golden mountain, they do not (unless, perhaps, they are philosophers of language) engage in the complicated word play of treating it as if it actually exists, but without the design of persuading others of the actual existence of such a thing.

In which category does the notion of the people fall? Well, it is certainly not a real entity - you cannot see, feel, or touch the people, and they do not exist in any fixed spatial or temporal location. Broadly speaking, Bentham considered the people to be a fictitious entity. As he says in the passage with which this chapter commenced, the people are a “fictitious body, composed of the individual persons

¹⁴⁹ University College London Library, Bentham Papers, box 101, folio 217.

¹⁵⁰ University College London Library, Bentham Papers, box 102, folio 24.

who are considered as constituting as it were its members". Fictions roughly approximated to lies for Bentham, but as we shall see, whilst their fictitiousness imposed quite significant constraints on their ability to act in concert, the people as a collective noun substantive *could* be traced back to real individuals who were capable of acting.

Bentham's writing at times does not always make this ontological distinction clear to the reader. Especially in his later writings, he often speaks of the people as cohesive and coherent, and in possession of attributes and faculties. Tellingly, he also frequently used the singular "le peuple", rather than the plural "les peuples", in the manuscripts that he wrote in the 1790s; the French noun for the people is far less ambiguous about its singular and plural iterations than the English. On these occasions, "the people" sounds far more like a fiction: a non-reality that is treated as if it were real (a disorganised plurality treated as if they were an organised singularity). Nevertheless, this would on the whole be a misreading; for Bentham, a fiction was an untrue proposition, and for him the people were not a proposition, but a collective noun substantive, explicable in terms of real individuals. Bentham as we shall see was often happy to entertain the language of fiction when it was in the cause of utility, and this sometimes applied to when he spoke about the people in democratic polities. However, on the fundamental question of what sort of entity the people constituted, Bentham was clear: they were a fictitious entity - a shortcut to the truth, but not an untruth.

As a "mere nothing", the fictitious people needed to be understood eventually in terms of real entities and real people. Although it is not an explicit connection, this too fits Bentham into an intellectual lineage that begins with Hobbes. It is the basic Hobbesian teaching that "the people" is not a real or natural entity; instead, the identity of the people is something that has to be fashioned or figured. "The Multitude naturally is not One, but Many", Hobbes argues in *Leviathan*, and:

A Multitude of men are made One Person, when they are by one man, or one Person, Represented; so that it be done with the consent of every one of that Multitude in particular. For it is the Unity of the Representer, not the Unity of the Represented, that maketh the Person One. And it is the Representer that beareth the Person, and but one Person: And Unity, cannot otherwise be understood in Multitude.

Representation is the vehicle by which the people come into being; the people gain a collective identity by being represented as such. Frank Ankersmit has described this as the theory of “aesthetic representation” in which representation does not simply “mimic” something that already exists (“mimetic representation” in his words) but is instead a fundamentally creative enterprise. The more general point when it comes to the people is that they are not an already existing entity with an identity that is independent of their being represented as such, but are rather brought into being by being represented. Bentham did not engage in this particular discourse of representation, but he agreed that “the people” did not exist prior to being governed but were brought into existence by those that govern. As Frederick Rosen puts it, any institutionalised popular power in a society was not the autonomous creation of the people themselves but was instead established by the governing few that acted on behalf of the people as a whole. This makes “the people” a fictitious entity for Bentham - something that lacks corporeal existence and requires real entities to be properly comprehended. And the fact that Bentham saw the people in this way questions in particular the very foundation of the voluntarist historiographical image of him that was outlined in the previous chapter.

Ambiguities

Thus far, we have established Bentham's philosophical and ontological understandings of fictions and fictitious entities and recognised that he thought of the people as a form of fiction. We have also deduced that, in the case of fictitious entities, Bentham's view was that they were justifiable on the basis that they are necessities of language. But what we have not yet considered is Bentham's normative stance on *fictions*, and in particular, his view of the place of fictions in politics. This is a somewhat trickier task, for in the round, there are a number of contradictions and ambiguities in Bentham's views of the legitimacy of fictions, and the appropriate standard against which to judge them.

On the face of it, Bentham's criticism of fictions appears to be unambiguous. As alluded to above, in his earlier years he was renowned for his almost ideological detestation of fictions. The field which provided the focal point for his criticisms was that of law and jurisprudence. "A large portion of the body of the law", he argued:

was, by the bigotry and artifice of Lawyers, locked up in an illegible character, and in a foreign tongue... Fiction, tautology, technicality, circuitry, irregularity, inconsistency remain. But above all the pestilential breath of Fiction poisons the sense of every instrument it comes near. The consequence is, that the Law, and especially that part of it which comes under the topic of Procedure, *still* wants much being generally intelligible.¹⁵¹

"In English law", Bentham says elsewhere, "fiction is a syphilis, which runs in every vein, and carries into every part of the system the principle of rottenness".¹⁵² As Nomi Stolzenburg put it, Bentham's scathing and polemical criticisms of legal

¹⁵¹ Bentham, *A Comment on the Commentaries and a Fragment on Government*, pp.411-12n.

¹⁵² Jeremy Bentham, "The Elements of the Art of Packing", in *The Works of Jeremy Bentham, Vol.V*, ed. John Bowring (Edinburgh, 1838-43) p.92.

fictions contrast starkly with his more reasoned and considered writing style in his discussion of fictions in "Ontology", for example.¹⁵³ Fictions appear here to be a "smokescreen" for Bentham which prevents us from working out what is actually going on in the operations of the law.¹⁵⁴ Making the law "generally intelligible" was the object of Bentham's writing, and elsewhere, he thought, making the laws to which people are subject transparent and clear should be a priority. He argued that general laws should be published in "one great book" and taught in schools and churches in "plain language", whilst laws that pertain to particular classes of people should be published in "so many little books".¹⁵⁵

Politics and political philosophy were not in Bentham's mind insulated from the corrosive effects of fiction either. Indeed, the main target of his criticism in the *Fragment* was one particular fiction which used a legalistic concept as the foundations for the theorisation of the very origins of political authority - that is, the fiction of the social contract. Blackstone's *Commentaries*, the subject of Bentham's *Fragment*, advanced an account of the inception of political society on the basis of an original contract, forged between individual, autonomous human beings in a conjectural state of nature. As suggested above, it was the inconsistency of the language used by Blackstone when discussing this original contract that Bentham took particular issue with, and there were in his mind a multitude of these discrepancies littered throughout the *Commentaries*. At one stage, he argues, Blackstone says that the idea of men in a state of nature meeting on a "plain" to form a contract "is too wild to be seriously admitted" and "besides, it is plainly contradictory to the revealed accounts of the primitive origin of mankind".¹⁵⁶ But elsewhere in the treatise, Blackstone also says that "though society had not its formal beginning from any convention of individuals, actuated by their wants and fears; yet

¹⁵³ Stolzenburg, "Bentham's Theory of Fictions", p.227.

¹⁵⁴ Runciman, "Political Theory and Real Politics", p.6.

¹⁵⁵ Jeremy Bentham, in Schofield, *Utility and Democracy*, pp.114-17.

¹⁵⁶ Bentham, *A Comment on the Commentaries and a Fragment on Government*, p.425.

it is the sense of their weakness and imperfection that keeps mankind together; that demonstrates the necessity of this union; and that therefore is the solid and natural foundations, as well as the cement of society".¹⁵⁷ When it comes to the state of nature itself - that state in which humans exist prior to entering into political society - Blackstone at some point suggests that people actually did exist in such a state; elsewhere, he suggests that this idealised condition is just that.¹⁵⁸ This excruciating word play, and its attendant conflation of statements about what *is* or *was* the case with what *ought* to be the case, was symptomatic of arguments imbued with the "pestilential breath of fiction" in Bentham's mind.¹⁵⁹ The idea of the social contract was but a fiction or a "chimera" which, he said, had already been "effectually demolished by Mr. Hume".¹⁶⁰ Rather than looking for an account of the origins of political authority in abstract reasoning punctuated by inaccuracies, Bentham concluded, a more plausible explanation could be found by examining history:

the origination of governments from a contract is a pure fiction, or in other words, a falsehood. It never has been known to be true in any instance: the allegation of it does more mischief by involving the subject in error and confusion... all governments that we have any account of have been gradually established by habit, after having been formed by force.¹⁶¹

Bentham is equally well-known for his critique of another set of fictions: that is, the natural rights to which French revolutionaries appealed at the end of the eighteenth century. These fictions, or "nonsense" as he called them in his writings on the French Revolution, exhibited the same sleight of hand as the other fictions he critiqued of dressing up non-entities in the garbs of reality. Ideas like the natural right to equality

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*, p.426.

¹⁵⁹ *Ibid.*, p.411-12n.

¹⁶⁰ *Ibid.*, p.439. Bentham refers to Hume's analysis in his *Treatise of Human Nature*.

¹⁶¹ Bentham, *Rights, Representation, and Reform*, p.331.

or freedom were plainly contradicted by reality: “All men born free?”, Bentham asked rhetorically, “All men remain free? - No, not a single man... all men, on the contrary, are born in subjection, and the most absolute subjection: the subjection of a helpless child to the parents on whom he depends every moment for his existence”.¹⁶² All men are equal in rights? Does that mean that “the idiot has as much right to govern everybody as any body can have to govern him”, or that “physicians and nurses have no more right to stop a sick man committing suicide than he has of doing so”?¹⁶³ In a striking metaphor, Bentham described natural rights arguments as the equivalent of dressing up hunger in order to make it look like bread.¹⁶⁴ Rights were not natural, he went on; in fact, they are precisely the opposite: they were the artifices or “children” of laws issued by governments that exist in a real, tangible historical location.¹⁶⁵

In all these cases, Bentham appears to criticise fictions on the basis that they are not true or accurate accounts of reality. Frequently, there is slippage in the language that he uses; fictions are referred to instead as “falsehoods” or “lies” or “fallacies”, rather than the more restrained and technical terms like fabulous entities or non-entities that he utilises elsewhere. Most importantly, in these instances, the standard against which fictions are being judged is that of *truth*, and Bentham it would seem rejected legal fictions and the fictions of the social contract because they were not true. Arguably, he imagined himself to be presenting a more empirically grounded, *truer* account of politics and the law. Indeed, in the *Fragment* he declared the “season of fiction” to be over, presumably to be replaced by the season of truth and reason. Given that Bentham was born at the highpoint of the Enlightenment and that the majority of his life elapsed in the eighteenth century, this sort of rhetoric

¹⁶² *Ibid*, p.323.

¹⁶³ *Ibid*, p.325.

¹⁶⁴ *Ibid*, p.330.

¹⁶⁵ *Ibid*, p.400.

should not come as a great surprise; he was just as much Enlightenment *philosophe*, argues Harrison, as he was a nineteenth century Philosophical Radical.¹⁶⁶

If Bentham was simply motivated by the discovery of truth, or as Harrison puts it, “if his starting point was truth, the desirability of true belief” then Bentham’s stance on fiction or falsehoods would be a simple one: they needed to be eradicated.¹⁶⁷ The problem, though, is that Bentham was *not* consistent in his desire to eliminate fictions or his commitment to “true belief”. In fact, there are many occasions where he was prepared to sanction the use of fictions, particularly in politics. One fiction he wrote about on a few occasions was that of the King’s inviolability, or the idea that “the King can do no wrong”. In his *The Book of Fallacies*, Bentham suggests there are different ways of interpreting this maxim. One way is to say that “whatever the King does is right, because he does it”. Such a stance was plainly “absurd”, argued Bentham, given that a King is but a man, and men are by nature fallible.¹⁶⁸ But there is another way in which this maxim might be construed, and this is that:

the king can not as such do any act, without the concurrence of some official person, his own nomination, who, in case of its being by the competent authority pronounced wrong, may eventually be punished for it. Plain and proper expression - For whatsoever act the King as such performs, some other official person appointed by him is, in a penal sense, responsible.¹⁶⁹

This construction of the fiction was “salutary” and “useful” argued Bentham.¹⁷⁰

Given that much of the everyday wielding of governmental power was not done by the King himself but by his ministers and agents, Bentham thought that this fiction

¹⁶⁶ Harrison, *Bentham*, pp.7-9.

¹⁶⁷ *Ibid.*, p.25.

¹⁶⁸ Jeremy Bentham, *The Book of Fallacies*, ed. Philip Schofield (Oxford, 2015) p.346.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

would prevent abuses of power from being shielded by the pretext of monarchical infallibility; since the King could do no wrong, if he came to ill-advised political decisions, it must be on account of the bad counsel of his advisors. In performing this function, Bentham wrote that the fiction of the King's inviolability was "perhaps of all political inventions the most ingenious and the most happy".¹⁷¹

Sometime later in 1823, in his constitutional writings for Tripoli, Bentham again sanctioned the use of fiction. Deploying the fundamental precepts that he had developed in his *First Principles Preparatory to a Constitutional Code*, he wrote proposals for a set of constitutional arrangements to be adopted by Tripoli, and he appended to these an "Exordium", to serve as a preface. This was to include two addresses to be given by the ruler, the Pasha, to his people, the first of which would recount a fictional apparition of the prophet Mohammad, in which he instructs the Pasha to "takest upon thee to provide for the wants of thy people", to inquire from the people what their wants in fact are, and to take counsel from men "chosen by the people".¹⁷² This of course was a fiction for Bentham (potentially informed by his own encounters with apparitions and phantoms as a child). Nonetheless, this was what he wished his constitutional provisions to be preceded by, because he thought it would be helpful in securing the legitimacy of his proposals in the eyes of the subjects of Tripoli.

Perhaps most surprisingly, Bentham even foresaw specific historical contexts where appeals to the social contract - that fiction he so ridiculed throughout his life - might be justifiable. In an intriguing passage in the *Fragment*, he says that:

with respect to this, and other fictions, there was once a time, perhaps, when they had their use. With instruments of this temper, I will not deny but that

¹⁷¹ Bentham, *Rights Representation and Reform*, p.29. "C'est dans cette maxime de l'impeccabilité Royale que se combine admirablement l'intérêt personnel du Roi avec l'intérêt de la nation. C'est peut-être de toutes les inventions politiques la plus ingénieuse et la plus heureuse".

¹⁷² Bentham, *Securities Against Misrule*, p.75.

some political work may have been done, *and that useful work, which, under the then circumstances of things, could hardly have been done with any other.*¹⁷³

Finally, though his *The Book of Fallacies* was primarily intended at “exposing” fallacious arguments that deployed fictions in order to “prevent their use”, Bentham did at least admit of some scenarios in which the deployment of fictions might be justifiable.¹⁷⁴ Bentham defined a fallacy as “any argument that is considered as having been employed, or consideration suggested, for the purpose, or with a probability of producing the effect - of deception”.¹⁷⁵ Of course, a fallacy is not quite the same as a fiction. A fallacy is defined by its intention to deceive and deploys a fiction to that end, but fictions are not always intended to deceive. Put differently all fallacies involved fictions, but not every fiction is a fallacy. “Political fallacies” for Bentham are simply those deployed in a political context, and specifically in *The Book of Fallacies*, in Parliament.¹⁷⁶ Bentham condemned most fallacies for their mischievous consequences, but there was one use of fallacies that he condoned, and this was as “self-defence against counter-fallacies”.¹⁷⁷ When used in the public interest to counteract the fallacious arguments used by others, fallacies were justifiable.

One deduction that could plausibly be made on the basis of all of this is that Bentham was a hypocrite.¹⁷⁸ It appears as if his commitment to truth is whimsical; at times he seems to be seeking almost to elevate himself above the lawyers and political thinkers who had wittingly or unwittingly engaged in the language of fictions, and at other times, he actively engages in precisely that language himself. How should we try to account for these inconsistencies in his work? One rather unprofitable response to this would be to say that we do not need to. As Stolzenburg

¹⁷³ Bentham, *A Comment on the Commentaries and a Fragment on Government*, p.441 [my emphasis].

¹⁷⁴ Schofield, *Utility and Democracy*, p.161.

¹⁷⁵ University College London Library, Bentham Papers, box 103, folio 1.

¹⁷⁶ Bentham, *The Book of Fallacies*, p.31.

¹⁷⁷ *Ibid*, p.53.

¹⁷⁸ Runciman, *Political Hypocrisy*, p.133.

puts it, Bentham did not purport to “provide a clear account of the relationship between his derogatory view of legal fictions and his general theory of fictions”.¹⁷⁹ Bentham was certainly not a linguist or a philosopher of language himself. And it is worth bearing in mind Quentin Skinner’s admonition against imposing an anachronistic coherence onto the thought of historical thinkers when in fact such a coherence does not really exist in their work.¹⁸⁰ However, there is a far more insightful and valuable response to this issue which builds on the reflection that Bentham was not a philosopher of language. Rather, Bentham was more precisely what we would now call a *theorist of politics*, and the fact that Bentham’s primary concern was understanding politics as a specific domain of human activity with its own imperatives relevant to the use of language and ideas can go a long way in helping us explain the nuances and complexities of his attitudes to fictions.

Utility, Truth and Fictions in Politics

Any account of Bentham’s political thought must centre on his concept of utility, which he defined as that “property, in any object, whereby it tends to produce happiness”.¹⁸¹ Bentham collapsed a number of terms - including happiness, utility, and benefit - into what was the same thing, and they all ultimately made sense in reference to two real entities that guided all human conduct: “Nature”, he wrote in the *Introduction*, “has placed mankind under the governance of two sovereign masters, pleasure and pain”.¹⁸² To the extent that an action increased pleasure and decreased pain, that action also promoted happiness; these statements were one and the same thing for Bentham. He continued that these two “sovereign

¹⁷⁹ Stolzenburg, “Bentham’s Theory of Fictions”, p.235-6.

¹⁸⁰ See Skinner’s “Meaning and Understanding in the History of Ideas”, p.16.

¹⁸¹ Bentham, *Introduction*, p.12.

¹⁸² *Ibid*, p.11.

masters” were the drivers of all human behaviour and the basis of his utilitarian moral framework:

It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of cause and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think... [by] the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question.¹⁸³

Put differently, what was good for Bentham was whatever promoted utility, and what distinguished the principle of utility from other moral codes was that it applied to everyone in all areas of human conduct: increasing happiness and minimising pain was a moral imperative in public and in private, in philosophy as well as in politics.¹⁸⁴ In the latter case, Bentham says that “the right and proper end of government in every political community is the greatest happiness of all the individuals of which it is composed”.¹⁸⁵

Superficially, Bentham’s utility principle appears like a one-size-fits-all approach to human conduct, and this has led to the criticism that utilitarianism is a rather crude and reductive moral framework. In its universalising tendencies, utilitarianism it is argued elides contextual and circumstantial factors that ought to be included in moral decision-making. In the case of politics, Bentham is often criticised by those theorists identifying as “realists” for advancing a naïve account

¹⁸³ *Ibid.*

¹⁸⁴ Jeremy Bentham, *Official Aptitude Maximized; Expense Minimized*, ed. Philip Schofield (Oxford, 1993) p.352n; See also Bentham’s comments on “the principle of sympathy and empathy” in *Introduction*, pp.17-27.

¹⁸⁵ Jeremy Bentham, *First Principles Preparatory to a Constitutional Code*, ed. Philip Schofield (Oxford, 1989) p.232.

which is blind to the specificities of the political domain. Utility is considered by these realist critics to be an objective, abstract metric against which political activity is to be judged, but this, they argue, ignores the particular factors that anyone acting in politics must recognise in deciding what to do in a given situation. Moreover, to seek to assess politics with reference to a single value like utility is to fail to appreciate that there are many competing values in politics that must be weighed up against each other.¹⁸⁶

Bentham's conception of utility, though, was far from the caricature that is often presented of it, and in many ways, his utilitarianism might be credibly viewed as a realistic approach to politics that is sensitive to contextual factors unique to this realm of human activity. First and foremost, utility was not some objective, unitary entity that exists independently of human judgement. We ought to take seriously the claim that Bentham's "principle of utility" was a fictitious entity; whilst it referred to the real entities of pleasure and pain, Bentham did not think that calculations of utility could be divorced from the subjective assessments of individuals, because the experience of pleasure and pain varied from person to person.¹⁸⁷ Additionally, utility was not in his mind a single unitary value that exists alongside other competing political values like security or liberty. Utility did not constitute some nascent notion of marginal economic utility. Rather, utility was the product of a more complex, comprehensive calculation within which all competing political values - including security and liberty - represented relevant considerations for Bentham. In the case of politics, Bentham believed that the means available, the likelihood of a given policy being successful, political and circumstantial factors and the compromises involved

¹⁸⁶ The most prominent realist critic of Bentham is Bernard Williams. Bernard Williams, *Essays and Reviews 1959–2002* (Princeton, 2014), p. 313; John Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973). For the relationship between politics and morality in realism, see Edward Hall and Matt Sleat, "Ethics, Morality and the Case for Realist Political Theory", *Critical Review of International Social and Political Philosophy*, Vol.20(3) (2017) pp.278-95.

¹⁸⁷ Schofield, *Utility and Democracy*, p.29-30.

between different imperatives were all pertinent considerations when assessing the utility of different courses of action. As Ben-Dor puts it, Bentham's utilitarianism

is an evaluative theory, [which] operates on an indeterminate basis. This indeterminacy is manifested in so far as it is not possible for an evaluating agent to have a universal vantage point from which to evaluate his moral perspective. This is not to say that utility collapses into total relativism, being sceptical about evaluation and normativity, but only that it fiercely resists a universal moral perspective for evaluation and interpretation... Utility supplies an evaluative principle which is based on the human condition, rather than an overarching substantive distribution principle, such as can attune itself to many social matrices. This gives it flexibility, an asset which means that the theory does not collapse into a particular cultural/ historical interpretation of its evaluative master principle.¹⁸⁸

In this light, the principle of utility appears as a far more sophisticated, realistic way of approaching politics than as it is frequently presented. Bentham did not ignore circumstantial factors but actually built them into his framework.¹⁸⁹ For these reasons, de Champs's claim that we ought to consider Bentham's utilitarian calculus as an "argumentative strategy rather than primarily a mathematical one" is a convincing one: utilitarianism represents a tool with which to work out the trade-offs between a variety of competing considerations relevant to aggregate happiness.¹⁹⁰

¹⁸⁸ Ben-Dor: *Constitutional Limits and the Public Sphere*, p.29.

¹⁸⁹ See Engelmann and Pitts, "Bentham's 'Place and Time'", for an analysis of the contextualism in Bentham's political and legal prescriptions.

¹⁹⁰ Emmanuelle de Champs, "Happiness and Interest in Politics: A Late Enlightenment Debate", in *Happiness and Utility: Essays Presented to Frederick Rosen*, eds. Georgios Varouxakis and Mark Philp (London, 2019) p.26.

To return to the question of fictions, another pertinent reason why Bentham's utilitarianism offers a more realistic tool of political analysis than is often suggested is that he recognised that the relationship between truth and utility was contextually defined. Schofield has helpfully teased this point out in an article on the subject: for Bentham, truth and utility usually went together, in the sense that "whatever was true was useful and whatever was useful was true".¹⁹¹ In the field of philosophy what was useful was almost always what was factually correct; Bentham was in search of a philosophical perspective that was true, "and it was because it struck him as true that he adopted the principle of utility".¹⁹² Having an accurate account of the world was always useful for Bentham. But whilst he *usually* thought that truth and utility were "mutually supportive" in politics, he recognised that this was not always the case.¹⁹³ Indeed, Bentham suggested that there were scenarios where deviating from the truth was "properly permitted" by the utility principle.¹⁹⁴ Michael Quinn has suggested that the relationship between truth and utility in Bentham's political thought was similar to that between a "chicken and egg", but Bentham was absolutely clear that *utility* was the proper end of politics, and truth was valuable only insofar as it was useful.¹⁹⁵ For, he said, "except in so far as in some shape or other it leads to and is productive of well-being...what is the value of all the knowledge in the world? - Just nothing".¹⁹⁶ It is this facet of Bentham's thinking that can help to explain the flexibility and adaptability on the question of fictions in his schema.

That Bentham thought that truth and utility might diverge in politics was a development in his thought rather than something he always believed to be the case.

¹⁹¹ Schofield, "Bentham on Utility and Truth", p.1127.

¹⁹² *Ibid*, p.1126.

¹⁹³ *Ibid*, p.1127.

¹⁹⁴ Jeremy Bentham, "Rationale of Judicial Evidence" in *The Works of Jeremy Bentham, Vol. VI*, ed. John Bowring (Edinburgh, 1838-43) p.267.

¹⁹⁵ Michael Quinn, "Which Comes First, Bentham's Chicken of Utility, or his Egg of Truth?", *Journal of Bentham Studies*, Vol.14 (2012) pp.1-46.

¹⁹⁶ University College London Library, Bentham Papers, box 101, folio 158.

In his earlier years, he thought that speaking what he considered to be truth - utilitarian reforms - to power would inevitably lead to the political improvements he so desired. This was the quintessential Enlightenment view that reasoned argument would lead to the perfection of government. As we saw earlier, Bentham thought that the age of reason in which he was writing would hasten the end of the “season of fiction”, and usher in more rational government. The presence of non-rational aspects to politics, and more importantly the fact that government frequently pursued policies and programmes that were decidedly not in the interest of general utility, could only be the product of “inattention and prejudice”.¹⁹⁷ The truth would beget utility.

As a number of scholars have attested, the critical development in Bentham’s political thought, and the thing that convinced him that the truth would not be enough to ensure utilitarian reforms were enacted in politics - that the season of fiction was *not* over - was his “discovery” of “sinister interest”.¹⁹⁸ Bentham’s understanding of sinister interest will be covered in more detail in the next chapter, but here, what is important to emphasise is that he came to realise that reasoning was not a pure and abstract effort at perceiving the common good (that is, general utility), but an *instrumental* exercise deeply inflected by the interests of individuals and groups. The problem is that those who wield political power ostensibly on behalf and in the interests of society as a whole have their *own* interests too, and these may not be coterminous with the interests of everyone else. Politics was not, he came to apprehend, determined by rational argument and truth, but by interests and the power of individuals and groups to pursue them, and thus the imperfections in government too were not merely the result of inattention and prejudice, but of “the elaborately organized, and anxiously cherished and guarded products of sinister

¹⁹⁷ Bentham, *A Comment on the Commentaries and a Fragment on Government*, p.508.

¹⁹⁸ See John Plamenatz, *The English Utilitarians*, pp.62-4; John Dinwiddy, ‘Bentham’s Transition to Political Radicalism’, pp.683-700; Schofield, *Utility and Democracy*, pp.109-36.

interest".¹⁹⁹ What made interests "sinister" for Bentham was the fact that those in positions of power were supposed to be acting in the interest of common utility - that is, the interests of all in society - but frequently used that power to pursue their own particular interests at the *expense* of general utility. And it was this that convinced him that the key determinant of whose interests would be served in politics was *power*, not truth.

The fundamental consideration for Bentham when weighing up whether or not a fiction might be useful in politics, then, was not truth, but power: what would be the consequences of deploying or exposing a fiction for relationships of power? Would they empower those whose interests were particular and potentially antagonistic to utility, or would they promote the interests of the many? As posited above, Bentham thought that fictions often provided a sort of "smokescreen", and on the one hand, he thought this smokescreen could work to conceal or mask the pernicious effects of sinister interest. This, as William Twining has remarked, means that Bentham's worldview bears a curious resemblance to that advanced in Marxism:

Much of Bentham's analysis could, with a few adjustments of terminology and emphasis, be adopted by a modern Marxist: the characteristics of the technical system are directly attributable to the material interests of a powerful class, interests which by and large conflict with those of the rest of society; the system is conserved through a combination of falsehood, mystification and self-deception and is cemented by an underlying liberal ideology.²⁰⁰

It was for this reason, rather than a direct concern with truth, that Bentham opposed the use of fictional language in politics. Indeed, what really worried him was the

¹⁹⁹ Bentham, *A Comment on the Commentaries and a Fragment on Government*, p.508.

²⁰⁰ William Twining, *Theories of Evidence: Bentham and Wigmore* (Stanford, 1985) p.75.

presence of what he termed “flagitious” fictions - those that hid the pernicious workings or abuses or usurpations of power. One relevant example cited above concerned fictions used by the judiciary. Bentham believed that judges used fictions when they wished to apply existing law to new areas, and that this was flagitious because it disguised the fact that judges were in fact acting to innovate and generate legislation, which was not in their gift to do. Judges were empowered to *judge* the application of the law - it was the place of *legislators* to legislate.²⁰¹ What perturbed him about these fictions was not simply that they were falsehoods, but that they had for their object ‘the stealing legislative power, by and for hands which could not, or durst not, openly claim it - and, but for the delusion thus produced, could not exercise it’.²⁰² It was these flagitious fictions that Bentham wished to expose, for they helped the unelected judiciary usurp the powers of the legislature, which was elected by and properly subject to the people as a whole.

Bentham’s rejection of the social contract and natural rights had something to do with power too, because they moralised the activities of government and hid the workings of power behind the language of authorisation, right and consent. More specifically, Bentham worried about the tendency of these fictions to undermine stable political society itself. He did not reject the social contract or the concept of natural rights because they were untrue yet ultimately inconsequential statements about reality, but for almost the opposite reason: these fictions had great consequences for how people conceived of political society, and these consequences were not in the interest of general utility. Bentham censured the social contract because he argued that it had anarchical tendencies that undermined the order and the authority of constituted government. It suggested that governments are subject to a pre-political contract, which if broken would legitimate populations disobeying their rulers. Indeed, Bentham perceived an ironic, anarchical streak to the conservative Blackstone’s theory of the origins of political authority. He also

²⁰¹ Harrison, *Bentham*, pp.32-3.

²⁰² Bentham, *A Comment on the Commentaries and a Fragment on Government*, p.509.

perceived these same anarchical tendencies in the language of natural rights; the idea that everyone has a natural right to liberty, Bentham averred, is antithetical to government itself, because every right must be positively prescribed by an actual government and necessarily entails impositions on the liberties of other subjects. Rights and duties were inseparable, he maintained, but the concept of natural rights presumes that they might be separated.²⁰³ In these instances, Bentham thought these fictions ought to be exposed and resisted because they undermined stable societies based on established sites of political authority that benefited everyone, and this anarchism was to his mind decidedly not in the interest of general utility. Bentham was a strident critic of the abuse of power, but he was not a critic of relationships of political power - that is, order - itself, and the fictions of the social contract and natural rights threatened precisely this. This is a distinctly realist position, which views order as the *sine qua non* of politics.²⁰⁴

However, this was only one side of the coin for Bentham. He did not think all fictions were flagitious or useless, because not all fictions necessarily function to mask the abuse of power or promote anarchy. And conceivably, if a fiction were to have, for example, the consequence of promoting utility by ensuring that the interests of everyone were served in political decision-making, then such a fiction would be politically justifiable. To modify one of Bentham's own maxims, if a fiction worked to empower the disempowered many, it would not be a vice, but a virtue.²⁰⁵ In fact, Bentham saw plenty of fictions that would work to promote utility by "giving those on the receiving end of power" protection and agency, and he was prepared to countenance them if they performed such a role.²⁰⁶

This helps to explain why Bentham endorsed the fictions that he did. In the case of the monarchical inviolability, he believed that, on balance, this fiction worked

²⁰³ Bentham, *Rights, Representation, and Reform*, pp.392-400.

²⁰⁴ William Galston, "Realism in Political Theory", pp.385-411.

²⁰⁵ Jeremy Bentham, "Swear Not At All", in *The Works of Jeremy Bentham, Vol.V*, ed. John Bowring (Edinburgh, 1838-43) p.222.

²⁰⁶ Runciman, *Political Hypocrisy*, p.136.

to protect people against potential abuses of power by those hiding behind the authority of the king, which was in the interest of people generally, and thus in the interest of common utility. Context played a significant part in these assessments about whether or not to condone fictions. With regards to his constitutional proposals for Tripoli, Bentham thought that the fiction of a divine apparition from the prophet Mohammad would go a long way towards securing measures that he believed were unquestionably in the interest of the subjects of that country. Indeed, appended to both the “Exordium” and the constitutional proposals was an “Account of Tripoli” that Bentham had penned, which examined the unique geographical and societal features of the state and included an extensive commentary on the importance of “Mahometanism” to its population.²⁰⁷ Deploying a fiction that appealed to the deep religiosity of the people of Tripoli was a calculated, realistic approach to ensuring the success of his utilitarian proposals there. In the case of the social contract, Bentham did concede a temporal context when such a fiction would have been useful; there was at least “once a time” when it had a use.²⁰⁸ That Bentham rejected the social contract was not so much due to the fact that it was a falsehood, but because he calculated that, in its anarchical tendencies, it was opposed to general utility in the context in which he wrote.²⁰⁹ A similar rationale applied to Bentham’s views on the fiction of the King’s infallibility; he may well have become a committed republican late in life, but he was ready to admit that in a different historical context, the fiction had proven a useful political invention (literally a “happy” one, as he wrote in 1788).²¹⁰

One final way to think about Bentham’s approach to fictions in politics is through the lens of “verity” and “veracity”. Bentham thought it was always useful and valuable to have a true understanding of how the world works; but the question

²⁰⁷ Bentham, *Securities Against Misrule*, pp.12-16.

²⁰⁸ See page 70 above.

²⁰⁹ Bentham, *A Comment on the Commentaries and a Fragment on Government*, p.441.

²¹⁰ See page 69 above.

of veracity - whether what you say is in conformity to verity, or what is true - is a different moral conundrum altogether. This was not to entertain some naïve Idealism or relativism on the subject of fictions. He did not think that *any* fiction could be justified. Rather, Bentham's stance demonstrates an underlying realism. He confronted this problem in his *Rationale of Judicial Evidence* with reference to Immanuel Kant's famous dilemma of whether or not to tell the truth to a murderer who arrives at your door and asks for the location of his potential victim. Kant derives an absolute obligation to veracity on the basis of pure reason, but Bentham rejects this, and argues that whether or not to simply tell the truth must be a function of context.²¹¹ Bentham is lumped together with people like John Rawls and Immanuel Kant in the category of political moralists by contemporary realists like Bernard Williams, but in his approach to the question of truth in politics, Bentham presents a realistic, pragmatic approach that marks him out as a radically different type of thinker.²¹²

The People

At this stage, we should return to the question of the people. We have established that the people represented a fictitious entity, as Bentham defined them. What does this tell us about the nature of the people? What are they capable of doing? And did Bentham think that the fictitiousness of the people was politically valuable and *useful*, or a falsehood that ought to be exposed by the clarifying light of reason and truth? Fundamentally, that "the people" were fictitious meant that they could not possibly perform the function that certain of Bentham's critics believed that he wanted them to. The people could not govern or act independently of their representatives, because they were at base "a mere nothing". Real persons do things,

²¹¹ Bentham, "Rationale of Judicial Evidence", pp.219-21.

