

Overcoming Uncertainty - New Thoughts on Bentham's Conception of Security

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0. Introduction¹

“It has been shown that the happiness of the individuals, of whom a community is composed, that is, their pleasures and their security, is the end and the sole end which the legislator ought to have in view[.]”² Jeremy Bentham considered security to be an integral part of desirable happiness as well as a necessary precondition for it. Thus, security becomes a pivotal concept of Bentham's theory and at the same time an indispensable instrument for its practical implementation: The ultimate aim of good government is the greatest happiness of the greatest number,³ ultimate aim of legislation is to provide and to guarantee security.⁴ There is no good government without good legislation – there is no happiness without security. The legislator has to ensure the society against evil – that means against anything opposed to the *principle of utility* – as well as to define and assure rights. Only if he succeeds in these tasks can individuals be secure and societal peace can be established.

As security is such an important end of government in his political theory, it is not surprising that many Bentham scholars deal with the meaning of the concept in Bentham's thought. Especially in the last three decades, so-called revisionist studies of scholars like Paul Kelly and Fred Rosen dealt with the meaning of security in Bentham's thought. Indeed, their main focus has been the relationship between security and liberty in order to create a “Liberal Bentham” and to counter the arguments of those declaring Bentham a security fanatic and authoritarian thinker. A study, however, that focuses on Bentham's conception of security is still outstanding. Thus, I would like to show in this paper, that a better understanding of security as one of Bentham's key concepts can not only lead to a deeper understanding of security as a powerful concept in the history of political thought, but also to a deeper insight into Bentham's thought in general. Notwithstanding the great achievements of the revisionist work, I hope to illustrate that security might be another powerful starting point to address Bentham's ideas, and even more to address them in a post-revisionist way. Furthermore, I

¹ I thank Sabrina Engelmann and Sarah Surak for helpful comments.

² Bentham (1843_I_IPML): 14.

³ Bentham (1843_IX_ConstCod): 5).

⁴ Bentham (1843_IX_ConstCod): 11.

want to show that an analysis of Bentham's notion of security can also be fruitful to shed new light on his conception of democracy.

In the first part of the paper, I would like to illustrate the ways in which Jeremy Bentham tries to define security as well as to implement it in his design of a well-organized state. For that purpose, I will present a new categorization (1), distinguishing security against offences (1.1), security against disappointment (1.2) and security against misrule (1.3). By means of this distinction I will outline the essential aspects of Bentham's conception of security. This will allow me to discuss afterwards the influence of Bentham's conception of security on his theory of democracy (2). There is no doubt that Jeremy Bentham was committed to securing fundamental freedoms and to promoting democracy. However, I will put forward the argument that he was so attached to his aim of establishing all-embracing security, that he was interested more in "democratic statecraft"⁵ than in a truly democratic society with pluralistic structures and vital public discussions. The so-called institutionalisation of mistrust vis-à-vis the ruling few is crucial for democratic government and Bentham certainly perfected those "securities against misrule." Based on my reading of Bentham's conception of security, I hope to show that he neglected an important dimension: In a democracy founded exclusively on mistrust, the "subject many" and the "ruling few" are likely to be opposing forces, deprived of the means to effectively counter challenges together. Bentham underestimates the amount of mutual trust necessary for democratic self-government.

1. Overcoming Uncertainty: Jeremy Bentham's Conception of Security

I distinguish three dimensions of security in Bentham's thought: security against offences, security against disappointment and security against misrule. As it is well known, the suffering of pain has to be avoided as much as possible in order to achieve the greatest happiness of the greatest number. For Bentham, pain in all its many facets is mainly caused by offences, disappointments and political misrule. Therefore he sought to secure the individual in his perfectly designed commonwealth from those three evils. Each of those dimensions has to be provided in order to fulfil the principle of utility. Moreover every dimension corresponds roughly with one of the three important fields of Bentham's legislative theory which in turn is the means for the procurement of security in form of securities. Those fields of Bentham's legislative theory are penal law (security against offences), civil law (security against disappointment) and constitutional law (security against misrule).

⁵ Lieberman (2008): 622.

Contrary to other research discussing Bentham's notion of security, as for example Rosen or Kelly, such a distinction as made here does not only allow but also requires the analysis of writings stemming from different periods and areas of Bentham's work therefore possibly opening new perspectives. A short comparison with the categorizations of Rosen and Kelly can bring forth some more detailed arguments for my distinction.

Rosen argues correctly that security is often perceived as "being against something"⁶ – somebody is secure or secured against an evil, against a threat that could come true. Thus, it is prudent to name categories that clarify already against what Bentham wants to secure the citizens of his commonwealth. I follow Rosen up to this point. Rosen's own distinction is not convincing though, as he rather unsystematically lists the areas in which Bentham addressed 'security':

“(…) from constitutional law (security against misrule) to civil procedure (security against delay, vexation, and expense) and to liberty of the press (security to make known complaints and remonstrances).”⁷

According to his own research interests Rosen departs from Bentham's constitutional law even though Bentham mainly worked on this in his later years. I would argue that security against misrule in its furthest developed form is only the completion of the conception of security that can be traced back to Bentham's early years. Furthermore, Rosen neglects Bentham's complex writings on penal law. Also Bentham would have understood the freedom of press that he demanded so vehemently mainly as security *against* misrule and not only as “security to make known complaints (…)”⁸ as Rosen calls it.

In his study 'Utilitarianism and Distributive Justice' Paul Kelly focuses predominantly on Bentham's notion of security of expectation. This, of course, is in line with his research aim, but it fails to capture the complexity of Bentham's conception of security. In another publication Kelly names different attributes of security in Bentham's thought,⁸ doubtlessly these are identified correctly, but this identification does not amount to a systematic distinction, it rather is an enumeration of those points.

In contrast to those differentiations I distinguish using the aforementioned three categories first against which evils Bentham was aiming to secure individuals. Departing from this starting point I can show how he intended to establish and stabilize the respective

⁶ Rosen (1992): 34.

⁷ Rosen (1992): 34. Elsewhere, Rosen distinguish different dimensions of security in Bentham's work according to penal, civil, and constitutional law (Rosen (1992): 36). Although my distinction is linked to these three types too, it is more focused on the central concern of the particular dimension of security and allows on the other hand to address their interrelation.

⁸ Kelly (2001): 23 f.

dimension of security. In this manner, I am able to analyse the securities that are means for the provision of each of the three dimensions. Because ‘security against disappointment’ occasionally reaches into the other two dimensions, the categories are not entirely disjunctive, but in the following I hope to illustrate that adequate arguments can be put forward in favour of this distinction.

This categorization allows for manifold and new perspectives on Bentham’s notion of security as well as for various links to crucial questions in political theory – questions such as the institutionalization of legal security, the relation between security, liberty and equality, the importance of fear, trust and mistrust for a political society and finally the question of the impact Bentham’s conception of security had on his idea of democracy. The latter as I already mentioned is to be explored in the second part of this paper.

