

Bentham's Cosmopolitanism, Theory and Practice

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0. Introduction

Most current conceptions of cosmopolitanism have been inspired by Enlightenment ideas of politics, culture and society unfettered by nation states. But in the philosophical climate of 18th century Europe, terms like "cosmopolitanism" or "world citizenship" were often used evocatively rather than analytically and sometimes amounted to little more than general gestures towards transcending or transforming the Westphalian order. Even in the designs of leading theorists of cosmopolitanism like Immanuel Kant, the term "*weltbürgerlich*" occurs in a bewildering variety of contexts and functions. Within the canon, there is no fixed meaning to the term, let alone a single clear moral and institutional agenda on the part of its users. At the same time, Enlightenment thinkers have developed concrete suggestions of border-crossing or border-transcending politics that we would now have good reason to understand as cosmopolitan, but often without using the 'cosmopolitanism' label, and largely independently of systematic designs of cosmopolitan order. While the extension of the term 'cosmopolitanism' is thus far too wide to make coherent sense, important applications of cosmopolitan thought have slipped the conceptual net and escaped the literature altogether.

Only recently have attempts been made to use 'cosmopolitanism' as a technical term in political philosophy and to distinguish various understandings and conceptions. One simple, but centrally important distinction is that between international and cosmopolitan understandings of justice or legitimacy, where cosmopolitanism refers to an individualistic perspective, while internationalism is an idea about how collectives - states or peoples - should relate to each other.¹ Once it is pointed out that 'cosmopolitanism' contains not only

¹ Such advances have to a large extent, but not exclusively, been inspired by developments in post-Rawlsian moral theory. In this paper however, I will be concerned with cosmopolitanism not as a position on justice, but as a position on political legitimacy. That cosmopolitanism can be conceived of as a theory of political legitimacy was first claimed in the now somewhat dated mid-1990s literature on cosmopolitan democracy (e.g. David Held, *Democracy and the Global Order*, Stanford: Stanford UP 1995).

the *cosmos*, i.e. the world, but also the *polites*, i.e. the individual citizen,² there is no going back to using the term for inter-state relations, even where they are thought to be global in their reach. But while the distinction between cosmopolitan and internationalist approaches in political philosophy is to be welcomed, the debate between them has overshadowed a large blind spot on the side of cosmopolitanism. Contemporary formulations of cosmopolitanism have concentrated on questions of global political order and, correspondingly, on globalist understandings of universal citizenship.³ In doing so, authors have tended to apply their understandings of single-state political community and of single-state citizenship to humankind as a whole. In the process, they have frequently acknowledged their indebtedness to authors like Rousseau, Kant, or Bentham,⁴ but few have paused to analyse the particular type(s) of cosmopolitanism offered by Enlightenment thinkers. Interpreters have tended to read Enlightenment authors as architects of "cosmopolitan order", advocating conceptions of world citizenship, global constitutionalism or world government closely analogous to their conceptions of domestic citizenship, domestic constitutionalism and domestic government.⁵ The historiography of ideas has thus supported readings in political theory which derive the legitimacy of global political institutions from undisputed Enlightenment values, such as every human being's claim to autonomy.⁶ While more recently, overly ambitious and unitary conceptions of global government have been disavowed, contemporary proponents of cosmopolitan order still stress that only forms of "political regulation and law-making that create powers, rights and constraints that go beyond the claims of nation-states" can lay claim to the label 'cosmopolitanism'.⁷

² See e.g. David Miller, Cosmopolitanism, in Brown & Held (eds.), *The Cosmopolitanism Reader*. Cambridge: Polity 2010, 377-392, 377.

³ One paradigm example is David Held, *Cosmopolitanism. Ideals and Realities*. Cambridge: Polity 2010, chapter 2, where "Cosmopolitan Principles" (69-74) are subsumed to "Principles of Cosmopolitan Order" (67-92). Brown and Held's *The Cosmopolitanism Reader*, Cambridge: Polity 2010, is itself a case in point of the diagnosis, in singling out, with Immanuel Kant's most statist design of cosmopolitan order (*Idea for a Universal History*, 17-26), a one-sided and tendentious text on Enlightenment cosmopolitanism.

⁴ Esref Aksu, *Early Notions of Global Governance. Selected Eighteenth-Century Proposals for 'Perpetual Peace'*. Cardiff: Univ. of Wales Press 2008.

⁵ For St. Pierre and Rousseau see Olaf Asbach, *Die Zähmung der Leviathane. Die Idee einer Rechtsordnung zwischen Staaten bei Abbé de Saint-Pierre und Jean-Jacques Rousseau*. Berlin: Akademie 2001, for Kant see Pauline Kleingeld, *Approaching Perpetual Peace. Kant's Defence of a League of States and his Ideal of a World Federation*. European Journal of Philosophy 12, 3, 2003, for Bentham see Peter Niesen, *The 'West divided'? Bentham and Kant on Law and Ethics in Foreign Policy*, in David Chandler & Volker Heins (Hg.), *Rethinking Ethical Foreign Policy*. London, New York: Routledge 2007, 93-115.

⁶ David Held, *Democracy and the Global Order*.

⁷ Held, *Cosmopolitanism*, 96. Contrast Held, *Democracy and the Global Order*. For a reformed, less ambitious

I see two main difficulties with this literature. The first difficulty is normative. Even where supranational conceptions of cosmopolitan citizenship are being articulated, they do not guarantee citizens strong participatory rights in supranational decision-making. Conceptions of global supranational citizenship, even where they can point towards an already existing global human rights regime, cannot even begin to account for the historically central feature of citizenship, the exercise of political rights. Although international law has progressed in the protection of basic human rights, supranational institutions accountable to citizens' formal control have not been established beyond the scale of the European Union, and even there only in a weak form. Thus, global supranational cosmopolitanism seems committed to a legal, yet non-political conception of citizenship which is indeed reminiscent of the apolitical origins of the cosmopolitan tradition in Cynic and Stoic thought.⁸ My second difficulty with global supranational cosmopolitanism is interpretative. It seems somewhat forced on Enlightenment authors like Rousseau, Kant or Bentham. While it is true that the works of those authors contain important inspirations for contemporary debates of global order, I suggest that this is not their characteristic *cosmopolitan* innovation. My claim is that under the dominance of the idea of membership in a world polity, a genuine systematic alternative conception of cosmopolitanism, a vision both presupposing a strong commitment to statehood and to a core element of citizenship, universal and meaningful political participation, has gone undetected. The important cosmopolitan innovation of those Enlightenment authors seems to lie not so much in inspiring post-statist designs on a global scale, but in working towards a cosmopolitan re-invention of statehood and state citizenship. In contrast to contemporary supranational cosmopolitans, they argue for a transnational understanding of cosmopolitanism, for a cosmopolitanism within one country, in every country.

The central element of transnational cosmopolitanism is the opening of nation state borders to outside political influence. This alternative understanding of cosmopolitanism demands border-crossing, not border-obliterating entitlements and activities. It does not invoke post-

formulation of globalist cosmopolitanism see also Daniele Archibugi, *The Global Commonwealth. Toward Cosmopolitan Democracy*. Princeton: Princeton UP 2008.

⁸ Ernst-Wolfgang Böckenförde, *Geschichte der Rechts- und Staatsphilosophie. Antike und Mittelalter*. Tübingen: Mohr Siebeck 2. Auf. 2006, 134.

statist conceptions of political authority and legitimacy, but it does correct the Westphalian model of sovereignty by perforating states' boundaries for interventions not by foreign states, but by foreign citizens, thereby incorporating foreigners into the state polity in varying functions, modes and intensities. The motivating ideal for cosmopolitanism in one country is one of (degrees of) open membership and participation in overlapping political communities, every single one virtually universal in intake but not authority. This understanding pictures Enlightenment cosmopolitanism as a way of relating existing states and foreigners, thereby conceiving of foreigners as bearers of entitlements to participation in every polity, but not thereby in an overarching single global commonwealth. Citizens' rights thus remain largely traditional in their theoretical scope (migration rights, participatory rights in electing and being elected, rights to political communication and, in a sense to be discussed later, legislation) as well as their impact. It is their universal extension that is revolutionary.