²¹² Bernard Williams, *Essays and Reviews*, p.313.

not fictitious persons, and though fictional entities might influence and affect the behaviour of particular individuals, Bentham was clear that we should not confuse this for an agency independent of humans themselves. But Bentham did not reject the people out of hand *because* they were fictitious; in fact, Bentham thought that the fictitious entity of “the people” as a collective was potentially very useful indeed because it gave those that are subject to power weight and influence in politics. As individuals, people are simply isolated, unaware and atomised, all pursuing their own narrow self-interest and easily manipulated by those in positions of power. As a cohesive entity that Bentham later sought to invest with sovereignty in his *Constitutional Code*, the people were less weak and less exposed to the workings of organised power.²¹³ This position of Bentham’s, as will be argued in the forthcoming pages, gave his views on the place of the people in representative democracy a heterodox nature; it distinguished him from those who believed the people were a real actor that could literally govern itself, but it also distanced him from the alternative, rationalist argument that, since the people are fictional, we should disregard their place in politics altogether. Bentham thought the people were fictitious entity, but also that they were a *useful* fictitious entity worth keeping.

That the people were fictitious also defined the problem which Bentham believed representative democracy as way of organising politics needed to address: the people are necessarily vulnerable to being misruled and manipulated by political

²¹³ This is what distinguishes Bentham’s theorisation of the people from a very similar one in the writing of Walter Lippmann. The notion of a sovereign people, Lippmann contended, is a “fiction”. It is at the core of a democratic ideal of popular self-government but, Lippmann wrote, “I think this is a false ideal. I do not mean an undesirable ideal. I mean an unattainable ideal, bad only in the sense that it is bad for a fat man to try to be a ballet dancer. An ideal should express the true possibilities of its subject”. The people or “the public” as Lippmann labels them “is a mere phantom”, and Lippmann blamed what he considered to be a strange disenchantment with American democracy in the early twentieth century on the inability of the public to ever perform the idealised function that certain voluntarist understandings of democracy had for it. Bentham’s view was slightly different. The people were not a *mere* fiction, but a useful one, and whilst their fictitiousness defined the limits of what the people could do, it had potential uses in democratic politics. Lippmann described the people as a fiction in a pejorative sense; Bentham imagined the fictionality to be janus-faced. See Walter Lippmann, *The Phantom Public* (New Brunswick, 1993) pp.4,29,67,

elites, because naturally they are incapable of acting autonomously as a group to resist their rulers when they abuse the power that they wield ostensibly on behalf of society as a whole. It is to this problem - the problem of undemocratic representation - that we turn in the following chapter.

Chapter III

Undemocratic Representation²¹⁴

Bentham's conception of the nature of the people constituted the theoretical underpinning of his theory of government. First and foremost, it made representation a basic reality of politics itself. That the people were naturally a disunited, incoherent multitude meant that government had to be something that was conducted on their behalf by elites. Bentham also contended that representation was positively desirable for *good* government: that is, government in the interest of general utility. This chapter will consider both these positions. However, Bentham's view of the inevitability and desirability of representative government did not lead him straightforwardly to a rationalist world view of government as simply the purview of independent elites; his conception of the people also defined what he took to be the principal problem with representative government: the tendency in them towards what he called 'misrule'. Bentham contended that representative governments were inherently prone to becoming corrupt and tyrannical, and that the people in turn were naturally susceptible to being tyrannised. Indeed, Bentham took the degenerative quality of elite government and the natural frailties of the people as a collective as the chief problems to be addressed in his mature constitutional writings.

This chapter is concerned with outlining Bentham's arguments for the inexorability of representative government, as well as its positive advantages from a utilitarian perspective. The first took the form of an almost ontological case for the distinction between the ruling few and the ruled many in his writings, whilst the second was a more normative contention in favour of government by those

²¹⁴ Sections of this chapter are taken from James Vitali, "Representative, Deputy, or Delegate? Jeremy Bentham's Theory of Representative Democracy", *History of European Ideas*, Vol.47(8) (2021) pp.1315-1330.

possessing the appropriate “aptitude”. Following this, Bentham’s understanding of sinister interest and the implications of this for his political thought will be considered. His “discovery” of sinister interest in the 1800s was pivotal in his intellectual development and converted him from a naïve idealist on the prospects of reform and government to a sceptical realist. It also revealed to Bentham the fundamental structural issue with government by elites. Finally, this chapter will consider why Bentham thought the people were acutely vulnerable to misrule and tyranny, and why subsequently that limiting the independence of those in possession of political power was necessary for government to promote the greatest happiness of the greatest number. The people may well be fictitious, but it became apparent to Bentham that a politics that entirely discarded any role for the people would likely result in misrule.

The Inevitability of Representation

In their 2008 book on the subject, Monica Brito Vieira and David Runciman argue that Bentham was not a particularly serious thinker on the subject of representation. Bentham was certainly an important and influential thinker, but “throughout his life”, they aver, “Bentham remained suspicious of the idea of representation, believing it to be part of the problem, not the solution”. It was left to Bentham’s friend James Mill, they argue, to make the concerted case for representative government in the cause of utilitarian reform.²¹⁵

Vieira and Runciman do draw out one of the key problems as Bentham saw it with representation - namely its suggestion of complete independence for political elites - which will be discussed below, but taken at face value, theirs is a potentially distorting picture. Representation - in the sense of a person or a number of persons

²¹⁵ Vieira and Runciman, *Representation*, pp.45-6.

acting on behalf of the people as a whole - was an elemental component of Bentham's understanding of government itself; it constituted his theoretical starting point - a basic assumption which underpinned his approach to politics throughout his life.²¹⁶ Although, as with many other subjects, Bentham did not outline his views at length in one place, there are a number of relevant passages in his work from which his belief in the political inevitability of representation can be ascertained. Rosen in his work on Bentham's theory of representative democracy has focused predominantly on his mature writing like the *Code* and the debates concerning the differences between Bentham and James Mill that were stoked by an essay written in 1829 by Thomas Macaulay for the *Westminster Review*.²¹⁷ These sources will be considered below, but they will also be supplemented by analysis of Bentham's writing on representation in the late 1780s and 1790s, as well as the sheets he wrote in 1822 as draft material for the *Code*.

Like many others in the period, Bentham made the common argument that representation was necessary in the era of vast commercial societies because of the practical difficulties of direct government by the people. These were, as he put it:

1. To act in concert, it would be necessary the whole multitude should at the same time be in the same place, and that in such sort that each one should be within sight and hearing of all the rest.
2. It would be necessary for them to give to the business of government, and in particular the business which consists in settling in what manner the matter

²¹⁶ Of course, the concept of representation is a complex one. As Hanna Pitkin points out, there are a number of senses in which the word can be used. To "represent" can mean to be authorised to act on behalf of a person or group of persons, to descriptively resemble them, or even to symbolise them. Pitkin herself looked to expound a theory of representation as a substantive activity. Nonetheless, representation here is used in the formalistic sense - as denoting the fact of some individual or number of individuals acting on behalf of others and with their authorisation, whether explicit or tacit. See Pitkin, *The Concept of Representation*.

²¹⁷ Rosen, *Jeremy Bentham and Representative Democracy*, pp.165-182.

of subsistence and abundance, in proportion as it comes into existence, shall be disposed of, the time necessary to the bringing it into existence.²¹⁸

“For a time at least”, he added, this scheme of government “might serve for hundreds”. But “it could never serve for millions”.²¹⁹

Additionally, however, Bentham made a more sophisticated, ontological argument for the necessity of representation. Government, he contended, was by its very nature by the few of the many; as he noted in the *Fragment*, a political society was one in which people as a whole were obedient and subject to the rule of a person or assemblage of persons.²²⁰ A state in which everyone governed themselves “would be - not government, but the absence of all government”, or in other words, anarchy.²²¹ A distinction, therefore, between the few that govern and the many that are governed was basic to Bentham’s understanding of politics. Rosen understood this to be a “sociological distinction” in Bentham’s mind and cites references to “the opulent few” and the “unopulent many” in his writing, but this gives a classist or economic dimension to the division that muddies the point that Bentham was trying to make.²²² Bentham’s distinction between the governing few and the governed many was a specifically political one which underlined his view that political orders were necessarily states in which people were *ruled*.²²³

Bentham understood this principle to apply to all forms of government, even democratic ones. As he put it in the Constitutional Code:

One point however there is - on which a representative democracy and an aristocracy-ridden monarchy do (it must be confessed) agree: under both

²¹⁸ Bentham, *First Principles*, pp.238-9.

²¹⁹ *Ibid*, p.238.

²²⁰ Bentham, *Fragment*, p.438

²²¹ Bentham, *First Principles*, p.238.

²²² Rosen, *Bentham and Representative Democracy*, pp.13, 20.

²²³ See Peardon, “Bentham’s Ideal Republic”, p.139; Harrison, *Bentham*, pp.208-9.

forms of government, the possession of power is secured to one class, to the perpetual exclusion of another class.²²⁴

Additionally, and as alluded to in the previous chapter, Bentham considered the people as a collectivity to be fictitious, and they could not therefore execute the business of government themselves. Naturally, they constituted an unorganised multitude without a unified existence or identity, or even a coherent voice. They could not provide the initiative required to govern. “In the exercise of political power”, he wrote, whatever is to be done “must be done through agents”.²²⁵ In many ways, Bentham’s attitudes here are comparable to those of his French contemporary Emmanuel Sieyès. Like Sieyès, it would seem, Bentham recognised the fact that people required representation to have any sort of corporate existence in a political society, and that it was only by being governed by some particular combination of “the few” that they could avoid the alternative, anarchical state that would ensue in the absence of rule.²²⁶ To this end, it does not quite make sense to say that Bentham considered representation to be “part of the problem” of government, as Runciman and Vieira propose. Rather, representation constituted an underlying reality of politics that any particular form of government had to recognise and incorporate. An assumption of a degree of independence and differentiation on the part of the ruling few from those whom they ruled over was built into Bentham’s political theory.

²²⁴ Bentham, *Constitutional Code*, p.433.

²²⁵ Jeremy Bentham, “Constitutional Code”, *The Works of Jeremy Bentham*, Vol. IX, ed. John Bowring (Edinburgh, 1838-1843) p.98.

²²⁶ Vieira and Runciman, *Representation*, pp.34-8.

The Desirability of Representation

Not only did he consider it a basic feature of politics itself, but Bentham also made a more normative argument that representation and a degree of elite independence was positively desirable for good government. As we saw in the previous chapter, Bentham considered the end of government and legislation, as with private deontology, to be the promotion of utility or the greatest happiness of the greatest number. But whilst the ends of government might be the same as that of private ethics, Bentham understood there to be some crucial differences between making decisions for oneself and making them on behalf of a political community. These latter types of decisions were qualitatively different for Bentham because they involved making calculations, compromises and trade-offs between various different individuals and their interests. And whilst he was clear that in private deontology, each person would judge best what was in his or her own self-interest, Bentham did not believe that everyone was equally capable of determining what was in the interest of a community as a whole.²²⁷ Some people, he claimed, had greater “aptitude” for government, and these people should be the political representatives of the public with autonomy to govern effectively.

Bentham did not see aptitude for government as purely a matter of intelligence, though this was certainly an important part of it. In fact, Bentham considered aptitude for political office to be threefold: “intellectual”, “moral”, and “active”. His most detailed account on this subject is to be found in *Economy as Applied to Office*. Intellectual aptitude itself, Bentham argued, had two branches: that of the knowledge one had acquired, and that of the capacity to make good judgements.²²⁸ Moral aptitude Bentham considered to be a “negative quality” that was

²²⁷ Bentham, *Deontology*, p.131; Dinwiddy, “The Classical Economists and the Utilitarians”, p.20-1.

²²⁸ Bentham, *First Principles*, pp.77-8.

constituted by the absence, in so far as possible, of a certain propensity universal in human nature. This propensity in the breast of each individual is the propensity to sacrifice all other interests to that which at each moment appears to him to be his own preponderant interest: to obtain happiness for himself to whatsoever amount by so doing, he abstracts or withholds it from all other individuals.²²⁹

Moral aptitude in other words is the propensity to favour the interest of general utility over that of one's own interest. Finally, active aptitude referred to the physical capacity of someone to discharge the duties required of them in office.²³⁰ Taken together, "appropriate aptitude" for government referred to a level across these various elements that would enable an individual to pursue the end of governing: utility.²³¹ Bentham's understanding of aptitude, then, was not simply an epistemic one: he did not embrace Plato's "philosopher kings" as the ideal type for the ruling few. Nonetheless, he did still believe that government should be conducted by an elite of sorts, who would be distanced from the population as a whole by their fitness for ruling. Bentham recognised that some people would possess more aptitude for government than others, and it was these people that Bentham thought should wield political power on behalf of the rest. One of his favourite metaphors for the ruling few was that of shoemakers: "It is not every man that can make a shoe", he wrote in 1790, "but when a shoe is made every man may tell whether it fits him without much difficulty. Every man cannot be a shoemaker, but any man may choose his own shoemaker".²³² People might be able to choose who ought to rule them, but not everyone was able to rule.

²²⁹ *Ibid*, pp.13-15.

²³⁰ *Ibid*, pp.87-8.

²³¹ *Ibid*, p.4.

²³² University College London Library, Bentham Papers, box 127, folio 2; Schofield, *Utility and Democracy*, p.98.

On this point, a particularly telling aspect of Bentham's political thought was his early support for England's "rotten" or "pocket" boroughs. These were constituencies with a tiny number of inhabitants which still elected members of Parliament, usually at the direction of a powerful, landowning family. In the most infamous case of Old Sarum (about two miles from Salisbury), a single patron effectively returned two members of Parliament. Though these rotten boroughs were to be abolished by the Great Reform Act of 1832, Bentham was initially supportive of their role in helping to generate a competent elite comprised of men with aptitude. In his *Considerations d'un Anglois sur le Composition des États Généraux*, written in 1788, Bentham was most likely referring to these rotten or pocket boroughs when he stated that one particular advantage of the English electoral system was that it was able "to supply able subjects by means of particular nominations".²³³ In 1795, Bentham then proposed to write an essay entitled *Rottenness no Corruption - or a Defence of Rotten Boroughs*.²³⁴ Indeed, for a time, Bentham himself hoped that his friend Lord Shelburne (who was prime minister for a brief period in 1782-3) would help him get elected in one of his pocket boroughs. Whilst such hopes were ultimately dashed, it is reasonable to conclude that Bentham considered this undemocratic mechanism for selecting MPs in England as a legitimate method for ensuring that the brightest and best - people, he presumably thought, like himself - entered the governing class.

A corresponding point that Bentham made was that decision-making in government often did have a technical, almost scientific nature to it.²³⁵ Of course, there were no *a priori* "right" and "wrong" answers to political questions from a utilitarian standpoint - as suggested above, Benthamite utilitarian calculations were

²³³ University College London Library, Bentham Papers, box 170, folio 46. Rotten boroughs, he wrote, would "Fournir des sujets capables au moyen des nominations particulières".

²³⁴ University College London Library, Bentham Papers, box 154, folio 3; Schofield, *Utility and Democracy*, pp.98,104.

²³⁵ See Stephen Engelmann, 'Mill, Bentham, and the Art and Science of Government', *Revue d'Études Benthamiennes*, Vol.4 (2008) [online].

post, not pre-political - but Bentham certainly did not believe that perceptions of utility were entirely subjective. Indeed, the whole point of his utilitarianism was to provide a common language or a “context” through which assessments could be made on the basis of agreed premises.²³⁶ Bentham was clear that humans would very often get these assessments wrong; but this did not mean that a correct assessment did not exist, it was simply that people had not perceived it effectually. Government was in his eyes “a site of technical knowledge”, and thus whilst intelligence was not the only measure of aptitude, it continued to be a most important one.²³⁷ To this end, not only did Bentham argue in his constitutional writings that provisions should be made to ensure that the ruling few were an elite with appropriate aptitude for government, but he also argued that governmental power should be wielded by an executive stocked with highly qualified officials, the majority of which would be appointed, rather than elected.

It is worth dwelling on Bentham’s proposals in his mature writing for a moment. It is generally agreed that Bentham towards the end of his life was a “radical” democrat, and as we shall see, Bentham recognised clearly the need for democratic elements in politics in order for government to promote utility. However, even in these later writings Bentham seems to display a consistent regard for technical expertise. In his schemes for a constitution, he proposed that government would be shared between a legislature and an executive which would resemble something like the modern-day civil service in the United Kingdom. He thought that those who wanted to serve in the executive ought to be required to pass a series of examinations, before being admitted to what he called a “Locable List”, on which candidates would be ranked, and from which governmental departments would select their officials.²³⁸ Furthermore, Bentham believed that Government ministers in the executive ought to be experts in their field with the requisite training

²³⁶ Harrison, *Bentham*, p.189.

²³⁷ David Lieberman, “Bentham’s Democracy”, *Oxford Journal of Legal Studies*, Vol.28(3) (2008) p.618.

²³⁸ Schofield, *Utility and Democracy*, p.299.

and experience for their particular brief. He drew up a list of “talents” which he deemed to be necessary for each minister: the finance minister, for example, should be trained in political economy and the foreign minister ought to be capable of speaking, reading and writing in a number of languages, whilst the health minister needed to be trained in medicine.²³⁹ Most of these positions were to be appointed by the prime minister, who Bentham suggested should be selected by legislators. The conception of the relationship between the people and their rulers in his mature constitutional proposals mirror what Bentham said earlier in life about political elites being akin to shoemakers - masters in their craft. A degree of distance between the people who were ruled and the people who were to rule was valuable in Bentham’s mind, because it would ensure that the ruling few would be comprised of individuals with the appropriate aptitude.

It is also important to recognise that as a younger man, Bentham believed that representation was the vehicle through which reforms in the cause of utility would be secured. That the younger Bentham thought this way should not come as much of a surprise. He was born at the highpoint of a period of confidence in the prospects of rational progress, and he lived well over half of his life prior to the events at the turn of the century that would come to undermine the enlightened optimism of the 1700s. As Harrison puts it, “Bentham was one of the *philosophes*, an English representative of the international intellectual movement centred in France”.²⁴⁰ He was a

²³⁹ Bentham, *Constitutional Code*, p.314; Peardon, “Bentham’s Ideal Republic”, p.130.

²⁴⁰ Harrison, *Bentham*, p.7. The question of where to situate Bentham in the context of the Enlightenment is a vexed one, because he exhibits an awkward relationship with many of its other interlocutors. De Champs in *Enlightenment and Utility* makes this point through the historiographical framework advanced in Jonathan Israel’s trilogy of books on the period. Israel cites Bentham in one place as a member of the “Radical Enlightenment” for amongst other things his promotion of equality and individual freedoms, and his rejection of national loyalism in favour of universalism. However, Bentham’s rejection of natural rights and admiration for Voltaire place him closer to the Moderate Enlightenment, which Israel distinguishes from the radical wing of the movement. This highlights the main issue with the dichotomy that Israel poses - namely that it cannot account for the specificity of the positions that Bentham advanced. See de Champs, *Enlightenment and Utility*, p.10-11. See also Jonathan Israel, *Radical Enlightenment: Philosophy and the Making of Modernity* Oxford, 2001); *Enlightenment Contested: Philosophy, Modernity and the Emancipation of Man, 1670-1752* (Oxford, 2006); *Democratic Enlightenment* (Oxford, 2011).

Francophile and imagined himself to be part of the great European project of intellectual and moral emancipation, and as contributing to an international, cosmopolitan Republic of Letters. Indeed, he corresponded with the likes of Voltaire and D'Alembert, and declared himself a disciple of Helvétius. He also learned French, the language of the Enlightenment, from the age of six, and wrote a number of his early tracts in French in an attempt to influence opinion on the Continent.²⁴¹ He visited Paris, the spiritual capital of the Enlightenment, on a number of occasions. As "a traveller, translator, pamphleteer and epistolary correspondent", writes de Champs, "Bentham was physically and socially embedded within the intellectual networks of a cosmopolitan Enlightenment in which French remained a vehicular language".²⁴²

Part of the early Bentham's *philosophe* worldview was his confidence that enlightened elites could be relied upon to deliver the reforms that he championed on behalf of the people. Before the French Revolution, Bentham's chief desire was to present his writing on penal reform and civil law to enlightened rulers on the Continent. In the late 1770s, and at the urging of Shelburne, Bentham set about writing hundreds of pages of manuscripts for 'un corps de loix complet' - a complete body of laws - to be presented to Catherine the Great. He wrote these manuscripts in French, a language that the Empress read, but also one that would allow Bentham to reach a wider audience of enlightened individuals in Europe.²⁴³ Given the relative enthusiasm for legal codes and reform proposals in the period - Catherine herself had written a tract in 1767 called the *Nakaz or Instruction, of Catherine the Great*, which set out a set of legal principles informed by Montesquieu and Beccaria, and Frederick the Great of Prussia had a number of volumes of a legal code of his own published - it is unsurprising that Bentham considered this the best route to see his

²⁴¹ De Champs, *Enlightenment and Utility*, p.21.

²⁴² *Ibid*, p.19.

²⁴³ *Ibid*, p.56.

ideas implemented at the time.²⁴⁴ In the 1780s, after he had completed his *Introduction to the Principles of Morals and Legislation* but before its publication in 1789, he drafted letters to a number of European rulers, including Catherine and Frederick, but also Leopold II of Tuscany, Gustavus III of Sweden and the viceroy of Sicily, the Marquis of Caracciolo, offering to draft a complete body of laws for their respective nations.²⁴⁵ Bentham was confident that reforms would follow straightforwardly from reasoned argument and scientific enquiry. That the particular interests of those with power might run contrary to the cause of reform did not yet occur to Bentham. As he wrote in 1780, "Let all other laws be good, let the sovereign not oppose their execution, what does it matter in which hands sovereignty is placed?"²⁴⁶ All that was necessary was to convince elites of the merits of reforms, and they would be made: "The herd of the people must for a long time perhaps forever be sway'd chiefly by authority: but of those who by their authority are in a way to lead there are enough whose circumstances admitt of their being sway'd by reason".²⁴⁷

Indeed, it is revealing that early in his life, Bentham thought popular influences in politics were more likely to be detrimental to the elite-driven pursuit of utilitarian reform than conducive. In 1796, he wrote that democratic pressures on government "subjugates the well-informed to the ill-informed classes of mankind".²⁴⁸ This is an isolated comment, and one which, as we will see, was not representative of Bentham's wider views about the place of the people in politics. Nonetheless, it is relevant here because it illustrates Bentham's view at that specific point in time that government had to be placed in the hands of a relatively autonomous elite who could make rational, utilitarian decisions on behalf of all.

²⁴⁴ *Ibid*, p.59.

²⁴⁵ *Ibid*, p.65.

²⁴⁶ De Champs, "Happiness and Interest in Politics: A Late Enlightenment Debate", p.28; University College London Library, Bentham Papers, box 170, folio 201.

²⁴⁷ University College London Library, Bentham Papers, box 27, folio 135.

²⁴⁸ University College London Library, Bentham Papers, box 174, folio 5.

Bentham thought that elites were more likely to make correct judgements about what courses of action would be in the interest of the people as a whole, but he also recognised that irrationality and prejudices in populations might well foment resistance to well-intentioned reforms. In such a scenario, Bentham was unequivocal about the responsibilities of political elites: “the welfare of all”, he wrote in 1782, “must not be sacrificed to the obstinacy of a few; nor the happiness of the ages to the quiet of the day”.²⁴⁹ The younger Bentham argued in particular that constitutional issues were best kept away from popular influence:

In constitutional topics like these, and under popular governments more especially, the judgement of men are in continual danger of being disturbed by the influence of their passions: nor is it to be wondered at if a consciousness of the inferences that may be drawn from the significations assigned to particular words should on such occasions dispose them to regard the most phlegmatic and impartial discussions with an eye of jealousy.²⁵⁰

Chapter V will demonstrate just how significantly Bentham’s mind changed on this subject.

Curiously, then, despite the stark and well-discussed differences between the two on almost all other subjects, Bentham, as a young man at least, advanced a rather similar conception of the relationship that ought to subsist between political elites and those they represented as Edmund Burke had done.²⁵¹ As the latter put in his *Address to the Electors of Bristol*:

²⁴⁹ Jeremy Bentham, “Place and Time”, in *Selected Writings*, ed. Stephen Engelmann (New Haven, 2011) p.175.

²⁵⁰ Jeremy Bentham, *Of the Limits to the Penal Branch of Jurisprudence*, p31.

²⁵¹ Indeed, the commonalities between Bentham, Burke, and sometimes John Stuart Mill, are something that have already been observed by a number of scholars. See Pitkin, *Concept of Representation*, p.205; James Steintrager, *Bentham* (London, 1977), p.107; and James, “Public Interest and Majority Rule in Bentham’s Democratic Theory”, p.56. As detailed below, by the nineteenth century, Bentham had begun to espouse ideas about representation that distanced him considerably from both Burke and Mill.

Certainly, gentlemen, it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion, high respect; their business, unremitting attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interest to his own. But his unbiassed opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. ... Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion...²⁵²

Bentham would have agreed that political elites are not only the inevitable consequence of the nature of government, but they ought to exist to because they are advantageous. Some people were manifestly better or more apt for the business of ruling, and they were selected for their “mature judgement” to do precisely that. To this end, affording a degree of autonomy and independence to the ruling few was, in the mind of the younger Bentham, clearly beneficial and, more specifically for him, it was in the interest of general utility. And to return to the argument that runs through this thesis, Bentham’s understanding of the necessity of political representation stems from the inadequacies and frailties of the people themselves. Not only did he think that the presence of elites was an inescapable fact of politics, but he also thought that the people generally were not best qualified for the technical activity of government. Instead, government should be conducted by those with the

²⁵² Edmund Burke, ‘Speech to the Electors of Bristol’, in *Select Works of Edmund Burke, Vol.IV*, ed. Francis Canovan (Indianapolis, 1999) p.11.

requisite aptitude. Bentham's belief in both the necessity and desirability of representation can largely be accounted for by his conception of the people.

Sinister Interest and the Pathological Nature of Representative Government

For some scholars, that Bentham's esteem for expertise and aptitude was consistent throughout his life is strong evidence of a rationalist conception of government in his thought. As outlined in Chapter I, this argument has been made variously by the likes of John Dinwiddy, Stephen Engelmann, and David Lieberman, who all focus on the fact that Bentham countenanced a significant degree of manipulation and management for political elites over those that they ruled. This confidence in enlightened reform from above is also evident in James Steintrager's 1977 book on Bentham. Steintrager argues similarly that, in Bentham's mind, political and constitutional questions were the sort that ought to be engaged with by elites with sufficient intellectual and active aptitude - not only to understand them, but also in order to dedicate to them the amount of time that they merited. As Steintrager writes:

Constitutional questions were abstract and remote from the normal interests of the common man whose primary concerns, after all, must be with his family and his fortune. If, as seems the case, Bentham held to the view that truth would win out in the marketplace, it was not because he had great confidence in the people, but because he counted on a few men who would be responsive to popular needs as articulated by thinkers like himself. Even though he was insistent that the feelings of the people must be taken into

consideration, his very concept of the legislative function suggest that change would come from above and not below.²⁵³

The conclusion that Bentham was advancing some straightforwardly elitist understanding of rational government is deeply misleading, however, since it elides the vital detail that Bentham considered representative government by an entirely independent elite to be fundamentally antagonistic to the interest of utility. This was because Bentham saw a basic, pathological, degenerative dimension to representative government that derived from the nature of humans as individuals and the nature of the people as a collective. To make this point, it is necessary to inquire into the first principles of Bentham's theory of human motivation.

In his understanding of human behaviour, Bentham belongs to a tradition of philosophical empiricism which includes the like of Hobbes and Hume, and which asserts that individual preferences and desires are not the products of pure reasoning but spring from sensory perceptions, and in Bentham's case, specifically from pleasure and pain. That is not to say that reason, imagination and so on are not important or relevant in the pursuit of desires (as means to ends), but Bentham was clear that human motivation itself should be understood in terms of the real entities of pleasure and pain.²⁵⁴ As he put it, ideas like obligations, duties, or concepts like security and liberty, were "so many fictitious entities", necessary contrivances of language for the means of discourse, which could not be made intelligible except by placing them "in company with some word that shall be significative of a real entity" - that is, pleasure or pain.²⁵⁵ And as an empirical rule, Bentham argued that

²⁵³ Steintrager, *Bentham*, p.53.

²⁵⁴ Bentham's desire to discern the "simple ideas" at the bottom of all human behaviour was heavily influenced by John Locke. See Harrison, *Bentham*, pp.48-51.

²⁵⁵ Bentham, *Of the Limits of the Penal Branch of Jurisprudence*, p.16; & *Deontology*, p.74. In discussing fictitious entities, Bentham used the metaphor of paper currency: "if we know how at any time to change them and get sterling in their room, all is well: if not, we are deceived, and... we possess nothing but sophistry and nonsense". Fictitious entities ought to be referable to real entities to be meaningful.

these “two sovereign masters” of human behaviour not only, as per his utilitarian ethic, tell us what we ought to do, but also “determine what we shall do”.²⁵⁶

This empiricism is the focal point for two critiques of Bentham: that his account of the motivations for human behaviour is reductive, and that his prescriptions for ethical conduct are crude. In the first instance, Thomas Babbage Macaulay’s critical essay of 1829 in the *Edinburgh Review* is the exemplary case. Macaulay suggests that the Benthamite assumption that humans are self-regarding is either trivially true or false. Macaulay subscribed to the latter view and argued that the idea individuals are self-regarding is only “one half of human nature” and ignores the equally valid empirical statement that humans often act on motivations *other* than self-regard, like sympathy for fellow men and women.²⁵⁷ John Stuart Mill’s later criticism of Bentham’s apparent inability to distinguish between higher and lower sources of pleasure is illustrative of the latter criticism, but it is not one that has been levelled solely by him. Thomas Carlyle called “Benthamism” a “pig philosophy”, whilst Karl Marx labelled Bentham “the arch-philistine”. Schumpeter described his ideas “the shallowest of all conceivable philosophies of life”.²⁵⁸ The most potent critique of Bentham perhaps comes from another utilitarian, the Cambridge philosopher Henry Sidgwick, who argued that the assumption of human egoism in Bentham’s theory was its most damning feature:

...unless a little more sociality is allowed to an average human being, the problem of combining these egoists into an organisation for promoting their common happiness is like the old task of making ropes of sand. The difficulty

²⁵⁶ Bentham, *Introduction*, p.11.

²⁵⁷ Whilst Macaulay’s critique was directed more specifically at James Mill’s *Essay on Government*, Macaulay considered Mill’s essay to be broadly representative of Bentham’s views too. And as noted in chapter one, John Stuart Mill came to level this same criticism of reduction at Bentham in 1838. See “Mill’s ‘Essay on government’”, pp.159-89; Crimmins, *Utilitarian Philosophy and Politics*, pp.36-40.

²⁵⁸ Pitkin, “Slippery Bentham”, p.104; Thomas Carlyle, *The Works of Thomas Carlyle*, ed. Henry Duff Traill (Cambridge, 2010) p.315; Joseph Schumpeter, *History of Economic Analysis* (New York, 1954) p.66.

that Hobbes vainly tried to settle summarily by absolute despotism is hardly to be overcome by the democratic artifices of his more inventive successor.²⁵⁹

These criticisms are caricatures of Bentham's utilitarianism rather than accurate assessments of what he actually thought. First of all, Bentham did not think of pleasure in some reductive, sensualist sense as the only valid end of human conduct, but rather that all human activity was motivated by some conception of pleasure specific to each individual. What someone will derive pleasure from is highly idiosyncratic and subjective - it could be poetry or the game of push-pin - but to be sure, their motivations will be driven by whatever they consider will promote their happiness. The sophistication of Bentham's account is captured well by Paul Kelly:

Bentham's causal theory of action implies that any end whatsoever is caused by the pursuit of pleasure and the avoidance of pain. This is so irrespective of the conscious motivations of an agent, because pleasure and pain provide the original source of whatever motivation he may have. Therefore, far from constraining all human motivation to the direct pursuit of pleasure which would be contrary to the evidence of experience, Bentham is able to account for the variety of different motivations in terms of the efficient causes of pleasure and pain.²⁶⁰

This enables Bentham to incorporate a whole array of secondary causes of pleasure in his theory; sympathy, benevolence, generosity and more are all potential sources of happiness, because they could be interpreted as pleasurable by specific individuals.

The extent to which Bentham's psychological hedonism makes his theoretical approach "egoist" - that it conceives of humans as basically concerned with

²⁵⁹ Sidgwick, "Bentham and Benthamism in Politics and Ethics", pp.213-14.

²⁶⁰ Paul Kelly, *Utilitarianism and Distributive Justice*, p.21.

augmenting their own happiness - is a more vexed question. Kelly himself suggests that Bentham's theory was not a version of egoism, because while pleasures are the efficient cause of all human behaviour, they may motivate actions and activities that are not self-regarding (it might make sense to argue that an individual who donates an organ to someone in need is psychologically hedonistic in Bentham's terms because they derive pleasure from helping someone, but it would be preposterous to suggest that they were egoistic).²⁶¹ Nonetheless, the most convincing interpretation of Bentham's views here is that, for the purpose of his *political* theory, he endorsed a "strategic egoism".²⁶² Effective political frameworks, he contended, could not be established on the basis of human virtue, but must be rooted in the reality of human imperfection. So even if human egoism was not a watertight, empirical truth for Bentham, it was a judicious assumption for any political theorist to make and was generally, if not absolutely and always the case: "to better his condition, to acquire for the future some means of enjoyment more than at present he is in possession of, is the aim of every man. *Not perhaps in the character of a universal proposition, true: but for the sake of argument, be it so*".²⁶³ As with his understanding of fictions, Bentham made assumptions and expressed views on how to pursue utility most effectually that were distinctive to politics and varied considerably from his views on action in other spheres of human endeavour, like philosophy or law.