1.1 Keeping the Others in Check: *Security Against Offences*

According to Jeremy Bentham a sophisticated legal code is the main protection against the biggest source of danger individuals are exposed to:⁹ the other, the fellow human being.

Bentham explains:

Security has for its adversaries, against whose enterprises it is to be afforded, *three classes of persons differently situated and denominated*, viz. foreign adversaries considered as such, foreigners considered in so far as they are, or are liable to become, adversaries; rulers, viz. of the country in question considered in that same light; and *fellow-citizens, or fellow-subjects*, considered in that same light.¹⁰

Every person is a potential perpetrator and able to minimize the security of others. This conviction is not surprising considering Bentham’s view of the human nature as hedonistic. But how can one deal with such a situation that promises nothing but insecurity and has to provoke a vast amount of fear? Bentham is certain that the greatest amount of clarity is necessary for the improvement of this dark initial situation, clarity in regard to what has to be seen as an offence and which consequences follow from committing it. If perpetrators are to be identified as such and made accountable, there can be no doubts as to what constitutes an offence as a misinterpretation or a misjudgement would be an unnecessary evil and not conform with the principle of utility. Bentham dedicated himself to the task of the clarification of offences in his *Principles of the Penal Law* as well as in *An Introduction to the Principles of Morals and Legislations*. Here, he provides a definition of offence:

Any act *may* be an offence, which they whom the community are in the habit of obeying shall be pleased to make one: that is, any act which they shall be pleased to prohibit or to punish. But, upon the

⁹ Bentham (1843_I_CivCode): 302: “Actions hurtful to security, when prohibited by the laws, receive the character of crimes.”

¹⁰ Bentham (1843_IX_ConstCod): 11. (emphasis added)

principle of utility, such acts alone *ought* to be made offences, as the good of the community requires should be made so¹¹

For Bentham, generally, offence is any act of human actors that opposes the principle of utility. Offences should not only be understood as criminal acts but as any deed that could be sanctioned in some form. This also entails those acts that are ‘punished’ by critique or the own remorse. What is to be seen as an offence (and at which point an offence becomes a crime) is defined by law. Regarding security against offences Bentham judges acts according to their consequences concerning the happiness of the affected, which makes him in this field a classical act-utilitarian. The evaluation of human acts through the anticipation of their consequences for society is the duty of the legislator that he fulfils as a kind of “security commissioner of society.” With regard to offences this means that the decision what is to be an offence or not follows the calculation of the legislator. The definition of offences serves the purpose of distinguishing right acts from wrong acts. In the *Introduction* Bentham classifies the different offences with his idiosyncratic meticulousness and obsession with detail.¹² The amount and diversity of the offences identified by Bentham and the manner in which he relates them to security, shows his immense need for security: “Security is again divisible *into as many branches as there are different sorts of offences*, or pernicious acts, by which, pro tanto, security is destroyed or endangered.”¹³

According to Bentham it is the purpose of law to reduce incentives for potential perpetrators or to reduce the pleasure of the perpetrator and the pain of the victim equally if the offence has already been committed. Hence, the greatest-happiness principle is adhered to; security can be re-established and ideally, incentives are set for rule-abiding behaviour in the future. This can be achieved by the legislator mainly through sanctions. There are four different kinds of sanctions in Bentham’s thought.¹⁴ In the case of crimes the instrument is, unsurprisingly, punishment.¹⁵ As exhaustively as Bentham provides clarity with regard to offences, he addresses all thinkable variety of punishment in *Principles of Penal Law*.¹⁶ In this context, Bentham is very optimistic about the effects of appropriate punishment on individuals. He does not only want to avenge committed offences but he also considers the educational aspect:¹⁷ Sanctions “make certain forms of action binding,”¹⁸ they secure human

¹¹ Bentham (1843_I_IPML): 97, 147.

¹² Bentham (1843_I_IPML): chapter XVIII, Division of Offences: 98-141.

¹³ Bentham (1843_III_Nomogr): 293. (emphasis added)

¹⁴ Bentham (1843_I_IPML): 14: “they may be termed the *physical*, the *political*, the *moral*, and the *religious*...”

¹⁵ Bentham (1843_I_PenLaw): 390.

¹⁶ Bentham (1843_I_PenLaw): 395.

¹⁷ e.g. Bentham (1843_I_PenLaw): 557.

¹⁸ Hofmann (2009): 139.

action itself and in doing so they can prevent future wrong-doings (through deterrence).¹⁹ Bentham explicitly states the relation between his theory of sanction and security: “The certainty of satisfaction is an essential branch of security. Whatever diminution there is in this respect, is so much security lost.”²⁰ According to the dogma of utility Bentham goes as far as connecting the punishment of an individual solely to the consequences for the security of society.²¹

However, the prevention of offences is not only achieved through sanctions but also through the possibility of indirect legislation. In a nutshell, Bentham describes indirect legislation as “art of directing the inclinations”²² of the individuals that make up society. “By weakening the seductive motives which excite to evil, and by fortifying the tutelary motives which excite to good,”²³ he aims to indirectly prevent misbehaviour. Because punishment as such always entails pain and therefore is an evil, even though a necessary one,²⁴ Bentham suggests the legislator to give as much room as possible to indirect legislation. As usual, Bentham provides a detailed description of indirect legislation while admitting that the different measures in this case cannot be distinguished as clearly as in other areas.²⁵ Bentham’s recommendations to ban alcohol in order to diminish the potential for aggression,²⁶ to influence the level of education in society,²⁷ but also to support music, arts and entertainment²⁸ (a concern that might not be expected of a seemingly technocratic thinker like him) are instances of his concept of indirect legislation. But the list of examples continues. Bentham put even more fantasy and words into a long list of measures that serve his aim of deterrence. For instance, he displays in great detail and very drastically²⁹ the educational function a perfect presentation of public punishment can achieve while also pointing to the feeling of security that can be experienced by upright citizens after witnessing public executions: “If they present to dishonest persons the idea of danger, they offer only an idea of

¹⁹ Bentham (1843_I_PenLaw): 367. (emphasis added)

²⁰ Bentham (1843_I_PenLaw): 372.

²¹ Bentham (1843_I_PenLaw): 396: “General prevention ought to be the chief end of punishment, as it is its real justification. If we could consider an offence which has been committed as an isolated fact (...) punishment would be useless. It would be only adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open (...) to all those who may have the same motives and opportunities for entering upon it, we perceive *that the punishment inflicted on the individual becomes a source of security to all.*” (emphasis added)

²² Bentham (1843_I_PenLaw): 534.

²³ Bentham (1843_I_PenLaw): 534.

²⁴ Bentham (1843_I_PenLaw): 533, 549

²⁵ See Bentham (1843_I_PenLaw): 534.