Jeremy Bentham, whose life spanned the second half of the 18th century and the first 30 years of the 19th century, is a representative of the late Enlightenment - perhaps its only leading English representative.⁹ During his long career as a legal and political writer, he regularly concerned himself with issues in international politics, starting with the American revolution and ending with the emancipation of nations within the Ottoman, Spanish and Portuguese Empires. He wrote on questions of foreign policy, war, peace and colonial settlement, on border-crossing political economy, on the humanitarian atrocities committed in colonial rule, and on the systematic design of international law.¹⁰ Not unlike in the case of Immanuel Kant, there is no consensus on what exactly his contribution to cosmopolitan thought is. But while in the case of Kant, his uses of the term and his overall philosophy have recently been situated with regard to current conceptual usage,¹¹ in the case of Bentham, no

⁹ John G.A. Pocock: Empire, Revolution and the End of Early Modernity, in Pocock (ed.), *The Varieties of British Political Thought 1500-1800*, Cambridge UP, Cambridge 1983, 283-318, 298. Bentham's untiring commitment to clearing up confusion and exposing fraud and sinister interest places him in the midst of the Enlightenment tradition. See Wilhelm Hofmann, *Politik des aufgeklärten Glücks*, Berlin: Akademie 2002; Ross Harrison, Bentham. (Arguments of the Philosophers Series), London: Routledge 1983; H.L.A. Hart, *The Demystification of the Law*, in Hart, *Essays on Bentham*. Oxford: OUP 1982, 21-39; Philip Schofield, *Utility and Democracy*. Oxford: OUP 2006.

¹⁰ Stephen Conway, *Bentham on War and Peace*. Jennifer Pitts, *Legislator of the World? A Rereading of Bentham on Colonies*, *Political Theory* 31, 2, 2003, 200-234; Gunhild Hoogensen, *International Relations, Security and Jeremy Bentham*. Abingdon: Routledge 2005; David Armitage, *Globalising Bentham*, *History of Political Thought* Vol. XXXII. No. 1. Spring 2011, 63-82.

¹¹ See Katrin Flikschuh, *Kant and Contemporary Political Philosophy*. Cambridge: Cambridge University Press

systematic link between his imputed cosmopolitan attitude and contemporary debates has been established. This is a serious lacuna in research, especially because Bentham's legal and political thought has attracted genuine and detailed interest in the past decades. Not only his democratic theory and his contributions to liberal thought, but also his thought on international law, on empire and colonialism have been reconsidered. There is no shortage of works on his international political theory.¹² Still, "cosmopolitanism" with regard to Bentham is largely used as an empty gesture, commending his impartial and anti-particularistic outlook rather than as a term characterising the specifics of his normative theory of global politics.

In this paper, I attempt to specify what type of cosmopolitanism Bentham supported, and how he supported it. I first identify two traditional interpretations along the lines of which scholars have argued for the cosmopolitan character of Bentham's political thought, first, the utilitarian nature of his philosophy; second, his proposals on international law, and find them inconclusive (1.1., 1.2.). I then attempt to make a case for reading Bentham's constitutional thought as arguing for transnational cosmopolitanism in a variety of dimensions (2.1.-2.5.). Finally, I look at the ways in which Bentham himself exercised his (presumptive) rights and entitlements as a cosmopolitan citizen to bring about constitutional change (3.1.-3.2.).

1. Bentham's Cosmopolitanism: Two false starts

1.1. Some authors draw a contrast between moral and political cosmopolitanism, where "moral cosmopolitanism" refers to the straightforward idea of moral universalism. Moral universalism is the idea that every person, no matter who and no matter where located, has a claim to equal moral concern and respect. Does Bentham hold this view? One obvious answer is: Yes, of course, because utilitarianism is a version of moral universalism, and

2000. Pauline Kleingeld, Kant and Cosmopolitanism. The Philosophical Ideal of World Citizenship. Cambridge: Cambridge UP 2011. Oliver Eberl & Peter Niesen, Kommentar. In: Immanuel Kant. Zum ewigen Frieden und Auszüge aus der Rechtslehre. Berlin: Suhrkamp Studienbibliothek 2011, 207-209, 248-266.

¹² Three recent important works are David Armitage, Globalising Jeremy Bentham. Jennifer Pitts, Jeremy Bentham: Legislator of the World?; Gunhild Hoogensen, International Relations, Security and Jeremy Bentham. Abingdon: Routledge 2005.

Bentham is a utilitarian. Utilitarians calculate the pleasure and pain caused by every action on every sentient being affected by that action.¹³

I see three main problems with applying this line of argument for the purposes of international political theory, and thus three hindrances to infer a substantive conception of cosmopolitanism from Bentham's moral theory. First, if we take utilitarianism to be a theory of morality, it is not immediately obvious how political cosmopolitanism could be established even on the basis of moral cosmopolitanism. Bentham's interest in the greatest happiness principle is as the basis of a theory of government,¹⁴ and in areas where no government exists, we have no idea how to apply such a theory. Although Bentham does reflect on the lack of co-ordinated activity in the international realm, and is aware of the unavoidable enforcement problems of any such activity,¹⁵ he gives no indication that government beyond the states ought to be established.

The first difficulty leads us to a second one, the question: what is so special about governments in Bentham's utilitarianism? In the literature, we find two answers to this question. In his *Introduction to the Principles of Morals and Legislation (IPML)*, Bentham's main systematic work in moral theory, he identifies the principle of utility as requiring, of every action, to contribute to "the happiness of the party whose interest is in question".¹⁶ But when exactly is it the case that a party's interest is in question? We can distinguish an

¹³ This understanding of Bentham's utilitarianism is dominant in IR theory. For one categorisation of utilitarianism as a type of cosmopolitanism along such lines, see Chris Brown, International Relations Theories, New Normative Approaches, NY: Columbia UP 1992, 41-47. "Bentham is not an advocate of world government ... but he is a cosmopolitan. The state has no value as such". (43) But while the state has no value as such, nothing apart from happiness has value as such in Bentham, not even a cosmopolitan political condition. Anthony Ellis ascribes Bentham the same position in Utilitarianism and International Ethics, in Terry Nardin and David R. Mapel (eds.), Traditions of International Ethics. Cambridge: Cambridge University Press 1992, 158-79, 164. Cf. also Sylvie Loriaux, Global Ethics. In Richard H. Corrigan & Mary Farrell: Ethics: A University Guide. Gloucester: Progressive Frontiers Press 2010, 185-206, esp. 189. J.S. Mill commends the "cosmopolitan character" of Bentham's writings, "especially those edited in French by Dumont, translations of which, or the original papers on which they were founded, are in the collected edition of Bentham's Works". The overly general character of Mill's endorsement indicates that he is using the term "cosmopolitan" in its empty compliment sense. Mill, Collected Works, ed. J. Robson, vol. XVII, Toronto: U of Toronto Press 1984, 1812. I owe the reference to Georgios Varouxakis, Cosmopolitan patriotism in J.S. Mill's Thought and Activism, *Revue d'Études Benthamiennes*, 4, 2008.

¹⁴ This point has been affirmed especially by readers attempting to defend Bentham against the charges of an overly simplistic conception of normative ethics (Paul Kelly, Bentham, in Boucher & Kelly, Political Thinkers, 2nd ed. Oxford: Oxford University Press 2009; Philip Schofield, Jeremy Bentham, A Guide for the Perplexed. London: Continuum 2010), but seems largely true in view of Bentham's avowed interest. His one attempt at systematic ethics, Deontology (Collected Works, ed. A. Goldsworth, Oxford: Oxford University Press 1983) is non-conclusive as to the argument made here. See J. Dinwiddie, Bentham on Private Ethics and the Principle of Utility, in W. Twining (ed.): John Dinwiddie, Bentham: Selected Writings. Stanford: Stanford UP 2004.