Bentham, then, presumed that human beings naturally privileged their own interests and happiness over that of others. This was in his eyes an account of what really is the case, rather than a normative account of what should be the case. However, this aspect of human nature becomes problematic if one considers the issue of government. Governments are operated by self-regarding, psychologically hedonistic men too, but the purpose of government is to act in the interest of the

²⁶¹ *Ibid*, p.22.

²⁶² *Ibid*, pp.29-30. Rosen comes to the same conclusion in *Bentham and Representative Democracy*, pp.209-10.

²⁶³ Bentham, *Deontology*, p.132 [my emphasis].

community as a whole: “the right and proper end of government in every political community is the greatest happiness of all the individuals of which it is composed”.²⁶⁴ Initially, Bentham had imagined that those who would seek public office would be motivated sufficiently by feelings of virtue and duty (or to possess sufficient moral aptitude, perhaps) to set aside their own interests in order to pursue that of the community as a whole.²⁶⁵ But this outlook was to be shattered by what was arguably the most historically significant development in Bentham’s political thought: his discovery of sinister interest.²⁶⁶

In his own account, Bentham first discovered sinister interest by experiencing its effects personally. In the 1790s, he had worked hard to receive government assent to construct a panopticon prison facility in England. After securing authorisation from Parliament in 1794, Bentham found his endeavours blocked at every turn. He put down the failure of his scheme to the pernicious influences of the Grosvenor family, who had intervened to prevent the proposed prison’s construction at Tothill fields, and to various other vested interests that had thwarted the facility being built elsewhere. He also attributed considerable blame to the king himself, who he believed had conspired to scupper the scheme.²⁶⁷ In 1803, the project was abandoned.²⁶⁸

Élie Halévy understood the debacle of the panopticon scheme to be the decisive influence in Bentham’s development as a democrat in the first two decades of the nineteenth century: “the disappointment and the distress with which he suffered made him a democrat; in hatred of the monarch and his ministers, he

²⁶⁴ Bentham, *First Principles*, p.232.

²⁶⁵ Steintrager suggests that this remains an undervalued element of Bentham’s political thought, but this I think is to underestimate the decisive influence that his discovery of sinister interest was to have on his entire outlook. *Bentham*, pp.54-5.

²⁶⁶ The best account of the role of sinister interest in Bentham’s intellectual development is to be found in Schofield’s *Utility and Democracy*, pp.109-36. However, many other scholars have cited the centrality of this “discovery” in Bentham’s political thought. See page 76 above.

²⁶⁷ Crimmins, *Utilitarian Philosophy and Politics*, p.138.

²⁶⁸ Schofield, *Utility and Democracy*, p.110.

became a deliberate enemy of monarchic and of aristocratic institutions".²⁶⁹ This is probably going too far, but Bentham's personal experiences with the panopticon certainly provided him with a memorable phraseology that he would deploy in his writings to discuss what he came to view as a decisive influence in politics and law. Bentham defined "sinister interest" as any particular or "partial" interest "to which the universal, the democratical interest has to antagonise, and to which that all-comprehensive interest has all along been... made a sacrifice".²⁷⁰ As noted above, Bentham assumed that every human being was motivated by their own interests and understandings of what will promote their happiness. What made interests sinister is when they were held by people in positions of power. Bentham first discussed sinister interests in his *Scotch Reform*, a series of letters he wrote on the laws of evidence and procedure. Bentham argued that it was in the interest of the community as a whole that the legal profession minimised "delay, vexation and expense", but that it was in the particular interest of legal practitioners to maximise these things in order to achieve the "maximum of profit and ease; profit, as much as could be extracted, with as much ease as was consistent with the extraction of it".²⁷¹ The interests of those subject to the law and those responsible for interpreting and applying it, for Bentham, were thus constantly opposed.²⁷² The overriding problem was that it was the lawyers and judges who possessed the means to pursue their particular interests, not the wider community. As he wrote in 1804, "men of law are but men... their interest is on many occasions in direct opposition to that of the community at large, and... this sinister interest is supported by powers adequate to the accomplishment of all its purposes".²⁷³

²⁶⁹ Élie Halévy, *The Growth of Philosophical Radicalism*, trans. Mary Morris (Boston MA, 1955) p.254.

²⁷⁰ Jeremy Bentham, "Plan of Parliamentary Reform in the Form of a Catechism", in *The Works of Jeremy Bentham*, Vol. III, ed. John Bowring (Edinburgh, 1838-1843) p.440.

²⁷¹ Jeremy Bentham, "Scotch Reform" in *The Works of Jeremy Bentham*, Vol. V, ed. John Bowring (Edinburgh, 1838-1843) p.5.

²⁷² *Ibid*, pp.5-6.

²⁷³ University College London Library, Bentham Papers, box 59, folio 159.

Though Bentham first made his argument about sinister interest in the context of his legal writings, it was not long before he applied it to the political domain too. As he wrote in his *Plan of Parliamentary Reform* in 1809, the Monarch and even Parliament itself (although Bentham considered the King a far more malign influence on politics than the political elites that made up the legislature) constituted their own separate sinister interests in the English constitution which he labelled “Corrupter-General and Co.”.²⁷⁴ The interests of people generally, he argued, were constantly being sacrificed to that of the monarch. In particular, the public was frequently “drained” of money to help fund the King’s wars abroad, which allegedly were in the national interest, but in reality were merely in the King’s interest, and more specifically, in the interest of George III as the Elector of Hanover; Bentham thought many of the wars waged in England’s name were in fact undertaken to secure the King’s control of the Electorate. Whilst Bentham noted that the acquiescence of the “aristocratical interest” in Parliament was necessary for the King to be able wage his foreign conflicts, he was clear that such ventures were directly motivated by the King’s interest in “money, power, factitious dignity”.²⁷⁵

It was not simply through overt means that Bentham thought sinister interest operated in politics. Partly, the problem was that those in positions of power were able to clandestinely promote their interests at the expense of general utility by manipulating people’s perception of their own interests. As we saw in Chapter II, Bentham discerned a number of “flagitious fictions” and fallacies which could be used to hide the abuses of power. Others that Bentham cited included the invocation of the promise of rewards in heaven for obedience to the crown, or the natural association of the aristocracy with virtue and superiority (again, notice the marked development in Bentham’s thinking on the desirability of government by independent elites).²⁷⁶ Fictions like these were deployed by the ruling class to hide

²⁷⁴ Bentham, “Plan of Parliamentary Reform”, in pp.438-42.

²⁷⁵ *Ibid*, pp.439-40; Also see Crimmins, *Utilitarian Philosophy and Politics*, p.140-3.

²⁷⁶ Bentham, *First Principles*, p.155.

their own pursuit of self-interest behind the façade of promoting the public good. They generated what Bentham called “interest-begotten prejudices” - views held by the public that were deeply influenced by power relationships but were not in the general interest. Rosen agrees with Twining that there is an almost proto-Marxist dimension to Bentham’s understanding of the workings of sinister interest; the nexus of sinister interests that controlled the levers of power constituted “a great machine” that was “kept well-oiled by a range of beliefs which the people had long been conditioned to accept”.²⁷⁷ In fact, Rosen argues that interest-begotten prejudice was “a far more powerful and invidious force in politics than ‘sinister interest’ itself”.²⁷⁸ “Notorious are the instances”, Bentham wrote, “in which, by thousands and ten thousands, by prejudice in its various modes, men have been led to sacrifice each of them his own unquestionable interest while contributing to the sacrifice of the universal interest at the altar of monarchical and aristocratical despotism”.²⁷⁹

Thus, the nature of the people *qua* a collective and of people *qua* individuals presented, in Bentham mind, a basic, inescapable political problem: government was always and necessarily of the many by the few, but government at the same time would be by individuals with the same basic, self-regarding nature:

if self-preference has place in every human breast, then, if rulers are men, so must it have in every ruling breast. Government has accordingly, under every form comprehending laws and institutions, had for its object the greatest happiness, not of those over whom, but of those by whom, it has been exercised; the interests not of the many, but of the few, or even the one, has been the prevalent interest: and to that interest all others have been, at all times, sacrificed.²⁸⁰

²⁷⁷ Frederick Rosen, *Bentham, Byron, and Greece* (Oxford, 1992) p.62.

²⁷⁸ *Ibid.*

²⁷⁹ Bentham, *First Principles*, p.152.

²⁸⁰ Bentham, “Memoirs”, p.81.

Sinister interests would always be found in government, because government would always be by the few, and the few would always have particular interests that were not coterminous with the interests of the community as a whole. Bentham defined the political effects of sinister interest in representative government as “corruption” - that is, where a “sinister sacrifice” of the general interest is made in favour of the particular interests of those in power.²⁸¹ The significance of Bentham’s position here merits being restated: Bentham believed that corruption was a pathological feature inherent to representative government itself:

Exposure to corruption is of the very essence of the representative system. It is the very essence of a Representative Democracy. It is the very essence of a mixt Monarchy having in its mixture any other body, and in particular a body of representatives of the people... in this respect, between a Representative Democracy and a mixt monarchy with a representative body in it there is no difference.²⁸²

For Bentham, any system where political power is wielded by a body that is not the people in its entirety was liable to corruption; and since he also believed the people were fictitious and could never literally rule themselves and that thus always required elites to govern on their behalf, the profound inference of Bentham’s argument is that government itself is perpetually threatened by the corrosive influence of sinister interest.

The immediate consequence of corruption in government was the “disease” of misrule: if “good” rule is that “which has for its end in view, or say object of pursuit, the greatest happiness of the greatest number of the beings of whom the community in question is composed”, then “bad rule, or say *misrule*, will be that rule

²⁸¹ Bentham, *First Principles*, p.17.

²⁸² Bentham, *First Principles*, pp.25-6.

which has for its end in view or the object of pursuit not that greatest number, but some lesser number” - those numbering the few in positions of power.²⁸³ And whilst the younger Bentham had such confidence in the intentions of political elites that any decisions that were not in the general interest could only be the result of insufficient enlightenment, his discovery of sinister interest confirmed to him that misrule and corruption were endemic features of any government. “Power, in whatever hands lodged, is almost sure to be more or less abused”.²⁸⁴ On this point, as Peardon has highlighted, Bentham’s stance displays a strong similarity with the common Whig suspicion of the power of government.²⁸⁵

Ultimately there were a number of competing strains in Bentham’s thought as a younger man; there was the Enlightenment inspired, philosophical universalism which held that societal progress would be the product of the great and the good using their reason to perceive the common interest of the community, and there was the scepticism that held human beings to be basically self-regarding and self-interested when acting politically. Bentham’s discovery of sinister interest had a decisive role in the growing dominance of that second strain in his thinking about political questions, and whilst elements of the first strain remained, they increasingly played second fiddle as Bentham grew older.

Popular Vulnerability

Bentham believed that the nature of the people, both as a fictitious collectivity and as individuals, rendered representative government both necessary and positively desirable. However, he also thought that these facets made the people acutely vulnerable to being misruled by their governors. As a disorganised and

²⁸³ *Ibid*, p.245.

²⁸⁴ Bentham, *The Book of Fallacies*, p.116.

²⁸⁵ Peardon, “Bentham’s Ideal Republic”, p.127.

disagreeing multitude, it was only through collective means that the people would be able to provide a “counter-efficient influence” and guard against the tyranny of their rulers. But whilst

the individuals who compose the particular interest always are, or at least may be - and have to thank themselves and one another if they are not - a compact harmonizing body - a chain of iron: the individuals making the universal interest are on every such occasion an unorganized, uncombined body - a rope of sand.²⁸⁶

The nature of the people had a number of ramifications. For one, it made it particularly difficult in Bentham’s eyes for them to discern when exactly it was that they were being misruled. Disorganised individuals, he argued are particularly vulnerable to being deceived and misled by the sorts of fallacies and falsehoods that those in power utter: “such is the infirmity of the human character... that these [types of] arguments, weak and inconclusive as they are, are those which, on the minds of the bulk of the people upon whom ultimately everything depends, make the strongest and most effectual impression”. The “weakness of the public mind” was as important a factor as the self-interestedness of the powerful in the pervasiveness of interest-begotten prejudices in society.²⁸⁷ But additionally, Bentham thought the nature of the people also made it extremely difficult for them to resist or challenge misrule when it occurred. The people could only challenge the rulers as a collective, but as a collective, they were effervescent, fictional and most importantly disempowered. Simply arguing that the duty of government was to promote the happiness of the community as a whole would be insufficient to safeguard against

²⁸⁶ Jeremy Bentham “Observations on the Restrictive and Prohibitory Commercial System”, in *The Works of Jeremy Bentham*, Vol. III, ed. John Bowring (Edinburgh, 1838-43) p.98.

²⁸⁷ Bentham, *The Book of Fallacies*, p.53.

tyranny, Bentham argued: “against interest - against a host of confederated interests - what can argument do? Exactly as much as against a line of musketry”.²⁸⁸

Perhaps the key development in Bentham’s political thought was his rejection of the view he once held that all that was needed to promote general utility in government was to show enlightened elites the veracity of his claims. Ben-Dor claims that Bentham continued to believe that the centrality of power and interest in politics could be “suspended” or “eliminated” from politics, and that the influence of rational persuasion or “understanding over understanding” would overcome the influence of “will over will”.²⁸⁹ But whilst this is a fair assessment of the younger Bentham, it was a view that he came to recognise as naïve. In fact, after his discovery of sinister interest, he realised that power and interest were ineliminable features of politics, and thus constituted factors that any realistic political theory must take account of rather than try to transcend. Bentham thus *became* a realist about the political domain; he came to see that arguments and reasoning were instrumental, that interests and the relative power of groups to pursue them were determinative in politics, and that hoping for rulers - who are but men - to act in the interest of the community at the expense of their own self-interest was deeply quixotic.²⁹⁰

Another significant *volte-face* in Bentham’s thinking following his discovery of sinister interest concerned his view of the role of the people in politics. Whilst previously Bentham thought that the cause of general utility would best be served by vacating politics of popular influences, rationalist government by an independent elite without any restraints or checks came to be the *very* problem that Bentham desired to solve, rather than the optimal form of political order. For Bentham, human nature explained why government had to be representative, but it also introduced a pathological, degenerative element to government itself that people

²⁸⁸ Bentham, “Plan of Parliamentary Reform”, p.536.

²⁸⁹ Ben-Dor, *Constitutional Limits and the Public Sphere*, p.202.

²⁹⁰ See James Vitali, “The Political Realism of Jeremy Bentham”, *European Journal of Political Theory*, Vol.0(0) (2021) pp.1-21.

would always be vulnerable to. To solve this, and to ensure good government in the general interest, Bentham argued that it was necessary to inculcate a degree of dependency between the ruling few and the people that they ruled, for this was the only way to ensure that serving the interest of the community as a whole was in the self-interest of those that wield power. This he called his “Means prescribing or Junction-of-interests prescribing principle”, which specified that what “is” the case (self-interested rule) needed to be brought “into accordance” with what “ought” to be the case (rule in the interest of general happiness) in order to promote good government.²⁹¹ This, he argued, could only be accomplished in a representative democracy. Thus, whilst he certainly continued to believe in the unavoidability of political elites and in the importance of procuring individuals with the appropriate aptitude to discharge the responsibilities of government properly, representative democracy was not simply what Harrison calls Bentham’s “solution to the old platonic problem” of ensuring government was conducted by an elite of experts.²⁹² Rather, addressing the inherent tendency of independent elites - whether experts or not - to misrule and tyrannise was the driving, “constitutive” motivation behind Bentham’s constitutional proposals for representative democracy.²⁹³

Though Bentham thought the people were “ropes of sand” - a fictitious collective entity without the capacity to rule themselves and requiring political representatives for that self-same task - it was also clear to Bentham, after his discovery of sinister interest and the centrality of power in politics, that simply doing away with any popular component in politics was likely to allow misrule and tyranny to continue unchecked. Somehow, the fictitious people needed to be brought back into politics to ensure that political elites did not have a free hand to pursue their own particular interests at the expense of the general interest. This was an important motivation behind Bentham’s embrace of representative democracy.

²⁹¹ Bentham, *First Principles*, p.235.

²⁹² Harrison, *Democracy*, p.99.

²⁹³ David Liberman, “Bentham’s Democracy”, p.614.

One figuring of representative democracy - and thus one putative solution to question of how to establish dependency between rulers and the ruled - that was being advanced and debated in the period that Bentham lived and wrote was the idea of a system of government in which the people as a collective would literally rule themselves through mandates. These proposals for representative democracy as popular self-rule and Bentham's response to them are the subject of the next chapter.

Chapter IV

Unrealistic Democracy

It is widely understood that Bentham was “converted” to democracy at some stage in his life. However, the reasons for this conversion and the precise point at which it took place have been a subject of controversy. Some have supposed that Bentham was not converted to the democratic cause until the 1800s, when he met James Mill and wrote his *Plan of Parliamentary Reform*.²⁹⁴ Mary Mack has argued otherwise that Bentham was thoroughly committed to the democratic programme at the time of the French Revolution, but performed a sort of “Fabian retreat”, focusing instead on his panopticon writings through the 1790s and waiting until a more propitious moment in the 1800s to pursue a democratic agenda.²⁹⁵ Dinwiddy by contrast has suggested that Bentham’s change in tone was not a mere Fabian retreat, but that the experience of the French Revolution had such an effect that he became a constitutional conservative, able to “denounce Jacobinism with almost Burkean vehemence”.²⁹⁶ As Schofield has pointed out, one needs to tread with caution when discussing Bentham’s democratic credentials, particularly with regard to his writings in the 1790s; Bentham frequently wrote proposals that he thought would fit the tenor and political context in France, and they were often attempts to make a name for himself rather than give a substantive account of his own political views.²⁹⁷

There is a more general issue with the scholarship on Bentham’s conversion to democracy though, and that is that it frequently fails to get to grips with what Bentham thought democracy was *for*. More specifically, if democracy is a regime concerned primarily with the place of the people, then Bentham’s interpreters - both

²⁹⁴ Halévy, *The Growth of Philosophical Radicalism*, p.154.

²⁹⁵ Mack, *Bentham: An Odyssey of Ideas*, pp.440-1.

²⁹⁶ Dinwiddy, “Bentham’s Transition to Political Radicalism”, p.693.

²⁹⁷ Schofield, “Jeremy Bentham, the French Revolution and Political Radicalism”, *History of European Ideas*, Vol.30(4) (2004) pp.384-5.

positive and negative - have frequently confused what he imagined to be their role in a democratic polity. In particular, the likes of Mill and later Schumpeter have argued that Bentham believed the people should literally govern in some way.

This is a substantial misinterpretation. At the end of the eighteenth and start of the nineteenth century, a number of theorists did see democracy as a way of instantiating popular “self-rule”. Whilst it was axiomatic that the big commercial societies of the period could not mimic the small ancient democracies of Greece by congregating all people in the same place for the task of governing, it was thought that the people could still govern themselves through proxies who would be obliged to deliver on their express will. This was a “delegate” model of representative democracy, in which popular self-rule would be facilitated indirectly by mandated and wholly dependent agents. In the period in which he wrote, Bentham saw the French Revolution as the concrete manifestation of this aspiration for the self-government of the people.

Bentham unambiguously rejected this version of democracy. Though, as noted at the end of the last chapter, he was committed to the idea that a degree of dependency between rulers and the ruled was necessary for good government, he spurned this model of democratic government as a way to achieve such dependency. This was fundamentally because of his conception of the nature of the people. Bentham considered popular self-government to be pathological; whilst a representative government by an entirely independent political elite was pathologically liable to degenerate into corruption and misrule, Bentham thought that the will for popular self-rule was equally pathological, with a perpetual tendency to descend into anarchy. A fictitious entity such as the people was incapable of literally conducting the business of government.

Bentham, then, had a basic theoretical opposition to popular self-government that stemmed from his understanding of the people as a collectivity. But his hostility was just as much *historical* as it was philosophical; popular democracy became closely associated in Bentham’s mind with the misguided, revolutionary

experiments in government that had taken place in France, and which had culminated in the horrors of the Terror. The French example helped to delineate and define what sorts of polities were viable in Bentham's own mind.

This chapter will outline what the delegate model of democracy meant in the context in which Bentham wrote, before detailing his opposition to it. Following this, the chapter will show that Bentham's rejection of the idea of popular self-government might best be understood as a consequence of his broader, *realistic* approach to politics. To Bentham, the delegate model of representation and the notion of literal rule of the people constituted a blueprint for "unrealistic democracy". Although the people could not simply be discarded as a politics vacated of popular influence would degenerate into the misrule of the governing few, Bentham thought it was quixotic to imagine that the fictitious people could be made to literally rule themselves.

Popular Self-Government and the Delegate Model of Representation

When Bentham was writing about democracy at the turn of the nineteenth century, the idea felt very novel. The overwhelming majority of European states were monarchies, and for many, democratic ideals was inextricably associated with revolutionary politics. The French and American efforts at democratisation - which will be addressed in greater detail below - were considered "experiments" in government. Yet as the more thoughtful interlocutors in the period recognised, democracy is in fact a much older idea. It had its historical antecedents as a concrete form of government in ancient Athens, where the people literally gathered together for the purpose of collective decision-making in the Assembly or *Ecclesia*. Democracy

in the ancient context was not only an idea but referred to a concrete set of practices and institutions for popular self-government.²⁹⁸

After the Greeks, democracy disappeared from human societies for around two millennia, and the term democracy itself became a term of political opprobrium most closely associated with a condition of disorder and chaos. It only reappeared again in the eighteenth century, and in a context vastly different to that of the ancient world. Small city states had been replaced by vast, populous and commercial states, and many of the conditions that facilitated the direct democracy of the ancients - relative proximity and homogeneity amongst the population, a citizenry with ample leisure time buttressed by a significant underclass of slaves - no longer held. Nonetheless, the ancient Athenian ideal of democracy as popular self-government remained a powerful one, even if those who invoked it believed such a way of organising politics would have to be adapted to the constraints of modern commercial society. The democracy of the moderns would simply be a form of indirect self-rule, in which the people would still in some way literally rule but would do so through proxies with a mandated set of instructions to carry out. Modern democracy, in other words, had to be representative democracy; it was no longer practicable to gather the people in their entirety for the purpose of governing directly. But having functionaries carry out their express wishes for them instead was an “expedient or second best” alternative to direct popular government.²⁹⁹ Consequently, whilst many of the early modern proponents of democracy did not reject representation *per se*, they did reduce it to the status of a passive device for enabling the people’s rule.

Such an articulation of representative democracy, as the literal rule of the people via proxies, might be called the “delegate model”. Under this model, political representatives are “agents” selected by “principals” (in this case the people) for the task of acting “as mechanical, passive extensions of their principals – they are a kind

²⁹⁸ Harrison, *Democracy*, pp.14-33; John Dunn, *Setting the People Free*, pp.1-47.

²⁹⁹ Urbinati, *Representative Democracy*, p.4.

of megaphone through which principals make their voice heard".³⁰⁰ A couple of things follow from this view about the function of representation: firstly, it is assumed that representatives are entirely dependent on the will of their principals. Previously, we saw that the likes of Burke advocated an expansive degree of autonomy for representatives in deciding how to act for those that elect them, but under this model, delegates are bound or "mandated" to carry out the express wishes of their principals. It thus also follows that the principal in question is capable of expressing a coherent and explicit wish and demanding that it is carried out.³⁰¹ A degree of self-sufficiency is assumed about the principal under the delegate model; their choice to have proxies carry out their wishes rather than to do so directly themselves is made on the basis of convenience and expedience, rather than out of necessity. Finally, the delegate model also generally implies that the principal subcontracts out the authority to act to a representative or representatives on a provisional basis; in other words, the relationship between the representative and the represented is akin to a legal contract, and if the former is deemed to have broken or transgressed the terms of that contract, the latter is entitled to end the representative relationship.³⁰² Politically speaking, representation under the delegate model is simply a way of making the literal self-government of the people possible, and the primary political good to be achieved is an identity between government and the express wishes of the people. Undergirding all of this is a "voluntaristic" conception of government and politics, in which the people are presumed to be a coherent collective actor capable of governing themselves.³⁰³ The driving force behind representative democracy here is taken to be the people: to return to Schumpeter's conception of this interpretation of democracy, "the people itself

³⁰⁰ Vieira and Runciman, *Representation*, p.74.

³⁰¹ *Ibid*, p.66-8.

³⁰² Pitkin, *The Concept of Representation*, p.155, 209.

³⁰³ Urbinati, *Representative Democracy*, p.23.

decide issues through the election of individuals who are to assemble in order to carry out its will".³⁰⁴

For the purpose of the argument to be made here, the most important aspect of the delegate model is that representatives are not held in it to have any independence of judgement. For the advocates of such a model in the eighteenth century, this was largely because a basic incompatibility between democracy and representation was assumed to exist. As Urbinati points out, this has something to do with the association of self-government and liberty in the period: to be free was in some way to make the laws that one was to live by. To cede judgement and the responsibility for making laws to a political representative was considered as effectively giving up one's liberty and autonomy. Democracy's advocates at the time "identified autonomy with the immediacy of presence – immediacy in the time dimension, wherein the political event (decision) and the political actor (the people) coincided".³⁰⁵ In fact, Urbinati adds that even democracy's opponents made the conflation between presence and liberty, as well as assuming the incompatibility between popular self-government and any independence for representatives; whilst democracy's champions said that a genuine democracy could not be substantively representative because this would mean the concession of liberty (that is, autonomy of judgement), the likes of Montesquieu, who railed against democracy in favour of mixed or constitutional government said that sovereignty could not lie with the people because the people themselves could never actually make laws. Before him, Robert Filmer argued that unless the people provided their representatives with instructions that they were mandated to implement, they did not retain their "natural liberty" (although Filmer was not arguing in favour of a delegate model of representation; in fact, he was arguing against this model on the basis that it was

³⁰⁴ Schumpeter, *Capitalism, Socialism and Democracy*, p.250.

³⁰⁵ Nadia Urbinati, "Representative Democracy and its Critics", in *The Future of Representative Democracy*, eds. Sonia Alonso, John Keane and Wolfgang Merkel (Cambridge, 2011) p.32.

entirely clear that the people did not retain their natural liberty and were not sovereign).³⁰⁶

In the period in which Bentham wrote, the thinker most associated with this model of representative democracy was Jean-Jacques Rousseau. In his highly influential *The Social Contract*, Rousseau engaged specifically with the idea of sovereignty, which he took to be the exercise of the power to make laws. He wished to argue that the only legitimate location for sovereignty in a political community was with the people as a whole, and to do this, he asserted that sovereignty by definition was the exercise of the “general will” - that is, the will of all citizens thinking and reasoning in the interests of the community - and that should law-making powers be exercised by a body other than the people as collective themselves, that body’s exercise of power was neither sovereign nor legitimate.³⁰⁷ To this end, Rousseau exhibited a basic scepticism about representation itself; fundamentally, to be free and sovereign, a people must exercise their will themselves, for to be free is to live by laws that one makes for oneself. Thus, “the moment a People gives itself representatives, it is no longer free; it no longer exists”.³⁰⁸ Political judgement, he surmised in *The Social Contract*, could not be surrendered to political representatives if the people were to remain free; instead, representatives would have to be *delegates* - passive vehicles for implementing the popular will. As he put in a chapter “On Deputies or Representatives”, political functionaries “neither are nor can be... representatives; they are nothing other than...agents; they cannot conclude anything definitively”.³⁰⁹ In this way, Rousseau recommended a delegate model of representative democracy as the appropriate way

³⁰⁶ *Ibid*, pp.32-3.

³⁰⁷ Jean-Jacques Rousseau, “On the Social Contract”, in *Basic Political Writings*, ed. Donald Cress (Cambridge, 1988) p.153.

³⁰⁸ *Ibid*, p.199.

³⁰⁹ *Ibid*, p.198.

to make political representatives entirely dependent on the people as a whole, and to mitigate the possibility of government tyranny.³¹⁰

Rousseau's *Social Contract* may have become emblematic of a strain of thought that existed at the end of the eighteenth century, but the logic of the arguments he put forward about popular self-rule was also manifest in the events and writings of the period. Urbinati has pointed out that in the constitutional debates about the Parisian municipal government in 1792, the same distinction between independent representatives and mandated delegates that Rousseau established can be observed. In particular, the Cordeliers, a revolutionary faction supportive of direct, voluntarist democracy, contended that for the people to truly rule themselves - to be *sovereign* - they needed to institute "administrators" or "delegates", and *not* representatives. The appointment of independent representatives for them constituted a fundamental alienation of sovereignty - something they argued characterised the undemocratic constitution of England, in which the political representatives were the "sovereigns of the nation", but which was unacceptable in a "free" state.³¹¹

More pertinently, Rousseauian ideas about representation as mandated delegation were to be found in the writings of Richard Price, a non-conformist minister and influential philosopher, as well as a contemporary of Bentham's. In his 1776 *Observations on the Nature of Civil Liberty, The Principles of Government, and the Justice and Policy of a War with America*, Price argued that the only legitimate forms of government were those based on popular self-rule. Government, Price argued, "is the creature of the people" and should be "conducted under their direction". Every

³¹⁰ Recent scholarship on Rousseau has pushed back on the idea that he straightforwardly rejected representative government entirely. Whilst Rousseau's writing frequently creates the expectation for popular mobilisation in politics, whenever he had the chance to explain what he meant, Rousseau qualified his comments by noting that popular *sovereignty* was entirely compatible with representative *government*. See Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2016) pp.1-8; Richard Whatmore, "Rousseau and the Representants: The Politics of the *Lettres Ecrites de la Montagne*", *Intellectual History*, Vol.3(3) (2006) pp.385-413.

³¹¹ Nadia Urbinati, "Rousseau on the Risks of Representing the Sovereign", *Politische Vierteljahresschrift*, Vol.53(4) (2012) p.652.

man ought to be “his own Legislator” and, most explicitly, in large, modern states, government by the people could be realised through the election of “delegates”:

in a great state, all the individuals that compose it cannot be admitted to an immediate participation in the powers of legislation and government, yet they may participate in these powers by a *delegation* of them to a body of representatives - in this case it is evident that the state will be still free or self-governed....³¹²

Government, he went on, is a “trust”, and “all its powers a *delegation for gaining particular ends*”.³¹³ Price thus offers an argument for popular self-government equivalent to that offered by Rousseau, and it was one that was also based on the concept of delegation.

Bentham, then, was writing in a context in which a vision of democracy as popular self-government based on delegation was present in both the rarefied domain of political philosophy and in the concrete debates about new political constitutions that were taking place in the period. Indeed, Bentham engaged specifically with the language of delegation. Curiously enough, Bentham (ever the stickler for precision in language) wrote in the early 1770s that the term “delegate” was preferable to that of “representative” when referring to political functionaries, because it included less ambiguity or “equivocation” than the word “representative”: “The word delegation” he wrote, “expresses a plain fact. The word

³¹² Richard Price, *Observations on the Nature of Civil Liberty, The Principles of Government, and the Justice and Policy of a War with America* (London, 1776) p.7 [my emphasis]. Efforts to connect the work of Rousseau to that of Price, as Richard Bourke points out, began with Josiah Tucker in *A Treaty Concerning Civil Government* (London, 1781). See Richard Bourke, “Popular Sovereignty and Political Representation: Edmund Burke in the Context of the Eighteenth Century”, in *Popular Sovereignty in Historical Perspective*, eds. Richard Bourke and Quentin Skinner (Cambridge, 2016) pp.212-235.

³¹³ *Ibid*, p.9 [my emphasis].

Representation expresses a figurative sophistical colouring given to a fact".³¹⁴ It is interesting that Bentham appeared to be aware of defects in the concept of representation quite early on: representation he recognised created a distance between governors and the governed which might be pernicious if it were to grow too great. Nevertheless, by the time that Bentham came to write his constitutional proposals in the 1820s, he had entirely and explicitly abandoned the label of "delegate" and the model of popular self-government that it implied. Clearly, after his discovery of sinister interest and his recognition of the pathological nature of purely representative government, Bentham realised that fostering dependency between rulers and the ruled was essential. But he reacted strongly against the suggestion that this could be achieved by making the people literally rulers themselves.

Bentham responded to arguments for representation as delegation in his critique of Price. In *Observations*, Price had argued that liberty itself was synonymous with self-government: "to be *free*", he put it, "is to be guided by one's own will; and to be guided by the will of another is the characteristic of *Servitude*".³¹⁵ Thus, for the people to be free in Price's mind, they had to govern themselves. As D.O. Thomas writes, Price placed "emphasis on the *continual participation* of the people in government and the more democratic belief that all men should have the right to *participate*".³¹⁶ Bentham rejected this view strongly. In 1776 he helped to draft his friend John Lind's critical response to Price, arguing forcefully against the idea that political liberty should be conflated with self-government. Liberty, Bentham contended, was a "negative" idea", and had nothing to do with the positive act of

³¹⁴ Bentham, *Preparatory Principles*, p.368. The term representative was also not "exclusively characteristic"; for instance, the King could represent a state, but he could not in any way be said to be a delegate of the state. Bentham, *Constitutional Code*, p.41.

³¹⁵ Price, *Observations*, p.11.