²⁶ See Bentham (1843_I_PenLaw): 534.

²⁷ Bentham (1843_I_PenLaw): 537.

²⁸ Bentham (1843_I_PenLaw): 541.

²⁹ Bentham (1843_I_PenLaw): 549.

security to those who are honest.³⁰ Particularly the last point refers back to the fact that sanction as an instrument of provision of security is an integral part of Bentham's theory. The participation in public punishment leads to the anticipation of possible sanctions for potential perpetrators and to the certainty of righteous citizens, that those potential perpetrators will be deterred.

Stephen Engelmann even calls Bentham "a theorist of indirect legislation."³¹ However, Engelmann sees indirect legislation as an instrument to direct the expectations and interests of the population and interprets the concept as almost equal to a special kind of government that has emerged in the 18th century and that Foucault denominates 'liberal government.'³² If one connects Engelmann's interpretation of 'indirect legislation' with Bentham's conception of security, it is clear that Engelmann focuses mainly on the regulation of security of expectation. According to the distinction developed in this paper, this perspective applies to the dimension of security against disappointment. Of course, Engelmann is correct in his assumption that some examples presented by Bentham in his exposition of indirect legislation can be interpreted as belonging to the category of security of disappointment. Yet, Bentham wants indirect legislation explicitly to be understood as a method of crime prevention: "The general result of the principles which have been laid down in relation to penal legislation, present a happy prospect and well-founded hopes of reducing the number of crimes, and mitigating punishments."³³ Because of this, Bentham's indirect legislation should rather be subsumed under the category of security against offences, not only under the category of security against disappointment. Certainly, it has to be examined with relation to both types, in how far Bentham – pursuing his desire to maximize security – gives the legislator deliberately or not leeway for manipulative action. The following sentence "(...) he does not announce his designs: he opens his mines, he consults his spies (...)"³⁴ or words like "directing"³⁵ at least allow for this possibility. Nevertheless Engelmann uses Bentham's term 'indirect legislation' differently than Bentham himself. As he does not explain this, he diverts from an important facet of Bentham's conception of security: the reduction of crime through prevention, i.e. the maximization of security beyond sanction. Furthermore this approach cannot capture the complexity of Bentham's conception of security: as long as a certain

³⁰ Bentham (1843_I_PenLaw): 550.

³¹ Engelmann (2003): 371.

³² Engelmann (2003): 370, FN 3.

³³ Bentham (1843_I_PenLaw):578.

³⁴ Bentham (1843_I_PenLaw): 533.

³⁵ Bentham (1843_I_PenLaw): 534.

measure of security against offences is not guaranteed security against disappointment cannot be achieved. One dimension of security is not conceivable without the simultaneous existence of the other one.

1.2 Giving Future a Sense: *Security Against Disappointment*

Jeremy Bentham - demonstrating the outstanding importance of security for his idea of a stable social system - emphasizes that security “is the only one which necessarily embraces the future.”³⁶ Subsistence, abundance, equality - all of those principles that are also subordinated to the happiness-principle are important and could be imagined with respect to the future. Solely security, however, “implies extension in point of time, with respect to all the benefits to which it is applied. Security is therefore the principal object.”³⁷ This is Bentham’s basis for the formulation of the principle of security of expectations - in my distinction I call it ‘security against disappointment’ - that until today is significant for normative political orders. He can probably be described as the first thinker to engage thus intensively with this subject.³⁸ He arguably was aware of this fact because he criticized legal scholars for not using the term expectation often enough and not addressing the concept sufficiently.³⁹

To approach security of expectation, a concept that was not only crucial for Bentham’s conception of security but for his complete juridical and political theory, the following passage is presented unabridged:

“In order to form a clear idea of the whole extent which ought to be given to the principle of security, it is necessary to consider, that man is not like the brutes, limited to the present time, either in enjoyment or suffering, but that he is susceptible of pleasure and pain by anticipation, and that it is not enough to guard him against an actual loss, but also to guarantee to him, as much as possible, his possessions against future losses. The idea of his security must be prolonged to him throughout the whole vista that his imagination can measure.

This disposition to look forward, which has so marked an influence upon the condition of man, may be called expectation—expectation of the future. It is by means of this we are enabled to form a general plan of conduct; it is by means of this, that the successive moments which compose the duration of life are not like insulated and independent points, but become parts of a continuous whole. Expectation is a chain which unites our present and our future existence, and passes beyond ourselves to the generations which follow us. The sensibility of the individual is prolonged through all the links of this chain.

The principle of security comprehends the maintenance of all these hopes; it directs that events, inasmuch as they are dependent upon the laws, should be conformed to the expectations to which the laws have given birth.”⁴⁰

Here the moment of anticipation appears again - a construct, that is crucial for Bentham and that we already came across when considering his efforts to achieve security against offences.

³⁶ Bentham (1843_I_CivCode): 302.

³⁷ Bentham (1843_I_CivCode): 302.

³⁸ See also Kelly (1990 b): 80.

³⁹ Bentham (1843_I_CivCode): 308.

⁴⁰ Bentham (1843_I_CivCode): 308.

This time it is not about protecting citizens from crime, but about generally opening up opportunities for them to plan their lives and to put those plans into action. For this to be possible a certain degree of security that future events are calculable is necessary so that it is worthwhile making plans and working for their realization. Of how much importance security of expectations is for Bentham becomes obvious not only through his detailed description of it but also through the dramatic choice of words in the cited passage: the look forward is what distinguishes man from animal and what at the same time elevates man above himself as it is a bridge into the future that connects different generations with each other. The chain of expectations and the chance of their fulfillment seems to reduce the arbitrariness of the individual and even give meaning to its existence by becoming part of a continuing whole. Everything that regards those expectations, “all these hopes,” are only encompassed and directed by the principle of security - a security that emerges from law, that in turn makes expectations possible in the first place. Referring to this statement a decisive distinction can be made: the distinction between objective and subjective security. Objective security is a state of factual security. The three dimensions of Bentham’s security conception first and foremost refer to this state: security against offences, against disappointment, against misrule - here the focus lies on what individuals are being protected from. However, objective security is not enough to reach or retain political and social stability. Subjective security, i.e. the feeling of security of the individuals, is crucial in this respect. The dimension ‘security of expectation,’ unlike security against offences, contains both elements. On the one hand the legislator has to guarantee a certain degree of expectability of expectations which is the matter of objective security. Departing from this objective security subjective security of expectations can evolve - a feeling of being certain that specific expectations will be fulfilled. This provides incentives to even have expectations and design life plans. Every form of objective security also influences in one way or the other subjective security - a fact that has to be kept in mind when studying the concept. It is impressive how clearly Bentham identifies and distinguishes in content the two sides of the coin ‘security’ (even though he does not use two different terms - in spite of his enthusiasm for linguistic unambiguousness). For Bentham objective security is the instrument necessary to be able to reach the pursued happiness, while subjective security is an element of the latter. However, Bentham apparently misses the fact that more objective security does not inevitably lead to more subjective security. For now we can state that Bentham tries to secure security and at the same time considers it to be an end in itself, not an instrument to the generation of objective security, but rather an element of the achieved happiness. Therefore Bentham’s conception of security explicitly exhibits traits of

something later to be termed a modern conception of security e.g by Franz-Xaver Kaufmann, that is supposed to have emerged in the 21st century.⁴¹