¹⁵ See the analysis of Principles of International Law, below, and ***

¹⁶ I, 2, 12.

all-affected and an all-subjected reading of this passage.¹⁷ The all-affected interpretation treats governments like all other powers, as one type of actor among many. According to this reading, governments must be committed to maximising the happiness of all those causally influenced by their actions. This interpretation is the traditional one that we find in introductions to utilitarianism.¹⁸ It entails that there is nothing special about governments, but that they, like all others, need to respect the interests of whoever is made to suffer by their activity. The rival interpretation, which was formulated 40 years ago by David Lyons, reads Bentham's *IPML* as a study in the standards of government.¹⁹ Lyons presents the machinery developed in *IPML* exclusively as a device of subjection, which seems not implausible given its attention to developing a legal-psychological apparatus motivating subjects to comply with the precepts of utility. Legislative action means nothing to those who are not governed by, or subject to them: infants, animals, non-residents; therefore they are not members of the party whose interest is in question. Lyons' interpretation has remained heterodoxical, and it must be admitted that it does not give a complete reading of all interests at stake in *IPML*. (In the next paragraph, I will refer in passing to a counterexample to it, the famous footnote on animal well-being.) But the question of Bentham's cosmopolitanism is a welcome occasion to rehabilitate, to a certain extent, Lyons' interpretation again. In a minute, I will explain why I think that Bentham was at least undecided about which answer to give to the question: whose interest is in question with any given action, the interest of those affected by that action or of those subjected to the dominion of the actor?

Before I introduce this argument, however, I want to turn to a third problem with inferring political cosmopolitanism from utilitarian morality. This problem only comes up if Lyons is wrong and utilitarian concern is owed to those affected, not just those subjected by government action. Recall that moral cosmopolitans hold that everybody is owed equal moral concern. The remaining question that needs to be asked is then: how egalitarian is Bentham's brand of utilitarian morality? It is not clear whether in certain contexts within his theory of morality, Bentham is not more egalitarian, and in yet other contexts less egalitarian than contemporary interpretations of the principle of utility seem to dictate.²⁰ On

¹⁷ I take these contemporary terms from Nancy Fraser, *Scales of Justice*, London: Polity 2008, 24-25, 65-7.

¹⁸ Otfried Höffe, *Einleitung*, in Höffe (ed.), *Einführung in die utilitaristische Ethik*. Tübingen: Francke 2nd ed. 1992, 7-51, 11; Tim Mulgan, *Understanding Utilitarianism*, Stocksfield: Acumen 2007, 168.

¹⁹ David Lyons, *In the Interest of the Governed* [1973], Oxford: OUP 2nd ed. 1993.

²⁰ The standard account of the maximisation of utility as a way to respect the "equal consideration of interests"

the one hand, recent studies have argued that as a theory of government, Bentham's late political philosophy is considerably more egalitarian than the traditional aggregative reading of the principle of utility would allow.²¹ They point toward the explanation of the phrase "the greatest happiness of the greatest number" as the greatest happiness "of all, in so far as possible" in Bentham's later constitutional writings.²² Government may not only be obliged to treat the interests of all with equal concern, but must provide, wherever at all possible, equal outcomes. But again, this is an interpretation of moral demands from within a theory of government. It has no immediate application where no governments exist. Even if Lyons is wrong and the interests of all affected parties are to be considered,²³ it would be rash to conclude that all persons are to be considered equally. One way to bring out the problem is to look at the footnote on animal well-being from *IPML*, in which Bentham chides the Western tradition for completely ignoring the interests of animals. (Of course, the footnote on animals is a challenge for the Lyons interpretation, since animals can only be affected, not subjected, by governments.) Bentham likens the deplorable situation of animals in his day to the fate of black African slaves: "The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor."²⁴ Although Bentham invokes animal "rights" here, contrary to his general disposition,²⁵ he is careful to state that these do not amount to the same entitlements that human beings can claim - the reason being animals' lack of the "long-protracted anticipations of future misery which we have" (282 fn.). If we ascribe a capacity of suffering to beings, we cannot presume that this gives equal moral status to them. While the greatest happiness principle yields, under Bentham's interpretation, a universal claim of every sentient creature not to be tormented, or not without redress, it does not establish

of all is perhaps that of Will Kymlicka, *Contemporary Political Philosophy*, Oxford: Oxford UP 1st ed. 1990, 31-32.

²¹ The original impulse comes from the work of Frederick Rosen, see esp. Jeremy Bentham and Representative Democracy. A Study of the Constitutional Code. Oxford: OUP 1983, chapter XI, 200-220. See also Paul Kelly, Utilitarianism and Distributive Justice. Jeremy Bentham and the Civil Law. Oxford: OUP 1990; Gerald Postema, Bentham's Equality-Sensitive Utilitarianism. *Utilitas* 10, 1998, 144-158, and James E. Crimmins, Utilitarian Philosophy and Politics. Bentham's Later Years, London/New York: Continuum 2011, 92-116.

²² The latter phrase comes from Constitutional Code vol. I, 136 (VII, § 2), cf. Frederick Rosen, JB and Representative Democracy 201.

²³ David Lyons denies this reading in his *In the Interest of the Governed*, 24f.

²⁴ Introduction to the Principles of Morals and Legislation, ed. J.H. Burns & H.L.A. Hart, *Collected Works*, Oxford: OUP repr. 2005, XVII, 4 fn, 282f.

²⁵ See the material formerly known as Anarchical Fallacies, now published as *Nonsense upon Stilts*, in Jeremy Bentham, *Rights, Representation and Reform*. Ed. P. Schofield et al. Oxford: Oxford UP 2002, 317-397.

that all are deserving of *equal* moral concern - this stricter condition is itself dependent on beings' sensibility.

Here, an argument from uncertainty can be invoked to the effect that among human beings, their susceptibility to pain and pleasure, and their capacity to experience happiness must be considered equal. In domestic political circumstances, Bentham says we have no choice but to act as if every person was susceptible to pleasure and pain to the same degree,²⁶ but again, that such an argument can be invoked to guide domestic political government does not give it automatic universal applicability. I conclude that there is no simple way from the greatest happiness principle to a robust conception of cosmopolitanism for international politics. The greatest happiness principle may entail, contra Lyons, universal concern, but it is not clear whether it entails universal equal concern. Even if universal equal concern can be established as an implication of Bentham's principle, it is not clear which relevance it would have for a political interpretation of cosmopolitanism, since its function is to serve as a normative standard of government behaviour.

1.2. While the simple identification of utilitarianism with cosmopolitanism is one false start that a discussion of Bentham's cosmopolitanism should avoid, consider another false point of departure. This alternative is suggested by the famous collection of texts called *Principles of International Law*, assembling four fragmentary essays, including "A Plan for an Universal and Perpetual Peace". Most scholars approach the topic of cosmopolitanism in Bentham from this text since it contains one of the few unproblematic textual sources. Its first essay, *Objectives of International Law*, starts off with the following passage:

If a citizen of the world had to prepare an universal international code, what would he propose to himself as his object? It would be the common and equal utility of all nations: this would be his inclination and his duty.²⁷

While the expression 'cosmopolitan' and its derivatives do not appear in Bentham's *Works*, this passage is one of the few explicit terminological sources for Bentham's cosmopolitan mindset, through its use of the phrase "citizen of the world". The phrase had its first

²⁶ "Faute de pouvoir déterminer le degré relatif de bonheur dont différens individus sont susceptibles, il faut partir de la supposition que ce degré est le même pour tous. Cette supposition, si elle n'est pas exactement vraie, approchera au moins autant de la vérité que toute autre supposition générale que l'on pourroit mettre à sa place". Bentham, Rights, Representation and Reform. Collected Works, ed. P. Schofield et al., Oxford: OUP 2002, 68.

²⁷ in: Bowring (ed.), Works vol. II, Edinburgh: Tait 1834, 537.

appearance in the preface to Bentham's first published work, *A Fragment on Government* of 1776, equally in a context *de lege ferenda*. In the *Fragment*, Bentham famously distinguishes two perspectives on law, that of the Expositor, who presents law as it is, and that of the Censor, who criticises existing legal practice from the perspective of law as it should be.

The Expositor, therefore, is always the citizen of this or that particular country: the Censor is, or ought to be the citizen of the world.²⁸

While the expositor can only reconstruct existing law, the censor can serve in the function of a teacher to the future legislator (ibid.). A citizen of the world is then first and foremost somebody who brings a competent, "disinterested", independent and benevolent mindset to the task of formulating a critique or a normative legal program, and this meaning is firmly in place from Bentham's earliest writings.²⁹ This usage is confirmed by later anecdotal, less discursive uses. Later in life, Bentham would not be averse to describing himself as a "citizen of the world",³⁰ and in the 'testimonials' he elicited for his codification proposals from various politicians throughout the world, his interlocutors would in the same sense describe him as a "citizen of the world", and a "friend of mankind".³¹

If a concern with impartial and benevolent legislation is at the heart of a Benthamic "citizen of the world", why should we think of his *Principles of International Law* are the wrong place to start investigating his cosmopolitanism?