³¹⁶ D.O. Thomas, *The Honest Mind: The Thought and Work of Richard Price* (Oxford, 1977) pp.187-8 [my emphasis].

governing.³¹⁷ Price was a vocal champion of the revolution in the American colonies, which he considered to be an enterprise in popular rule. When justifying his initially critical stance on the revolution some years later in 1793, Bentham stated that “Dr Price with his self-government made me an anti-American”.³¹⁸

We shall return to Bentham’s views on the American experiment in representative democracy, but the philosophical dimension of his opposition to the idea of popular “self-government” is worth dwelling on here. As we saw in Chapter II, Bentham thought of the people as a fictitious entity, but he also maintained that government is always something conducted by particular, real persons.³¹⁹ An abstract collective entity such as “the people” thus could not literally rule themselves. The rule of everyone, he reasoned, was tantamount to the rule of no one, which is the same as a condition of anarchy. Bentham railed against the notion that the people might be capable of literally ruling themselves through delegates. Peonidis has suggested that Bentham was basically in favour of a Rousseauian vision of popular self-government via mandated proxies, but this is patently controverted by what Bentham actually said on the subject himself. Later on in his life, he made his views unequivocal:

[To the people] it belongs, amongst other things, to depute and locate... the members composing the legislative; and eventually... to dislocate them: *but not to give direction, either individual or specific, to their measures, nor thereafter to reward or punish them: except in so far as relocation may operate as reward, and dislocation as punishment.*³²⁰

³¹⁷ Jeremy Bentham, *The Correspondence of Jeremy Bentham, Vol. I: 1752-1756*, ed. Timothy Sprigge (London, 1968) p.310.

³¹⁸ University College London Library, Bentham Papers, box 170, folio 175.

³¹⁹ Bentham, *Constitutional Code*, p.433.

³²⁰ Bentham, *Constitutional Code*, p.26 [my emphasis].

What the people *were* supposed to do in Bentham's representative democratic polity is the subject of the fifth chapter of this thesis. But here, it suffices to say that Bentham was clear in his view that the people could not be responsible for governing themselves, either directly or by providing instructions to their representatives. To return to a point made by Rosen, the distinction between rulers and the ruled was absolutely basic to Bentham's conception of politics - a fixed, inescapable feature of political order itself.³²¹ The delegate model contradicted this essential political fact, and in Bentham's mind tended towards anarchy.

Democracy in France

Bentham's rejection of the delegate model of representative government had a powerful theoretical dimension which centred on his conception of the people and his dissatisfaction with the conflation of liberty and self-government. But it was also informed by Bentham's historical experiences and the concrete proposals that were made for popular self-rule within the period in which he lived.³²² Such a scheme for government was intimately tied up in the minds of contemporaries with the democratic movement in France in the 1790s. The practical implications of the attempt in France to re-establish society on the basis of government by the people for its citizens led Bentham to believe that such a blueprint for politics was revolutionary, dangerous, and *unrealistic*.

Despite this it is worth pointing out that Bentham was initially supportive of the Revolution in France. Between 1788 and 1789, he wrote a number of tracts that he hoped would be of use to those in France confronting the question of how the national legislature should be constituted, and how its members should be selected

³²¹ Rosen, *Jeremy Bentham and Representative Democracy*, p.13.

³²² Schofield, "Bentham, the French Revolution and Political Radicalism", p.384.

by the population at large. Bentham was desirous to help shape the direction of the Revolution. This period saw Bentham's first collaborations with Dumont, who was to become a lifelong partner and who's *Traité de législation civile et pénale* - a rendition of Bentham's writing on civil and penal law - would become the most widely read version of Bentham's work on the Continent.³²³ Generally, he seemed to commend the activities of the *Parlements* and the King for their role in facilitating constitutional change.³²⁴ Indeed, Bentham agreed on many of the principles that the French revolutionaries invoked: he *did* think that rulers had become too detached from the people and that it was important to inculcate greater interdependency between them and those they ruled. He was also, as will be explained further below, no opponent of rights, just what he saw to be a particularly faulty conception of them. And he was good friends with Jacques-Pierre Brissot and corresponded with Mirabeau, two of the most prominent figures in the initial stages of the Revolution.³²⁵ Perhaps above all else, Bentham considered the Revolution (at least at its inception) to be the culmination of the political and social Enlightenment that he so wholeheartedly endorsed as a younger man. For him, France was the primary incubator of this wider intellectual movement that he so consciously imagined himself to be a part of. In 1792, he was even prepared to accept honorary citizenship of the nascent French Republic.

This generally positive view, however, altered radically after 1792. Bentham, like many others in England with similar social and economic standing, was horrified by the attack on the Tuileries and the massacre of the Swiss Guard, the increasing prominence of the Parisian mob as the Revolution progressed, and the eventual execution of King Louis XVI in 1793. Indeed, the violent effects of the Revolution may have been felt even more proximately by Bentham; La

³²³ Schofield, Pease-Watkin and Blamires, "Introduction", in Bentham, *Rights, Representation and Reform*, p.xxix.

³²⁴ *Ibid*, p.xxi.

³²⁵ De Champs, *Enlightenment and Utility*, pp.93-108.

Rochefoucauld d'Enville, part of the extended circle of Lord Shelburne's (by then Lord Lansdowne) friends of which Bentham was also a member, was assassinated in September 1792.

Bentham's growing animosity to the French Revolution did not, though, constitute merely a generalised concern about instability. For him, French Revolutionary democracy constituted a misguided attempt to realise the ideal of the people governing themselves via mandated delegates. Indeed, the voluntarist logic of popular self-rule permeated the *Declaration of the Rights of Man and the Citizen*, that basic expression of Revolutionary principles, whilst many of the key players in the period appealed to the people as a collective body capable of seizing back the right to govern from the monarchy and exercising it themselves through representatives.³²⁶ The delegate model of representation was also explicit in the arguments of many of the Revolution's protagonists. As early as 1789 and well before the miseries of the Terror, Maximilien Robespierre, the man who has come to most closely symbolise the voluntarist strain in revolutionary thought, was able to give an account of legitimate government that was unmistakably Rousseauian: "governments, whatever there are, are established by the People, and for the People; and... all those who govern, and even therefore kings, are only the mandataries and the delegates of the people".³²⁷ Elsewhere, Robespierre made clear his recognition that modern democracy could not be the same as the democracy of the ancients.

³²⁶ Simon Schama, *Citizens: A Chronical of the French Revolution* (London, 1989) pp.292, 300-1. A number of French scholars have argued that the Terror was not an unfortunate aberration or perversion of the Revolutionary spirit, but a logical extension and realisation of it. The key, for the likes of Pierre Rosanvallon and Claude Lefort, is the unitary, homogenous, reified conception of the people that was propounded by revolutionaries, for in order to achieve this ideal, the difference, diversity and plurality that inheres naturally in human societies had to be irradiated. See Rosanvallon, *Democracy Past and Future*, p.96; Claude Lefort, *Democracy and Political Theory*, trans. David Macey (Oxford, 1988) pp.59-88.

³²⁷ Maximilien Robespierre, "Discours non prononcé lors de la séance du 21 septembre 1789 sur la sanction royale", *Archives Parlementaires des 1787 à 1860*, Vol. 9 (1877) pp. 79-83. "Il faut se rappeler que les gouvernements, quels qu'ils soient, sont établis par le peuple et pour le peuple, que tous ceux qui gouvernent, et par conséquent les rois eux-mêmes, ne sont que les mandataires et les délégués du peuple".

Modern democracy would not, he later told the National Convention, be “a state in which the people continuously assembled regulates by itself all public affairs”.³²⁸

However, the relationship that he posited between the people and their representatives in his understanding of democracy was synonymous with that found in the delegate model: representatives were to passively carry out the expressions of the people, who would thus in some way rule themselves.

Bentham also associated the attempts in France at erecting a polity based on popular self-government with two principles that had deeply anarchical tendencies: that of the power of the people to generate new polities *ex nihilo*, and that of the “natural rights” of man. In the first case, the putative power of the people as a collective to dissolve government and to erect an entirely new one was a critical part of the Revolutionary project. The Jacobin political programme was to demolish the *Ancien Régime* and to establish on top of the rubble a new form of government based on enlightened principles and popular self-government. The argument that this power was essentially inalienable - that people would always by right be capable of retrieving political authority from the ruling few and delegating it to another individual or group of individuals - was for Bentham part of a broader political theory that was discussed briefly in Chapter II: that of the social contract. Exponents of social contract theory are many and varied. Hobbes, of course, sought to deploy social contract arguments to justify the absolute political authority of the sovereign, as did Blackstone, who repurposed essentially Hobbesian arguments in the eighteenth century to make the case for the supremacy of Parliament in the English Constitution. However, social contract arguments were also utilised to make a very different argument: that political rulers were bound by a set of obligations to those they ruled, and that should the former renege on those obligations, the people were entitled to rescind the authority that they had bestowed to make decisions on their behalf. Such a theory was advanced in some form by Rousseau in the *Social Contract*

³²⁸ Maximilien Robespierre, *Discours et rapports à la Convention* (Paris, 1965) p.213.

but could also be found in the work of John Locke, who had argued that, should it be required, the people could dismiss their government and “constitute to themselves a new legislative, as they think best, being in full liberty to resist the force of those, who without authority would impose any thing upon them”.³²⁹ As he argued in the *Fragment*, Bentham thought that part of the problem of this type of argument was that it was simply an inaccurate account of how political authority might be established, since historically, it was invariably the product of force and habit. Ben-Dor has suggested that Bentham considered government to have been “a voluntary investiture”, but this is to ignore the fact that he thought this way of understanding the origins of political society to be historically untenable.³³⁰

However, and as alluded to in Chapter II, another key reason why Bentham thought this argument defective was that it assumed a role for the people that they were entirely incapable of playing. Indeed, Bentham argued that social contract theorists had basically got the relationship between the people and government completely the wrong way around. It was not the people that established the power of governments, but governments that established any sort of role for the people in a polity.³³¹ Bentham explicated this in terms of governmental “operative” power and popular “constitutive” power:

The operative power is the power by which every thing that is done in the way of government is done... Take away all operative power, you take away all constitutive power: No constitutive power has any subject matter to operate upon.

³²⁹ John Locke, *Two Treatise of Government and a Letter Concerning Toleration*, ed. Ian Shapiro (New Haven, 2003) p.194.

³³⁰ Ben-Dor, *Constitutional Limits and the Public Sphere*, p.60.

³³¹ Rosen, *Philosophical Ideas in Politics*, p.7.

Of the nature and magnitude of Constitutive power no conception therefore can be formed but in so far as a conception is formed and entertained of the nature of the correspondent operative power.³³²

Thus, dissolving government did not simply return political power to the people; it terminated political society itself, and instigated anarchy. In this, Bentham agreed with the aforementioned Sieyès and Hobbes on the inability of the people to simply will governments into existence. And it became increasingly apparent to Bentham what the people could and could not do as a collective. They could - and did in the French context - tear governments and political societies down. This was the politics of the streets and the mob. But as the Revolution's degeneration into the chaos of the Terror demonstrated, they were not equally capable of building up new political orders. As Rosen puts it, "while it is true that the people, as an ultimate sanction, can rise up and destroy the government, it does not follow that in such an uprising the people can constitute any other government".³³³ Bentham recognised too that any new government established in the wake of an old one would still have to adhere to that basic fact of politics - it would still remain a government of the few over the many. The idea that the rulers could be made more dependent on the people by instigating a new political order based on collective popular self-rule was anathema to Bentham. Playing up to the notion that a fictitious collective entity was capable of government was dangerous because it was anarchical.

The second principle that Bentham associated with the voluntarist, delegate model of democracy being advanced in France was that of the natural rights of man, but his objection to this was the same as that which he had to the idea that the people could dissolve governments and erect new ones; both, he believed, had pathologically anarchical tendencies. It is important to be specific here about what

³³² University College London Library, Bentham Papers, box 113, folio 6; See Rosen, *Bentham, Byron, and Greece*, p.65.

³³³ Rosen, *Philosophical Ideas in Politics*, p.7.

Bentham was objecting to when it came to rights, for Bentham was a consistent advocate of protections for individuals. Paul Kelly points out that “expectation utilities”, or the utilities that derive from the security of expectations of individuals in a society, were extremely important in Bentham’s political thought. Rights, he argues, had a more important place in his work than has been recognised by the likes of John Rawls and Élie Halévy, who argue for the illiberalism of his utilitarianism. The overall thrust of Kelly’s argument, that in reality there is little to separate Bentham from Rawls when it comes to a liberal theory of justice, is overall rather implausible; Benthamite utilitarianism depended on the idea that compromises and trade-offs between competing interests could be made. Otherwise, how could Bentham promote the interests of all over sinister interests?³³⁴ Nevertheless, Kelly is correct to highlight the point that Bentham did think about rights and championed them as devices for the promotion of utility. He desired a framework of expectations for individuals to pursue utility which would be undergirded by a set of protections for persons and property.³³⁵

Bentham did not object to rights *per se*, but he deeply criticised the notion of *natural* rights - a dangerous and anarchical component of the Revolutionary ideology in his mind. Bentham’s philosophical critique of natural rights is perhaps the most widely known aspect of his work. Advocates of natural rights had committed the grave error, he argued, of conflating what is the case with what ought to be the case. Rights do not exist naturally, but are the product of government legislation, and are always accompanied by a set of duties or obligations. Thus, talk of natural rights amounted in Bentham’s eyes to “a perpetual vein of nonsense flowing from a perpetual abuse of words. Words having a variety of meanings where words with

³³⁴ Schofield, *Utility and Democracy*, pp.38-40.

³³⁵ Kelly, *Utilitarianism and Distributive Justice*, pp.64-9; Crimmins, *Utilitarian Philosophy and Politics*, pp.65-6.

single meanings were equally at hand". Natural rights were "simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts".³³⁶

Bentham, though, was not opposed to the language of natural rights simply because it represented "nonsense", or because it was an inaccurate understanding of the origins of legal right and obligation. In fact, Bentham's argument against the *Declaration of the Rights of Man and the Citizen* was that carelessness with words and language had far greater significance in the political domain. "In a play or a novel", he wrote:

an improper word is but a word: and impropriety, whether noticed or no, is attended with no consequences. In a body of laws, especially laws given as constitutional and fundamental ones, an improper word may be a national calamity, and civil war may be the consequence of it.³³⁷

This was not just rhetoric. Bentham was entirely serious in his view that the idea of natural rights might lead to anarchy and civil war. The logic of the natural rights argument embraced by the revolutionaries had three potential upshots, he argued. Take for example article six of the *Declaration*, which states that:

all the citizens have the right of contributing personally or through their representatives to [the law's] formation... All the citizens, being equal in its eyes, are equally admissible to all public dignities, places, and employments, according to their capacity and without distinction other than that of their virtues and of their talents.

Two interpretations of this passage, Bentham would suggest, are not of great concern. One is that it is saying that this *is* the case - that all citizens do contribute to

³³⁶ Bentham, *Rights, Representation, and Reform*, pp.321, 330.

³³⁷ *Ibid*, p.322.

law-making - and in which case it is wrong but innocent; indeed, across Europe it was plainly true that subjects did not all equally contribute to legislation. Another interpretation would be that this passage is saying that this *ought* to be the case - that all citizens ought to contribute equally to law-making - in which case it is debatable, but again innocent. Whilst the first reading is simply wrong and the second perhaps a subject of legitimate contention, neither have mischievous implications. But a final interpretation of the passage is politically pernicious: that any such established system in which this is not the case is null and void.³³⁸ The notion of a natural right to self-government suggested any existing government not based on popular self-rule was illegitimate and should be resisted. By justifying the French Revolution in these terms, its supporters undermined the very possibility of political authority and order: "in justifying past insurrection they plant and cultivate a propensity to perpetual insurrection in the future. They sow the seeds of anarchy broadcast".³³⁹ When Bentham said that discussion of natural rights might lead to the dissolution of political society, he meant it. The idea of natural rights undermined the capacity of real, concrete governments to legislate for and administer rights - those that come with corresponding duties backed by the coercive power of the state. The *Declaration* and its articles constituted, he wrote to his brother Samuel, "a compleat code of anarchy".³⁴⁰

Indeed, Bentham considered legal rights to be some form of artificial, fictitious entity that might be created to paper over our basic human infirmities. It is not that a group of individuals naturally invested with a set of rights and the capacity to reason come together to form a political association in their own image, as the social contract theorists would have us believe. Bentham argued precisely the opposite:

³³⁸ Schofield, *Utility and Democracy*, pp.67-8.

³³⁹ Bentham, *Rights, Representation, and Reform*, p.320.

³⁴⁰ Jeremy Bentham, *The Correspondence of Jeremy Bentham, Vol. 7: January 1802 to December 1808*, ed. John Dinwiddy (Oxford, 1988) p.284.

it is not the rights of man which causes government to be established: - on the contrary, it is the non-existence of those rights. What is true is, that from the beginning of things it has always been desirable that rights should exist - since, so long as there are no rights, there can only be misery upon the earth - no sources of political happiness, no security for person, for abundance, for subsistence, for equality: - for where is the equality between the famished savage who has caught some game, and the still more hungry savage who is dying because he has not caught any?³⁴¹

“It is the law alone”, he put it elsewhere, “which permits me to forget my natural weakness”.³⁴² To discuss natural rights was not merely idle talk but advanced an understanding of individuals as rights-bearing actors that could withdraw their consent for government whenever they judged their natural privileges to have been contravened. A delegate model of representative democracy, based on a voluntarism in which individuals are considered to have a natural right to rule themselves, was therefore pathologically prone to anarchy in Bentham’s view. Stripping away government, which the Revolution encouraged, would not reveal the people to be capable of ruling over themselves but would reveal the natural incapacity of the people to do precisely that. As with his critique of the idea that the people could dissolve and re-establish governments at their will, Bentham also believed that the ideology of natural rights attributed properties to the people that they did not by nature possess.

There was also a “flagitious” dimension to the arguments being advanced in favour of the natural rights of man. Political elites advancing these arguments were informing the people that they had a natural right to self-government, and that their

³⁴¹ Bentham, “Pannomial Fragments”, in *The Works of Jeremy Bentham*, Vol. III, ed. John Bowring (Edinburgh, 1838-43) p.219.

³⁴² Quoted in Harrison, *Bentham*, p.252.

political representatives should be bound by their will. Yet in so doing, they were disguising the underlying reality that it was really them, the political elites, who would continue to rule, because this was an unavoidable aspect of politics itself. Much like when the lawyers used their own fictions to obscure the fact that they were usurping power from legislators, Bentham believed that the elites were deploying the nonsense of natural rights to lend a legitimacy to their claims to rule that was ill-deserved. Importantly, Bentham did not reject natural rights because they were fictional, but because of the *consequences* that he believed these particular fictions would have for political order.³⁴³ Indeed, Bentham believed the connection between the language of natural rights and a vision of democracy pathologically liable to degenerate into anarchy was an explicit one: the former was used by Jacobins to play up the misguided idea that the people could seize back political power and govern themselves through proxies: “what has been the object, the perpetual and palpable object, of this Declaration of Pretended Rights? To add as much force as possible to these passions already too strong: to burst the cords that hold them in”.³⁴⁴

Democracy in America

Just how significant the anarchical dimension of French Revolutionary democracy was in Bentham’s rejection of it can be brought into stark relief by comparison to another concrete plan advanced slightly earlier in the period for increasing the dependency of rulers on the ruled: that of the American founding fathers. Bentham’s assessment of the American Revolution was considerably divergent from that of the French, despite the fact that it too engaged in the language

³⁴³ Harrison, Bentham, p.79.

³⁴⁴ Bentham, *Rights Representation and Reform*, p.321.

of natural rights. In fact, Bentham first trialled the arguments he made against the *Declaration* in the context of the *American Declaration of Independence*. In the latter, the drafters declared that all men are created equal, that they are endowed with inalienable, God-given natural rights, and that these include a right to life, to liberty, and to the pursuit of happiness. Bentham asked, “If the right of pursuit of happiness is a right unalienable why (how) are thieves restrained from pursuing it by theft, murderers by murder, and rebels by rebellion?”³⁴⁵ Despite this, and despite his general criticism of American independence at the outset, Bentham felt able to describe the American republic in the 1780s as “that newly created nation, one of the most enlightened, if not the most enlightened, at this day on the globe”.³⁴⁶ Given that both engaged in this potentially dangerous language of natural rights, what difference did Bentham perceive between the American and French experiments in government that enabled him to be supportive of the former yet disdainful of the latter?

Another quote from the *Introduction* is instructive here, and sums up what Bentham considered to be the relationship between ideas and actions, means and ends in politics:

Who can help lamenting, that so rational a cause should be rested upon reasons, so much fitter to beget objections, than to remove them?

But with men who are unanimous and hearty about measures, nothing so weak but may pass in the character of a reason: nor is this the first instance in the world, where the conclusion has supported the premises, instead of the premises the conclusion.³⁴⁷

³⁴⁵ Bentham, *Correspondence*, Vol. I, p.343.

³⁴⁶ Bentham, *Introduction*, p.309.

³⁴⁷ *Ibid*, p.309.

The main thrust of this passage is Bentham's critique of the language of natural rights found in the *Declaration of Independence*. Bentham here is suggesting that the rationale for independence was instrumental and retrospective, rather than determinative. However, there is another implicit message in this extract that is worth considering. Bentham of course was a consequentialist, and he came to be a sincere admirer of the American Republic, despite the fact that its advocates employed cynical arguments to justify their enterprise. Bentham saw utility in the American experiment in government, even if its philosophical rationalisation was defective. It may seem like a trifling point, but the reason that Bentham came to support democracy in America and reject it in France is because the former was successful in practice: it actually provided for a stable political order with greater dependency between those that rule and those that are ruled. French revolutionary democracy, by contrast, ended in the most abject state of anarchy and disorder. Bentham never dropped his almost fanatical hostility to the language of natural rights, and he continued to lament the American flirtation with it. But both his philosophical concern with the inconsistency of natural rights and his political concern with their tendency towards anarchy were overridden by the fact that, in practice, the United States established itself as a viable form of democracy in which constraints on rulers could be established.

Perhaps the most important variable in Bentham's contrasting views on French and American democracy was the place of representation in these two political projects. French revolutionaries had imbibed the Rousseauian suspicion of representation and concluded that in order for the people to truly rule themselves (to retain their *liberty*), their political functionaries could only be delegates, without the power to "conclude anything definitively". French democracy was only representative in the thinnest sense of the word - it was a decided attempt to make the people literally rulers themselves through the means of mandated proxies. This though, as has been established, was a rendering of the relationship between the people and their representatives that failed to take into account the most basic

structural facts of politics as Bentham saw them: that the people are a naturally disunited multitude, and only a collective by fiction; that they could never rule themselves; that a division between governors and the governed was constitutive of political society itself and unavoidable.

American democracy on the other hand was explicitly and committedly representative in a substantive sense. Indeed, As James Madison, perhaps the most articulate theorist of the American experiment in government, put it, the United States was arguably not a democracy at all, but a *republic*, by which he meant a government “in which the scheme of representation takes place”.³⁴⁸ Partly, Madison contended that representation was necessary because the people could not rule themselves in vast and populous modern states (this was, as we saw in Chapter III, something that Bentham noted too).³⁴⁹ But he also made a far more substantive case for representative government - that the people were not fit to govern themselves, and that representation was positively desirable:

through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country... it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose.³⁵⁰

Put differently, Madison argued that political elites were more likely to be capable of reasoning about and pronouncing on political questions than the body of the people. Madison was not embracing a delegated model of representation in which the

³⁴⁸ James Madison, “Federalist No.10”, in *The Federalist Papers*, ed. Michael Genovese (New York, 2009) p.52

³⁴⁹ *Ibid*, pp.52-3.

³⁵⁰ *Ibid*, p.52.

people governed through representatives, for like Bentham, he believed that the nature of the people and the nature of individuals made this a deeply misguided proposition.

In Bentham's eyes, the American polity was a representative democracy, and one that observed the fact that political representation was both necessary and advantageous. French Revolutionary democracy on the other hand, asserted (incorrectly) that representation was not necessary, and that it was only advantageous insofar as it expedited the literal instantiation of popular rule. This was the critical reason why Bentham found himself supportive of the American republic yet disparaging of the French Revolution. Despite its embrace of a lamentable justifying rationale in natural rights discourse, the American government was grounded in the acknowledgement of the practical realities of politics. The revolutionaries in France however, in seeking to transcend those realities, were profoundly irresponsible, and the dire consequences of their actions were evident in the traumas of the Terror.

Utilitarianism, Reform and Revolution

Bentham's antipathy to revolutionary popular government as a way of inculcating interdependency between rulers and the ruled can be understood more generally as a consequence of the realism of his approach to politics. Certainly, Bentham was "pragmatic" in that he had a "sufficient regard for the facts" of politics.³⁵¹ Bentham founded his political theory on the principle that rule would always be of the many by the few and that the people inherently lacked the capacity for self-government, and he also recognised the inevitable ascendancy of interest over truth and the instrumentality of reason in politics, as we saw with his discovery

³⁵¹ Matt Sleat, "Realism, Liberalism and Non-Ideal Theory", p.29.

of sinister interest in Chapter III.³⁵² But Bentham was a realist in the more substantive, political theoretical sense of the term too. Like many realists, Bentham recognised anarchy and disorder to be the *summum malum* of politics and, despite suggestions to the contrary, he understood something akin to the contemporary concept of legitimacy to be essential to stable political authority, not adherence to an imagined social compact. Yes, he had a political *summum bonum* in utility, but whilst some recent political realists have argued that to possess an ethical end for politics is to endorse a moralism that is the very antithesis of realism, Bentham's conception of utility was far more politically sophisticated than has previously been recognised.³⁵³ Bentham also possessed a realistic approach to the relationship between political means and ends and was sensitive to the importance of timing and context in political decision-making. All of these realist tendencies contributed towards Bentham's unambiguous repudiation of the delegate, voluntarist model of democracy, and it is helpful to consider each in some detail.

Realism is not a unitary school of thought, and there is considerable variation amongst those that identify as realists. Some, as noted, suggest that to have a pre-political moral or ethical end which one then applies as the sole metric of value in politics is a version of political moralism. Realism, argues Matt Sleat, is not just more "fact sensitive" than this moralism, but offers "a fundamentally different conception of politics – one which has very distinct notions regarding the purpose and limits of politics, as well as the appropriate ambitions of political theory".³⁵⁴ To see politics as merely "applied morality" is the quintessentially anti-realist position for Bernard Williams, or a version of "moralism".³⁵⁵ But this is not a point of consensus. Some realists would say that politics is in fact ethical and has its own distinctive end:

³⁵² McQueen, "Political Realism and Moral Corruption", pp.141-161.

³⁵³ Matt Sleat, *Liberal Realism: A Realist Theory of Liberal Politics* (Manchester, 2013) pp.9-12.

³⁵⁴ Sleat, "Realism, Liberalism and Non-Ideal Theory", pp.30-1.

³⁵⁵ Bernard Williams, *In the Beginning Was the Deed*, p.2.

power.³⁵⁶ Others would make the more moderate claim that there is a place for ethical ends and convictions, but that the pursuit of them in politics must be tempered by a recognition of the specific nature of the political domain, as well as of the morally hazardous means of power that is unique to it.

Bentham falls into the latter of these camps. Utility in his framework was the product of a post-political calculation that took into account all relevant considerations, interests and contextual factors. To return to the question of Bentham's views on the various models of democracy advanced in the period, voluntarist democracy would have appeared to him as naïve, idealistic, moralistic. For Price, for example, the end of politics and government itself was popular self-rule, but Bentham would have rejected this, and he would have responded that the political agent must weigh up desires for popular self-rule against other competing imperatives to establish what the most auspicious course of action is: this realistic approach is a paraphrasing of the utility principle. It is worth noting too that in giving weight to the various imperatives in politics, Bentham gave priority to that of security over others like equality.³⁵⁷ This was why he rejected mass redistribution of property and wealth as a means to promote aggregate happiness - this he thought would undermine security of expectations such that there would be a net loss in happiness - and favoured taxation instead, but it was also why he rejected the claims of some that popular self-rule was desirable because it constituted the most egalitarian form of government; equality was not the end of politics for Bentham, utility was, and it was not clear to him that promoting absolute equality in government would necessarily promote utility. Yes, utility constituted a moral end for Bentham in politics, but utility itself was such a remarkably adaptable, flexible and capacious concept that Benthamite utilitarianism looks far more like political realism in practice than anything that could be described as political moralism.

³⁵⁶ See Matt Sleat, "Legitimacy in Realist Thought: Between Moralism and Realpolitik", *Political Theory*, Vol.42(3) (2014) p.314-337.

³⁵⁷ Crimmins, *Utilitarian Philosophy and Politics*, pp.62-5; de Champs, *Enlightenment and Utility*, p.90.

Moreover, like all realists, Bentham considered anarchy and civil war to be the *summum malum* of politics, and stable order to be its *sine qua non*.³⁵⁸ Utility could only be achieved in stable societies in which security of expectations could exist, and a state of anarchy was an environment of the most intense insecurity imaginable. Pushing politics in that direction could thus never be in the interest of aggregate happiness: “no government can be so bad that a friend to mankind should be justified in advising revolt in order to substitute to it any other form of government”.³⁵⁹ Tellingly, and despite his later praise of the American republic as “the best government that is or ever has been”, Bentham initially censured the colonists’ revolt against the British. The pain and misery caused by the revolt, he contended, would far outweigh the pain of the British tax burden, which was the ostensible cause of colonial disgruntlement.³⁶⁰ He even proposed a new newspaper to champion the public and private life of the monarch in order to combat American prejudices against him.³⁶¹ As de Champs has remarked, Bentham “believed that political stability was a necessary condition for reform and the responsibility of rulers was to work within existing expectations”.³⁶² Militating for a delegate model of democracy was unacceptable for Bentham, because its appeal to the utterly unrealisable end of popular self-rule risked anarchy. Of course, this is not to say that he fetishized or obsessed over order; Bentham was not an *authoritarian*. But he did see it as the first consideration in politics - the thing that must be secured before any other good or value can be meaningfully pursued.

There is a more general point here that Bentham recognised the importance of “legitimacy” in government. Needless to say, Bentham was withering in his critique of the existing political establishment, particularly after the first decade of the nineteenth century. He was consistent in his view that utility was the only acceptable

³⁵⁸ William Galston, “Realism in Political Theory”, p.408; Williams, *In the Beginning Was the Deed*, p.3.

³⁵⁹ University College London Library, Bentham Papers, box 170, folio 199.

³⁶⁰ Bentham, “Plan of Parliamentary Reform”, p.472.

³⁶¹ University College London Library, Bentham Papers, box 44, folio 5.

³⁶² De Champs, *Enlightenment and Utility*, p.119.

moral principle, and he certainly recognised that much of the governing going on his time was in fact productive of *disutility*. But he did not believe that this made those existing governments *illegitimate*. Indeed, to Bentham, that was the logic of the natural rights argument he so loathed. What made a government legitimate in his eyes was that it had the force to compel obedience and the observance of duties, and that the people complied with its rule habitually. Bentham advanced this view in his earliest political writings. A government, he stressed in the *Fragment*, was not legitimate because it had assented to and fulfilled its obligations under an original compact struck between it and the people as a whole. Bentham thought Hume was closer to a realistic articulation of political authority. Indeed, there is a great deal of symmetry between Bentham's pronouncements on the nature of government and those found in Hume's *Of the First Principles of Government*. "Nothing", Hume states:

appears more surprizing to those, who consider human affairs with a philosophical eye, than the easiness with which the many are governed by the few; and the implicit submission, with which men resign their own sentiments and passions to those of their rulers. When we enquire by what means this wonder is effected, we shall find, that, as FORCE is always on the side of the governed, the governors have nothing to support them but opinion. It is therefore, on opinion only that government is founded; and this maxim extends to the most despotic and most military governments, as well as to the most free and most popular.³⁶³

Ben-Dor argues that Bentham "deplored" the concept of legitimacy and believed that government gained its sanction by the constant reshaping of its boundaries and limits by the people, but this is simply not true.³⁶⁴ Ben-Dor is correct to say that

³⁶³ David Hume, "Of the First Principles of Government" in *Political Essays*, ed. Knud Haakonssen. (Cambridge, 1994) p.16.

³⁶⁴ Ben Dor, *Constitutional Limits and the Public Sphere*, p.201.

Bentham considered there to be two sides to government – power and obedience. Yet he goes too far in suggesting that this meant Bentham thought the people could or should actively and regularly pronounce on the scope of government and the conditions of their obedience. Gerald Postema offers a more nuanced articulation of how Bentham understood the relationship between the people and their rulers. In *Bentham and the Common Law Tradition*, Postema contends that Bentham saw relationships of political obedience as dispositional, customary and “interactional”, rather than “mechanical”.³⁶⁵ Postema’s argument – that Bentham considered political authority to be socially constructed in part by the willingness of subjects to habitually obey, and that this in itself placed limits on the exercise of power – is more subtle and does not imply that Bentham thought the people ought to regularly and deliberately define the conditions of their obedience, as Ben-Dor does.

Bentham did not believe that the people could play this participatory role, and nor did he think that they should. What he did believe was that opinions in the form of “habits of obedience” were vital to the sustenance of political orders.³⁶⁶ This corresponds with the argument made by Hume above, and amounts to something very close to the notion of legitimacy advanced by political theory realists; a legitimate government, argues Williams, is one that can underwrite political order in a way that commands the opinion of those subject to rule.³⁶⁷ Bentham did not explicitly use the language of legitimacy himself. However, he did have an attitude to government legitimacy comparable to that of Williams, and such an attitude translated in practice into a preference for constituted authority and an aversion to revolution.

As with his views on representation, there is in places a curiously Burkean tinge to Bentham’s attitude on change in society. Of course, even Burke the conservative was prepared to admit that “A State without the means of some change

³⁶⁵ Gerald Postema, *Bentham and the Common Law Tradition* (Oxford, 2019) pp.216-56.

³⁶⁶ Bentham, *A Comment on the Commentaries and a Fragment on Government*, pp.428-33.

³⁶⁷ For Williams’s “Basic Legitimation Demand” (BLD), see *In the Beginning was the Deed*, p.4.

is without the means of its conservation".³⁶⁸ Burke was not hostile to *change*; what he believed was that such change needed to recognise that a political society was not some abstract entity existing outside of time but was instead "a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born".³⁶⁹ Societies are anchored in intergenerational obligations, and this works both in multiple directions: those living have duties to those of the past and the future, but the interests of those living also should not be disregarded in preference for those already dead or those yet to be born. To do so would either be idealistically conservative or dangerously utopian. Bentham would have concurred. Certainly, he agreed with some of the principles of the French revolutionary project, particularly on the question of increasing the dependency of the powerful on the powerless, and of affording individuals securities in law. But ripping up the existing political order on the basis of mistaken assumptions about the capacity of the people to establish a new one in their own image was unacceptable from a utilitarian perspective. "The French", he wrote, "in forming a republic are sacrificing the happiness of the present generation to that of the future".³⁷⁰ Revolutionary democracy as perpetrated in France conflicted with the utility principle, because it obliterated expectations established by previous generations, as well as preferring the abstract happiness of future ones at the price of the unhappiness of the living. Both of these tendencies were detrimental to aggregate utility in Bentham's eyes.