The concept of security of expectation to some extent encompasses the other two dimensions of security in Bentham's thought, security against offences and security against misrule. In 1.1 I showed how far Bentham avails himself of expectations in order to prevent crimes and considerably reduce the amount of offences - a potential perpetrator always has to be sure what is expecting him, if he is made accountable.⁴² Without a doubt this is a kind of secured expectation even though the potential perpetrator of the example anticipates not pleasure but pain regarding his punishment. Bentham distinguishes positive and negative expectations that according to him can themselves already be a trigger for the sensation of pleasure or pain (and therefore be part of them): "The pleasures of expectation are the pleasures that result from the contemplation of any sort of pleasure, referred to time future, and accompanied with the sentiment of belief."⁴³ He recommends the term 'apprehension' for negative expectations while 'expectation' keeps its positive connotation.⁴⁴ Bentham sees security of expectation fulfilled for citizens in two different manners: firstly through legal security and secondly through the security of what is promised through law. Legal security means that individuals can be certain of their rights; their rights are securely bestowed unto them by the legislator. This point was very important to Bentham, precisely in view of his harsh critique of the British Common Law.⁴⁵

For Bentham's conception of security a system of twofold protection, of counter-security so to say, is characteristic on many levels. The indispensable security against disappointment results from single securities against disappointment: rights and duties of the individuals are established positively in the civil code, whereby the guarantee of security of expectations is promised to the individuals. This security of expectation is then secured through the paragraphs of the penal code that aspires to punish any infraction of rights and duties. In Bentham's thought, penal law and civil law are inextricably linked to each other:⁴⁶

⁴¹ Kaufmann (1973): 58: (Translation by the author) "However, to be an end in itself the idea of security has to be reflexive. Thoughts and acts don't begin to turn to the questions of security, until concrete securities are to be secured."

⁴² Bentham (1843_III_Pannom): 211 f.

⁴³ Bentham (1843_I_IPML): 19.

⁴⁴ Bentham (1843_I_IPML): 19.

⁴⁵ On this also Dinwiddy (1989): 65.

⁴⁶ This is merely consequent with regard to the necessary combination of right, obligation, and offence: Bentham (1843_I_CivCode): 299. - See also Bentham (1843_I_IPML): 142: "Yet that branch which concerns the method of dealing with offences, and which is termed sometimes the *criminal*, sometimes the *penal*, branch, is universally understood to be but one out of two branches which compose the whole subject of the art of legislation; that which is termed the *civil* being the other."

Without the punishments threatened in the penal law, the civil law would have no power of enforcement and therefore would lose its legal nature. Yet, without its civil law counterpart the penal code would also be void of meaning and utility because the civil code is the one that codifies rights and duties, so that they can be identified as such.⁴⁷

Let us address the second aspect of security of expectation founded by law - the security of that which can be expected according to the law oftentimes called ‘security against the pain of disappointment’ by Bentham.⁴⁸ In order to guarantee this security, Bentham includes (in his later works) two principles into his complex system that are to warrant rights: the disappointment-preventing principle and the security-providing principle. Bentham defines the principles as follows: “To civil law, more particularly, apply the axioms relating to security as to property. Sole principle - *the disappointment-preventing principle*.”⁴⁹ And as of the latter: “Principle correspondent to security, and the axioms thereto belonging, is the *security-providing principle*.”⁵⁰ Bentham subsequently details as an identification of the security-providing principle who has to be protected of what and against whom.⁵¹ There is no doubt that both principles were designed as additional securities to make sure that the legislator diligently performs his task by legislating not only effective but also just laws. What the principles mean in detail, how they are related to the principle of utility, and in how far they should be understood as actual rules of action or rather as a kind of umbrella term for everything the legislator has to keep in mind when formulating ‘good laws’ has not been clarified completely by Bentham.⁵²

The disappointment-preventing principle has become particularly famous within revisionist research, because several of those scholars interpreted it as a principle of justice.⁵³ This interpretation allows them to redefine Bentham’s utilitarianism as a theory of distributive justice and to derive from it an indirect utilitarianism. Kelly for example, understands the latter as the fact that the legislator creates a secure set of rules within which each individual can maximize in a self-determined fashion her own happiness.⁵⁴ On the basis of the distinction presented here I would argue that security and not justice is the crucial principle

⁴⁷ See also Hofmann (2009): 136.

⁴⁸ Bentham (1843_III_Pannom): 212.

⁴⁹ Bentham (1843_III_Pannom): 212. – I follow Postema’s understanding of ‘property’ in Bentham: „In Bentham’s view, all forms of social interaction available to human beings except political relationships and institutions fall under the concept of property” (Postema (1986): 174).

⁵⁰ Bentham (1843_III_Pannom): 212.

⁵¹ Bentham (1843_III_Pannom): 213.

⁵² On this also Lyons (1992), e.g. 325.

⁵³ Rosen (1985): 104.

⁵⁴ Kelly (1989): 66 or Kelly (1990 a): 204.

for Bentham, but I agree with Kelly that actually an indirect utilitarianism does follow in matters that regard security against disappointment (as opposed to the act-utilitarianism in matters that regard security against offences).

However, the prominent position security in general and security against disappointment enjoy in Bentham's thought leads to the question of which freedoms remain for the individuals of this system to independently design and realize their life plans. Jeremy Bentham's basic definition of liberty is, as is well known, a classic definition of negative liberty as we know it since Thomas Hobbes: "Liberty then is neither more nor less than the absence of coercion. This is the genuine, original and proper sense of the word liberty. The idea of it is an idea purely negative."⁵⁵ For Bentham it is certain that liberty of this kind cannot be created by law: "[Liberty] is not anything that is produced by law. It exists without law and not by means of law. It is not producible at all by law, but in the case where its opposite coercion has been produced [by law] before."⁵⁶ This impossibility of creating liberty through law does not bother Bentham at all, since he assumes that liberty would be worthless if individuals could not be certain of it. In this respect Bentham moves a decisive step further than Hobbes⁵⁷ by connecting the concepts of security and liberty in the state of a constituted society. Liberty only has worth as secured liberty:⁵⁸

What means *liberty*? What can be concluded from a proposition, one of the terms of which is so vague? What my own meaning is, I know; and I hope the reader knows it too. *Security* is the political blessing I have in view: security as against malefactors, on one hand – security against the instruments of government, on the other."⁵⁹

In this respect Postema incidentally distinguishes a subjective from an objective element of the conception of security. While liberty is to be regarded as completely objective - "the state of *actually being free* from restriction and constraint,"⁶⁰ security is unthinkable without its subjective dimension. Objectively individuals need to have secured liberties in order to develop their expectations and realize them. This however is not sufficient, what is necessary

⁵⁵ UCL, manuscripts, box 69, S. 44. Quoted after Long (1977): 74. – Contrary to Hobbes, Bentham's definition of liberty comprises not only the absence of restraints but also the absence of constraints as Rosen demonstrates convincingly (Rosen (1992): 28 ff).