²⁸ Ed. J. Burns & H.L.A. Hart, Cambridge 1988, 8 (Preface to the First Edition of 1776). Ross Harrison, commenting on the Fragment, interprets the passage to mean that "Bentham's central work was not tied to the law of any particular country. He was, to use a word he himself invented, an international figure. At this time he was international in doctrine and intention. Later on he was international also in reputation". Introduction, in Burns/Hart (eds.), Jeremy Bentham. A Fragment on Government, vi-xxiii, xi.

Note the global context in that the Fragment relates to the American Revolution. Bentham was involved in intensive debates and cooperation with the pro-British pamphletist John Lind. [Jeremy Bentham, John Lind], Short Review of the Declaration [1776], in: David Armitage (ed.), The Declaration of Independence. A Global History. Cambridge, Mass.: Harvard University Press 2007, 173-186. For the relation between A Fragment on Government and the American Revolution, see the doctoral dissertation by Paola Rudan, Dalla Costituzione al Governo. Jeremy Bentham e le Americhe. University of Bologna, 2007, at http://amsdottorato.cib.unibo.it/193/1/Rudan._Jeremy_Bentham_e_le_Americhe.pdf (last accessed Feb 12, 2012). Rudan also reads Bentham's later anti-colonial writings as based on "the censorial jurisprudence of Jeremy Bentham, citizen of the world, and on the utility of emancipation" (ibid. 269, transl. PN).

²⁹ *Principles of International Law*, 539. The connection between "censure", i.e. critique, and a cosmopolitan mindset can also be gleaned from Bentham's "motto of a good citizen": "To obey punctually, to censure freely." *Fragment on Government*, 10. For a linkage with Immanuel Kant's conception of Enlightenment, see Oren Ben-Dor, Constitutional Limits and the Public Sphere. A Critical Study of Bentham's Constitutionalism. Oxford: Hart 2000, 124.

³⁰ "an Englishman by birth, ... a citizen of the world by naturalization", Letter to Lord Holland, 31st October, 1808.

³¹ *Legislator of the World* 319, 335.

There are two worries here, one textual and one systematic. First, on the less important textual point. *Principles of International Law* was collated from various foreign-policy related manuscripts. It must be conceded that a work of Bentham's under the title *Principles of International Law* "does not exist",³² and that various manuscript sources, among them those of the passage quoted above, are now missing. However, the textual worry is perhaps not decisive since there is ample manuscript material from which similar positions can be gathered.³³ But as in a number of other cases, there seems no way to separate Bentham's materials and intentions from those of his editors.

A second, more important worry is that the *Principles of International Law* themselves, besides their clear delineation of a role for cosmopolitan 'legislative' activity in the very first passage, deliver little evidence for a cosmopolitan stance, once we are serious about the distinction between internationalism and global normative individualism, i.e. cosmopolitanism. On the contrary, Bentham, in his *Principles of International Law*, is committed to a global order in which the only elements claiming normative status are collectives. When he specifies, as quoted above, "the common and equal utility of all nations" as the standard for relations between states, he is on the one hand making a conceptual point: international law is defined as law *inter gentes*. This eclipse of individuals as potential subjects of an international legal order is already preordained in Bentham's much-praised introduction of the term "international law":³⁴ it relates exclusively states (and their sovereigns) to each other, not individuals or even non-state peoples.³⁵ Bentham insists that relations between sovereigns and foreign individuals cannot be captured under international law. Such conflicts as arise between them are dealt with under "internal", i.e. domestic law.

This entails that international law does not cover, and its utilitarian calculations do not strive to further, non-aligned individuals' and non-state peoples' interests. Groups that are not organised in the form of states, like the aborigines of Australia, cannot claim to be subjects

³² Gunhild Hoogensen, International Relations, Security and Jeremy Bentham. Abingdon: Routledge 2005, 50.

³³ There exists no edition of Bentham's works on international law, but see the careful tracing of his projects in David Armitage, Globalising Bentham, History of Political Thought Vol. XXXII. No. 1. Spring 2011, 63-82.

³⁴ For "international law", see Introduction to the *Principles of Morals and Legislation* (IPML), J.H. Burns & H.L.A. Hart (eds.), Oxford 1996, chap. XVII, § 25 fn (296f.). The term was introduced there in the printed material of 1780, although the work was published only in 1789. For "international relations", see the *Book of Fallacies*, Works, J. Bowring (ed.), vol. II, London 1843, 447.

³⁵ On this latter problem see Niesen, The 'West Divided'? Bentham and Kant on Law and Ethics in Foreign Policy.

of international law.³⁶ This is no mere oversight. There is a normative point behind the eclipse of individuals and non-state peoples, and it concerns the obligations of government. Conflicts of obligations may arise between a government's commitments to the happiness of its subjects, and to the common and equal utility of all nations. The question is then whether the government of a particular state, being under an obligation to provide for the greatest happiness of its population, is *permitted* to commit itself to international utility:

Would or would not the duty of a particular legislator, acting for one particular nation, be the same with that of the citizen of the world? That moderation, which would be a virtue in an individual acting for his own interests, would it become a vice, or treason, in a public man commissioned by a whole nation? Would it be sufficient for him to pursue in a strict or generous manner their interests as he would pursue his own?—or would it be proper, that he should pursue their interests as he would pursue his own, or ought he so to regulate his course in this respect as they would regulate theirs, were it possible for them to act with a full knowledge of all circumstances? And in this latter case, would the course he would pursue be unjust or equitable?³⁷

I have quoted this passage at length to show that for Bentham, there is a serious question here: not from the perspective of the citizen of the world, but from that of the domestic legislator and administrator. Note also that the question itself only makes sense if Bentham is at least contemplating an interpretation of the domestic legislator's obligations akin to Lyons' reading of *IPML*: Under the standard reading, which imputes to the legislator an obligation to all those who are affected by his actions, the domestic government could not coherently pursue a policy of maximising its members' happiness at the expense of others. But is it the duty of the sovereign to promote his subjects' happiness, or only to promote it within the limits of the happiness of all nations? Bentham dissolves the problem in arguing that the circumstances of international politics will unavoidably bring actions geared toward international utility into harmony with actions toward domestic utility. A sovereign who aims to maximise domestic utility at the expense of international utility, Bentham says, "cannot fail always to experience a certain resistance", and repeated confrontation will lead him to seek out a "line of least resistance": "The point of repose will be that in which all the forces

³⁶ In Bentham's works on an Australian "Colonization Society", "uncivilized" Australian aborigines only occur as sources of insecurity for the settlers. MS Colonization Society, 11.8.1831, MS U.C. box 8, p. 155. Quoted from the Bentham Project transcripts downloaded via dataarchive.ac.uk, 2003.

³⁷ *Principles of International Law*, 537.

find their equilibrium".³⁸ One such equilibrium was the balance of power among the nation states of Europe, as a result of the roughly equal threat potential of states or alliances. But note that this argument from the balance of power between nations effectively excludes individuals and non-state peoples from serious international political concern. As non-state peoples and individuals cannot credibly threaten retaliation, governments might not only be free to take advantage of that, but under strong obligations to their inhabitants to do so. It follows that international obligations do not unequivocally entail any normative commitments vis-a-vis entities other than states, including individuals.

To this line of argument, it might be objected that individuals necessarily have normative standing in Bentham's moral and political thought because of Bentham's individualistic analysis of the notion of "interest" itself. From the perspective of his utilitarianism, states (as well as other groups, societies, all kinds of collectives) have no intrinsic interests over and above the their members's interests. All collective interest is an aggregate of individual interests.³⁹ It can therefore be argued that under the notion of the "utility of nations", what is *de facto* protected is the advancement of their members' interest. I believe that this argument cannot have any force since the sizes of the relevant communities do not matter within Bentham's conception of international law. Recall that the utility principle he draws on is that of the "common and equal utility of all nations". Equal utility between communities, given their greatly differing population figures, admits of greatly differing average utilities among the members of the various communities. I conclude that Bentham's conception of international law is not only conceptually incapable of integrating a concern for individuals' well-being, but that its background normative assumptions about a harmony of domestic and international policy are in conflict with awarding normative claims to individuals beyond the state.