There is no denying, however, that Bentham was a committed reformer, and agitated for increasingly substantial alterations to the English Constitution. Interestingly, however, Bentham often made his case for reform in deeply pragmatic terms, especially in the early nineteenth century and after the horrors of the Terror. Reform, he argued on a number of occasions, was essential to stave off the

³⁶⁸ Edmund Burke, *Reflections on the Revolution in France*, ed. Conor O'Brien (London 1988) p.106.

³⁶⁹ *Ibid*, pp.194-5.

³⁷⁰ University College London Library, Bentham Papers, box 170, folio 51.

possibility of revolution.³⁷¹ As he put it in the introduction for his *Plan of Parliamentary Reform*, “the country, if my eyes do not deceive me, is already at the brink - reform or convulsion, such is the alternative”.³⁷² It might be said that, far from the voluntarist model of democracy - with its tendency to anarchy and chaos - being Bentham’s political end, it was the thing that he most feared would transpire should efforts at reform fail.

Context, both temporal and geographical (or what Raymond Geuss has called the “question of Nietzsche”), was something else that Bentham placed great emphasis on in political decision-making, and this too lends a realist hue to his approach to politics.³⁷³ That this dimension of his political thought is underappreciated is lamentable, but it is understandable: Bentham the eighteenth-century *philosophe* was committed to the universalistic enlightenment project. On the face of it, no clearer indication of this universalism can be offered than his proposals for a *Pannomion* - a complete and comprehensive body of laws with an “interwoven rationale” for each of its provisions.³⁷⁴ On first glance, such an enterprise appears as quintessentially *unrealistic*; an idealised legal code derived from philosophical principles and applied objectively without regard to the specificities of context. But if one digs a little deeper, Bentham’s sensitivity to considerations of time and place, even as a younger man, seem evident. One example of this is an introductory chapter for his *Pannomion* that Bentham wrote entitled “Place and Time”, which detailed the relevance of contextual factors in the calculation of utility.³⁷⁵ At one point, he states that:

1. No law should be changed, no prevailing usage should be abolished...without some specific assignable benefit [which] can be shewn as

³⁷¹ Steintrager, *Bentham*, p.87.

³⁷² Bentham, “Plan of Parliamentary Reform”, p.435.

³⁷³ Raymond Geuss, *Philosophy and Real Politics* (Princeton, 2008) p.30.

³⁷⁴ Schofield, *Utility and Democracy*, p.240.

³⁷⁵ Engelmann and Pitts, “Bentham’s ‘Place and Time’”, p.48.

likely to be the result of such a change. 2. The changing of a custom repugnant to our own manners and sentiments, for no other reason than such repugnancy, is not to be reputed as a benefit.³⁷⁶

Such a view on the importance of context was in large part a consequence of Bentham's belief that calculations of utility could never be divorced from the perspectives of individuals implicated in a given decision. He wrote extensively in the *Introduction* about "circumstances influencing sensibility", and one is left after reading those passages with the conclusion that "almost every adducible fact about individuals is capable of acting as such a circumstance".³⁷⁷ Bentham's universalism was thus heavily qualified by his attention to circumstantial considerations. Indeed, this is evident in his approach to democracy and the particular version of it that was propagated in France. He may well have thought that something that looked a bit like the rule of the people would have been possible in the small, homogenous states of antiquity (although presumably he would still have maintained that the distinction between rulers and ruled was inescapable, so some hierarchical division would have been necessary). But popular self-rule via delegation was not suitable in the context of vast modern states, and it was especially unsuited to contemporary England. Indeed, Bentham rejected the idea that French revolutionary and democratic principles could be abstracted and applied straightforwardly in the English context. In this, he found himself on the opposite side of the argument for reform in England from people like Joseph Priestley, with whom he otherwise had much in common.³⁷⁸ Not only was the geographical context important, but so was the *timing*. Seeking reforms in the febrile 1790s was misguided, Bentham argued:

³⁷⁶ Jeremy Bentham, "Place and Time", pp.173-4.

³⁷⁷ Michael Quinn, "'The First Article to Look to is Power': Bentham, Happiness and the Capability Approach", in *Happiness and Utility: Essays Presented to Frederick Rosen*, eds. Georgios Varouxakis and Mark Philp (London, 2019) p.124.

³⁷⁸ Bentham, *Deontology*, p.292.

No man in the three kingdoms has a fuller comprehension of the imperfections of the law; no man a more painful and indignant sense of them; no man has been more assiduous in investigating them; no man less sanguine in his expectation of seeing them voluntarily amended. It is with this body of grievances before my eyes that I say notwithstanding - no change in the constitution - no Reform in Parliament.³⁷⁹

Likewise, Bentham often listened to advice from friends about when to time the publication of his work. Most significantly, despite the fact that he had written the manuscripts for a parliamentary reform plan in 1809, he delayed publishing them until almost a decade later because of the way in which the war against Napoleon was unfolding in Spain and across the Continent.³⁸⁰ Bentham recognised that a failure to pay attention to timing might undermine the reformist cause that he was so committed to.

Steintrager has argued that Bentham became less realistic in older age, and more willing to entertain risky revolutionary programmes that were less nuanced and context-sensitive: “If Bentham has been remarkably flexible and undogmatic for the better part of this life”, he suggests, “the last fifteen years were marked by a growing inflexibility and dogmatism, characteristics marked by the increasing tendency to treat his personal associates with vituperation and scorn”.³⁸¹ The idea, however, that Bentham’s political realism gave way to an ideological moralism in his twilight years is unpersuasive. Bentham may well have become pragmatic about the prospects of getting his own plans and proposals for reform implemented in his lifetime, but he remained a *reformer*, and never became a *revolutionary*. The first piece of evidence against Steintrager’s thesis is Bentham’s approach to the reform movement in England at the time. Resigned to the fact that he himself would never

³⁷⁹ University College London Library, Bentham Papers, box 170, folio 173.

³⁸⁰ Steintrager, *Bentham*, p.87; Crimmins, *Utilitarian Philosophy and Politics*, p.160.

³⁸¹ *Ibid*, p.94.

enter Parliament, Bentham dedicated his time to marshalling a relatively fragile coalition in favour of Parliamentary reform that would promote greater interdependency between the people and their government, and which would focus on the way in which the functionaries of the latter were selected: that is, the frequency and manner of elections. Bentham worried that ideologically extreme radicals would threaten that coalition. A case in point is his relationship with Daniel O'Connell, an Irish radical who managed to get elected to Parliament, and who Bentham at first believed could serve as a mouthpiece for Benthamism in Westminster. According to Crimmins, Bentham fell out with O'Connell over the latter's support for Simón Bolívar. Most reform-minded people in England and Europe had initially looked favourably on Bolívar as the "Liberator" of South America, but as his grip on power turned increasingly authoritarian and despotic, attitudes changed. O'Connell remained steadfast in his support of Bolívar and became critical of liberal-minded political institutions in Europe. Bentham, suspecting that O'Connell's dogmatism had something to do with his moralising Catholicism, censured him for having turned his back on the "constituted authorities" promoting reform both in Europe and in the Americas.³⁸² Firmly in his mind, however, was the concern that O'Connell's controversial backing of Bolívar would drive a wedge through the reform coalition in England. Bentham's instincts here, even in his final years, were of a realist, concerned about the potential of idealistic, potentially religiously inflected radicalism to undercut the movement for reform. The second and more powerful argument against Steintrager's position is provided by the *Constitutional Code*, a deeply realist text which Bentham wrote at the age of 74. The *Code* is the subject of the next chapter.

Bentham was, then, at least by the late 1790s, an anti-revolutionary realist, and this was the broader intellectual framework through which he considered the question of the best means to promote greater dependency of governors on the

³⁸² Crimmins, *Utilitarian Philosophy and Politics*, p.171-4.

governed. Bentham rejected the delegate model of representation, in which the people would literally rule themselves through mandated proxies, because of its *unrealism*: it was ignorant of the “facts” of politics as he saw them, in particular, that the people were incapable of self-rule and that government would necessarily be the purview of elites; it exemplified a crude, moralising attitude about self-rule as the only relevant value in politics; it had a pathological tendency towards anarchy - the political *summum malum*; and it relied on a chimerical understanding of how political societies had been and could be established. Bentham would have to look elsewhere to find a realistic blueprint for government that would mitigate misrule in such a way that would promote rather than hinder utility.

Chapter V

Realist Democracy

Up until this point, we have dealt exclusively with what forms of political organisation Bentham did *not* advocate, or those that he *rejected*. As we have seen, Bentham acknowledged that the activity of government would always have to be conducted by a political elite, because this was the very nature of government itself; government *was* the division between those that rule and those that are ruled. Not everyone can rule, because a condition in which everyone rules is tantamount to an absence of rule. However, Bentham rejected the Burkean ideal of rule by independent elites since, in and of itself, elite representative government was pathologically liable to degenerate into corruption and misrule. Political elites are humans like anyone else, and they are thus self-regarding; leaving them to wield power autonomously will inevitably result in them doing so in a way that furthers their own self-interest at the expense of the political community as a whole. Bentham therefore considered a degree of dependency on the part of the rulers on the ruled to be necessary to mitigate this tendency.

Yet, at the same time, Bentham also rejected the idea that this necessary dependency could be effectively fostered by making representatives the “delegates” of the people. This was a political model that was also pathologically liable to degenerate, albeit in this case into anarchy rather than the misrule of the few. Bentham rejected the idea of making the people literally rulers themselves through mandated proxies. Not only did he think that this was unpragmatic, but as we saw in Chapter IV, he thought it to be substantively unrealistic: appeals to popular self-government compromised and undermined the stable political orders that are a prerequisite for the promotion of happiness, and they were “revolutionary” in the sense that they sought to transcend the basic realities and structural facts of politics,

rather than working with them. Most importantly, the people as a collective were in his mind fictitious and thus incapable of self-rule.

This chapter will address what Bentham *did* advocate. In the form of the *Constitutional Code*, largely written in the 1820s but unfinished at the time of Bentham's death in 1832, he penned a realistic blueprint for representative democracy, a regime devised to promote general utility by securing the people from misrule and ensuring competence and responsibility in government. Several components of that blueprint will be the focus here: Bentham's notion of the "deputy"; the location and nature of sovereignty; the role of public opinion; and finally, Bentham's response to the problem of "majority tyranny". Attention will be paid throughout to Bentham's conception of what constitutes the proper political function of the people.

Deputies

It has been suggested that Bentham's *Constitutional Code* represented a proposal for representative democracy as a "Utilitarian Utopia".³⁸³ I want to push back on this reading of Bentham as a utopian theorist. It is of course true that the *Code* posits a constitutional arrangement *ex nihilo* and in the abstract; it is universalist in style and aspiration, as well as being addressed to "ALL NATIONS and ALL GOVERNMENTS expressing LIBERAL OPINIONS".³⁸⁴ But this idealism and universalism must be considered alongside Bentham's deep sensitivity to context in his political writings - something that has been observed at various points in preceding chapters. Indeed, whilst the *Code* itself is written in the abstract, most of Bentham's concrete constitutional proposals for specific countries were accompanied

³⁸³ Peardon, "Bentham's Ideal Republic", p.120.

³⁸⁴ Bentham, *Constitutional Code*, p.1.

by detailed contextual supplements. One need only look to his writings for Tripoli and Greece as examples. In the case of the former, Bentham affixed an essay that covered the nature of Tripoli's territory, population and language, its religious mores, the specifics of its political, military and financial establishment, and its diplomatic relationships with neighbouring North African powers.³⁸⁵ In the latter case, prior to outlining his own proposals, Bentham wrote *Observations by an Englishman*, which gave an account of the unique nature of the existing Greek Constitution whilst comparing and contrasting it to that of Spain.³⁸⁶ The interpretation of Bentham as a universalist must subsequently be heavily qualified; he recommended utilitarianism and representative democracy everywhere, but recognised that these things would always be inflected by local, circumstantial factors.³⁸⁷

Not only this, but as we have seen in the previous chapter, Bentham rejected a number of proposals for democratic constitutions precisely because they were unrealistic. Bentham considered the French proposals for a democratic constitution based on natural rights and the self-government of the people via mandated delegates as a political ideal that would simply not work in the real world and would instead be pathologically liable to fall apart. Bentham's proposals for representative democracy were self-consciously intended not only to be more "pragmatic", but also more "realistic" in the substantive, theoretical sense of the word: Benthamite representative democracy was to be *anti*-utopian; it is permeated with Bentham's scepticism about the weight and agency of reason and rationality, his attention to the workings of power and interests in politics, and his commitment

³⁸⁵ Bentham, *Securities Against Misrule*, pp.1-21.

³⁸⁶ *Ibid*, pp.209-56.

³⁸⁷ A good example of Bentham recognising the importance of local knowledge in politics has already been raised in Chapter II: Bentham's constitutional proposals for Tripoli were prefaced with a proclamation to be given by the Pasha, which would detail a divine visitation to the ruler from the prophet Mohammad. Bentham knew that the population in Tripoli was primarily Moorish-muslim or "Mahometan", and thus he recognised that an appeal to religious sensibilities would be useful in securing popular legitimacy for his proposals. See *Securities Against Misrule*, pp.12-16, 74-6.

to stable political orders as a necessary precondition for securing utility. Furthermore, Bentham's proposals were based on the view that a dualism in representative relationships was crucial in producing a durable polity that might avoid the pathological tendencies of both elite rule and the cries for popular self-government.

Much can be revealed about Bentham's attitude to political representation by his fascinating discussions about what the appropriate label for representatives ought to be. In an extended footnote in the *Code*, Bentham wrote that the title "representative" was not "apposite" or "exclusively characteristic". "Representative" could refer to any manner of relationship, from that between a guardian and an orphan to that between a private estate and its trustees, and it did not offer sufficient specificity about the nature of a political representative relationship. It also did not pay due recognition to any sort of dependency on the part of the representatives; as representatives, political elites had been authorised to act and could thus do as they liked, and the represented had to own their actions, whatever they were.³⁸⁸ The label "representative" in other words, promoted the idea of the independent ruler, which was the very problem that Bentham sought to address. As noted previously, at one point, Bentham endorsed the alternative label "delegate" as an expression of "plain fact" which would make clear the dependency of rulers on the ruled.³⁸⁹ However, by the time he wrote the *Code*, Bentham's experience of the French Revolution and his philosophical misgivings about the delegate model of representation had led him to abandon this label altogether. Instead, Bentham adopted "deputy" as the most "appropriate" title for the "highest sort of functionary" in a representative democracy.³⁹⁰

Predominantly, Bentham chose the title of deputy for political representatives because it best recognised the necessity of a dualism in the relationship between

³⁸⁸ Bentham, *Constitutional Code*, p.41; Pitkin, *The Concept of Representation*, pp.38-59.

³⁸⁹ Bentham, *Preparatory Principles*, p.368.

³⁹⁰ Bentham, *Constitutional Code*, p.41.

rulers and the ruled. For that relationship to be productive of utility, representatives had to be separate and distinct from those they represented, but also in conversation with them and ultimately accountable to their electors. Bentham recognised that what made representative democracy distinctive was the basic duality at its core: it was not a system in which the elites ruled independently, or in which the people ruled through proxies, but a system in which the people were both the ultimate political authority at the same time as being subject to the government of the ruling few.³⁹¹ Benthamite representative democracy was intended to cut across this binary. Using the label of deputy allowed Bentham to escape from the reductive renderings of political representatives as either wholly dependent on or wholly independent of the people - renderings which he thought were pathologically liable to either misrule and corruption or anarchy.

The differences between delegates and deputies in Bentham's mind are best illustrated by the mechanisms through which they were to be made more dependent on the people. In both a delegated and deputy-based model of representation, some degree of dependency is implied. Of course, Bentham had long thought that this was decidedly in the interest of general utility. As he had written sometime in the Autumn of 1789, "the efficient cause of constitutional liberty or of good government, which is but another name for the same thing", is "the dependence, immediate or mediate" of political rulers on "the body of the people". In the same passage, he went on to say that "constitutional liberty depends upon and is proportioned to the dependence of the possessors of efficient public power upon the will of the body of the people, in virtue of the originative power they possess".³⁹² Dependency alone could ensure that rulers remained tethered to the people. To generate this dependency, Bentham suggested that it was necessary to effect what he called the "juncture of interest principle": to make the interests of rulers the same as those of

³⁹¹ Bentham wrote that in such a political form, the people would be "themselves rulers: not the less rulers for being subjects: not the less subjects for the being rulers". Bentham, *First Principles*, p.136.

³⁹² Bentham, *Rights, Representation, and Reform*, pp.407-8.

the people themselves.³⁹³ One way to do this was to oblige political representatives to carry out the express wishes of the people: to make political rulers *delegates* - passive vehicles for the wishes of the people as they themselves expressed them. But Bentham wrote explicitly that political representatives should not be instructed or given "direction" by the people.³⁹⁴ Like Burke, Bentham recognised that letting political elites get on with the business of governing was important. Not everyone could govern well, just as not everyone could make a shoe well. The governing elites needed to be composed of those with the greatest aptitude for the task.³⁹⁵ Bentham envisaged a different model of "deputed" government, in which rulers would be made dependent not through mandated popular instructions, but instead by giving the people sovereignty and the "constitutive power" to "locate" and "dislocate" deputies via election, and by facilitating the operation of public opinion.

These devices will be discussed further below, but it is worth highlighting the subtle but vitally important differences between these two models of delegation and deputation. In the former, the activity of government is intended unambiguously to be transferred to the people themselves. In the latter, government remains decidedly in the hands of the political elites, but a "creative tension" is generated between the elites and the people.³⁹⁶ Bentham described his proposals, based on a deputy model of representation, as a system of "securities against misrule"; implicitly, in this version of representative democracy, the people are still *ruled*, but are secured against bad forms of rule by having the competency to select *who* will rule, and to influence indirectly *how* they are ruled. Bentham's deputy model recognised the fact that the people are fictitious, and thus fundamentally incapable of ruling themselves, and it recognised too the basic distinction between rulers and the ruled in a way that the delegate model in his mind did not. Bentham considered this model of

³⁹³ Bentham, *First Principles*, p.235-6.

³⁹⁴ Bentham *Constitutional Code*, p.26.

³⁹⁵ Fred Cutler, "Jeremy Bentham and the Public Opinion Tribunal", *Public Opinion Quarterly*, Vol.63(3) (1999) p.332.

³⁹⁶ Rosen, *Jeremy Bentham and Representative Democracy*, pp.176-7.

representative democracy to be a more realistic plan for inculcating the interdependency that he deemed essential to staving off misrule and therefore promoting utility.

Sovereignty

As a number of scholars have testified, Bentham dedicated a sizeable amount of his work to the question of sovereignty.³⁹⁷ However, the scholarly debate on this topic has often served to confuse, rather than clarify Bentham's own theoretical perspectives on where sovereignty should lie. In the first place, he wrote about sovereignty in a range of different contexts and at various points in his life, but often these have not been disentangled. Distinguishing these differing contexts and recognising the development and change in Bentham's thought over time is crucial and can help us get to grips with the significance of sovereignty in his proposals for representative democracy.

In his earliest writings, Bentham understood sovereignty in essentially juridical terms: sovereignty meant the power to make laws.³⁹⁸ This is perhaps unsurprising; in writing the *Fragment* in 1776, Bentham was engaging directly and explicitly with the legal arguments of William Blackstone, and his objective was to critique a prevailing theory of legal obligation.³⁹⁹ Since, for Bentham, sovereignty

³⁹⁷ FC Montague, editor of a modern edition of Bentham's earliest published work, *A Fragment on Government*, described the tract as an "essay on sovereignty". See also HLA Hart, *Essays on Bentham: Jurisprudence and Political Philosophy* (Oxford, 1982) pp.220-42; & JH Burns "Bentham on Sovereignty: An Exploration", in *Jeremy Bentham*, ed. Frederick Rosen (London, 2007) pp.399-416.

³⁹⁸ As he wrote in *Of the limits of the Penal Branch of Jurisprudence* (p.24), the manuscript for which was written mostly in the 1770s, "A law may be defined as an assemblage of signs indicative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are or are supposed to be subject to his powers". This view changes considerably between the 1770s and the 1820s when Bentham composed the *Constitutional Code*.

³⁹⁹ HLA Hart, *Essays on Bentham*, pp.220-2.

meant initially the authority to issue binding laws for a political community, sovereignty could not therefore be popular. The people as a collective lacked the substance and organisation to legislate themselves; they constituted a natural multitude without a single authoritative voice, whereas sovereignty depends on the ability to provide clear and decisive commands. Thus, Bentham argued (in terms that were similar to Blackstone's) that sovereignty is lodged in the legislature, and in the specific case of the English Constitution, in the Monarch in Parliament.⁴⁰⁰ Yet, later, and particularly in his mature constitutional writings, sovereignty came to connote something rather different in Bentham's work. It came to have something to do with "the power of the people to limit or control government and public officials", or the ultimate accountability of rulers to the people as a whole.⁴⁰¹ Partly, Bentham understood this notion of sovereignty to imply "constitutive authority" or what he labelled the "locative" and "dislocative" functions: that is, the ability to elect and *deselect* the rulers of a given political community.⁴⁰² But Bentham also understood this notion of sovereignty in a less concrete, more nebulous sense, as political finality, or the place to which power recurses to. In these later articulations, Bentham argued not only that sovereignty could be popular, but that locating sovereignty with the people was normatively desirable for government in the interest of general utility. A popular sovereign would help to secure the juncture of interest principle in a representative democracy: if rulers depended on the ruled for the continuation of their power, then they would be incentivised to serve the interests of the latter in order to stay in office. In this way, the particular interest of the few would come to be the same as the general interest. Bentham prescribed that the people should be capable, not only of electing their deputies, but of removing them on the basis of petition of one quarter of the electors of that particular

⁴⁰⁰ Bentham, *Fragment*, p.461; HLA Hart, "Sovereignty and Legally Limited Government", p.223.

⁴⁰¹ Crimmins, *Utilitarian Philosophy and Politics*, p.151.

⁴⁰² Bentham, *Constitutional Code*, pp.26,29-33.

constituency.⁴⁰³ Sovereignty understood as constitutive authority, then, was an important mechanism in Bentham's mind for fostering political interdependency and securing the people from misrule. At the same time, it helped to generate the sense that the people were the final political arbiters in a polity.

What do these discrepancies tell us about Bentham's thinking about the political role of the people? In his *Constitutional Limits and the Public Sphere*, Ben-Dor attempts to resolve the tensions in these two divergent understandings of sovereignty as legal, legislative competency on the one hand, and as political finality or supremacy on the other. In the book, Ben-Dor, extrapolates what he considers to be underlying commonalities or "common denominators" across Bentham's corpus of work on sovereignty, and in consequence he ends up arguing for a participatory theory of democratic sovereignty that is consistent across his writings, and which is based on the idea of the people continuously reappraising the limits and mandate of their rulers.⁴⁰⁴ In this way, Ben-Dor argues that Bentham's later discussions of sovereignty can be assimilated with what he had to say in his earliest work, and that he was committed to an activist role for the people in politics.

This is, however, a fatally flawed approach to understanding Bentham's engagement with the question of sovereignty. For one, it is historically unsound. Ben-Dor notes himself that his argument relies on "reconstructing" Bentham's argument; Bentham becomes a "constructed author" in Ben-Dor's account in order that the inconsistencies and variations in what he says across his life can be resolved.⁴⁰⁵ Of course, the imposition of a "mythology of coherence" onto Bentham's work is anachronistic and historically unsatisfying in itself.⁴⁰⁶ As Hart puts it, Bentham's discussion of sovereignty in the *Code* not only involves "a quite different concept" to that involved in the *Fragment*, for example, but it also invokes "a quite

⁴⁰³ Bentham, *Constitutional Code*, pp.32-3.

⁴⁰⁴ Ben-Dor, *Constitutional Limits and the Public Sphere*, pp.3,4,9,56.

⁴⁰⁵ *Ibid*, pp.3,11.

⁴⁰⁶ See Quentin Skinner, "Meaning and Understanding in the History of Ideas", p.22.

different theory of law".⁴⁰⁷ Yet equally importantly, this effort to resolve contradictions in Bentham's writing over time by positing a general and consistent theory across his work leads to a complete misunderstanding of Bentham's later views on sovereignty in particular. In fact, the discrepancies between Bentham's early and later renderings of sovereignty say a great deal about what function he thought the people were capable of playing in a representative democracy.

Ben-Dor depicts Bentham as enthusiastic about the concept of sovereignty, but the reality is that Bentham was probably quite sceptical and mistrustful of the idea later in life. He had written early on for the "necessity of an omnipotent legislature", and moreover was committed to the view that a legislature must have the necessary competencies to do all the things it needed to do.⁴⁰⁸ But as we have seen, he was also of the view that establishing power without attendant securities and constraints was pathologically liable to produce misrule and corruption. The concept of sovereignty, then, imbued with the language of absolute and untrammelled power, was most likely an awkward one for Bentham. In the *Code*, Bentham was prepared only to offer a "few terse sentences" on the idea, and restricted himself entirely to the practical, constitutive mechanisms through which it might be manifested: "Art. 1. The sovereignty is in the people. It is reserved by and to them. It is exercised, by the exercise of the Constitutive authority, as per Ch. iv".⁴⁰⁹

The notion of *popular* sovereignty would have been especially problematic for Bentham. When discussed in jurisprudential terms, sovereignty as we saw is often conflated with legislation. But whilst Bentham decided to locate sovereignty with the people in his mature constitutional proposals, he was also clear that the people could not take on a positive, active role in government, because the people as a collective are fictitious and incapable of such organised action. To this end, Ben-Dor's effort to combine and amalgamate Bentham's theories of sovereignty is diametrically

⁴⁰⁷ HLA Hart, "Sovereignty and Legally Limited Government", p.228.

⁴⁰⁸ Bentham, *Rights, Representation, and Reform*, p.263; & *Constitutional Code*, pp.41-2.

⁴⁰⁹ Rosen, *Jeremy Bentham and Representative Democracy*, p.41 Bentham, *Constitutional Code*, p.25.

opposed to what the latter himself actually attempted to do in his writing: in the *Code*, Bentham explicitly delineates sovereignty from what he calls “legislative omnicompetence” - the former referred to political finality, whilst the latter meant the unlimited competency to make laws.⁴¹⁰ Bentham thus deliberately distinguished sovereignty from legislative omnicompetence to ensure that his endorsement for popular sovereignty could not be confused with an argument for a participatory theory of popular government. Government and sovereignty meant different things to him, and Bentham did not imagine his sovereign people would take on an active role either in governing or in setting constitutional limits for government; it is worth remembering that Bentham thought that governments established political roles for the people, not the other way around.⁴¹¹

Yet, notwithstanding all these misgivings - about the conflation of sovereignty and legislation, and about a fictitious people’s capacity for action - Bentham did not reject the idea of popular sovereignty out of hand. Whilst his sentences in the *Code* on the subject were terse, they were certainly unequivocal: sovereignty ought to lie with the people and be reserved for them. Why? Ultimately, Bentham saw the identification of sovereignty with the people collectively as a useful component of a system of securities against misrule, and a check on the organised power of political elites. To elucidate this point, a comparison between Bentham’s approach to popular sovereignty and that of the early French liberals – with whom he was often corresponding with - is instructive.

There are many obvious connections between Bentham and the likes of Benjamin Constant, Condorcet and Germaine de Staël, and their intellectual heirs like Francois Guizot. All displayed a basic scepticism and anxiety about

⁴¹⁰ Unlimited, but not unchecked of course. As Crimmins observed, *all* political authority is “necessarily limited by its power to compel obedience from the people” in the first place. Crimmins, *Utilitarian Philosophy and Politics*, p.151. Bentham also wrote about checks that would be applied by securities against misrule. See *Constitutional Code*, p.141.

⁴¹¹ See page 128 above. For the salience of the distinction between sovereignty and government in the history of modern political thought and democratic theory, see Tuck, *The Sleeping Sovereign*.

unconstrained governmental power and, despite the increasing divergence between Bentham and Constant after the French Revolution, both recognised the importance of some individual, essentially liberal, protections or guarantees against the power of the state. Bentham preferred to call these “securities”, whilst Constant preferred the language of rights, but the distance between these positions was small. Bentham’s issue with the language of rights was in practice a rhetorical one which derived from its association with *natural* rights:

Change the language and instead of can not put ought not, the case is widely different. The moderate expression of opinion and will intimated by this phrase leads naturally to the inquiry after a reason, and this reason, if there be any at bottom that deserves the name, is always a proposition of fact relative to the question of utility. Such a law ought not to be established, because it is not consistent with the general welfare: its tendency is not to add to the general stock of happiness.⁴¹²

Discussions within liberalism usually cast the choice between (liberal) rights and (utilitarian) securities as two fundamentally irreconcilable visions, and the historical decoupling of utilitarianism from early French liberalism lends itself to this reading. But as de Champs convincingly argues, “the two approaches developed historically together and in constant dialogue with one another”.⁴¹³ A comprehensive genealogy of liberalism cannot afford to exclude the contributions of Bentham, a thinker who by his own admission could not do without the idea of liberty.⁴¹⁴

Another foundational agreement between Bentham and the early French liberals concerned the nature of the people: both considered the people to be at base a fictional, rather than a real, political actor. Bentham of course had written at length

⁴¹² Bentham, *Rights, Representation, and Reform*, pp.188-9.

⁴¹³ De Champs, “Happiness and Interest in Politics”, p.34.

⁴¹⁴ Bentham, *The Correspondence of Jeremy Bentham, Vol. I*, p.311.

on the nature of fictions and of the people too, but the perspective of the French liberals on the nature of the people stemmed more from experience than metaphysical investigation. Their view that the people constituted a fiction was also a far more pejorative one than Bentham's. Constant and later Guizot were deeply scarred by the appeals to the people made in the course of the French Revolution. Constant described the people as entirely "abstract", and without substance; a phantom appealed to by all the competing factions in the course of struggle for power in France.⁴¹⁵ A popular sovereign thus was an "abstract thing", and people instead should refer to the real exercise of power by concrete governments. For Guizot:

This collective sovereign has neither form, nor residence, nor majesty. It cannot even be seen in the living people who work in the fields and trade on the streets. It is the people, but only as an idea, an abstract people that can be neither heard nor seen, a people to which only theory attributes a being and a will.⁴¹⁶

However, whilst the French liberals agreed with Bentham's opinion that the people as a collective constituted a fiction, they disagreed forcefully with his prescriptions for placing sovereignty with the fictional people. Both saw such a move as dangerously misguided and likely to facilitate the tyranny of the majority over minorities.⁴¹⁷ Constant in particular thought that the language of popular sovereignty was almost always mobilised by would-be despots to lend a veneer of legitimacy to absolute rule. Indeed, the fictitious nature of the people - their inability

⁴¹⁵ Arthur Ghins, "'Popular Sovereignty that I deny': Benjamin Constant on Public Opinion, Political Legitimacy and Constitution Making", *Modern Intellectual History*, Vol.19(1) (2022), p.132.

⁴¹⁶ Francois Guizot, *Philosophie Politique: de la souverainete in Histoire de la civilisation en Europe suivie de Philosophie politique*, ed. Pierre Rosanvallon (Paris, 1985) p.339.

⁴¹⁷ Aurelian Craiutu, "The Battle for Legitimacy: Guizot and Constant on Sovereignty", *Historical Reflections*, Vol.28(3) (2002) pp.471-91.

to speak for themselves coherently as a collective - meant that they would be unable to object to whatever is done in their name. Constant certainly believed that some popular involvement in politics would be necessary to ensure that liberty was safeguarded, but this involvement was to be realised through public opinion, which Constant considered as an “alternative” to the sovereignty of popular will.⁴¹⁸ Guizot expressed a similar view; popular sovereignty was productive of tyranny and oppression, and thus had to be rejected. Indeed, Guizot suggested that sovereignty ought really to be placed beyond any human agency, be it a king, a representative body or the people as a whole:

I believe neither in divine right nor in the sovereignty of the people. I cannot see in them anything else than usurpation of force. I believe instead in the sovereignty of reason, justice and right: this is the legitimate sovereign that people search and will always search for because reason, truth and justice do not reside anywhere on Earth in a complete and infallible form. No man, no assembly of men can have them or possess them without failure or limits.⁴¹⁹

Constant and Guizot (as well as Mill and Tocqueville later) rejected the notion of popular sovereignty because they thought it would facilitate tyranny and misrule. Bentham, in stark contrast, embraced popular sovereignty because he saw it as a check or “security” against misrule. The question raised is which is the more plausible position, and Bentham would have argued strongly that his was the most tenable from the perspective of general utility. The problem with the argument of the French liberals was that it seemed confused. Were the people real and potentially dangerous, or were they a fiction and thus nugatory? Bentham may have rejected this simple binary, for fictions and indeed fictitious entities were certainly not

⁴¹⁸ Arthur Ghins, “‘Popular Sovereignty that I Deny’: Benjamin Constant on Public Opinion, Political Legitimacy and Constitution Making”, p.130.

⁴¹⁹ Francois Guizot, *Du gouvernement de la France depuis la Restauration* (Paris, 1820) p.201.

nugatory in his mind but frequently had very tangible effects. Nonetheless, he would have rejected the view that making the fictitious people sovereign was dangerous. For Bentham, placing sovereignty with an entity that was fundamentally incapable of positive action because of its very nature was a prudent and useful balancing act. Locating political finality with the people provided a check against the political elites that were actually capable of wielding power, and mitigated what Bentham considered to be a more troubling scenario in which representatives overruled the people and their wishes expressed at the ballot box.⁴²⁰ The people as sovereign was a useful fictitious entity in Bentham's eyes. That was worth keeping because it helped to generate the dependency that Bentham considered essential to utility, whilst leaving political elites legislatively competent.