⁵⁶ UCL, manuscripts, box 69, S. 44. Quoted after Long (1977): 74. See also UCL, manuscripts, box 69, S. 56. Quoted after Long (1977): 75.

⁵⁷ Rosen (1990): 60.

⁵⁸ See also Bentham (1843_I_CivCode): 302.

⁵⁹ Bentham (1843_VII_Ration): 522. See also UCL, manuscripts, box 69, S. 55. Quoted after Long (1977): 78: "Liberty without security is that which is possessed by Hottentots and Patagonians. Liberty by security is that, the possession of which is the pride of Englishmen. (...)"

⁶⁰ Postema (1986): 171.

is the “*sure knowledge*, of that liberty. Security itself is a source of liberty, then, without assurance of no interference in one’s activities, one may be inclined not to engage.”⁶¹

If liberty can only be understood as secured liberty, should we continue to call this concept liberty? No is Bentham’s answer as he suggests a more appropriate choice of words: “That which under the name of Liberty is so much magnified, as the invaluable, the unrivalled work of Law, is not liberty, but security.”⁶²

Had Bentham not so often used the terms security and freedom synonymously with a linguistically revisionist intent,⁶³ his readers would probably have been less confused. After clarifying his notion it is certain that the objections of those that read Bentham merely as an authoritarian have to be rebutted with regard to the thesis that liberty was not important to Bentham. Individual’s rights, termed liberty or liberties by others, reside at the center of Bentham’s thought concerning security against disappointment, so that persons are not hindered in independently finding the best way to reach the greatest happiness.⁶⁴ Bentham’s aim to guarantee ‘security against...’ on differing levels effectively results in a “framework within which one can locate liberty”.⁶⁵ However, if Rosen goes as far as saying that liberty as security is Bentham’s primary aim of all legislation, objections could be raised.⁶⁶ Not every security serves the promotion of liberty; only security in the sense of security against disappointment fulfills this task. Furthermore, despite his linguistic airs for Bentham security and liberty are not tantamount. In Bentham’s thought security is the condition of the possibility of living in freedom and as such security remains the most important concept of Bentham’s political theory because it is the fundamental concept. In this point, I rather agree with Postema who argues: “Thus, contrary to Bentham’s original claim, law can be seen to *produce* liberty. Yes, he replies, but only *indirectly* and through the direct production of security. And this only reinforces the main point. The task of law is not to create liberty, but to maximize security.”⁶⁷

⁶¹ Postema (1986): 171.

⁶² UCL, manuscripts, box 69, 44. Quoted after Long (1977): 74. See also Bentham (1843_VIII_Toreno): 509 f: “As to the word liberty, it is a word, the import of which is of so loose a texture, that, in studied discourses on political subjects, I am not (I must confess) very fond of employing it, or of seeing it employed: security is a word, in which, in most cases, I find an advantageous substitute for it: (...)”

⁶³ Niesen (2009 a): 147 (FN 18).

⁶⁴ Rosen (2003): 250

⁶⁵ Rosen (1992): 34.

⁶⁶ Rosen (1992): 35: “As security, liberty played the most fundamental role as the main end of legislation and as a component of the principle of utility itself.”

⁶⁷ Postema (1986): 171.

The assumption that the maximization of security was Bentham's first priority is supported by the fact that despite his emphasis on the disappointment-preventing principle and the immensely important security of expectation he left a void for the legislator that allows for the manipulation and destabilization of expectations:

Do you wish to establish a law in opposition to the actual expectations of men? If it is possible, let it begin to have effect at a distant period: the present generation will perceive no change, and the rising generation will be all prepared for it; you will find among its youth, auxiliaries against the ancient opinions; you will not injure existing interests, because they will have leisure to prepare for the new order of things. Every thing will become smooth before you, because you will have prevented the birth of expectations which would have been opposed to you.⁶⁸

Expectations should under no circumstances be disappointed. If they however simply change, no breach of the disappointment-preventing principle occurred. Bentham sees no harm if the legislator who knows about the utility of his actions for the community inconspicuously contributes to the generation of new expectations. What he fears is a "shock to security"⁶⁹, instead of gradual and cautious renewal. At this point the question has to be posed whether merely the secured invulnerability of expectations, security against disappointments, is actually enough to speak of a guarantee of civil liberties, as revisionist researchers like to do. Or, whether for Bentham in fact "the authority of the state was the origin of which liberty of man was solely a deduction".⁷⁰

1.3 Watching the Ruling Few: *Security Against Misrule*

The third important dimension of Bentham's conception of security is security against misrule: the security of the subjected from misuse of power by the rulers, the security of the individuals from political arbitrariness. Jeremy Bentham describes misrule as follows:

Misrule is bad government: it comprehends whatsoever is opposite to good government. A government is good in proportion as it contributes to the greatest happiness of the greatest number; namely, of the members of the community in which it has place. Rule may therefore come under the denomination of misrule in either of two ways: either by taking for its object the happiness of any other number than the greatest, or by being more or less unsuccessful in its endeavours to contribute to the greatest happiness of the greatest number.⁷¹

It is not surprising that Bentham also used his systematic 'security-strategy' concerning the topic of protection from arbitrary rule. Through different securities against misrule he aimed to guarantee a general security against misrule - the subjected should be protected from misuse of power⁷² and respectively be put in the position to control the rulers. In 1.2 I showed in how far Bentham wants his conception of liberty to be understood as security and how he

⁶⁸ Bentham (1843_I_CivCode): 325.

⁶⁹ Rosen (1985): 219 f.

⁷⁰ Kramer-McInnis (2008): 340. (Translation by the author)

⁷¹ Bentham (1843_VIII_Secur): 558. Concerning the subject "good rule/bad rule" see also Bentham (1843_IX_ConstCod): 46 ff.

⁷² See also Bentham (1843_IX_ConstCod): 106 f.

attempted to corroborate this by using the term liberty and security synonymously.