The discussion in 1.1. and 1.2. has shown that two strategies for arguing for the cosmopolitan character of Bentham's political thought are unavailable. There is no direct route to Bentham's cosmopolitanism from his version of utilitarianism in moral theory, nor is there one from his theory of international law. While the one true cosmopolitan feature

³⁸ Principles of International Law, 538.

³⁹ "The community is a fictitious body, composed of the individual persons who are considered as constituting [it]. The interest of the community then is, what?- the sum of the interests of the several members who compose it." IPML I, 4 (12).

discovered in Bentham's writings on international law, the role of a draughtsman of an international code, shows "cosmopolitan potential"⁴⁰, for a systematic expression of Bentham's cosmopolitanism we must look elsewhere.

2. Bentham's Cosmopolitan Theory: Cosmopolitanism within one country

Now that we have established what Bentham's cosmopolitanism is not, let us ask what it is. For this, I revert to a distinction introduced earlier, between a cosmopolitanism based on unified global citizenship and a cosmopolitanism "in one country". The difference is that between an orientation toward a single world polity and the universalistic transformation of a single state polity. These positions need not in the long term prove incompatible, but they delineate very different institutional ideas. While there is little evidence that Bentham holds the first view, there is ample reason to think that he embraces the second one.

In this section, I want to present five pieces of evidence for this claim. They all come from Bentham's normative constitutional projects, and most have been written with concrete revolutionary or reform contexts in mind. Some come from Bentham's early, some from his later period. There is no indication that at any time Bentham had occasion to revoke any of them. All of them are gathered from Bentham's democratic writings; all examples are taken from democratic constitutional proposals, which may suggest that cosmopolitan openness applies exclusively to democratic societies. The sequence of presentation traces their growing momentum.

2.1. The first piece of evidence for a cosmopolitan orientation within the bounds of domestic society is a proposed universal right of emigration and immigration. In Bentham's late *Constitutional Code*, the members of the Legislative Assembly, upon election, are required to take a solemn oath that includes the following formula:

Never, by force or intimidation, never by prohibition or obstruction, will I use any endeavour to prevent my fellow-countrymen, or any of them, from seeking to better their condition in any other part, inhabited or uninhabited, of this globe. In the territory of this State, I behold an asylum to all: a prison to none.⁴¹

⁴⁰ David Lieberman, *The Province of Legislation Determined. Legal Theory in Eighteenth-Century Britain*. Cambridge: Cambridge University Press 1989, 241.

⁴¹ Bentham, *Constitutional Code*, vol. i [1830], ed. by F. Rosen and J.H. Burns, 1983. Oxford: OUP, 144.

The Legislator's Inaugural Declaration is to serve as an equivalent to constitutional declarations of rights which Bentham attacked during most periods of his career as incoherent and politically dangerous. In contrast to the catalogues of subjective rights produced in the American and French revolutions, it formulates a commitment in the form of a promise exacted from those in power, thereby awarding securities to those that are or may come to be subjected to its laws and administration.⁴² Although the first sentence of the passage quoted specifies only ones' fellow-countrymen as the addressees of the promise, the last phrase of the passage makes clear that the promise guarantees perfect symmetry of emigration and immigration. This last phrase introduces the idea of a constitutional order as an "asylum to all". While in office, the legislators promise to guarantee a regime of open borders, in both directions.⁴³

2.2. A second, more far-reaching element of cosmopolitanism in one country is the granting of passive suffrage to foreigners. This idea is worked out in early manuscripts sent out during the convocation of the French Estates General, when Bentham advised his French interlocutors in constitutional questions. It is well known that he successively radicalised his egalitarianism concerning electoral law, and that he came to advocate granting universal suffrage to men and to women and abolishing all property qualification.⁴⁴ What is less well known is that he suggested the same radical extension in passive suffrage not only for women, but also for foreigners. Even before the French revolutionary constitutions of 1791 and 1793 insisted that foreigners be naturalised almost as a matter of course, Bentham argued that the holding of political office in France ought not be limited to French citizens. While conceding that only French citizens should be entitled to vote (under conditions of swift naturalisation), he demands that "from the capacity of being elected no human creature whatsoever shall be excluded." His reasoning is not based on an argument to the effect that restrictions would violate moral claims of non-citizens. It is the citizens themselves whose interests may be hurt by foreigners' exclusion. Any restriction on the choice of delegates to the National Assembly would be "an infringement of the right of the

⁴² Frederick Rosen, *Jeremy Bentham and Representative Democracy*, 67-75.

⁴³ Of course, there is a problematic aspect to the passage quoted in that it may encourage settling in presumptively unowned territory. Bentham, especially in his later political thought, was not averse to the establishment of settler colonies. On the problematic legacy of the case for open borders, see Leo Campos Boralevi, *Bentham and the Oppressed*, Berlin, New York: Campus 1984.

⁴⁴ Bentham, *Rights, Representation, and Reform*, 67-96. See Philip Schofield, *Jeremy Bentham, the French Revolution and Political Radicalism*, *History of European Ideas* 30, 2004, 381-401

elector".⁴⁵ Bentham's example is the figure of Jacques Necker, expert administrator under the absolutist monarchy, and so at first glance he might seem to hold the nascent republic to the cosmopolitan standards established by its autocratic predecessor regime. But Bentham makes clear that it is exclusively the support of a republican electorate, in contrast to the former practice of having foreign experts nominated by the crown, which will confer legitimacy upon their office.⁴⁶ If foreigners were in fact elected, this would give them independent legitimacy and testify to their greater virtue and merit. In stressing the dimensions of qualification and virtue, Bentham treats of foreigners' inclusion mainly as a way of finding the best possible candidate. Their inclusion as candidates for mandates and public offices stands in the service of an epistemic or qualitative improvement of democratic government.

2.3. The third feature of a cosmopolitanism in one country concerns the rights and chances of political representation for foreigners. This idea is not identical to awarding passive suffrage to foreigners, which does not commit potential foreign holders of mandates to representing an interest that is not identical to that of their constituency. Bentham developed his theory of parliamentary government during the early stages of the French revolution - the summoning of the Estates General and their subsequent conversion into the National Assembly. In the manuscripts shipped to France, he developed an epistemic approach to legislative decision-making. Already the title of his influential account of parliamentary proceedings, first edited by Etienne Dumont in 1816 as *Tactique des Assemblées Politiques Délibérantes*, betrays that Bentham pursues a deliberative conception of parliamentary debate, one that privileges full publicity of debates, advises against factional government and generally argues against cognitive closure.⁴⁷ It is no surprise therefore to see Bentham supporting foreigners' participation in representative assemblies from an epistemic perspective. Yet his two approaches to the issue, one early, one late, result in two different models that need to be distinguished.

The first version, a model of 'reciprocal representation' was developed in the context of the Franco-English confrontation induced by the French Revolution. In such a situation, reciprocal representation could be conducive to peace: "Were the French and English

⁴⁵ Jeremy Bentham, Rights, Representation and Reform, 231, 250.

⁴⁶ Bentham, Rights, Representation and Reform, 250.

⁴⁷ Jeremy Bentham, Political Tactics. Ed. Michael James et al. 1998. On Bentham's theory of publicity, see Jürgen Habermas, *The Structural Transformation of the Public Sphere*, Cambridge: MIT Press 1989, and Oren Ben-Dor, *Constitutional Limits and the Public Sphere*.

legislature to interchange a few Members, there could not be a more powerful means of wearing away those national antipathies and jealousies which as far as they prevail are so disgraceful and so detrimental to both countries".⁴⁸ Note that although the proposed exchange of delegates is to counter nationalistic sentiment, technically speaking Bentham's suggestion is not evidence of a cosmopolitan mindset, for two reasons. The first reason is that Bentham's suggestion is designed to accommodate only a single foreign country, on the basis of a particular historical experience of conflict. Now it may be objected that this is not as parochial as it looks, since reciprocal representation could easily be extended to any number of countries and therefore reach a global scope. Since it is not implausible that the danger of war may arise between any two countries, a qualified system of reciprocal representation may be warranted and this difficulty avoided. It does not seem far-fetched to argue that such a universalised idea of reciprocal representation would echo Bentham's affirmation of the old system of appointing "war residents" in enemy countries.⁴⁹ However, the second reason is more serious and concerns the reciprocity requirement itself.⁵⁰ Transnational cosmopolitanism, or cosmopolitanism in one country, has in our earlier examples always been conceived of as a matter of unilateral commitment. It has not depended on circumstances in which a reciprocity of cosmopolitan obligations is in fact honoured, or could in a limiting case be secured through supranational authority. This distinguishes it from the reciprocal awarding of entitlements of parliamentary representation, which may exclude outsiders.⁵¹ Also, consider whether under the logic of