Public Opinion

Bentham deliberately distinguished between sovereignty and omnicompetence in his later writings in order to be specific about the political functions the people might realistically have themselves, and those that they would always be incapable of fulfilling. The people might be able to select their rulers - and seeing them as the final arbiters in a political community might be prudent in ensuring a sense of dependency on the part of the governing few - but they were not able to legislate or literally govern themselves. Another way he distinguished between the differing political roles of the people and elites was in terms of

⁴²⁰ This argument resembles one made by Edmund Morgan in his *Inventing the People; The Rise of Popular Sovereignty in England and America* (New York, 1988). Morgan argues that the notion of the sovereign people is a fiction which has been mobilised by parliamentary elites to justify their own rule, but which in turn has constrained those same elites because the fiction – upon which their legitimacy lies – must have some degree of plausibility for subjects to “willingly suspend their disbelief” and consent to their being ruled. Morgan, too, sees popular sovereignty as a potential useful security against misrule.

“constitutive” and “operative” power, with the people as a whole in possession of the former and the government in possession of the latter. The notion of constitutive power can be suggestive of primacy. Indeed, this was what Bentham understood the arguments of social contract theorists to be: that constitutive power is logically prior to operative power, which it “constitutes” for a particular purpose and upon which it imposes limits and constrains. But as we saw in the last chapter, Bentham believed that social contract theorists had got the relationship between constitutive and operative power essentially the wrong way round: instead, Bentham contended that constitutive power was entirely in the gift of operative power: as Rosen writes, “the operative power of the government created constitutive power which resided in the people”.⁴²¹ In the essay “Identification of Interests”, Bentham offered the metaphor of a mainspring and a regulator in a watch to illustrate the differing roles of the people and political elites:

In the construction of this part of the machine, the [supreme operative power] performs the office of the mainspring in a watch; the [constitutive power] that of the regulator in a watch. Without the regulator the main spring would do too much; without the main spring the regulator would do nothing: viz. one with one another and antagonizing with one another, in so far as they are aptly proportioned to each other, they will do that which is required.⁴²²

To translate, “operative power is the main spring of the watch and, as such, is the driving force of government. Constitutive power ‘regulates’ operative power”.⁴²³ The operative power of government provides the impetus for politics, whilst the role of the people is to regulate government and to ensure it does not degenerate into misrule. But how? One way in Bentham’s mind was through the selection of rulers

⁴²¹ Rosen, *Philosophical Ideas in Politics*, p.7.

⁴²² Bentham, *First Principles*, p.135.

⁴²³ Rosen, *Bentham, Byron, and Greece*, p.66.

as discussed above, but an equally important device in his schema was public opinion.

Opinion occupied a central role in Bentham's political thought from the outset. He believed, like Hume, that "all power depends upon opinion".⁴²⁴ In rejecting social contract theory as a credible explanation for the foundations of political authority, he instead argued that "all governments that we have any account of have been gradually established by habit, after having been formed by force".⁴²⁵ These are Humean perspectives, but Bentham actually went much further than Hume did in examining "systematically the significance of public opinion for government".⁴²⁶ Bentham did not just think governments were formed by habits that were conditioned by opinions, but that opinions could affect and *did* affect government on a more continuous basis. In fact, many scholars of public opinion or the public sphere have looked to Bentham for theoretical insights on this subject; Jürgen Habermas, one of the most renowned theorists on the subject, cites Bentham's essay "Of Publicity" as a decisive development in the understanding of public opinion.⁴²⁷

In his mature work, Bentham discussed the political significance and function of public opinion almost exclusively in terms of the "Public Opinion Tribunal", which was the entity through which public opinion would be brought into action. As Fred Cutler points out, this was - given his aversion to imprecise and vague terminology - probably out of a desire to give public opinion a greater fixity and concreteness in his theory.⁴²⁸ Yet he also thought public opinion was very real in some sense too. This is not to say that Bentham was unaware of the effervescent nature of the thing that he was seeking to describe and theorise. The Public Opinion

⁴²⁴ Bentham, *Rights, Representation, and Reform*, p.413.

⁴²⁵ *Ibid*, p.331.

⁴²⁶ Peardon, "Bentham's Ideal Republic", p.142.

⁴²⁷ Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger (Cambridge MA, 1989) p.99.

⁴²⁸ Cutler, "Jeremy Bentham and the Public Opinion Tribunal", p.325. He also capitalised the "Tribunal" too.

Tribunal could not be seen or touched, he recognised: “on no occasion are the several members of it seen sitting all together in their official and judicial capacity, or so much as capable of sitting and taking part in the business at the same time and in the same edifice or enclosure...”⁴²⁹. Bentham thought of the Public Opinion Tribunal as a *fictitious entity* - a contrivance of language which served as a shortcut to the truth.⁴³⁰ As he wrote in “Securities Against Misrule”, to speak of a Tribunal of Public Opinion

is in some sort to use the language of fiction. But the fiction is not of the sort of those of which deception is the object and effect. It will be seen to be the work of necessity, interwoven with the texture of all language, and not having deception either for its object or its effect. The groundwork it will be seen is composed of truth: from fiction all that it borrows is a sort of covering necessary to fit it for use.⁴³¹

Elsewhere, he wrote that the fiction of the Public Opinion Tribunal “is of the number of those innoxious and necessary ones which in the state of imperfection to which language stands forever condemned are necessary to giving communication of ideas from mind to mind”.⁴³²

That the Tribunal had its “groundwork” in reality was, for Bentham, most observable in its very real effects. Certainly, the entity itself was “purely fictitious and verbal”, but “as to the effects produced by the action of this body, or at any rate by the anticipation of it, nothing can be more real or more perfectly out of dispute”. “It wears therefore the colour of fictitiousness”, he put it, “but it possesses the

⁴²⁹ Bentham, *Securities Against Misrule*, p.54.

⁴³⁰ University College London Library, Bentham Papers, box 102, folio 23; Runciman, *Political Hypocrisy*, p.132.

⁴³¹ Bentham, *Securities Against Misrule*, p.28.

⁴³² *Ibid*, p.121.

substance of reality”.⁴³³ Bentham thought history illustrated the concrete effects of public opinion in politics:

in this strain for example thought and acted the Members of that Section of the Public Opinion Tribunal by whose warrant, under the denomination of a warrant by the Members of the High Court of Justice, the life of Charles the First of England was Extinguished at Westminster in the year [1649].⁴³⁴

In practical terms, Bentham’s Public Opinion Tribunal was remarkably inclusive: its members would simply be all the members of a political community, even those that were excluded from the franchise in Bentham’s *Code*. It was also potentially international: anyone who took “cognizance” of a given question could contribute to the formation of public opinion on it.⁴³⁵ In typically Benthamite fashion, the *Code* offers an itemisation of the Tribunal’s functions, of which he argued there were four: an “Evidence-furnishing function” - to inquire into and gather facts that would help the public to make judgements on the conduct of their rulers; a “Censorial function” - to give expression “to any judgement of approbation or disapprobation”; an “Executive function” - to administer either punishment or reward to rulers by furnishing them with either good or bad reputations; and a “Melioration-suggestive function” - to suggest improvements to government and policy.⁴³⁶ In Bentham’s conception, public opinion worked in tandem with the locative and dislocative powers to foster interdependency between the people and their rulers; the Tribunal enabled people to express their praise or disapproval of their deputies which would help inform their decision at the ballot box. The effects or anticipation of the effects

⁴³³ *Ibid*, p.28, 54.

⁴³⁴ *Ibid*, p.123.

⁴³⁵ Bentham, *Code*, p.35.

⁴³⁶ *Ibid*, pp.36-7; Cutler, “Jeremy Bentham and the Public Opinion Tribunal”, p.328.

of this mechanism would encourage political elites to serve the interests of their constituents in order to stay in office.

To ensure the Public Opinion Tribunal operated effectively, Bentham argued that a commitment to publicity was necessary, which would allow for the “superintendence of the public”.⁴³⁷ In Bentham’s proposals for representative democracy, publicity in government was to be promoted in several ways: the proceedings of the legislative assembly were to be published (what Bentham termed the publication system) and short-hand writers employed to take notes of speeches made; members of the public were to be admitted to the sittings of the assembly; and the very architecture of public buildings and government departments was to be reformed and redesigned to promote openness and transparency.⁴³⁸ There was, Bentham contended, no limit to the good of publicity, except in the case where the cost of effecting it was prohibitive, or when there would be a temporary utility in secrecy. In the latter case, Bentham thought this would only really apply to matters of foreign affairs and defence, and even then, secrecy should be time-limited, and the prime minister required to report to the legislature on instances of concealment.⁴³⁹

At the same time, for the Tribunal to facilitate the influence of public opinion on government, it was also necessary to enable people to voice their opinions and submit them in a way that would be impactful. This was to be accomplished by a free press, and by the work of newspapers, which Bentham described as the “only effectual instrument” for articulating public opinion.⁴⁴⁰ Bentham went as far as to write that the newspaper editor was second in importance only to the prime minister in a well-functioning representative democracy.⁴⁴¹

There is considerable ambiguity however in the existing literature over the chief end that public opinion might serve in a representative democracy. Frequently,

⁴³⁷ Bentham, *Political Tactics*, p.29.

⁴³⁸ *Ibid*, pp.39-41; & *Code*, pp.438.

⁴³⁹ Bentham, *Constitutional Code*, pp.165-7.

⁴⁴⁰ Bentham, *Securities Against Misrule*, p.44.

⁴⁴¹ *Ibid*, p.45.

Bentham has been placed in a lineage of thinkers who have seen a thriving public sphere as a means of promoting enlightenment or the discovery of the “true” interests of the people. Cutler suggests that Bentham was a “typical liberal, believing that the best approximation to the truth comes from free debate” amongst citizens.⁴⁴² Here, Bentham is considered as an early proponent of the liberal, Millian theory of public opinion, in which freedom of thought and expression is valued primarily in terms of its capacity to aid in the discovery of truth.⁴⁴³ There is a teleological dimension to this theory of public opinion too, in which the conformity of public opinion with “truth” increases over time. Cutler argues that Bentham had a “near utopian faith” in the “progressiveness” of public opinion.⁴⁴⁴ This interpretation is probably partly responsible for the comparisons that have been made between Bentham and his French contemporary, Condorcet. Condorcet himself saw the primary end of publicity and public opinion as that of “truth-seeking” and was an exemplar advocate of the ideas of progress advanced by enlightenment rationalism.⁴⁴⁵

Elsewhere, Bentham’s views of public opinion have been interpreted as a nascent form of deliberative democracy. Both Ben-Dor and Crimmins have contended that, in the latter’s words, Bentham’s approach to public opinion “bears more than a passing resemblance to the deliberative model of Jürgen Habermas”, which suggests that the public sphere is valuable because it creates “opportunities for all citizens to engage in inclusive, equitable, and transparent institutions and procedures”.⁴⁴⁶ Crimmins adds that Bentham believed in the “empowerment benefits derived from public deliberation”, particularly in terms of the “enhanced

⁴⁴² Cutler, “Jeremy Bentham and the Public Opinion Tribunal”, p.323.

⁴⁴³ Philip Schofield, “Jeremy Bentham on the Freedom of the Press, Public Opinion, and Good Government”, p.43.

⁴⁴⁴ Cutler, “Jeremy Bentham and the Public Opinion Tribunal”, p327.

⁴⁴⁵ Nadia Urbinati, *Representative Democracy*, pp.177-81.

⁴⁴⁶ Crimmins, *Utilitarian Philosophy and Politics*, p.155.

agency” of the people.⁴⁴⁷ In this reading, Bentham valued public opinion because it helped facilitate the indirect self-government of the people.

These are, however, significant misunderstandings on why Bentham valued public opinion. Bentham was not so equivocal himself as to what end the Public Opinion Tribunal was designed to serve in his own writing. As he wrote plainly in *Political Tactics*, the purpose of publicity and public opinion was “to constrain the members of the assembly to perform their duty”.⁴⁴⁸ Bentham understood public opinion primarily through the lens of *security*: its role was to help secure the people from being misruled. It was not about helping to facilitate a deliberative democracy in which the people somehow ruled themselves by participating in the formation of government decisions. Indeed, whilst Bentham spent much time detailing the functions of the Public Opinion Tribunal, he gave “short shrift” to the ameliorative function - the function with the most participatory implications - because it was the least important in his mind.⁴⁴⁹ Those looking for a Habermasian, participatory theory of deliberative democracy in Bentham’s proposals for the Public Opinion Tribunal should bear in mind his clear efforts throughout his mature work to distinguish the political roles of the people from that of governors - sovereignty from omniscience. Public opinion was not indirect self-rule in Benthamite representative democracy.

Yet nor was public opinion intended for “logical ratiocination” or the discovery of truth or the “true” popular interest.⁴⁵⁰ Yes, Bentham thought that with increasing publicity and education, public opinion would become more coterminous with truth. As he wrote in the *Code*, the “coincidence” of public opinion and

⁴⁴⁷ *Ibid.*

⁴⁴⁸ Bentham, *Political Tactics*, p.29.

⁴⁴⁹ Cutler, “Jeremy Bentham and the Public Opinion Tribunal”, p.329.

⁴⁵⁰ Rosen, *Jeremy Bentham and Representative Democracy*, p.38. Bentham was not thus unconcerned with truth, but he saw it as secondary to considerations of security. Indeed, Schofield has argued that the distance between Bentham and John Stuart Mill on this point is shorter than is often assumed. See Schofield, “Jeremy Bentham on the Freedom of the Press, Public Opinion, and Good Government”, pp.52-3.

aggregate utility (that is, the public interest) would increase and “deviations” would become less numerous.⁴⁵¹ He added too that public opinion represented the “surest visible sign” available of what was truly in the general interest.⁴⁵² But Bentham’s argument was a probabilistic one. He did not believe there was a necessary correlation between public opinion and truth, and they were certainly not the same thing.⁴⁵³ *Contra* Cutler, there was little that was “utopian” in Bentham’s arguments about public opinion.

In fact, Bentham was well aware that public opinion might be *wrong* - that its dictates might *not* be in harmony with the actual interests of the people as a collective. The truly original part of Bentham’s arguments regarding public opinion - and the aspect of it that most clearly highlights the centrality of security - was that he thought political representatives should still be bound by public opinion *even* when they thought it to be mistaken. Bentham makes this argument in a fascinating chapter in *Political Tactics*. In general, he put it, the supposition that public opinion is “in accordance with the public welfare” is “well founded”:

Still, however, the opinion of the public may be incorrect since all the members of this tribunal are men. If there be measures upon which the wisest men are not agreed, how is it possible that the public should agree who are not all wise?... It may therefore be said, that in those cases in which public opinion is erroneous, it is desirable that the legislators should vote in secret, that they may be withdrawn from unjust censure, and rendered more free in their votes”.⁴⁵⁴

⁴⁵¹ Bentham, *Constitutional Code*, p.36.

⁴⁵² University College London Library, Bentham Papers, box 127, folio 3.

⁴⁵³ See Schofield, ‘Bentham on Utility and Truth’, pp.1125-42.

⁴⁵⁴ Bentham, *Political Tactics*, p.144.

Bentham rejected this view because he saw in it a recipe for misrule. If the political elite could simply overrule the constraints put upon them for the security of the people, then the value of those constraints would be significantly undermined. “It follows”, he thus wrote, “that recognizing the fallibility of the public, it is proper to act as though it were infallible; and that we ought never, under pretence of this fallibility, to establish a system which would withdraw the representatives of the public from its influence”.⁴⁵⁵ As alluded to in Chapter II, then, this is one of those occasions in which Bentham discusses the people in terms far more suggestive of a fiction – an untrue proposition – than a fictitious entity. Bentham’s willingness here to sacrifice considerations of truth and veracity to those of security derived from his realistic understanding of what a representative democracy was for and what it could in practice achieve.

Harrison has lambasted Bentham for what he calls his “emotivist retreat from the common pursuit of true judgement”, but this is to miss the point.⁴⁵⁶ Bentham himself was well aware of the arguments made at the time against increasing the influence of popular opinion: “These judges”, he wrote

by whom every person and everything are to be judged, who, it may be said, are they? Who but the members of that body, the vast majority of whom are,

⁴⁵⁵ There are some interesting historiographical details about this work from which this passage derives. Only a very small part of this work was definitely penned by Bentham himself. The rest of it comprises chapters from Etienne Dumont’s French translation, *Tactique des Assemblées Législatives, Suivie d’un Traité des Sophismes politiques*, and the translation of that work back into English by Richard Smith, which was published in the Bowring edition of *The Works of Jeremy Bentham* as “An Essay on Political Tactics”. It is impossible to tell how much of this text was contributed by Dumont and Smith; the former in particular is understood to have been innovative in his translations. It is plausible that the actual word “infallible” was not Bentham’s, given his frequent contestations against the notion elsewhere (See Melissa Schwartzberg, “Jeremy Bentham on Fallibility and Infallibility”. *Journal of the History of Ideas*, Vol.68(4) (2007) pp.562-86). Nonetheless, Bentham’s specific arguments here seem to fit in with the general arguments he made across the works he wrote after his democratic turn in the early nineteenth century – of the necessity of binding representatives more closely to their electors. And the work, as its editors remark, bears the mark of Bentham’s “peculiar genius for organisation and classification”.

⁴⁵⁶ Harrison, *Bentham*, pp.193-4.

and always will be, in all places, and at all times, the comparatively ignorant and weak judgemented: and it is by these least informed, that all better qualified judgements are expected to be influenced and guided?.⁴⁵⁷

In response to this, Bentham remarked that it is not in the correctness of any specific judgement that the value of public opinion is to be found, but in the general dependency inculcated by public opinion:

It is not from any particular judgment, ascertained to be on any occasion actually delivered by them, that the good here looked to, is expected. What is not proposed is, that the votes of any of them, shall on any particular question, be collected: on no other occasion than that of an election of deputies will that be done, in regular course. It is from the opinion expected to be on each occasion inwardly entertained by them, that the good is looked for. It is not from anything expected to be said, only from what it is expected will be thought, that the benefit is expected. Included in this aggregate judgment, are the judgments of the most unapt, as well as those of the most apt.⁴⁵⁸

This view makes sense once it is understood that the function of public opinion for Bentham was as a security against misrule, and that its value was to be found not in the truthfulness of *particular* judgements or in its capacity to facilitate popular self-rule, but in the fact that as a *general* principle it might help protect people from the tyranny of their rulers.

Another objection to Bentham's understanding of public opinion was that it was in some way idealistic or unrealistic - that the Public Opinion Tribunal offered no real, concrete protections for the people against their rulers, and that the idea that

⁴⁵⁷ Bentham, "Constitutional Code", p.42.

⁴⁵⁸ *Ibid.*

it affected government decisions was simply mystification. In response to this, two things might be said. First, Bentham thought that the Public Opinion Tribunal was indeed a fictitious entity, but as noted, he believed its effects and consequences were perfectly real and observable. But perhaps more substantially, Bentham argued that a realistic view of politics must recognise that humans are deeply motivated by fictions, passions and the non-rational dimensions of life. Those who desired simple, empirical, verifiable frameworks for understanding the world were just as guilty as the “idealists” that they criticised of offering a caricatured image of the world for Bentham. In particular, Bentham made this critique of those who were seeking the same democratic ends that he was towards the end of his life. Some, he argued, might reject the Public Opinion Tribunal’s value on the basis of its fictitiousness or “irregularity”: “By those by whom regularity is preferred to happiness, this same irregular tribunal will be hated”. But:

Those who desire to see any check whatsoever to the power of the government under which they live, or limit to their sufferings under it, must look for such check and limit to the power of the Public Opinion Tribunal, irregular and, to the degree in which it has been seen, fictitious: to this place of refuge or to none...⁴⁵⁹

On balance, Bentham thought that the fictitious Public Opinion Tribunal, in combination with the treatment of the people *as if* they were infallible, was useful and would help to secure the people from misrule.⁴⁶⁰

⁴⁵⁹ Bentham, *Securities Against Misrule*, p.124-5.

⁴⁶⁰ Bentham would have come to this view reluctantly. He was far more zealous in his critique of fictions before his discovery of sinister interests, and throughout his life he was an opponent of the idea of infallibility. Nonetheless, Bentham was prepared to entertain this fiction because he thought it would help to empower the people against the organised sinister interests of political elites. Schwartzberg, “Jeremy Bentham on Fallibility and Infallibility”, pp.562-86.

Equally importantly, Bentham understood that there was a dialogical element to public opinion that fitted into the dualism that he considered critical to the functionality of a representative democracy. There would be a constructive conversation between the people and their deputies: Bentham thought that public opinion would foster “a dialogue between legislators and people which could benefit both parties. The legislators would learn the real wishes of the people, who themselves would be better informed”, and “Electors would have more information on which to base their choice of representative”.⁴⁶¹ However, the institutionalisation of the Public Opinion Tribunal was not designed to transfer the activity of governing to the people themselves. It was, rather, intended to secure the people against the misrule of political elites who would continue to govern them. Publicity and public opinion would constrain rulers “to perform *their* duty”, rather than making government the duty of the people. Bentham was pragmatic about the capacities of the people in politics, but he was conscious too of the workings of power and the necessity of checks and securities against the tendency of all representative government to corrupt. Public opinion would help strike a balance in representative democracy that would enable it to stave off the twin threats of misrule and anarchy.

The Tyranny of the Majority

In their *Democracy for Realists*, Achen and Bartels assume that there is a wide gulf between the realism of Madisonian democracy and the idealism of Benthamite democracy.⁴⁶² This seems to me, however, to result from a quite significant historical misinterpretation. As the foregoing has shown, there are some important and obvious affinities between the vision of representative government expressed by

⁴⁶¹ Rosen, *Jeremy Bentham and Representative Democracy*, pp.176-7.

⁴⁶² Achen and Bartels, *Democracy for Realists*, p.230. Madison of course would have rejected the notion that he was a “democrat”.

both of these thinkers. In fact, Bentham went as far as declaring that *The Federalist Papers* - written by Madison, Alexander Hamilton and John Jay, and considered the clearest articulation of Madisonian democratic principles - was “the work which contains by far the greatest quantity of sound reasoning and useful instruction on the subject of government”.⁴⁶³ Both Madison and Bentham were deeply committed to the “scheme of representation” and were sceptical of proposals for popular self-rule. Like Bentham, Madison saw elite rule as political inevitability, and believed the primary purpose of constitutional design to be constraining those elites, rather than facilitating the literal government of the people: “In framing a government which is to be administered by men over men”, he wrote in *Federalist 51*, “the great difficulty lies in in this: you must first enable the government to control the governed; and in the next place oblige it to control itself”.⁴⁶⁴ Bentham could hardly have agreed more.

Both too viewed politics through the prisms of power and interest, rather than truth and rationality. Take for example their respective comments on “factions” or particular interests in politics. Famously, Madison writes in the tenth *Federalist* paper that a corrosive “disease” to be combatted in politics is that of faction: “By a faction I understand a number of citizens... who are united and actuated by some common impulse of passion, or of interest, adverse to... the permanent and aggregate interests of the community”. And whilst factions in the sense of particular interests were, given human nature, inevitable, the political effects of them were pernicious to a community and needed to be mediated. This, Madison believed, could be achieved by representation, which would “refine” and “enlarge” the public views, and over a large scale would make the establishment of concrete interests or factions antagonistic to the interests of people harder and less likely.⁴⁶⁵ Bentham possessed a broadly analogous view. Particular interests were a political

⁴⁶³ Bentham, “Constitutional Code”, p.123.

⁴⁶⁴ James Madison, “Federalist No.51”, in *The Federalist Papers*, ed. Michael Genovese (New York, 2009) p.120.

⁴⁶⁵ Madison, “Federalist No.10”, p.50.

inevitability: humans are by their very nature self-regarding, and no structure of government or constitutional framework could alter basic human nature.

Nevertheless, a regime in which the people as a whole elect political representatives to govern on their behalf would have the effect of making the organisation of sinister interests opposed to aggregate utility more difficult:

Where the government is in the hands of all, or what comes to the same thing, of those whose collective interests are the same with the interests of all, the natural effect of the principle of self-preference is - not as in the case where it is in the hands of one, or of a few, the sacrifice of the interest of all, to the interest of that one or those few; but the sacrifice of all interests that are opposed to the happiness of all. In so far as his aim is, to sacrifice all interests to his own, - the interests of others, to that which is peculiar to himself, no man finds any effective number of hands disposed to join with his: in so far as his aim is, to serve such of his interests alone, as are theirs as well as his, he finds all hands disposed to join with his: and these common interests correspond to the immediately subordinate right and proper ends of government, maximization of subsistence, abundance, security, and equality.⁴⁶⁶

The dichotomy of “realistic Madison” and “idealistic Bentham”, then, is a false one. Nonetheless, there was a fundamental disagreement between the two thinkers, and it concerned what they respectively considered to be the primary danger of a representative democratic regime. For Madison, the primary danger was to be found in its potential for majority tyranny - that an “interested and overbearing majority” might come to oppress a minority or deprive them of their rights.⁴⁶⁷ In this, Madison fits into a long lineage of liberal thinkers who have considered the “democratic”

⁴⁶⁶ Bentham, “Constitutional Code”, p.63.

⁴⁶⁷ Madison, “Federalist No.10”, p.49.

component of representative democracy to be the most hazardous part of it. Alexis de Tocqueville offers perhaps the clearest and most famous explanation of the concern about majority tyranny in his 1835 *Democracy in America*. However, the charge of embracing a crude majoritarianism was one that was made both indirectly and directly of Bentham himself. In the first instance, utilitarian logic was closely associated with many in the period with democratic excess. The early French liberals offered a vision of politics in which majoritarianism, revolution, democracy and *utilitarianism* were antagonistic towards the rights and protections of individuals. As de Staël described the logical consequences of the principle of utility, “according to what arithmetical calculation is this sacrifice to be enjoined? Can the majority dispose of the minority if the former only exceeded the latter by a few votes?”⁴⁶⁸ Mill in his essay on Bentham made the charge more explicitly. Bentham’s political proposals, he argued, assumed the idea that we should be under the “despotism” of the opinions of the “numerical majority” as a “universal truth”. This despotism would arrogate itself not only over the “bodies” of individuals, but their minds too, resulting in a sort of slavish “groupthink” that would be destructive of individuality.⁴⁶⁹ Mill recognised that Bentham’s representative democracy might use majorities and representation to check sinister interests, but he worried that it would equally threaten non-sinister interests too, like those of minorities.

The first thing to say here is that Bentham’s representative democracy was far more nuanced than the criticisms of de Staël and Mill would suggest, principally because Bentham’s *utilitarianism* was itself more nuanced than has previously been recognised. Yet, as Schofield has explained, certain sacrifices of the minority to the majority were justifiable for Bentham; utilitarianism (and indeed representative democracy) would not work as a system if they were not. How else could Bentham argue that the particular interests of rulers should be subservient to the interests of the people? But that is not to say that *any* sacrifice was necessary in Bentham’s mind,

⁴⁶⁸ Germaine de Staël, quoted in de Champs, *Enlightenment and Utility*, p.189.

⁴⁶⁹ Mill, “Bentham”, pp.106-7.

and he himself offered substantial qualifications to his majoritarianism.⁴⁷⁰ For one, he argued strongly for rights as “expectation securities” in a political society: a single act that violated a system of expectations - such as property rights - would not produce net happiness.⁴⁷¹ Order and stability, which in turn helped to secure expectations, were a prerequisite for generating aggregate utility, and thus individual acts that compromised these things were not justifiable in Bentham’s utilitarianism.

Furthermore, Bentham’s majoritarianism was heavily qualified by what he called the “disappointment prevention principle”, which held that, *ceteris paribus*, the pain of the loss of something will outweigh the pleasure of the gaining of that same thing. This principle was, in Bentham’s words, “the one all-comprehensive rule of civil justice” upon which property law ought to be based.⁴⁷² The disappointment prevention principle established the primacy of security over other considerations like equality in Bentham’s utilitarian calculations and gave them a “conservative” dimension on big public policy questions.⁴⁷³ To this end, Bentham rejected proposals for, say, wholesale property or wealth redistribution; any happiness gained by such a course of action would be far outweighed by the net pain caused by the disappointment of loss inflicted. Bentham wrote specifically that majoritarianism ought to be qualified in the instance of slim voting majorities. If there were two groups, one of 2001 people and another of 2000, and if you were then to deprive the latter of all their liberties and material goods in order to serve the interests of the former, then the net result would be greater pain than pleasure, Bentham averred.⁴⁷⁴

Aside from these qualifications to majoritarianism in a representative democracy, however, Bentham made the broader argument that it was not the democratic element of this type of polity that was the most hazardous. It was not, in

⁴⁷⁰ Schofield, *Utility and Democracy*, pp.38-40.

⁴⁷¹ Kelly, *Utilitarianism and Distributive Justice*, pp.64-9.

⁴⁷² Bentham, *Deontology*, p.308.

⁴⁷³ Crimmins, *Utilitarian Philosophy and Politics*, pp.63-6.

⁴⁷⁴ Bentham, *Deontology*, pp.309-10.

other words, the people as a collective that we should be worried about, for the people lack the fundamental agency to tyrannise. Naturally they constitute a multitude of disorganised individuals, whilst their collective identity is fictitious. They have a basically limited capacity to coerce, because power attaches itself to real persons and not fictitious ones. If there is a threat or danger in a representative democracy, it will come, not from the people, but from the political elites. Yes, the people can “locate” and “dislocate” those that govern and influence them through the power of public opinion.⁴⁷⁵ But they cannot wield power. It is political elites who have the agency to tyrannise and potentially sinister interests to pursue. And in practice, Bentham did not believe that the sacrifice of majorities to minorities “was necessarily a characteristic of good government, and nearly always saw in it mischievous effects”.⁴⁷⁶

On balance, Bentham determined that investing the fictitious people with sovereignty, providing them with constitutive powers and political finality and facilitating the workings of public opinion were worthwhile, *useful* securities against misrule, given that misrule would invariably come from the powerful few rather than the disempowered and vulnerable many. For what interest, Bentham asked, have the people in being misruled?⁴⁷⁷ Benthamite representative democracy was realist democracy: it was conscious of the basic limitations of popular politics; it recognised the importance of power and the pathological tendency of rulers towards corruption; and it offered a system in which those most qualified to govern would do so but would simultaneously be accountable to and dependent on their electors. It was a political programme not aimed at the discovery of truth or popular self-rule,

⁴⁷⁵ Jeremy Bentham, *Securities Against Misrule*, pp.29-31.

⁴⁷⁶ Rosen, *Bentham, Byron, and Greece*, p.53. Curiously, Bentham’s position on this subject was similar to that of Constant. Despite his misgivings about the notion of sovereignty (popular or otherwise), Constant was just as worried about minority, rather than majority tyranny. In particular, he was concerned about enterprising, demagogic individuals who might come to dominate popularly elected legislatures and employ the authority that such bodies confer tyrannically. See Selinger, *Parliamentarism*, p.129.

⁴⁷⁷ Bentham, “Plan of Parliamentary Reform”, p.445.

but at producing a stable political order that might mitigate the dual pathologies of misrule and anarchy, and within which individuals might pursue utility with a degree of security.

Chapter VI

Bentham and Contemporary Political Theory

To return to a point that was made at the very beginning, a primary objective of this thesis has been to offer a historical appraisal of Bentham's theory of representative democracy – one that rejects the received historiographical view of Bentham and instead considers what Bentham himself intended his proposals to be for, and what problem he saw them addressing. His representative democracy was not straightforwardly a schema for a utilitarian 'utopia'; it was a realistic proposal for addressing a specific set of political problems, and it was rooted in his understanding of the nature of the people and political elites. In the foregoing chapters, the thesis has looked to refocus how we understand the "historical" Bentham.

Nevertheless, this thesis also has a more ambitious goal of demonstrating that Bentham's political thought ought not to be merely an object of historical curiosity but might actually be instructive for contemporary political theory. Is abstracting Bentham's ideas from their historical context and applying them in different temporal settings justifiable? The Skinnerian warnings against such an approach to political thought are well known: the risks of anachronism; the inseparability of meaning from context; the foreignness of the past.⁴⁷⁸ Yet there seems to be some sensible reasons for why Bentham's work might be relevant to those thinking about representative democracy today. As outlined in the Introduction, there is a "perennial" quality to many political dilemmas that makes comparisons across time defensible.⁴⁷⁹ Questions like "what is the proper political role of the people?", or "what should the relationship between those that rule and those that are ruled be?", or even "how do we stave off the twin threats of anarchy and tyranny?" are just as

⁴⁷⁸ Skinner, "Meaning and Understanding in the History of Ideas", pp.3-53.

⁴⁷⁹ Bevir, "Are there Perennial Problems in Political Theory?", pp.662-75.

salient today as they were at the turn of the nineteenth century when Bentham was writing about politics. Talking about Bentham's relationship to the present seems valuable; much of course has changed, and there are aspects of contemporary politics that would be utterly incomprehensible to Bentham. But at the same time, Bentham wrote about and discussed several questions that all societies must address, including our own.⁴⁸⁰

Much of Bentham's relevance to contemporary political theory has been obscured by what I have contended is misrepresentative history. Above, I have shown that, from the younger Mill through Schumpeter and up until the present, Bentham's political thought has been fundamentally mischaracterised, as either providing an idealistic blueprint for popular self-government, or as a rationalist endorsement of independent elite government. These historiographical frames have not only obfuscated Bentham's relevance to the political theory of representative democracy generally, but also the lessons that he holds for a particular subset of political theory – that of political realism. Indeed, it will have become clear over the previous chapters that much of what Bentham wrote had a proto-realist dimension to it; many of the problems and dilemmas that he diagnosed with politics and the responses he proposed to them constitute nascent forms of those that occupy the thoughts of self-defining realists today.