Analogically to this, Bentham also argues for a change of terms in this new context and recommends to all those, that call securities against misrule rights of the ruled towards the rulers, to cease using the word rights: “When, instead of the word *securities* and *misrule*, you employ such a word as *right*, a cloud, and that of a black hue, overshadows the whole field.”⁷³ Bentham’s suggestion seems logical given his previous arguments: Because right is always linked to law for him, it is only the legislator that can formulate laws and therefore codify rights. The subjected cannot be authors of law; therefore the term right does not need to be put in connection to them. However, the ruled can have securities against the ruler, the expression securities against misrules is hence more appropriate and, according to Bentham, leaves no room for misinterpretation. While security against offences was mainly part of Bentham’s thoughts on penal law and security against disappointments element of the civil law, security against bad government regards another branch of the Pannomion - the constitutional law, which is to some extent the basis of penal and civil code:

Constitutional law has for its object, security against misrule; security against those adversaries of the community, in whose instance, while their situation bestows on them the denomination of rulers, the use they make of it, adds the adjunct evil, and thus denominates them evil rulers.⁷⁴

Even though main features of this constitutional law are already identifiable in his early writings,⁷⁵ Jeremy Bentham was intensively engaged in this subject in the last decades of his life. The securities against misrule that also encompass, as we shall see later, many democratic principles, were developed and formulated by Bentham who had become a philosophical radical, who had transformed from a monarchist to a democrat. However, not all the securities against misrule are considered by Bentham to be applicable only in democratic states. He also advocates, for example, for the strengthening of the public and more transparency within his ‘consulting’ of undemocratic states. Nevertheless his aims to curtail political misuse of power always have to be considered with regard to his turn to democracy.

In order to achieve security against misrule the powerless have to be given power so as to check the uncontrolled power of the rulers. For this Bentham devises extensive and diverse mechanisms of control. This goes with his desire to optimize existing institutions of all kinds through reform and thereby gradually approach the greatest happiness. However, the full realization of the latter is only possible within a democratic ruling system, according to (the later) Bentham:

⁷³ Bentham (1843_VIII_Secur): 557. - See also Dinwiddy (1989): 78.

⁷⁴ Bentham (1843_IX_ConstCod): 9.

⁷⁵ See also Halévy (1995): 20.

By instituting the power of locating and eventually dislocating, and applying it to all official situations, and placing the whole of it in the hands of the people, a pure representative democracy is instituted: and this form of government, and this alone, as has been already shown, can have the greatest happiness of the greatest number for its effect.⁷⁶

Jeremy Bentham demands periodic elections, general suffrage⁷⁷ and the possibility to make political representatives accountable in case of crimes (to which he would also subsume corruption). Yet, political transparency and a strong public sphere are of crucial importance for his notion of democratic standards:⁷⁸

One word—*misrule*—will serve for conveying a general conception of the disease: another word—*publicity*, for conveying the like conception of the remedy: the only remedy which, (it will be seen,) without a change in the form of the government, the nature of the disease admits of.⁷⁹

In order to establish this publicity as a protection against the misuse of power, Jeremy Bentham constructs the so-called Public Opinion Tribunal (POT), whose tasks he describes as follows:

Exercising in any way rule over their rulers: how then is it that they can remain subjects? Answer. In the way of direct mandate and coercive powers;—no: in no such way can they give direction to the conduct of these same rulers. Yes: in the way of indirect and gentle power, or in one word, influence. (...) Operating thus as judges, the members of this same community may, in their aggregate capacity, be considered as constituting a sort of judicatory or tribunal: call it for example *The Public-Opinion Tribunal*.⁸⁰

The POT shall be composed of all the members of society. It is similar to an over-dimensioned effigy of political decision-making. This way every individual can orient herself as a member of the POT⁸¹ towards the representatives in the House of Commons, who come together, according to diverse subjects of debate, in different committees and have the right to actively engage in the process, i.e. to be heard.⁸² Because the POT meets in plenum - similar to a parliamentary assembly - this image could of course be seen as a metaphor for a generally alert and informed public as a whole, capable of exchange. According to Bentham this concept has to “unavoidably be mixed with more or less of fiction“.⁸³ In smaller meetings citizens can really come together and discuss political processes and decisions (“in this case, all fiction may be excluded“⁸⁴). The tribunal receives its power through what Bentham calls

⁷⁶ Bentham (1843_IX_ConstCod): 98 and 100. Also Bentham (1843_III_Plan): 446, 447 f, Bentham (1843_VIII_Secur): 575.

⁷⁷ Indeed, illiterates shall be excluded from the voting: (Bentham (1843_III_Plan): 464). See also Lieberman (2000): 134.

⁷⁸ See also Lieberman (2007): 31 f.

⁷⁹ Bentham (1843_VIII_Secur): 559. (original emphasis)

⁸⁰ Bentham (1843_VIII_Secur): 561. (original emphasis)

⁸¹ See also Lieberman (2000): 126 f

⁸² See also Bentham (1843_IX_ConstCod): 41.

⁸³ Bentham (1843_IX_ConstCod): 41.

⁸⁴ Bentham (1843_IX_ConstCod): 41. See also Bentham (1843_VIII_Secur): 563: „It wears, therefore, the colour of fictitiousness, but it possesses the substance of reality.“

counterforce⁸⁵ vis-à-vis the rulers: the authority to refuse loyalty to the rulers, to revoke obedience.⁸⁶ This might surprise at first, if one considers that according to Bentham a good citizen has the following features: “[t]o obey punctually; to censure freely“.⁸⁷ But obedience towards the rulers is only necessary if the latter act according to the greatest-happiness principle. The capacity and authority to censure freely⁸⁸ serves the means of protection - in this case virtually as a protection against the negligence and improvidence of misrule.⁸⁹

The condition for this kind of influence on the rulers, the civil servants and the judicial system is that as many individuals as possible are capable of informing themselves in political questions and to form a proper opinion. For this purpose one medium is necessary according to Bentham - the newspaper: “Easy communications, and the ready circulation of intelligence, by means of newspapers, augments the extent of this tribunal, and increases the submission of individuals to the empire of opinion.”⁹⁰ Articles about a wide range of topics put together as “mixed mass of evidence and argument“⁹¹ shall be valuable for members of the POT as well as for the rulers. The former are encouraged, informed and enabled to form an opinion, while the latter discover through the comments presented in newspapers how far the population is satisfied with their rule. The ruling class of course is not able to tell which positions the ruled have on particular publicized issues. Therefore it is not only the publicized opinions through which the POT can keep the rulers in check, but also the anticipation of the rulers of not yet publicized opinions.⁹²

David Lieberman who studied Bentham’s long-neglected conception of the public sphere intensively, argues: “Hitherto we have been so devoted to finding behind Bentham’s legislative theory a nation of shopkeepers, that we have neglected his commitments to a nation of newspaper readers.”⁹³ For Bentham, in this nation of newspaper readers two additional basic securities have to be established as a condition for the formation of opinions and the consultations of the POT – the liberty of press and of assembly:

For increasing the power of opinion in extent, there are many methods: the principal are, the liberty of the press, and the publicity of all acts which interest the nation—publicity of the tribunals, publicity of accounts, and publicity of the debates upon state affairs, when secrecy is not required by some particular reason. The enlightened public—the depository of the laws and archives of honour, the

⁸⁵ Bentham (1843_IX_ConstCod): 41.