⁴⁸ Bentham Jeremy Bentham, *Rights, Representation and Reform* 250. I borrow the term "reciprocal representation" from Philippe Schmitter, who has introduced a similar suggestion (Exploring the problematic triumph of liberal democracy and concluding with a modest proposal for improving its international impact. In Axel Hadenius (ed.), *Democracy's Victory and Crisis*. Cambridge: CUP, 1997, 297-307, 303-5): Formally sovereign nation states are to accord each other two or three seats in their respective parliamentary assemblies. Such representatives are to have debating rights and rights of documentation, but not voting rights. Reciprocal representatives could supplement the normal channels of diplomatic relations by publicly highlighting problems that might arise and thus embody an "early warning system" for policies that could negatively affect the citizens of their respective home countries. Bentham's suggestion is more far-reaching than Schmitter's in that he does not pre-empt reciprocal representatives' voting rights, and more universal in scope as he does not require that representatives belong to neighbouring states.

⁴⁹ *Principles of International Law*, Bowring vol. II, 53*: "When war has broken out, a palliative for its evils might perhaps be found in the appointment of war-residents, to provide for prisoners and to prevent violations of the laws of war. Will it be said, that in quality of a spy such residents would be to be feared? An enemy known to be such, could scarcely be a spy. All the proceedings of such residents should be open, and all his letters subjected to inspection. At present, foreigners are scarcely excluded from an enemy's country—scarcely even military men or ministers; and so soon as it is wished to employ a spy, could not a native be found? A resident of this character could always be employed as a channel of communication, if an accommodation were desired".

⁵⁰ I thank Marcus Willaschek, Angela Marciniak and Miriam Ronzoni for pressing me on this point.

⁵¹ This difference between reciprocally internationalist and cosmopolitan representation is important for

reciprocal representation, stateless intellectuals, lacking a foreign constituency, could be admitted as delegates to single-states parliaments. Clearly, the answer is no. Reciprocal representation is therefore not strictly speaking a cosmopolitan idea, although under empirically universal conditions its realisation could amount to a *de facto* cosmopolitan opening of representative systems.

In a later proposal, Bentham suggests opening up parliaments to foreign delegates in a unilateral mode:

In the case of a legislative body the members of which are freely chosen by the people, why should not they aggregate to themselves a few members, selected by them from other political states, associates, whose constitution bears more or less analogy to theirs. In the case of these foreign associates, to the right of speech and motion need not, nor should, be added the right of suffrage: for, to any use, derivable from information, afforded by a man in the character of a witness or an advocate, would be applied - not addition but subtraction, by any share, given to him in the power of a Judge. Power, it would not be competent to them to give: information, so it but afforded any the least promise of being of use, no man can be incompetent to receive. ... An aggregation of this sort would be - not only a source of information, but a bond of fellowship.⁵²

In restricting the intake of foreign parliamentarians through a condition of constitutional similarity, this proposal is no more perfectly cosmopolitan than the reciprocal representation scheme. However, the restriction seems to be motivated by the need to identify trustworthy and usefully experienced candidates, and not by an expectation of their ideological conformity. It is also significant that Bentham offers only initiative and deliberative rights to the transnational members. Such rights are important in influencing parliamentary agenda-setting and opinion-formation, but they lack formal impact. The foreign members' competence is restricted to an "influence of understanding over understanding", while they do not partake of an "influence of will over will", as manifested in voting rights.⁵³ Whereas the reciprocal scheme discussed earlier offers strong participation rights, the unilateral admission of foreigners equips them as weak members of strong publics. The latter scheme,

evaluating the claims of the European Union to an immanent cosmopolitanism.

⁵² Bentham, *Legislator of the World* 295f. fn. The text (*Codification Proposal Addressed by Jeremy Bentham to All Nations Professing Liberal Opinions*) was first printed in 1822. Bentham believes that foreign parliamentarians might be especially welcome in cases of recent decolonisation.

⁵³ Bentham, *Rights, Representation and Reform*, 422. On the distinction between the two categories of influence see P. Niesen, *Tribunal der Zeitungsleser. Bentham über schwache und starke Öffentlichkeiten*, in Olaf Asbach (Hg.), *Vom Nutzen des Staates. Staatsverständnisse des klassischen Utilitarismus: Hume - Bentham - Mill*. Baden-Baden: Nomos 2009, 153-182.

though in its unilateral orientation more clearly wedded to an ideal of cosmopolitanism in one country, privileges the epistemic function already discussed under foreigners' passive suffrage (2.2.) over claims to a representation of their interests (e.g. as parties affected by the impact of domestic legislation). Although Bentham has not forgotten that an inclusion of foreigners may contribute to peace and "fellowship", he does not commit to entrusting them strong voting rights in parliament under the non-reciprocal scheme.

2.4. A fourth suggestion can be understood as a generalisation of the former proposal, more precisely of the second scheme for representative assemblies. It amounts to awarding extensive rights to free border-crossing speech to all foreigners. This idea is at the same time the purest form of cosmopolitan entitlement we find in Bentham's political thought and an important element of his democratic theory. During both 'democratic periods' of his work, in his so-called first 'democratic conversion' during the French Revolution as well as in his post-1806 association with democratic Radicalism,⁵⁴ Bentham conceives of constitutional democracy as a constant interplay between two types of bodies. On the one hand, there are 'strong', decision-making assemblies like parliament or juries, authorised to make legislative or jurisdictional decisions. On the other, there is the exercise of weak and informal, but controlling authority called the "Public Opinion Tribunal".⁵⁵

The mature *Constitutional Code* discusses the interplay between the two types of bodies. It locates sovereignty "in the people"⁵⁶ and entrusts its exercise to a Constitutive Authority. The Constitutive Authority is supreme among the hierarchically ordered set of authorities containing the Constitutive, the Legislative, the Administrative and the Judiciary. The competence of the Constitutive Authority lies, firstly, in delegating and revoking the members of the Legislative and, if necessary, holding them legally accountable. The constitutive body is made up of all electors (i.e. no females, non-adult males, non-readers or "passengers"⁵⁷). But the Constitutive Authority does not restrict itself to formal decision-making. Besides the electoral or constitutive body, a further element within the Constitutive Authority is the Public Opinion Tribunal (POT), a body made up not only out of electors, but

⁵⁴ Halevy; Mack; J.H. Burns, Bentham and the French Revolution, *Transactions of the Royal Historical Society*, Fifth Series 16, 1966, 95-114; John Dinwiddie, Bentham's Transition to Political Radicalism [1975], in Dinwiddie, Bentham, Stanford: Stanford UP 2004, 110-133; Philip Schofield, Utility and Democracy, 78-136.

⁵⁵ Peter Niesen, *Tribunal der Zeitungsleser*, 155ff., for a comparison of Bentham's theory of democracy to that of Jürgen Habermas.

⁵⁶ Chapter III: "Sovereignty, in whom", 25.

⁵⁷ *ibid.*, 27. In the reason-giving ("ratiocinative") part of the Constitutional Code, Bentham criticizes the exclusion of women.

also of non-electors and of "all other political communities, all such members, to whom it happens to take cognizance of the question, whatever it may be".⁵⁸ Every domestic POT consists of all domestic individuals, all international collectives *and* all individual citizens of the globe. The right to participate in the exercise of the POT is conferred equally on all three classes of members. Its inclusion in the Constitutive Authority leads to an oscillating concept of the people. When Bentham states that "Public Opinion may be considered as a system of law, emanating from the body of the people",⁵⁹ his notion of the people is wider than that of the constitutive body. "The people" then encompasses the members of the constitutive body and those making up Public Opinion.