In this chapter, I will propose that Bentham's work might be relevant to the contemporary study of representative democracy in four key areas: the people and their political function; the role of fictions in politics; the implications of populism and technocracy for representative government; and the purpose of public opinion. I

⁴⁸⁰ There is precedent for applying Bentham's teachings about politics to the present. Of particular note, in 2006, Rosen gave a fascinating lecture on the similitudes between Bentham's political thought and the philosophical underpinnings of Tony Blair's New Labour. Rosen drew comparisons between New Labour's rhetoric about the few and the many and Bentham's ruled-rulers dichotomy, between the former's commitment to a Freedom of Information Act and the latter's publicity principle, and between their respective attitudes towards economics and wealth distribution. In this chapter, I want to do something comparable to Rosen, but with a political-theoretical rather than party-political focus. See Rosen, *Philosophical Ideas in Politics*.

also wish to propose that what Bentham has to say in these specific areas has a particular relevance to political realists.

The People and Popular Politics

Of the more conspicuous features of the contemporary political landscape are the widespread calls for more forms of popular self-government. Deliberative democrats assert that consulting the people more closely as to what their opinions are will also help to make government more closely reflect popular will and thus more legitimate in the eyes of those subject to it.⁴⁸¹ Participatory democrats propose that the people can literally govern themselves via referenda, and that technological advancements and the example of Switzerland show that the people can take direct control over a growing number of governmental decisions.⁴⁸² Proposals for citizens' assemblies – in which juries composed of members of the general public study policy dilemmas and give recommendations to legislators – appeal to both deliberative and participatory democrats. These developments can seem novel. There is, however, a perennial nature to calls for the self-government of the people. Since the inception of modern representative democracy at the turn of the nineteenth century, there has existed a vision of democracy that considers the impetus and stimulus for politics to come from the people, and a belief that somehow transposing the activity of government to the people collectively is judicious. Whilst these appeals feel modern today, this moralised view of representative government has, as Chapter IV made clear, always existed in modern democracy.

⁴⁸¹ See Jürgen Habermas, "Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory of Empirical Research", *Communication Theory*, Vol.16 (2006) pp.411-26; John Parkinson and Jane Mansbridge, *Deliberative Systems: Deliberative Democracy at the Large Scale* (Cambridge, 2012).

⁴⁸² See, for example, Peonidis, *Democracy as Popular Sovereignty*.

Bentham has often been cast as a supporter of this viewpoint. Peonidis, for example, has found in Bentham a blueprint for indirect popular self-rule via mandated delegates, whilst Ben-Dor has suggested that Bentham advocated a polity in which the people constantly renegotiate the constitutional limits of their government.⁴⁸³ On this subject, both Bentham's supporters and critics have tended to agree; critics like Schumpeter, Achen and Bartels have offered a similar interpretation of Benthamite democracy.⁴⁸⁴ However, Bentham in fact would have urged considerable caution when considering recommendations for moves towards popular government. Most importantly, Bentham believed the very nature of the people represented a basic structural reality of politics that applied just as much in a representative democracy as it did any other form of polity. Representative democracy is certainly *for* the people; the sole end of action in the utilitarian framework is the greatest aggregate happiness that can be achieved, and this applies to government as it does to any other sphere of human endeavour. But government can never be *by* the people because the people are a fiction and thus inherently incapable of independent action. In terms of the concrete proposals for popular rule via referenda, Bentham would have seen the influence of sinister interest at work. Bentham did contend for one type of plebiscitary power, which was the right of constituents to recall their representatives (the "dislocative" function). But with regards to substantive policy and governmental decision-making, Bentham was clear that this was to be conducted by the political elites that wielded operative power, not simply because this was desirable – political elites were more likely to have the aptitude to govern – but *because this could not but be the case*. Bentham was unconvinced by the idea that the people could instruct their rulers or ever literally rule. Elite government was simply a political fact that any political regime had to acknowledge.

⁴⁸³ *Ibid*; Ben-Dor, *Constitutional Limits and the Public Sphere*.

⁴⁸⁴ Schumpeter, *Capitalism, Socialism and Democracy*, p.250-2; Achen and Bartels, *Democracy for Realists*, p.230.

Another key insight Bentham offers is that when politicians deploy the language of popular self-rule in justifying referenda or other forms of participatory democratic governance, it is not merely nugatory or inconsequential because untrue, but “flagitious” – they are employing falsehoods that act as a smokescreen to what is really going on, which is that the elites are still ruling, but legitimating their activities duplicitously by claiming that they are really the activities of the people. Referendums, for example, are not the spontaneous productions of the people themselves. They are decided upon, legislated for and organised by political elites. The choices on the ballot paper are selected by those same elites, and how to interpret the results is at their discretion too. Bentham would concur with Schumpeter that any “popular will” does not exist organically “out there” but is only ever manufactured by politicians.⁴⁸⁵ We should not then forget that referendums do not really transfer governing power to the people; when used, they are simply one more mechanism to lend legitimacy to the rule of elites. Failing to recognise this makes it easier for sinister interests to operate under the cover of fiction: political elites can absolve themselves of justifying actions in terms of aggregate utility by deploying the rhetorically and emotively powerful language of popular self-rule. In the case of citizens’ assemblies and other deliberative democratic schemes, Bentham of course ascribed significant weight to the Tribunal of Public Opinion in his work – something we shall come to - and he may well have been receptive to these proposed assemblies as potential “committees” of the Tribunal. But Bentham in no way envisaged this Tribunal taking on the power to govern, and the suggestion that it might could only be flagitious in his mind.

Thus, if there are problems or dilemmas of government to be solved in a representative democracy, however hard they are, Bentham reminds us that the solution cannot lie ultimately with the people, and we should be distrustful of those political elites that claim that it might. Rather, any solution must lie inevitably with

⁴⁸⁵ Schumpeter, *Capitalism, Socialism and Democracy*, p.263.

the individuals that the people choose to rule over them. This is not to say the people do not have a role to play; Bentham thought that they did, but it is not the role participatory democrats ascribe to them. It is to ensure the moral, intellectual and active aptitude of those that rule via their constitutive powers and the influence of public opinion, not to become the rulers themselves.

Whilst he is often claimed (or spurned) as a theorist of how participatory democracy might work in practice, then, Bentham is far more pertinent to realists – those sceptical about the possibilities of popular self-government. Amongst other things, William Galston argues, realism defines itself by its “robust conception of political possibility and rejection of utopian thinking”, particularly concerning what function the people can and cannot perform in government. In this, political realism can also be connected with the elite theorists of democracy of the twentieth century.⁴⁸⁶ Like Achen and Bartels, Bentham rejected idealised accounts of democracy as popular self-government as unattainable, but also potentially dangerous, inflating the expectations of the people and promoting disillusionment and sapping the vitality of representative democracy. And with Schumpeter, Bentham would have wholeheartedly agreed that democracy was not about facilitating popular self-rule, but selecting or “locating” the government or “operative power” – the ruling few. Arguably, Bentham theorised what we might call an “iron law of representation” for politics – that government would always be of the many by the few. A state in which this did not take place was not really a state at all, he argued; it was the absence of a political state – anarchy. All political societies possess a group that govern and represent the many. And this, he wrote in the *Constitutional Code*, is true not only of aristocracies or monarchies, but

⁴⁸⁶ William Galston, “Realism in Political Theory”, pp.385-411; See also David Held, *Models of Democracy* (Cambridge, 1987) pp.125-57.

representative democracies too.⁴⁸⁷ Such a stance on government is evocative of how realists have come to conceptualise the constraints on popular politics.⁴⁸⁸

What Bentham recognised, though, and what many realists have failed to recognise, is that purely elite government, devoid of any popular involvement, is pathologically liable to degenerate into misrule and bad government. Bentham was no participatory democrat, but he made the case strongly that the people needed to be afforded some role in politics to secure themselves against tyranny. If independent elite government in its tendency towards tyranny is also pathological to stable political orders, then realists - for whom order is the political *sine qua non* - must be equally as sceptical about it as calls for popular self-government. They also ought to put forward a positive account of what place the people should have in politics, and how they might mitigate tyranny. What that place might be will be considered in due course below.

Fictions

Political theorists tend to have difficulties placing and establishing the value of fictions - those accounts of politics that are not necessarily in point of fact or empirically true, but nonetheless shape how we experience the world. This is especially the case for those thinking about democratic politics, for democracy is often seen as having an exceptional, *sui generis* relationship with truth compared

⁴⁸⁷ Bentham, *Constitutional Code*, p.433.

⁴⁸⁸ Compare for example Robert Michels' influential account of the "iron law of oligarchy" in *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (New York, 1915) pp.11,390. Michels writes that "the majority is thus...incapable of self-government. Even when the discontent of the masses culminates in a successful attempt to deprive the bourgeoisie of power, this is after all... affected only in appearance: always and necessarily there springs from the masses a new organised minority which raises itself to the rank of a governing class... ". This "principle of oligarchy", as Michels labelled it, is "a preordained form of the common life of great social aggregates". Even a democracy, Michels thought, with all its noise about popular self-government, was still a society in which a particular formulation of the few rule over the many.

with other political forms. Fictions, myths, falsehoods, fictitious entities, lies – all are conflated as modalities of the same thing, which is the binary opposite of the truth. Generally, it is thought that those who attribute value to such things are conservative, elitist, or anti-democratic: the likes of Plato with his endorsement of the “noble lie”; Edmund Burke with his veneration of “the decent drapery of life” and “all the superadded ideas, furnished from the wardrobe of a moral imagination”; and De Maistre, who argued that “man needs beliefs, not problems”.⁴⁸⁹ Fictions, like the divine right of kings or the virtuousness of the well-born, are what pre-modern, pre-democratic regimes depended upon in this worldview to keep the people in the dark about the flimsiness of their claim to rule. Democracies by contrast are a more “enlightened” form of government committed to the truth. As Bernard Williams’s writes in *Truth and Truthfulness*, in a democracy:

The people are the source of the government’s authority and (under various substantial restrictions) even of its policies. Government is in some sense a trust; there is a special relationship between government and people, *and it is a violation of this conception for secrecy or falsehood to come between trustee and people*.⁴⁹⁰

Democratic regimes, however, rely upon the use of fictions to legitimate themselves just as much as any other form of polity; representative democracy relies on a certain “economy” with the truth.⁴⁹¹ As Judith Shklar argues, “it is not at all clear that zealous candour would serve liberal democracy particularly well”. The democracy we value, she writes, “does not arise from sincerity. It is based on the pretence that we must speak to each other as if social standings were a matter of indifference in

⁴⁸⁹ See Edmund Fawcett, *Conservatism: The Fight for a Tradition* (Woodstock, 2020) p.419.

⁴⁹⁰ Bernard Williams, *Truth and Truthfulness: An Essay in Genealogy* (Princeton, 2002) p.210. [my emphasis].

⁴⁹¹ Margaret Canovan, “On Being Economical with the Truth”, *Political Studies*, Vol.38(1) (1990) pp.5-19.

our views of each other. That is, of course, not true.”⁴⁹² The unadulterated truth is that the people are a disorganised multitude of unequals that are destined by their very nature to be ruled over. Representative democracy depends on the belief that there is more to politics than absolute sincerity about this truth. They require what Edmund Morgan has called the “willing suspension of disbelief”.⁴⁹³

Bentham recognised this better than anybody. He believed that the people and their mouthpiece in the Public Opinion Tribunal - “fictitious entities” in his taxonomy - were some of the most important constraints or checks on the ruling few in a representative democracy. In fact, to return to a passage quoted earlier, Bentham argued that “irregular” fictions or fictitious entities might be the *only* place to look to in some regards for protection against misrule: “to this place of refuge or to none”.⁴⁹⁴ In his writings on politics, Bentham talked positively about the people as a collective, even though he believed they constituted a fiction of sorts.

Realists have a particularly acute dilemma when it comes to truth and democratic politics. Should they criticise fictions as being an inaccurate account of what is going on, or should they recognise their value in sustaining political order? This points up a salient and awkward tension in realism that makes it difficult for its advocates to offer a coherent position on the normative status of fictions. Of course, many realists consider their *raison d'être* to be producing a more accurate, *truthful* account of politics – in particular, one that does not rely on a mythology or “folk theory” of democracy as some morally purer form of government, but that instead articulates more closely what in point of fact happens in democratic politics.⁴⁹⁵ To this end, fictions represent an obstacle to a “truer” account of how politics works to many realists, and thus something to be exposed and debunked. For certain contemporary practitioners, this has sometimes translated into a normative

⁴⁹² Judith Shklar, *Ordinary Vices* (London, 1984) p.77.

⁴⁹³ Morgan, *Inventing the Sovereign People*, p.14.

⁴⁹⁴ Bentham, *Securities Against Misrule*, p.125.

⁴⁹⁵ Achen and Bartels, *Democracy for Realists*, p.1.

commitment to “unmasking”; Raymond Geuss, Janosch Prinz and Enzo Rossi for example, often drawing on Bernard Williams’s “Critical Theory Principle”, contend for the importance of challenging assumed beliefs, not simply because they obscure a true account of political reality, but because they might also be instruments of coercion.⁴⁹⁶ Yet at the same time, realists have a primary commitment to sustaining stable political orders, and it is not always clear that unmasking the bare truth is conducive to this end: “such a critical exercise is potentially detrimental of political power. Indeed, reflection might push us to revise our beliefs in light of this newly acquired awareness, and such a reflective attitude can foment hostility towards existing power structures”.⁴⁹⁷

Bentham offers a far more convincing framework for approaching the question of fictions in democratic politics. Bentham was in some ways a typical realist.⁴⁹⁸ He subscribed to what is perhaps the key realist “truth” in democratic politics, which is that the people can never actually rule themselves. Bentham worried about those politicians who marshalled the language of self-rule skilfully, because he knew that popular self-rule was a practical impossibility; the purpose of such appeals was really to provide a moral façade for the rule of the politician, which was pernicious because it enabled those same politicians to avoid having to justify their behaviour in terms of utility. But Bentham was also of the view that by itself, this “truth” is not helpful or *useful*, and this makes him a highly idiosyncratic realist. Simply stating that that the people are incapable of acting independently in politics is not particularly democratic, and democracy itself might depend on things that cannot be valued simply in terms of their truthfulness. Truth, Bentham believed,

⁴⁹⁶ Greta Favara, “Political Realism as Reformist Conservatism”, *European Journal of Philosophy*, Vol.30(1) (2022) pp.326-44; Janosch Prinz and Enzo Rossi, “Political Realism as Ideology Critique”, *Critical Review of International Social and Political Philosophy*, Vol.20(3) (2017) pp.348-365; Geuss, *Philosophy and Real Politics*, pp.50-5.

⁴⁹⁷ Greta Favara, “Political Realism as Reformist Conservatism”, p.330.

⁴⁹⁸ Runciman, “Political Theory and Real Politics in the Age of the Internet”, p.6.

usually went hand in hand with utility, to the extent that what was true was probably useful.⁴⁹⁹ But this was not always the case.

The key is that fictions are not inherently bad and could even be productive of aggregate happiness. As we have established, Bentham was a scourge of those fictions that hide the abuse or misuse of power – those flagitious fictions used as a smokescreen for the sinister interests of political elites. He did not, though, reject such fictions *because* they were fictions, but because of their consequences, and Bentham knew that fictions could work the other way too. Fictions are ambivalent: they might hide the workings of power, but they might also protect the vulnerable from power.⁵⁰⁰ Bentham knew, to return to the example raised in Chapter V, that the people were not infallible. But he did not subsequently say that rulers should be able to make themselves independent of the peoples' judgement when they concluded it to be wrong. Bentham realised that this was not in the interest of aggregate happiness, since the fiction of the people's infallibility helped to ensure the rule of elites did not degenerate into misrule. The notion of the people as a collective entity sitting in judgement of those that wield political power was a key device in Bentham's mind for guaranteeing the "moral aptitude" of the political elite, or their propensity to favour the general happiness over their own individual happiness. Bentham's utilitarian approach offers a far more sophisticated framework for assessing the place of fictions in representative democracy which guards against the tendency amongst some realists to adopt a quasi-moralism of asserting truth to be the ultimate political value *a priori*.⁵⁰¹ It is also what most decidedly distinguishes Bentham from others in the realist lineage.

Bentham does not suggest a perspective for today that is post-truth or anti-truth – clearly truth must be the norm for fictions to function effectively. A political society based solely on fiction would be uninhabitable. Bentham himself spent much

⁴⁹⁹ Schofield, "Bentham on Utility and Truth", p.1127.

⁵⁰⁰ Runciman, *Political Hypocrisy*, p.136.

⁵⁰¹ James Vitali, "The Political Realism of Jeremy Bentham", pp.11-15.

of his life attacking those fictions that he considered to be pernicious and destructive of general utility – those of lawyers and self-interested political elites. He would have abhorred the denigration of expertise and fact-based policymaking today. However, what he suggests is an approach to the relationship between truth and fiction that is proportional and contextual. That acknowledges the validity of fictionality in certain settings and situations because it might be productive of utility. Demystification appears as the central aim of many contemporary realists like Geuss or Achen and Bartels – to peel away the layers of myth and fiction that overlay political society in order to reveal the bare truth underneath. Bentham proposes that, in a democracy, there are some layers, some fictions that might be worth leaving in place. For one, the people infallibility might be a fiction, but it is a useful one in democratic politics.

Populism and Technocracy as Pathology

Bentham also offers some insights on how we should conceptualise and approach two contemporary political phenomena: populism and technocracy. Indeed, populism and technocracy might plausibly be considered as analogues of the voluntarist and rationalist renderings of politics that Bentham self-consciously imagined himself to be writing in opposition to. The connections between voluntarism and populism on the one hand and rationalism and technocracy on the other hand have been implied throughout the foregoing, but it is worth drawing out the intellectual linkages explicitly. In the case of populism, the theoretical literature usually traces the development of this ideology to late-nineteenth century America, with the emergence of the Populist Party that articulated an agrarian ideal of politics and championed the “return” of power to “the plain people”.⁵⁰² However, as a

⁵⁰² Kelly, “Populism and the History of Popular Sovereignty”, p.514.

number of scholars have argued, populism as a specific theoretical stance on the ambiguities of representative democracy existed in political discourse much earlier. Duncan Kelly has traced populism – which he conceptualises as a particular stance on the composition of “the people” and the nature of popular sovereignty – back to transatlantic conversations in the mid-nineteenth century about the relationship between theory and practice and the locus of unity in modern politics.⁵⁰³

Geneviève Rousselière has argued for the presence of populist thought in the Jacobin movement in Revolutionary France – a movement that Bentham himself considered to be the clearest manifestation of the voluntaristic, unrealistic project for literal popular self-rule.⁵⁰⁴ In the case of technocracy, Daniele Caramani has traced technocratic theoretical perspectives back to a “trustee” model of representation, in which representatives act independently of the people but in what the former consider to be the latter’s best interests.⁵⁰⁵ This model is closely associated with the political thought of Edmund Burke, and as we saw in Chapter III, Bentham engaged specifically with this model of representative government and rejected it.

There is further reason to think of populism and technocracy as contemporary manifestations of voluntarist and rationalist logic respectively if one considers the perspectives on political representation that they advance. All sorts of different ways of conceptualising populism and technocracy have been offered, from seeing them as ideologies, to political “styles” or theoretical standpoints.⁵⁰⁶ It is true that the two are ideologically “thin-centred” or lacking in ideological weight; they do not have a consistent or coherent position that is mappable on a political spectrum.⁵⁰⁷ It is also the case that populism and technocracy are not monolithic phenomena; not all

⁵⁰³ *Ibid*, pp.517-18.

⁵⁰⁴ Geneviève Rousselière, “Can Popular Sovereignty be Represented? Jacobinism from Radical Democracy to Populism”, *American Journal of Political Science*, Vol.65(3) (2021) pp.670-82.

⁵⁰⁵ Daniele Caramani, “Will vs. Reason: The Populist and Technocratic Forms of Political Representation and Their Critique to Party Government”, *American Political Science Review*, vol.111(1) (2017) pp.54-67.

⁵⁰⁶ Benjamin Moffitt and Simon Tormey, “Rethinking Populism: Politics, Mediatisation and Political Style”, *Political Studies*, Vol.62(1) (2014) pp.381-397.

⁵⁰⁷ Cas Mudde, “The Populist Zeitgeist”, *Government and Opposition*, Vol.39(4) (2004) p.544.

populists or technocrats necessarily possess the same views on representation. However, we can credibly talk about “populist” and “technocratic” stances on the nature of the people and their relationship with political representatives or rulers, and these bear a resemblance to voluntarism and rationalism respectively. Indeed, this is the imbedded message in Rosanvallon’s writing on democracy: populism mimics the voluntarist desire for fusion and unity in its quest to make sociological reality conform with political principle of popular sovereignty and self-government, whilst technocracy in its privileging of knowledge and truth in politics imitates the rationalist inclination towards rule by enlightened elites.⁵⁰⁸ This is not to say that populism and technocracy are *identical* contemporary manifestations of voluntarism and rationalism, and as always, comparisons across time need to be qualified. But given their resemblances, it may well be instructive to consider Bentham’s arguments about the limitations and complications of voluntarism and rationalism in the context of populism and technocracy.

At this stage, it is worth returning to Bentham’s basic conception of the people. For him, at the core of representative democracy is a fictitious people in possession of constitutive or sovereign power but equivocal and effervescent in status. Their fictitiousness as a singular, unified entity makes them incapable of independent action and thus of self-rule, but it also makes them uniquely vulnerable to the misrule of real, organised elite actors (a “rope of sand” versus the “chain of iron” of organised sinister interest, as we saw in Chapter III).⁵⁰⁹ Bentham theorised a polity in which the fictitious people could be brought to bear on government, influencing elites through public opinion and providing a check on their potential misrule, but never assuming the responsibility of governing either directly or through mandated representation. This preserves an important balance between the

⁵⁰⁸ Moyn, in Rosanvallon, *Democracy Past and Future*, p.15-17.

⁵⁰⁹ Of course, as a collective noun substantive, “the elite” might be thought of as another form of “fictitious entity”. However, their smaller number than “the people” - the shorter the distance between the fictitious entity and the real entities that it aggregates - makes the elite more agentive and better able to combine to pursue their ends.

people and their representatives: a relationship of interdependency, rather than complete autonomy or complete dependency. One that gives space for elites to rule, but that safeguards against the possibility of them misruling.

Populism and technocracy are frequently seen as opposites in the theoretical literature, but in one critical regard, they might be considered structurally related to each other: both are antagonistic to the fictional nature of the people that Bentham championed.⁵¹⁰ Populism imagines the possibility of reifying the people so that they take on a more real, concrete form. In response to the chasm between the political principle of the people as a unified, coherent entity and the sociological reality of their disorganised, disunited and incoherent existence, populists look to make political reality conform more closely with political ideal.⁵¹¹ They are impatient with the uncertainty, ambiguity and contradictions of the people, and see democracy as the regime in which the latter ought to become the decisive political actor. As Stefan Rummens has argued, this can make populism anti-pluralistic, because plurality undermines the idea that the people are a single actor that speaks with a single voice.⁵¹² But this also potentially makes populism anarchical, because it places the responsibility for the government and political impetus with an entity basically incapable of providing these things. The technocratic view of representation is similarly hostile to the fictional nature of the people, but instead believes that the people should be rejected out of hand as a relevant entity *because* of their

⁵¹⁰ In a similar vein, Chris Bickerton and Carlo Invernizzi Accetti have suggested that populism and technocracy might better be seen as “complements” rather than “opposites”, and that they share a fundamental antagonism to certain basic features of representative democracy; namely, party politics and “the idea that the specific conception of the common good that ought to prevail and therefore be translated into public policy is the one that is constructed through the democratic procedures of parliamentary deliberation and electoral competition”. Bentham’s emphasis was slightly different. He did not have a great deal to say about political parties, primarily because this was a development that would come after his time. But he would have agreed entirely with the suggestion that these contemporary manifestations of voluntarism and rationalism were hostile to the very nature of representative democracy as a distinctive political form. See Bickerton and Accetti, “Populism and Technocracy: Opposites or Compliments?” p.188.

⁵¹¹ Rosanvallon, *Democracy Past and Future*, pp.79-87.

⁵¹² Rummens, “Populism as a Threat to Liberal Democracy” p.567.

fictitiousness. Because the notion of the people as a coherent actor is a fiction, and because in reality the people are often less than rational, less than capable of perceiving what is in the common interest, technocrats contend that political elites, who are best placed to make decisions on behalf of the community, should be left relatively free to get on with the technical activity of governing. From the same antagonism to the fictitiousness of the people, populism and technocracy derive different conclusions about political representation: for the former, the people need to rule directly to realise their basic unity; for the latter, political elites need to disregard the fictional people and rule according to the dictates of enlightened reason.

Some scholars have seen populism and technocracy as competing anodynes to the ills of contemporary democracy – the former as a tonic for a political culture that has become too sclerotic and detached from ordinary people, the latter as a corrective to what is imagined to be the short-termism of democratic decision making processes that are constrained by the constant supervision of the people.⁵¹³ Bentham, however, would caution that this outlook is naïve and potentially dangerous, and that populism and technocracy ought instead to be understood as pathological. As with voluntarism, populism has a basic tendency towards anarchy because it seeks to transcend the basic political reality that the people themselves can never literally rule. Technocracy, like rationalism, is likely to foster misrule because it gives independence to political elites who are human and thus naturally inclined to prefer their own self-interest to that of the general interest, or utility. Both are destructive of a political form in representative democracy that champions the rule of political elites that are checked and constrained by those they govern. Indeed, the connection between populism and technocracy and their perspectives on the people is further emphasised by the fact that populism tends to promote charismatic,

⁵¹³ See, for example, Margaret Canovan, "Trust the People! Populism and the Two Faces of Democracy", *Political Studies*, Vol.47(1) pp.2-16. For a more extreme version of the rationalist strain of thinking in technocracy, see Jason Brennan, *Against Democracy* (Princeton, 2016).

authoritative leaders who it is hoped can articulate the popular will directly, as well as denigrating mediating institutions that work as constraints on such leaders. In this way, populism and technocracy come to overlap to a certain extent. Whilst this undoubtedly appears ironic, it can more accurately be seen as confirmation of the immutable nature of popular politics and representative government.

This returns us to Bentham's basic teaching that the people ought to be considered as a useful fictitious entity. Such a view rules out the populist idea that the people can literally take on the competencies of government, but it also rules out the idea that a government should be the purview of an independent elite without any role for the people. The fictitious people that Bentham endorsed was productive of a creative tension between rulers and the ruled. As will be discussed in the final part of this chapter, this perspective allows space for the people to influence and affect their governors, but in a way that ensures that decision-making power remains with those with the requisite aptitude and capabilities. Populism and technocracy turn what is a dialogical relationship into a destructive, oppositional one. Populism arrays a pure and moralised public against a debased and malign elite, whilst technocracy pits an intelligent, knowledgeable, truth-seeking elite against a stupid and irrational populace. Populism and technocracy, like the voluntarism and rationalism that Bentham critiqued, constitute partial views of representative democracy which if taken in isolation are degenerative of the political form.

For Bentham the consequentialist, this degenerative quality in voluntarism and rationalism made such viewpoints politically flawed. However, Bentham was also of the view that voluntarism and rationalism were epistemically flawed in their conception of representative democracy, and these flaws apply to populism and technocracy too. Both populism and technocracy ignore the dualism that Bentham argued is constitutively important to representative democracy as a distinctive political form. And in this, Bentham might be associated with a number of contemporary scholars who have advanced some similar arguments about

representative government. Pitkin famously wrote on the “paradox” of political representation, whilst Manin has spoken of “mixed” government or “democratic aristocracy” to emphasise the symbiosis between the people and political elites.⁵¹⁴ More recently, Runciman has discussed the “doubleness” and “ambiguity” of representative democracy, in which the people both rule and are ruled, whilst Urbinati has rejected the so-called “incompatibility theory” of the relationship between popular sovereignty and political representation.⁵¹⁵ These different scholars have deployed diverse vocabularies, but they have all tried to conceptualise the same thing: the duality at the heart of representative democracy that Bentham also contended for. And importantly, they all see that same duality to be intrinsic to the political form itself, and not a problem to be resolved. Of course, the comparison between Bentham and contemporary scholars of political representation can only go so far. Pitkin believed in the necessity of a pre-political people with coherent views and interests for representation to be genuinely democratic and not merely a Hobbesian relationship of authorisation, whereas Bentham was clearly sceptical about such a notion. Moreover, Urbinati, as we will see below, is deeply critical of the realist approaches to representative democracy that I believe Bentham exemplifies. Nonetheless, all of these scholars agree on the composite nature of this unique type of polity. Populism and technocracy fail, on this point, to understand the basic nature of representative democracy.

This shared understanding of the importance of representative democracy’s duality is also significant because all these scholars agree that there is something positively beneficial about it. For Manin and Runciman, it helps ensure that rulers and ruled both get what they want out of their relationship and do not arrive at

⁵¹⁴ Pitkin, “Commentary: The Paradox of Representation”; Manin, *The Principles of Representative Government*, p.132.

⁵¹⁵ Runciman, “Political Theory and Real Politics in the Age of the Internet”, p.12; Urbinati, *Representative Democracy*, p.6.

moments of fissure.⁵¹⁶ For Urbinati and Pitkin, the advantages have more to do with a relationship of engagement – “a continuum of influence and power” - that is opened up in representative democracy.⁵¹⁷ Bentham would have agreed that representative democracy’s dualism helps furnish both these ends; more specifically, however, its purpose in his mind was to help stave off the twin threats of anarchy and tyranny by facilitating elite government whilst securing the people against misrule. Bentham warns us then of the potential pitfalls of embracing populist or technocratic visions of representative politics; to do so would compromise representative democracy itself, as well as the political benefits that its duality holds.

Realists, of course, have no problem with rejecting the populist approach. For them, the belief in the literal self-rule of the people is a critical component of the “folk” theory of democracy, which they understand to be not only epistemically flawed, but positively dangerous: inflating the expectations for popular government can only lead to disillusionment and resentment, because the people are fundamentally incapable of playing the role ascribed to them in this theory. However, Bentham also makes it clear why independent, technocratic rule by elites is potentially just as dangerous and degenerative to political order. Elites left unchecked will inevitably pursue their own self-interest at the expense of the people more generally. “Habits of obedience”, the things that Bentham believed provided the basis for political orders, are two-way things, and require some popular buy-in.⁵¹⁸

⁵¹⁶ Manin, *The Principles of Representative Government*, p.156; Runciman, “Political Theory and Real Politics in the Age of the Internet”, p.12

⁵¹⁷ Pitkin, *The Concept of Representation*, pp.209-40; Urbinati, *Representative Democracy*, p.16.

⁵¹⁸ This, as we saw in Chapter IV, is similar to the position advanced by Williams. See Williams, *In the Beginning was the Deed*, p.4.

A Realist Theory of Public Opinion

Finally, Bentham offers some insights into the place of public opinion, as well as a persuasive realist understanding of its function in a representative democracy. Increasingly, concerns about the health and vitality of democratic society have centred on public opinion and the public sphere. For Urbinati, the key site of contestation in contemporary representative democracy is that of public opinion. In her *Democracy Disfigured*, she suggests that democracy constitutes a “diarchy” of will and opinion:

Representative democracy is a *diarchic system* in which ‘will’ (by which I mean the right to vote and the procedures and institutions that regulate the making of authoritative decisions) and ‘opinion’ (by which I mean the extrainstitutional domain of political opinions) influence each other and cooperate without merging.⁵¹⁹

Both these elements, she contends, are foundationally important to this political regime. Urbinati argues that the volitional component of representative democracy is no longer questioned; the idea that popular will as expressed at the ballot box should be determinative is unchallenged today. However, the less formal, more indirect dimension of opinion in democratic society is under challenge from many directions: from populists who fail to recognise the distinction between will and opinion; from technocrats who are basically hostile to opinion and wish to replace it with truth; and from those advocating a version of audience democracy in which public opinion is transformed from a substantive device for influencing government into a passive mechanism for spectatorship. In this latter case, opinion’s role is simply the giving or withholding of applause for actors on the political stage, and is

⁵¹⁹ Nadia Urbinati, *Democracy Disfigured* (Cambridge M.A, 2014) p.2.

not intended to materially affect their decisions or actions.⁵²⁰ These various “disfigurations” of representative democracy fail to recognise the place that opinion has as a form of power distinct from will which enables the people to be in constant communication with their rulers, and Urbinati sets herself the task of describing and defining democracy as “government of and by the means of opinion”.⁵²¹

Urbinati does not have a great deal to say about Bentham in *Democracy Disfigured*, but she has plenty to say about realist theories of representative democracy. Such theories, Urbinati argues, exhibit a sort of Platonic scorn of opinion, which she argues lead them to embrace audience democracy as the perfection of the rule of the few. Audience or “plebiscitary” democracy, she avers, “is the premeditated conclusion of a definition of parliamentary or representative democracy as an elected oligarchy or the mix of two predetermined and separated groups, that of the active few and the passive many”.⁵²² Thus, realist approaches to representative democracy fail to recognise the vital function played by public opinion as substantive. Chief in Urbinati’s mind are Robert Michels, Vilfredo Pareto, Max Weber, Carl Schmitt, and Joseph Schumpeter.⁵²³

Urbinati’s attempt to establish the duality of representative democracy as a political form has been influential in the arguments I have presented above, and her functional distinction between will and opinion is convincing. However, I want to focus briefly on her challenge to realist approaches and their perspectives on public opinion. It is true that many realists have minimalist and often dismissive accounts of public opinion, primarily because they question the rationality of individuals or their capacity and desire to gain sufficient knowledge and understanding to have informed views on complicated subjects. Admittedly, few thinkers in the realist

⁵²⁰ *Ibid*, pp.5-12; David Runciman, *How Democracy Ends* (London, 2018) p.47; Manin, *The Principles of Representative Government*, pp.218-235.

⁵²¹ Urbinati, *Democracy Disfigured*, p.4.

⁵²² *Ibid*, p.14.

⁵²³ *Ibid*, pp.14,173.

canon reject public opinion entirely.⁵²⁴ But they often do not make positive, compelling arguments in favour of the role of public opinion that could rise to the challenge that Urbinati makes, because their scepticism prevents them from doing so.