⁸⁶ See also Niesen (2009 b): 171 f.

⁸⁷ Bentham (1977): A Comment on the Commentaries and A Fragment on Government. Ed. by J. H. Burns and H.L.A. Hart. London: Athlone Press: 399. Quoted after Schofield (2009): 3 (FN 10).

⁸⁸ See also Bentham (1843_IX_ConstCod): 41.

⁸⁹ Bentham (1843_VIII_Secur): 562.

⁹⁰ Bentham (1843_I_PenLaw): 458.

⁹¹ Bentham (1843_VIII_Secur): 567.

⁹² Niesen (2009 b): 168.

⁹³ Lieberman (2000): 134.

administrator of the moral sanction, forms a supreme tribunal which decides upon all causes and all persons. By the publicity of affairs, this tribunal is in a condition to collect the proofs, and to judge—by the liberty of the press, to pronounce and to execute its judgment.⁹⁴

Bentham was a vigorous advocate of liberty of press, that he promoted everywhere. In this context his almost passionate letters to the citizens of Spain must to be mentioned in which he urged the Spanish to oppose a law by their government that would lead to a curtailing of the liberty of the press. According to Bentham's basic conviction, that there are no personal basic rights, and according to his conception of security, liberty of press and assembly as well as other liberties are 'permitted'⁹⁵ by law, they are not *per se* available to the individual.

Established as a protection against arbitrary rule, Bentham's version of liberty of expression essentially refers only to political issues.⁹⁶ Concepts such as liberty of press, liberty of expression and of assembly do not have an inherently positive connotation in his thought, they are merely a lesser evil than the imminent oppression through the powerful that must breach the greatest-happiness principle: "The liberty of the press has its inconveniences, but the evil which may result from it is not to be compared with the evil of the censorship."⁹⁷

This shows again that the public sphere and transparency for Bentham are mainly means to an end. First and foremost, Bentham is only concerned with the establishment of a stabilized, secured commonwealth. In his desire for the greatest-possible security and his ambition to generate the latter, Bentham loses out of sight the fact that his model of society, although it sets some democratic standards, ultimately runs the risk to be nonconforming with more demanding standards, which are appropriate to a prevailing understanding of democracy. This point will be further explored in the next section.

2. Security Through Democracy - Democratic Security?

When exactly and for what reasons Bentham mutated into a democrat is being discussed controversially within Bentham research. It seems to be settled though that Bentham's detailed theoretical work on the so called 'sinister interest' of a small elite of rulers, judges and other officials - that began in the years 1803 and 1804⁹⁸ - strengthened his turn to democracy and made it irrevocable. Sinister interests are the particular interests of the ruling few, to use power to their own advantage and at the expense of the greatest-happiness

⁹⁴ Bentham (1843_I_PenLaw): 563.

⁹⁵ Bentham (1843_II_LibPress): 280: "...the allowance of this liberty..." "In the republic, this liberty is allowed..."

⁹⁶ Bentham (1843_II_LibPress): 282: "In regard to liberty of writing and speech on political subjects..."

⁹⁷ Bentham (1843_I_PenLaw): 538. See also: Bentham (1843_II_LibPress): 280. In a similar way, Bentham argues in matters of freedom of assembly: Bentham (1843_I_PenLaw): 577.

⁹⁸ Concerning this subject see Schofield (2009): 9-13.

principle. In contrast to the particular interest of each individual concerning his own well being, sinister interest does necessarily exclude taking into account the interests of others. Sinister interests are always in opposition to the interests of the subject many, in stark opposition to the greatest-happiness principle:⁹⁹ To implement his sinister interests a ruler can use different means that are at his unlimited disposal in a monarchy, as the latter is virtually based on “a security for, not against, misrule“:¹⁰⁰

His instruments, real and corporeal, are three: the soldier, the lawyer, and the priest: his fictitious and incorporeal are four: force, fear, corruption, and delusion: with these incorporeal instruments he by the hands of his corporeal instruments works.¹⁰¹

According to Bentham, a monarch can do as he pleases without constraints. He can use dishonest methods and violence in order to secure his own power. In this sense Bentham considers the ruling few as enemies of the subject many and searches for possibilities to control the former and to protect the latter from arbitrariness.

Political misrule could provoke offences and dependence on political arbitrariness would of course be in opposition to the principle of security of expectation, therefore Bentham’s evolvement to a democrat does not ultimately surprise. On closer examination his system of thought and the crucial importance he lends to security seems to be the logical consequence. But in this respect the questions arising are whether democracy was not only means to the end of maximization of security for Bentham and whether his conception of security does not have to have an effect on this democratic theory so that it might not conform with today’s requirements of democracy as a form of government of free and equal people. These questions are to be answered in the following.

Let us turn to Bentham’s method of developing his theory. It is characterized by his disposition for unambiguousness, clarity, and transparency¹⁰² - fitting for the ‘scientific approach’ he pursued, as he understood himself as the Isaac Newton of philosophy and legal theory. Bentham’s conception of security exhibits weaknesses because of this method, weaknesses that have to influence upon his notion of democracy: it is hardly possible to define concepts as security unambiguously and to make such a definition lasting. Yet, Bentham tries to achieve an exact determination of what security is that extends into countless

⁹⁹ Bentham (1843_VIII_Secur): 570, Bentham (1843_IX_ConstCod): 138. See also Schofield (2006): 109 ff.

¹⁰⁰ Bentham (1843_VIII_Secur): 593.

¹⁰¹ Bentham (1843_IX_ConstCod): 134 f.