The four functions of the POT are its statistic or evidence-furnishing function, its censorial function (expressing critique or approbation), its executive function (in bringing about punishment or reward for those criticised or approved of), and, finally, its melioration-suggestive function. In a dramatic passage, the *Constitutional Code* describes its cosmopolitan constituency:

To every person, elector, inhabitant, or foreigner, - to every individual of the human species, belongs the right of exercising, in relation to the condition of every department of this government, and the conduct of every functionary thereto belonging, the statistic, executive, and melioration-suggestive functions above-mentioned. (...) So likewise the Censorial: how strong soever the terms, in which the approbation or disapprobation stands expressed.⁶⁰

If we understand these "rights of exercising ... the statistic [and other] functions" as subjective entitlements, we can see them as constitutional rights to universal participation in a global public sphere - "the great open committee of the tribunal of the world."⁶¹ However, unlike in the conceptions of global cosmopolitanism, no global institutional development is to correspond to that tribunal. Thus, if Bentham's Constitutional Code were to be realised in more than one country, the result would be a plurality of overlapping public spheres, all with global intake and local focus, rather than a single global public sphere, accompanying and controlling the workings of a global institutional order.

2.5. The fifth feature of transnational cosmopolitanism is strictly speaking a special case of the fourth: the freedom to draft and propose codification, especially constitutional

⁵⁸ *ibid.*, 35.

⁵⁹ *ibid.*, 36.

⁶⁰ *ibid.*, 39.

⁶¹ Bentham, *Panopticon Writings*. London: Verso 2005, 48.

codification.⁶² The idea of qualified foreigners drafting constitutions is of course an ancient one and was re-actualised for the Enlightenment by Jean-Jacques Rousseau, of whom more below. We have already come across a variant of this feature, in Bentham's assigning the responsibility for drafting international law to a citizen of the world. As is well known, Bentham advocates holding open competitions for the drafting of codes, in order to maximise both moral and intellectual aptitude on the part of the drafters. He styles this "the open mode" of codification.⁶³ With great patience, he rejects objections levelled against that method: that invoking a foreigner's expertise would subject the nation to a foreign yoke or expose it to that stranger's ignorance of its particularities, or that it would shame the nation's pride.⁶⁴ On the contrary, while a foreigner's intellectual aptitude can be judged publicly against his domestic competitors, he is at a clear advantage in terms of his moral aptitude: by not having a stake in the finished product, his work can be more single-mindedly directed toward the greatest happiness of the greatest number.⁶⁵ Although Bentham admits that local knowledge is not to a maximum degree at the disposal of the foreign expert, and therefore his intellectual aptitude diminished, he stresses the foreigner's greater aptitude in terms of judgment: he may succumb to his own, but not to the "local prejudices".⁶⁶ Again, participation in foreign constitution-making is no subjective entitlement on the part of the draughtsman:

The greatest happiness of the greatest number requires, that, for the drawing of the original draught, all foreigners be admitted into the competition: and that, in so far as applicable, unless it be in all particulars taken together decidedly inferior, the draught of a foreigner be employed in preference.⁶⁷

While for Rousseau, the supremacy of foreign expertise is categorically ensured by the Legislator's having to leave the country after rendering his services, Bentham gives some more detailed and more openly cosmopolitan arguments for involving a foreign hand in

⁶² It could be objected that codification proposals need not be public, and could even more efficiently take effect in a discreet consultation between draughtsman and constitutional legislator or sovereign, but this is not Bentham's strategy for liberal-democratic constitutions. He counts the ensuing public debate as an advantage of admitting foreigners' drafts in codification projects, see *Legislator of the World*, 243-297, esp. 281, and below.

⁶³ Bentham, *Legislator of the World*, 262; cf. 85, where Bentham adds that one virtue of the open mode is the possibility of public deliberation about drafts.

⁶⁴ *Legislator of the World*, 22-29.

⁶⁵ Cf. Bentham, *Legislator of the World*, 91. Foreigners, in contrast to citizens, tend to be free from "sinister interests and affections, from the irresistibly-tempting and seductive influence". *Legislator of the World*, 290.

⁶⁶ *Legislator of the World*, 290-92.

⁶⁷ Bentham, *Legislator of the World*, 289.

constitution-making. Of special pertinence is the case of a state's enlargement, of colonial or other territorial acquisition, or the influx of new residents, in which citizenship law will have to be revised. This raises many questions, especially when "a new mass of population, differing ... not less in laws and customs than in language" is being added to a state's dominion. Bentham believes that to the new citizens, it would "be in some degree a matter of satisfaction, to learn that the preparation of the business was consigned to hands, for whose impartiality, there would be such a security as could scarcely have been in contemplation otherwise".⁶⁸ Bentham also affirmatively refers to the medieval and Renaissance practice of appointing a foreigner as caretaker dictator, or *podesta*, in periods of constitutional emergency.⁶⁹

This concludes our enumeration of the elements of Bentham's "cosmopolitanism in one country". Before moving on to the practical questions of implementation, let me sum up the five elements again:

- (1) Open borders for emigration and immigration (transnational movement)
- (2) Alien passive suffrage (transnational political rights)
- (3) Foreign representatives' participation in lawmaking (transnational expertise and representation of interests)
- (4) Foreign citizens' participation in public political debate (transnational deliberation)
- (5) Foreign advice and intervention in constitution-making (transnational legislative expertise)

3. Bentham's Cosmopolitan Practice: Cosmopolitan constitutionalism in every country

It turns out that the "cosmopolitanism in one country" model, while more modest than strong globalist conceptions of cosmopolitanism, is at the same time more ambitious in that it understands border-crossing citizenship in terms of universal citizens' rights and capacities of active political participation. While Bentham stops short of equipping cosmopolitan citizens with strong electoral rights, and while he hesitates to award their representatives

⁶⁸ *Legislator of the World*, 33. For a more substantive attempt at working out the complexities of citizenship law, see the second essay within *Principles of International Law, Of Subjects or Of the Personal Extent of the Dominion of the Law*.

⁶⁹ *Legislator of the World*, 29. Bentham here refers to the work of Jean Charles Léonard Simonde de Sismondi.

decision rights, he expects their participation to contribute to the flourishing of single state democracies. The sense in which Bentham thought of transnational codification "in expressly cosmopolitan terms" has been explained in the preceding section,⁷⁰ but we still have to investigate how cosmopolitan actors can and may attempt to get involved in foreign nation state politics. If non-members are to share in democratic political opinion-, will- or even decision-formation in the above mentioned areas, we need to ask how, according to Bentham, the model is to be implemented. The legal-political means of his choice is the establishment of liberal constitutions (3.1). But how is cosmopolitan constitutional change to be brought about? What are the means for political change compatible with a cosmopolitan mindset (3.2)?

3.1. Bentham's overall strategy for constitutional change lies in legal, especially constitutional codification, and there is no shortage of examples of him attempting to influence constitutional reform processes. When he writes, only half ironically, that "the globe is the field of dominion to which the author aspires - the press the engine, and the only one he employs",⁷¹ Bentham admits that it is the 'legislative' aspect of transnational cosmopolitanism (2.5.) that is most important for his own cosmopolitan practice. However, the Rousseauean idea of bringing about constitutional change through an outsider is not uncontroversial, especially under conditions of popular sovereignty. It has been argued that the idea of republican or democratic constitutional change facilitated from outside raises a "paradox of heteronomy".⁷² But the Rousseau-Bentham model is largely innocent on this charge.⁷³ Both authors' constitutional theories rely on the conceptual distinction between authoring and enacting a constitution.⁷⁴ The Rousseauean-Benthamic constitutional

⁷⁰ David Lieberman, Bentham on Codification, in S. Engelmann (ed.) *Jeremy Bentham: Selected Writings*. New Haven: Yale UP 2011, 460-477, 470. Lieberman identifies those "cosmopolitan terms" with the universal scope of Bentham's jurisprudence and Pannomion "on an international scale", providing for application according to the particularities of the situation (470f).

⁷¹ *Principles of International Law*, 546.

⁷² Bonnie Honig, *Democracy and the Foreigner*. Princeton: Princeton UP 2001, 21.

⁷³ In Rousseau's model of constitutional design, foreigners are preferred to members because of their impartial attitude and superior expertise. In Rousseau, "a people" is a body that comes into being only by the act of constitution-giving. The constitution-giver is, for conceptual reasons, always an outsider. But he also disqualifies for political office, in legislation and in government, in the emerging polity, and must leave the polity after his work is completed. Rousseau's idea is not that foreigners are experts in the realm of the values to be protected through a constitution, but that they may have experience and expertise in designing procedures that allow the will of the population to emerge in an undistorted way. For more critical readings of the Rousseauean tradition, see Judith Shklar, *Men & Citizens. A Study of Rousseau's Social Theory*, Cambridge: Cambridge UP 1969, 126ff, 165ff.; David Wisner, *The Cult of the Legislator in France, 1750-1830. A study in the political theology of the French Enlightenment*. Oxford: Voltaire Foundation, 1997.