In Bentham, however, we find a powerful, realist argument for the importance of public opinion which has been overlooked in the literature on the subject. Bentham, as per Urbinati's critique of the realist position, did put forward a theory of elites and did imagine there to exist "two predetermined and separated groups" in the ruling few and ruled many. Bentham also rejected strongly the conception of representative democracy as popular rule through opinion that Urbinati herself endorses. However, he ascribed a central role to public opinion in his blueprint for a representative democratic constitution, and it was an entirely realist one: that of securing the people from misrule. Public opinion in combination with the constitutive power would help to align the private interest of rulers (to remain in power) with the public interest of the people (utility). Bentham was eager to demonstrate the force and influence of public opinion (hence his using the proper noun "Public Opinion Tribunal"), and thus was explicit about the mechanisms through which it would work. It was the *conjunction* of public opinion and the constitutive powers of location and dislocation that would provide the mechanism by which the "moral" or "popular" sanction could be applied to rulers.⁵²⁵ Public opinion would produce a context in which rulers are incentivised to rule in the

⁵²⁴ The "democratic realist" Walter Lippmann, for example, did not argue public opinion had no role in politics and government in his book dedicated to the subject, but that we should be clearer about what that role actually is: not facilitating popular self-rule, for example, but "devising standards of living and methods of audit by which the acts of public officials and industrial directors are measured". Equally, Schumpeter did not think that public opinion could be the vehicle by which the general will is realised, but he did think that opinions counted in the competitive struggle for political power, in that the opinions of the electorate determine who is elected to govern. Such a choice was not a hollow or empty one in Schumpeter's mind. Choosing between alternative governors for Schumpeter was the difference between a democratic and non-democratic society, and this difference remained a meaningful one. See Lippmann, *Public Opinion*, p.197; Schumpeter, *Capitalism, Socialism and Democracy*, pp.269-273.

⁵²⁵ Bentham, *Constitutional Code*, p.24.

interest of aggregate utility or the greatest happiness, because their staying in power depended on doing so.

Importantly, a Benthamite conception of public opinion offers a realistic approach that answers Urbinati's challenge. Bentham believed that public opinion would genuinely influence government decision-making when operating in conjunction with the authority to locate and dislocate the operative power, but it would not be a substitute for popular self-rule, as Urbinati contends for. A Benthamite approach to public opinion is realistic but it also helps preserve the dualism that so many scholars have argued lies at the centre of representative democracy; it allows the few to govern (as they must), but in a way that ensures that their decisions are influenced and constrained by those they rule over. And thus, it addresses the twin pathologies of anarchy and tyranny that threaten to unravel representative democracy at the extremes.

Bentham's understanding of public opinion was probabilistic and indeterminate; he did not think that what the public thought was always coterminous with what was in their interest. But he did think it would generally tend towards aggregate utility. And even so, the primary utility of public opinion lay elsewhere for Bentham – in the constraining effect that it had on rulers in preventing them from operating as if detached from those they ruled over. In fact, it is Bentham's utilitarianism that distinguishes him from other realists on this topic and enables him to make a strong case for why realists should take public opinion seriously. A comparison with Achen and Bartels, is helpful here. The latter broadly discuss public opinion in terms of a truth-false binary built upon the assumption that what is true is what is valuable. They suggest that the correlation between the public's opinion and their interests is not probabilistic but random, and it is because of this – because public opinion is very infrequently a truthful account of what is in the people's interest, and that when it is, it is so incidentally – that we should question the prominence given to opinion in democracy and be sceptical about its apparent inviolability. Bentham, however, would argue that this is to miss the point.

For him, it is not in its propensity to perceive and explicate the true interest of the people that the value of public opinion is to be found, but in its constraining of political elites. In other words, Bentham thought the aggregate happiness which public opinion generated by making rulers more dependent on the ruled outweighed the potential unhappiness produced by an individual, erroneous pronouncement of public opinion. Public opinion, in conjunction with the locative and dislocative powers, promoted utility because it secured people from being misruled, not because it was necessarily coincident with the truth all of the time.

Significant challenges to Bentham's theory of public opinion are present in modern politics. For one, Bentham considered newspapers to be the key mouthpiece for the judgements of the Public Opinion Tribunal, but contemporary media outlets present themselves as something closer to sinister interests; entities with considerable power and interests potentially divergent to that of the people as a whole. As Cutler has shown, Bentham was not ignorant of this possibility, recognising the potential for papers to become "party organs". But his proposed solution – to provide for two publishers at every newspaper to present both the case for the government and the opposition – is not accompanied by any mechanism with which to implement it in practice.⁵²⁶ Moreover, Bentham can tell us very little about social media, which is entirely alien to the political world that he inhabited but which plays an increasingly prominent role in public opinion formation today. To say that the jury is out as to whether social media as its own mouthpiece for public opinion promotes aggregate happiness or utility would be an understatement.⁵²⁷

Indeed, there is a discussion to be had about whether the utility calculation that Bentham makes – that the general utility derived from the constraining effect of public opinion outweighs the potential disutility of specific pronouncements of public opinion - remains true today. The strongest argument against Bentham's

⁵²⁶ Cutler, "Jeremy Bentham and the Public Opinion Tribunal", p.339.

⁵²⁷ For a critique of the undemocratic consequences of social media, see Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York, 2019).

contention for the constraining effect of public opinion concerns the disconnect between the performance of elected representatives and how they fare at the ballot box. The logic of retrospective accountability – which suggests that, whilst voters do not necessarily determine policy, they can judge whether their rulers are doing a good job and make them accountable accordingly – depends on the idea that good behaviour will be rewarded and bad behaviour will be punished. The elected need to perceive a direct causal link between their decision-making and their security in office for them to feel genuinely accountable to electors. In reality though, and as the burgeoning literature critical of rational choice theory contends, such a direct causal link often does not exist. Achen and Bartels have demonstrated that historically, politicians have been both punished and rewarded by things entirely outside of their own control, from the weather, to freak shark attacks, to international oil prices.⁵²⁸ If rulers do not feel their behaviour will affect their chances at elections, then they will not be incentivised to behave well.

This is a solid case, but I do not think it is terminal to Bentham's argument for public opinion. One could say that Bentham is simply arguing on a different plane to other realists: Bentham trusts the people and realists are more sceptical, and not much of a conversation can be had. The question, simply, is who is more clear-sighted in their assessments of the people, and here, Bentham arguably appears more naïve. However, I think this is unfair, and Bentham in his own time offered a robust response to the suggestion that the people are a deficient judge of their rulers. It would be fair to say he went on an intellectual journey with regard to this question. Early on in his life, Bentham was, as we have seen, sceptical of the capacities of the people. In the 1790s, when most of the educated classes in England were taking a more conservative tack in response to the tumult in France, Bentham

⁵²⁸ Achen and Bartels, *Democracy for Realists*, pp.90-145,114. For early twentieth century studies that have proven influential for subsequent critics of rational choice theory, see also Kenneth Arrow, *Social Choice and Individual Values* (New Haven, 1951); Vilfredo Pareto, *The Mind and Society* (London, 1935).

stated that the people lacked understanding.⁵²⁹ Yet in his mature writings, Bentham believed it appropriate to invest the people with sovereignty and empower them via the Public Opinion Tribunal. To explain this later confidence in the people, and to respond to the implicit challenge from rational choice critics, it is worth considering the problem in terms of Bentham's understanding of aptitude. As set out in Chapter II, Bentham distinguished intellectual aptitude, which denoted the capacity to make good judgements, from moral aptitude, which concerned the tendency to favour the common interest (or utility) over personal interest. Both weighed equally in determining the ability of someone to promote the common good, and it was the combination of them that counted. Bentham believed that it *might* be the case that rulers possess greater intellectual aptitude, but the people *always* possessed greater moral aptitude for, as he asked famously, what interest do the people have in being misruled?⁵³⁰ For an empowered public to be a bad idea, it would have to be demonstrated that a different group – the rulers, perhaps – not only possessed greater *intellectual* aptitude, but an equal degree of *moral* aptitude too. To this end, that the people may possess less intellectual aptitude than their rulers did not of itself rule out the validity of the Public Opinion Tribunal; if rulers are deficient in moral aptitude and allowed to disregard the pronouncements of public opinion, they might use their greater intellectual aptitude in service of sinister, rather than the general interest.⁵³¹

⁵²⁹ University College London Library, Bentham Papers, box 44, folio 2.

⁵³⁰ Bentham, "Plan of Parliamentary Reform", p.445.

⁵³¹ Bentham addressed this issue in a letter he drafted in 1831 entitled "The People's Enemy Unmasked". In it, he considered the balance between different types of aptitude in a hypothetical conversation between two interlocutors – the people's enemy, and the people's friend. The people's enemy in this pamphlet makes the argument that the people had insufficient intellectual aptitude, and this would hamper their ability to judge whether their rulers were acting in their best interests, or to afford reward or punishment properly. The people's friend, however, responds that intellectual aptitude was not the only relevant factor, that moral aptitude was equally important, and that only when intellectual aptitude worked in tandem with moral aptitude would it promote the "appropriate aptitude" for pursuing utility. See University College London Library, Bentham Papers, box 149, folio 279,280,281.

As he was suspicious of the idea that the solutions to political problems could come straightforwardly from the people collectively, so Bentham was also sceptical of laying the blame for political problems with the people themselves. If the people are struggling to judge their rulers effectively, are the press doing their job effectively? It was their job to scrutinise the government and to act as a conduit for public opinion, and in the *Code*, Bentham stated that the efficacy of public opinion itself depended on the efficacy of the press.⁵³² Well-regulated media outlets represented essential tools for scrutinising the government for him. Even something like social media, for all its well-publicised negative consequences for politics, social harmony and mental health, is probably not innately productive of unhappiness. As David Runciman has put it, technology is a neutral vessel which could have either good or bad implications for society.⁵³³ It depends on how it is used, and if regulated effectively and used well it could be yet another avenue for scrutinising the ruling few – another “subcommittee” of the Public Opinion Tribunal. If the people are struggling to establish cause and effect between government policy and outcomes, is the decision-making of politicians transparent enough? Bentham argued strongly that, except in very specific circumstances where secrecy was in the interest of utility, the deliberations and discussions of decision-makers and those responsible for governing should be readily available to members of the public, and not only that, the form in which that material is presented should be easily accessible and comprehensible for the average member of the public; Bentham saw the workings of sinister interests in the jargon of the powerful, which concealed what was actually going on from those not versed in legalese or technical language. In his mind, it made more sense to question the intentions and performance of those powerful groups like newspapers, lawyers and politicians than to question the desire of the people to pursue their own interests.

As he wrote in 1820 in “Radicalism not Dangerous”:

⁵³² Bentham, *Constitutional Code*, pp.86-7.

⁵³³ Runciman, *How Democracy End*, pp.120-64.

The danger then to the ruling few from radicalism from the subject many is visionary. [T]he apprehension, groundless. But the danger to the subject many from the ruling few is real: or to speak properly is realized: for the mischief being present has got already beyond the line of danger.⁵³⁴

Far from being naïve, Bentham's utilitarian approach to the question of public opinion provides a deeply realistic alternative for us to consider today. Not only does he prompt us to think about where abuses of power are most likely to come from – the disempowered many, or the powerful few? The rope of sand or the chain of iron? – but he also asks us to think about the issue in terms of competing, imperfect, flawed, but concrete alternatives. There is no moralism in Bentham's advocacy of public opinion, save for the very general fact that he advocates it because he thinks on balance it will tend to the interest of the whole. He recognises the flaws in public reasoning, the fact that the people might often be wrong, the presence of selfishness and emotion in individual calculations. But for Bentham the key question is whether we want public opinion as a constraint on rulers, however defective, or not. On balance, his recommendation is that the trade-off between truth and security that is made in empowering the Public Opinion Tribunal is worthwhile.

It is important to recognise that, even if representative democracy could not facilitate the government of the people via public opinion for Bentham, public opinion could materially affect the activities of the governors. Bentham genuinely wanted his rulers to listen to what people have to say, even if he did not want them to concede the activity of governing. It is instructive to consider again Bentham's opening proclamation that he affixed to his constitutional writings for Tripoli. The proclamation centres on an imagined encounter between the Pasha and the prophet Mohammad, in which the latter commands the former to "call the people around

⁵³⁴ University College London Library, Bentham Papers, box 137, folio 216.

thee” and to learn from them “their wants”.⁵³⁵ This story was not included whimsically, and we ought to think of it as an allegory – a window into Bentham’s thought on public opinion. Bentham genuinely believed that public opinion would help to ensure that rulers received a better understanding of the wishes of the ruled, even if it remained up to those rulers to decide how best to address those wishes.

In concrete terms, Bentham would have been decidedly in favour of citizens’ assemblies and other deliberative schemes as potential mediums for the expression of the Public Opinion Tribunal’s pronouncements. What Bentham would urge us to do today, however, is to be mindful of how we conceptualise the purpose of those schemes. They should not be seen as ways to realise the self-government of the people via public opinion, but instead as devices for helping the ruling few to better understand the desires of the public. Even if security remained Bentham’s primary concern – and the principal end that public opinion served in his eyes – he also saw a positive role for public opinion in a dialogical relationship between the people and their governors. And in this, Bentham offers a constructive, *realist* theorisation of the role of public opinion, something self-identifying adherents of realism have frequently failed to do.

⁵³⁵ Bentham, *Securities Against Misrule*, p.75.

Conclusion

Jeremy Bentham's Theory of Democratic Representation?

Why study Bentham? As I remarked at the very outset, Bentham is not generally to be found in the contemporary scholarly debates about political representation and representative democracy – the broader subject that this thesis has been concerned with. His manuscripts are difficult, sometimes impossibly difficult to read, and much time has to be spent simply collating the relevant source material from the expansive corpus of unpublished sheets that he composed. Though his literary executors – John Bowring and the other editors he commissioned – did do a poor job of editing his work and printing it for the reading public, one can sympathise with the task that Bentham set them upon his death. Moreover, if I am right in my analysis of Bentham's political thought, and it does offer a heterodox account of representative democracy, how and why have so many others been so wrong?

To take the second question first, I think there are three main reasons, two of which I analysed more fully in Chapter I. To recapitulate those, firstly, a considerable amount of blame for the historical image of Bentham that we have inherited can be attributed to Mill. Mill was in effect the primary vehicle through which Bentham's ideas were transmitted to posterity, given the fact that Bentham's writing itself often proves impenetrable to the general reader, and because Mill's essay on Bentham was published in 1838, before the publication of much of Bowring's collected edition. The 1838 essay itself was a determined effort by Mill to cast Bentham in such a way that Mill's own utilitarianism appeared as a superior, improved iteration of the former's theory. Bentham is depicted as a "one-sided", perhaps even crude, philosopher, so that Millian utilitarianism looks nuanced and more credible by comparison. Mill has himself become totemic for liberals and their

self-conception of liberalism's intellectual origins, and thus many have uncritically reproduced Mill's hostile reading of Bentham.

Secondly, there is a great deal in what I have criticised in this thesis that is a faithful interpretation of Bentham, but it has usually only been *partially* faithful or accurate. This might itself be an upshot of Mill's framing of Bentham as one-sided and insufficiently attuned to the non-rational side of human motivation (he was, plainly, neither of these things). But, as I have argued, it is important to recognise that this partial reading of Bentham is also to be found in the work of those that claim him for intellectual support. Bentham critics and devotees of all different stripes have been guilty of simplifying his theoretical perspectives on political representation. Regardless, in Bentham's understanding, the dualism of representative democracy is entirely central to its functionality, and thus partial readings are necessarily grave misinterpretations. Bentham was interested in getting those with the greatest aptitude into government and he did see the latter as technical activity, as some scholars have pointed out. He was also a powerful advocate for popular sovereignty and the beneficial influence of public opinion on politics later in life, as others have emphasised. Taken in isolation, these perspectives offer a skewed idea of what Bentham was arguing for.

To my mind, though, there is a third, less tangible reason for the frequent misrepresentations of Bentham political thought. And that is that there seems to be a basic psychological need in political theory, but also society more generally, to refer to a caricature of utilitarianism as a particularly stunted way of looking at the nature of politics and humankind. Thinkers from John Rawls to Bernard Williams, Karl Marx to Germaine de Staël, Joseph Schumpeter to Hannah Pitkin, and even utilitarians like Henry Sidgwick and Mill, have all employed a caricature of Bentham in order to argue that their own frameworks are less mechanical and more attuned to the realities of human nature. Partly, the fact that Bentham has provided this strawman for a naïve worldview is understandable for the reasons detailed above.

But part of the explanation is that caricaturing utilitarianism is instrumental; people have got Bentham so wrong because it is *convenient* to do so.

To the second question, then. Why spill so much ink on Bentham? Again, my response has three parts. Firstly, and obviously, given that Bentham's political theory has frequently been misunderstood, it is intrinsically important to correct that historical misunderstanding. Key to this endeavour has been *understanding Bentham in relation to the school of political realism*. I have attempted to explode a persistent historiographical bifurcation of Bentham from a lineage of politically realist thinkers, and instead placed Bentham alongside thinkers from that very lineage. This gives what Bentham had to say about representative democracy an entirely different cadence: his insights on this way of organising politics are not about how to make popular self-rule a reality; they are not about how to make government the preserve of a political elite that can "nudge" citizens into behaviours that the former deems to be good.⁵³⁶ They are instead about the role of leadership and elites in democratic politics, the pathological tendencies for representation to lead to misrule, and the need for some interdependency between rulers and the ruled in order to generate stable and durable forms of political obligation and authority.

A great irony in my findings is that the modern thinker with whom Bentham has perhaps the most affinities is Schumpeter, the great caricaturist of the classical doctrine of democracy and the theorist of Bentham as a proponent of it. On the subject of political representation, Schumpeter wrote that:

The voters outside of parliament must respect the division of labor between themselves and the politicians they elect. They must not withdraw confidence too easily between elections and they must understand that, once they have elected an individual, political action is his business and not theirs. This

⁵³⁶ Peonidis, *Democracy as Popular Sovereignty*, p.60; Engelmann, "Nudging Bentham: Indirect Legislation and (Neo-)Liberal Politics", pp.70-82.

means that they must refrain from instructing him about what he is to do - a principle that has indeed been universally recognized by constitutions and political theory ever since Edmund Burke's time.⁵³⁷

Schumpeter references Burke, but he could just as well have referenced Bentham. Later in life, Bentham of course put greater emphasis on the constraints required on representatives to guard against their tendencies towards self-interested action. But Schumpeter too felt such constraints were meaningful and important in a democracy. Indeed, that is why Schumpeter was a realist theorist of democracy, and not an *anti-democrat*. He believed the fact that rulers were elected "by means of a competitive struggle for the people's vote" was significant and operated as a disciplining mechanism on their conduct, even if it did not lead to popular self-government.⁵³⁸ Schumpeter would have agreed with Bentham too that political representatives (as with any other humans) are self-regarding and without mitigating constraints and structures are likely to use power for their own self-interest. Schumpeter did not think politicians acted first and foremost to "promote the public welfare" (and if they did, they were exceptional and thus an insufficient basis for a general theory of politics), but rather to further their own ends in the competitive struggle for power.⁵³⁹ The similitude between these statements and Bentham's claim that every government has always had "for its object the greatest happiness, not of those over whom, but of those by whom, it has been exercised", is clear.⁵⁴⁰ Neither Bentham nor Schumpeter endorsed the idea of representative democracy as an indirect method of achieving the promise of direct democracy. But both valued representative democracy, nonetheless. The differences between the two – Bentham's more sanguine account of public opinion, Schumpeter's focus on certain

⁵³⁷ Schumpeter, *Capitalism, Socialism and Democracy*, p.295.

⁵³⁸ *Ibid*, p.269.

⁵³⁹ *Ibid*, p.283.

⁵⁴⁰ See page 106 above.

other external conditions required for the efficacy of representative government - seem far less salient than the commonalities in their respective approaches to representative democracy.

A further twist in my research has been the commonalities I have found between Bentham and Burke. I am not contending that Bentham was some sort of Burkean conservative, nor that Burke was a committed utilitarian. There is no shortage of reasons why Bentham and Burke are separated from each other in the scholarship on them, and there are fundamental divergences between the two that cannot and should not be ignored. Though Bentham found himself on the same side as Burke in criticising the French Revolution, he was critical of the latter's advocacy, as he saw it, of deference to ancient institutions simply because they were ancient; to base a society on such a deference, he argued, "subjugates the well-informed to the ill-informed *ages*".⁵⁴¹ Burke's defence of the church and the monarchy as transmitters of customs and conventions that bind society together jars greatly with Bentham's critique of the same as vestibules of sinister interest. Bentham endorsed democratic constraints on political representatives, whereas Burke was instinctively suspicious of them. Yet there are curious interplays between the thinking of the two that call into question the historical image of the debates that took place at the turn of the nineteenth century around institutions, rights and political authority. Bentham had opinions comparable to those of Burke about the necessity of political representation, even if he rejected the degree to which the latter suggested that representatives should be independent of the people. This is something that other scholars have recognised, as has been gestured to above.⁵⁴² Something that has perhaps gone largely unnoticed, though, is the degree to which Bentham and Burke's perspectives on *history* overlapped. Like Burke, Bentham was sceptical about ahistorical political projects that sought to generate sites of political authority *ex nihilo* and without reference to context, and he contended too that history had value

⁵⁴¹ University College London Library, Bentham Papers, box 44, folio 5.

⁵⁴² See page 96 above.

from a utilitarian perspective. On certain occasions, he argued, appeals to historical precedent might be more “effectually persuasive” than those made to the utility principle alone.⁵⁴³ Bentham believed that an effective approach to politics must recognise the fact that history itself *can* furnish legitimacy; it was a contextual question whether that was in the interest of utility or not. And whilst *usually* Bentham saw the workings of sinister interest behind the use of history and custom for justifications – Bentham called these political fallacies, used by political elites when arguments based on utility were not in their favour – he did not believe this was always and everywhere the case.⁵⁴⁴ Indeed, Bentham was prepared to make appeals to the ancient English Constitution and the inherited rights of Englishmen in his attempts to secure the passage of some parliamentary reforms.⁵⁴⁵ Equally, there is a utilitarian tinge to Burke’s conservatism that some scholars of his work have discerned.⁵⁴⁶ Indeed, it has even been suggested that Burke’s conservatism is part of a broader intellectual lineage, the common denominator of which is a “historical utilitarianism”, and that this conservatism ought to be distinguished from political ideologies that invoke an ultimate or transcendental truth, whether religious or otherwise.⁵⁴⁷ The intellectual connection between Bentham and Burke is thus a complicated one that merits further inquiry, and this in itself asks us to probe the predominant image of Bentham that has been inherited by posterity – that of the

⁵⁴³ Schofield, *Utility and Democracy*, pp.152-3.

⁵⁴⁴ *Ibid*, pp.156-8.

⁵⁴⁵ Bentham, “Plan of Parliamentary Reform”, pp. 446–7, 511–16.

⁵⁴⁶ Iain Hampsher-Monk, *The Political Philosophy of Edmund Burke* (London, 1987).

⁵⁴⁷ Jerry Mueller, *Conservatism: An Anthology of Social and Political Thought from David Hume to the Present* (Princeton, 1997). As the book’s title suggests, Mueller places Hume in this same intellectual lineage, and juxtaposes it to “Orthodoxy”. Burke’s relationship with utilitarianism is not a simple one, however. As Yuval Levin has pointed out, religion featured heavily in Burke’s thinking, and he believed justifications for political action could not be internal to politics alone. Yuval Levin, *The Great Debate: Edmund Burke, Thomas Paine, and the Birth of Right and Left* (New York, 2014).

abstract, moralising, “Rationalist” (to borrow Oakeshott’s epithet) philosopher who was ignorant of history, custom and political practicalities.⁵⁴⁸

Secondly, *we can understand political realism as a contemporary school of thought better in relation to Bentham*. This is not a historical point: I am not suggesting that we should see Bentham as the forefather of modern political realism. He patently was not. Rather I am making a contemporary political-theoretical point: that Bentham says much that contemporary political realists would do well to take seriously. There are undoubtedly ideas in the realist vocabulary that have been better articulated by others. If one wanted an account, for example, of the need for political order, of the necessity of leadership in politics or of the limits to human reason, it is to Hobbes, Hume, Weber or Schumpeter that one would look first, not Bentham. And if realism, like any other school of political thought, is the sum of arguments classified as such by its practitioners (realism is what realists say it is), then the fact that no contemporary realists claim Bentham as one of their own is salient.⁵⁴⁹ Nevertheless, and as I argued in Chapter VI, I do think Bentham offers perspectives that can help fortify proponents of this way of thinking from the charge that theirs is an uninformative, reductive guide to politics. For one, Bentham understood the importance of elites in democracy, but he considered that role in relation to some perennial problems that face representative government. The nature of the people necessitates elite leadership – that much all realists agree on. But Bentham reminds realists that, in order to stay true to their sceptical attitudes towards human nature and politics, they must also recognise political elites are susceptible to the same foibles and imperfections as anyone else. Realists need to take misrule as seriously as the absence of rule; bad government can be equally as threatening to political order as the anarchical tendencies of voluntarist democracy. If government becomes

⁵⁴⁸ Bentham describes Burke’s writing as “a strange mixture of salutary reason and mischievous absurdity”, which captures well the ambivalent relationship he had with the latter’s ideas. University College London Library, Bentham Papers, box 44, folio 5.

⁵⁴⁹ On the subject of how to define schools of political thought, see Duncan Bell, “What is Liberalism?”, *Political Theory*, Vol.42(6) (2014) pp.682-715.

arbitrary and coercive, and reliant on simple relationships of power, there is little to distinguish it from the condition that realists consider the *summum malum* of politics.⁵⁵⁰ This is why Bentham granted such an important place to public opinion in his theory. His vision of public opinion influencing government and serving as a security against misrule, whilst not transferring the activity of ruling from elites to the people collectively, is realist in character but takes the political function of opinion seriously in a way that other self-identifying realists have often failed to.

Furthermore, Bentham provides a useful framework for realists to think about populism and technocracy. Realists tend to see populist, voluntarist renderings of the role of the people in politics as the great threat facing representative democracies. Sometimes, technocracy, or rule by experts, is seen as the “perfection” of a realist understanding of democracy in which elites govern on behalf and in the interest of the people.⁵⁵¹ One need only glance, for example, at Schumpeter’s suggestion that “the effective range of political decision” open to democracies “should not be extended too far” to see some technocratic leanings in elite-centric political realism.⁵⁵² Bentham urges that realists, however, should be just as concerned with technocracy as a contemporary political development, for it too threatens to unravel the composite, dualistic core of representative democracy that has enabled it to be such an effective and durable form of government.

Finally, Bentham’s account of *fictions* is one of the most original and clear-sightedly realist to be found. Realists tend to get stuck between a critical theory approach which sees fictions and myths as obstacles to a better, “truer” understanding of politics and a Burkean approach that sees these things as necessary to the maintenance of established political order. These two approaches ironically leave

⁵⁵⁰ Williams, *In the Beginning Was the Deed*, p.5.

⁵⁵¹ Urbinati, *Democracy Disfigured*, p.14.

⁵⁵² Schumpeter, *Capitalism, Socialism and Democracy*, p.291.

realism unable to make contextual judgements about the place of fictions in politics. The contextualism of Bentham's utilitarianism provides a persuasive alternative approach to the question of the normative status of fictions. He was as a scholar singularly capable of seeing through and critiquing the strange customs, conventions and fictions in politics and society.⁵⁵³ Yet Bentham's utilitarianism, and his relentless focus on the centrality of power in politics, enabled him to recognise *both* moments and contexts in which fictions might be facilitative of coercion *and* when they might be positively desirable. Bentham's understanding of fictions alone qualifies him for consideration by political realists.

It is through this reframing of Bentham that we come to my third point and the case that has underpinned this entire thesis, which is that he is worth studying for the innovative and incisive account of representative democracy that is to be found in his work. Of course, Bentham cannot tell us everything about representative democracy today, and we certainly should not try to read every development in contemporary politics through the lens of Bentham's political thought. Perhaps the most profound *lacuna* in his work is any theory of the place of the political party in modern democracies. There are some passing references of note in some of Bentham's texts on the subject. In sheets he penned in the late 1780s, Bentham suggested that if rulers are divided into contending parties who are forced to appeal to the people for the authority to govern, then this would tend towards the liberty of subjects. However, Bentham here was referring more to the division between the various branches of government in the English Constitution - the Monarch and the two Houses of Parliament - rather the division of the legislature itself into competing parties.⁵⁵⁴ Generally, Bentham saw parties merely as vestibules

⁵⁵³ There is good reason to suggest that had Bentham been alive today, "he would have received the diagnosis of Asperger's syndrome". Philip Lucas and Anne Sheeran, "Asperger's Syndrome and the Eccentricity and Genius of Jeremy Bentham", *Journal of Bentham Studies*, Vol.8(1) (2006) p.1; Jonathan Haidt, *The Righteous Mind* (London, 2012) pp.137-9.

⁵⁵⁴ Bentham, *Rights, Representation, and Reform*, pp.409-414.

for sinister interests in politics, rather than having any substantive value.⁵⁵⁵

Bentham's age was not yet the age of mass party democracy future. The Westminster Parliament was yet to be defined by rigid party-political structures and the notion of the independent member, voting according to their conscience rather than the direction of the party whip, was yet to become antiquated.⁵⁵⁶ Americans too were still coming to terms with the idea of institutionalised political factions, given the severe concerns amongst the founding fathers about the "spirit of party".⁵⁵⁷ Nevertheless, parties are the key to understanding contemporary democracy; their development in the nineteenth century in conjunction with expansions to the franchise transformed or "metamorphosed" representative government, and they now constitute the primary intermediary bodies between state and society. A full account of modern representative democracy cannot be made without a recognition of the place of the political party, and this sets a hard limit on how useful a guide Bentham's thought can be for the present.⁵⁵⁸

Yet equally, we should not commit the anachronism of criticising Bentham as a historical figure for failing to tell us everything there is to know about modern politics.⁵⁵⁹ Bentham remained a genuine theorist of representation as a substantive activity within democracy, and that means he is relevant to the growing literature on the subject that has accompanied the "representative turn" in political theory. Theorists have looked to understand representation as not merely having instrumental value as a device for the passive facilitation of popular self-rule in large commercial societies, but as a rich, complicated, dualistic and ambiguous

⁵⁵⁵ Bentham, "Plan of Parliamentary Reform", pp.525-527.

⁵⁵⁶ See Boyd Hilton, *A Mad, Bad, Dangerous People? England 1783-1846* (Oxford, 2006) for an excellent account of the state of flux that British party politics frequently found itself in during the early nineteenth century.

⁵⁵⁷ George Washington, "Farewell Address", in *The Early Republic and Antebellum America: An Encyclopedia of Social, Political, Cultural and Economic History*, ed. Christopher Bates (Abingdon, 2015) p.1134.

⁵⁵⁸ Manin, *The Principles of Representative Government*, pp.193-236; Bickerton and Accetti, "Populism and Technocracy: Opposites or Compliments?", p.190.

⁵⁵⁹ Skinner, "Meaning and Understanding in the History of Ideas", p.12.

phenomenon that is productive of different ends. To this has been added a greater historical understanding of the debates about the place of representation at the inception of modern representative democracy, and I want to finish on two contemporary debates which would benefit from taking consideration of Bentham's political thought.

The first is William Selinger's discussion of "Parliamentarism" as the overarching intellectual and political framework when representative democracies were emerging in the nineteenth century. In particular, Selinger suggests that the key constitutional question of the period concerned whether liberty was best served by the British model of government, where the executive was placed in the legislature, or, by the American model, in which the two were firmly separated. Bentham was not an explicit theorist of Parliamentarism himself, but he deserves to join thinkers like Burke, Constant and Mill who Selinger discusses explicitly. Bentham argued against the separation of powers and in favour of Parliamentarism's basic principle of making the executive accountable to the legislature, and having the legislature accountable to the people. Bentham thought this arrangement most productive of liberty (understood by him as *security*), because it secured a balanced, two-way relationship between those in power and those subject to it. Like other advocates of Parliamentarism, Bentham thought it important that members of the government attended parliamentary debates in order not only that they be held accountable, but to improve the quality of discussions about policy too.⁵⁶⁰

Secondly, Greg Conti has excavated an argument with far-reaching consequences that took place in the nineteenth century between those who believed that representation (and its institutional manifestation in Parliament) had a descriptive purpose - that it should "mirror" the nation and be a descriptively faithful recreation of it - and those who imagined its purpose to be deliberative and

⁵⁶⁰ Peardon, "Bentham's Ideal Republic", p.130; Bentham, *Constitutional Code*, p.417; Selinger, *Parliamentarism*, pp.23-24.

creative - to forge a collective will that would transcend society's political indeterminacy. According to a contemporary cited by Conti: "it is plain that Parliament cannot be at once an accurate mirror of public opinion and a collection of the wisest men."⁵⁶¹ One can add to these conceptions of representation another which has been a recurrent theme in this thesis: that of furthering self-rule. Bentham posits an alternative conception that ought to be added into the conversation: that representation's end is *utility*, and that a necessary aspect of this is a trade-off between these various other values, such as descriptiveness, deliberation, and securing the "presence" of the people in political decision-making. Indeed, Bentham thought genuine representative politics to be a perfect regime for the promotion of utility. Whilst Bentham denigrated imprecision with language - it was what made him nervous about the idea of representation in the first place as a younger man - he came to recognise the benefits of its elasticity and the grey area which it produced between rulers and the ruled.⁵⁶² It was in this space afforded by representation that these two groups could co-exist in a creative tension that would not only stave off the twin threats of anarchy and tyranny, but would also positively improve government. It was in this form of polity that the cause of utility would be most effectively advanced.

In many ways, then, perhaps it makes more sense to call Bentham's theory one of *democratic representation*, rather than representative democracy. *Representation* was in essence the "foundational" idea in his thought.⁵⁶³ Democracy was never an end in itself for him, but instead constituted an effective means of modulating representative government so as to ensure that it was productive of utility. Bentham cannot tell us all there is to know about representative democracy. But insofar as he was one of its earliest explicit advocates, his political thought deserves closer

⁵⁶¹ Conti, *Parliament and the Mirror of the Nation*, p.288.

⁵⁶² Runciman, *Political Hypocrisy*, p.139.

⁵⁶³ Runciman, *Confronting Leviathan*, p.51.

inspection than it has been afforded up until now. In it, a rich, realist and enlightening theory about the form of politics we have inherited is to be found.

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