⁷⁴ Bentham is aware of this distinction even if he does not, over a long period of his writing, in principle object

legislator is the author of the fundamental laws, though not the source of their authority. While both prefer foreigners to draft constitutions, they leave no doubt that sovereignty does not lie with the saintly professionals who in fact design and formulate the constitutional text. In Bentham's words, "no act of power will be performed, not any of the minutest particle of power exercised".⁷⁵

3.2. It may be useful to distinguish a normal and an extraordinary mode of cosmopolitan political activity. In normal circumstances, cosmopolitan citizens, in order to participate effectively, must exclusively rely on their powers of deliberation. But at least Bentham did not at all times want to restrict himself to the channels of press and publicity.

When discussing constitutional change, it needs to be remembered that the early 19th century is the age of "the origins of humanitarian intervention".⁷⁶ Bentham's approach to the problem of intervention can perhaps be illustrated by recounting the Tripoli episode. In 1822, Bentham met Hassuna D'Ghies, a diplomat from Tripoli on the North African coast (coextensive with parts of contemporary Libya). Immediately he set out to draft a constitutional charter for Tripoli, focusing on the prevention of arbitrary infringements of citizens' liberty by the government. The new order was to guarantee wide-ranging personal freedoms, set up a representative assembly and install a daily newspaper as the motor of liberal social change.⁷⁷ But how bring about the adoption of such a constitution? In draft letters to John Quincy Adams, then U.S. secretary of state and later president, Bentham attempts to enlist U.S. support in staging a liberal putsch. In those letters, Bentham portrays Tripoli as a future rogue state under an ostensibly "monstrous" heir to the throne, a man

to autocratic codification. When submitting suggestions to the presumptively enlightened monarchs of Russia and North Africa, Bentham does not pay too much attention to the ratification requirements raised by popular sovereignty, and thereby illustrates the ambivalent character that foreign constitutional expertise can assume. For Russia, see the *Introduction to Legislator of the World*, xxif.. For North Africa, see below and *Securities against Misrule and Other Constitutional Writings for Tripoli and Greece*, ed. F. Rosen, Oxford: Oxford University Press 1990. Note that in the context of colonial rule, where Bentham has less qualms about the introduction of legal codes from outside, a paradoxical situation cannot arise.

⁷⁵ Bentham, *Legislator of the World*, ed. P. Schofield. Oxford: Oxford University Press 1998, 22. (The passages referred to in this paragraph address the drafting of a Pannomion, i.e. a combination of Civil, Penal and Constitutional Law, 85. Bentham at one point comments on foreigners' greater aptitude for drafting penal and civil law, and their lesser aptitude for drafting constitutional law, but his reasoning (that "Constitutional law depends throughout on localities" seems purely tactical. *Legislator of the World*, 103). See also 261, where Bentham insists on the distinction between "original drafts" by experts and "ultimate drafts" which "receive the sanction of the sovereign power". For Rousseau, see *Contrat Social*, II, 7, and Christopher Bertram, *Rousseau and the Social Contract*, London: Routledge 2004, 137f.

⁷⁶ Thus the subtitle of Gary Bass: *Freedom's Battle*. New York: Vintage 2009. Bass argues that there exists an internal relation between Bentham's alleged anti-imperialism and his plea for supporting the Greek and other nation's struggles for liberty, 346.

⁷⁷ Bentham, *Securities against Misrule*, 23-112.

whose "equal in cruelty is scarcely to be found in any page of history".⁷⁸ He does not claim that the government of Tripoli will constitute a danger for international peace (although he does bring up acts of piracy in the Mediterranean in order to motivate American support).⁷⁹ Tripoli, in Bentham's view, will become an outlaw state because it will terrorise its own citizens.

Bentham predicts a liberal revolution induced in Tripoli might cause a domino effect: The despotic regimes of Tripoli's western neighbours, those of Tunis, Algiers, and Morocco, might all fall in a fit of revolutionary enthusiasm if the design should prove successful. The reason Bentham approaches the United States, of all states, with his design is easy to see: "Yours is the only State ... upon earth from which [not] the smallest danger to national independence might ... be received. Your constitution admits not of conquest. Your constitution admits not of distant dependencies." Bentham is aware of the problem that the constitutional order of the United States will not allow the executive to fund a military expedition in bypassing the legislative. Because he feels a necessity to proceed in secret in order not to jeopardise the success of the intervention, he implores Adams not to have recourse to Congress. In order to finance the expedition, therefore, one would need to find an "ostensible reason capable of covering the true one", i.e. another war, another project in the same area, that could motivate the expense of sending gunboats.⁸⁰ In the end, liberal revolution did not take place in Tripoli. D'Ghies left London and commenced a career in the Tripolitan government; the draft letters to Adams were not sent.

4. Conclusion

E.H. Carr concluded his review of idealist thought in International Relations by stating that Bentham and the Utilitarians practised a simple "transplantation of democratic rationalism from the national to the international sphere".⁸¹ In our context, it would not be unfair to say that Bentham enlarged our understanding of democracy through applying a rationalist

⁷⁸ For the letters, see *Securities against Misrule*, 145-180. For details of the scheme see the editorial introduction by Philip Schofield in *Securities against Misrule*, xxvi-xxxvi, and L.J. Hume, *Preparations for Civil War in Tripoli in the 1820s*: Ali Karamanli, Hassuna D'Ghies and Jeremy Bentham, *Journal of African History* 21, 3, 1980, 311-322. The passages quoted without reference in this and the next paragraph are from MS transcripts provided by the Bentham Project of UC box 24, 410, accessed through data-archive.co.uk in 2003.

⁷⁹ *Securities against Misrule*, 174.

⁸⁰ *Ibid.*, 174.

⁸¹ *The Twenty Years' Crisis, 1919-1939* [1939], repr. New York: St Martin's Press 2001, 28.

understanding of cosmopolitanism.⁸² Cosmopolitanism extends the set of people who can have their say, and, if they are persuasive, transform the state institutions they have addressed. Yet it remains a stance toward transforming, not transplanting or transcending nation state institutions and stands in the service of a better functioning of those institutions. Thus the core of the "cosmopolitan purpose" of Bentham's thought has been established to lie not in the realm of international politics,⁸³ in the common and equal utility of all nations, but in the transformation of domestic politics, in enlarging the set of convictions and interests that can become objects of concern. Bentham's cosmopolitanism, as far as it goes, is egalitarian because it allows virtual universality of participation in its four dimensions of movement, passive suffrage, representation and deliberation. It has a clearer commitment to, and a more concrete understanding of, political participation across nation state borders than contemporary globalist understandings of cosmopolitanism.

The cosmopolitan features of Bentham's proposed distribution of political rights allow him to compensate for the tenuous connections between utilitarianism as a moral theory and political cosmopolitanism, and for the exclusion of individuals from being objects of concern in the international legal order. If David Lyons is right and Bentham's utilitarianism is to be understood as a government-centred doctrine with a responsibility for all those subjected, cosmopolitan participation may be a necessary corrective to its 'parochial' orientation toward maximising intra-state happiness. An enlarged democratic will-formation can contribute to bringing into harmony the pursuit of redefined intra-state interests with the interest of those 'merely' affected by state governments. The key to furthering constitutional change outside one's own national order, finally, lies in the willingness of political sovereigns to adopt liberal and democratic codes. Here Bentham's lifelong strategy was to pursue a deliberative agenda. The Tripoli episode shows that he was not averse to trying out other routes, and that utilitarianism's cosmopolitan interpretation of co-citizenship can seem to entitle its subjects to take border-crossing revolutionary action.

⁸² The "rationalism" in question being one in the Enlightenment sense of increasing reasonability, not (necessarily) the rational pursuit of preferences

⁸³ Jennifer Pitts, 'Great and Distant Crimes'. Empire in Bentham's Thought, in S. Engelmann (ed.) Jeremy Bentham: Selected Writings. New Haven: Yale UP 2011, 478-499, 481.