¹⁰² UCL, manuscripts, box 27, 44. Quoted after Long (1977): 65: “Define your words says Locke: Define your words says Helvetius. Define your words says Voltaire: (...) Define them for the rules of Physics: define them for the sake of Ethics; but above all define them for the sake of law. Philosophers, I have obeyed you. I have defined my words: and with more especial care, where with venturous/ presumptuous / grasp I have taken in hand the sceptre of legislation.”

details in order to provide clarity - as presented in section 1. Finally Bentham's attempt leads to the fact that the legislator determines through extensive codices what security is and what it should mean to every individual. The citizens are left with no room in which they could agree on the quality of security, on the amount of security wished for in a society, and the relation of it to other value concepts, such as liberty or equality. This is what Postema refers to when he writes:

Absent, finally, is any awareness of the human desire or capacity to join with others in defining and carrying out a conception of the common good or shared values. For Bentham, conflicting conceptions of individual or common good are merely different arrangements of uniform human interests – and more often different views of the most efficient means of satisfying these interests¹⁰³

What security is and how it is to be established and provided is decided by the sovereign, not by the deliberating public in Bentham's commonwealth. One could say pointedly that law here almost acts as a form of "political debate stopper."¹⁰⁴ The population merely has the possibility to control the sovereign and to revoke their obedience if he does not rule in compliance to the fixed conception of security. In this sense, democracy, as designed by Bentham, does not fit in with today's notion of democracy as an order wanted by the people itself and legitimated by it through free opinion and will formation that allows the addressees of the law to simultaneously understand themselves as its authors.¹⁰⁵

This can be demonstrated using the example of his construction of the Public Opinion Tribunal. Bentham was concerned with deliberation of the public about political issues for reasons of control of the authorities, not in order to discover the societal common interest.¹⁰⁶ He attaches crucial significance to the controlling function of the POT. Not for nothing does he underline the task of valuing, judging and finally of sanctioning (usually through the instrument of moral sanction) by using the term 'Tribunal'.¹⁰⁷ His conception of the POT does not entail a kind of deliberation to which all members of a community would have access to. Postema also on this:

[B]ut the aim of these devices, as of his democratic proposals generally, was to maximize accountability of those in power. It was not to increase the level of public participation in community governance. The public plays a passive judgmental and enforcement role, not an active, policy-affecting, participatory role in government.¹⁰⁸

In Bentham's notion of societal public sphere the power-holders have to keep their actions transparent and comprehensible for security reasons but rulers and ruled are opposed to each

¹⁰³ Postema (1986): 167.

¹⁰⁴ Postema (1986): 463.

¹⁰⁵ Habermas (1998): 100. (Translation by the author)

¹⁰⁶ See also Hume (1988): 493 ff.

¹⁰⁷ This assumption perhaps could be supported by Niesen's observation that Bentham's sensitivity for deliberation is rather diminishing than increasing in his later writings. (Niesen (2009 b): 181).

¹⁰⁸ Postema (1986): 462.

other rather as a kind of enemies. They are not equal participants in deliberation and opinion formation.¹⁰⁹

Let us remain a bit on this point of animosity between rulers and ruled. The rulers have to be mistrusted according to Bentham. All securities against political arbitrariness do not essentially increase the trust the people have in its government, as Niesen argues,¹¹⁰ but rather merely diminishes the mistrust it has. This assumption is supported by the many separate securities Bentham names in detail in his *Securities Against Misrule* as well as in other places, where he details groups of different offences or different expectations that must not be disappointed. Under the title “*The securities in detail*”¹¹¹ diverse precautionary arrangements against the misuse of power can be found that would harm individuals (and also the nation as a whole). Using this list Bentham’s strategy of twofold protection can be illustrated especially well. He believes it to be necessary because of the mistrust towards the ruling class and the prevalent insecurity that follows; essentially many securities are being opposed by one counter-security.¹¹² Similarly, Bentham includes in his catalogue of securities a counter-security also for liberty of press and liberty of assembly.¹¹³ According to today’s democratic notion, liberty of press understood this way cannot be seen as resilient enough. While liberty of press and assembly in Bentham’s version give the ruled the possibility to keep tabs on their rulers, the latter can make use of the transparency of the consultations of the people so that they ultimately would be able to control the thoughts of their citizens and strengthen their own sovereignty again

Trust and mistrust are held to be the crucial dimensions of the concept of security in modern societies.¹¹⁴ One of the great advantages of democratic ruling systems is the fact that in them the possibility of mistrust has been institutionalized. The same applies to Bentham’s draft of a representative democracy and it can be argued without exaggeration that he achieved a degree of perfection in the institutionalization of mistrust. However, without a certain degree of trust that has to be developed and fostered the population and the political representatives have to be in opposition to each other, they will not be capable of overcoming challenges together. Said in the words of Niklas Luhmann: trust reduces the social complexity

¹⁰⁹ Probably, even the Public Opinion Tribunal is composed of opposition parties. See for example Bentham (1843_VIII_Secur): 570.

¹¹⁰ Niesen (2009 b): 158.

¹¹¹ Bentham (1843_VIII_Secur): 583-592.

¹¹² e.g. Bentham (1843_VIII_Secur): 584.

¹¹³ Bentham (1843_VIII_Secur): 583 ff.

¹¹⁴ See also, for example, Glæßner (2003): 23 ff.

and eases the leading of a life by assuming the risk.¹¹⁵ Without a certain degree of trust a democracy cannot function in the long run. Besides, without a certain degree of trust, there is also a lack of security, because subjective security - the feeling of security of an individual - cannot develop without trust. Trust, in turn, presupposes openness and some kind of positive insecurity, which leaves room for flexibility and creativity. This is something one misses in Bentham. On the contrary, Bentham's obsession with drawing from the individual to society, from the single case to the rule,¹¹⁶ the crucial role fear plays in his thought (which cannot be separated from pain),¹¹⁷ and the consequences he concludes from this for his conception of security lead to a great amount of inflexibility. Through this the rational calculation and consideration of risks is complicated as well as the possibility to confront them calmly and appropriately.

In this context it has to be kept in mind how much Bentham feared "shocks to security." He was not hostile towards liberty and equality¹¹⁸ and he actually advocated dedicatedly for the implementation of liberal principles. Nonetheless, in case of doubt he would have subordinated everything under the concept of security. An example could be Bentham's stance on colonization. In many of his writings, Bentham called for the release of the settler-colonies into independence. Yet, his arguments were often based on considerations regarding the security of Great Britain. He thought the colonies to be essentially economically harming and to be a threat to the stable social order 'at home'¹¹⁹ because the evils of despotic colonial rule overseas could be re-imported into the states of the European colonial rulers.¹²⁰ Whereas he had little objections to the colonization of regions with indigenous population as Campos-Boralevi compellingly shows. The yardstick here was again the security of the British people - the struggle against over-population, unemployment and famine - not the security of the indigenous inhabitants of the areas to be colonized.¹²¹ Bentham's theory does

¹¹⁵ Luhmann (1989): 78. (Translation by the author)

¹¹⁶ Bentham (1843_I_IPML): 81: "Have I to examine an act attacking the security of an individual? I compare all the pleasure, or, in other terms, all the profit that arises from this act to its author, with all the evil, or all the loss, which results from it to the party injured. I see at once that the evil of the first order surpasses the good of the first order. But I do not stop there. *This action is followed by danger and alarm to society: the evil which was confined at first to a single person, spreads itself over all in the shape of fear. The pleasure resulting from the action is only for one: the pain is for a thousand, for ten thousand, for all.* The disproportion, already prodigious, appears almost infinite, if I pass on to the evil of the third order, by considering, that if the act in question were not repressed, there would result from it an universal and durable discouragement, a cessation of labour, and at last the dissolution of society." (emphasis added)

¹¹⁷ Bentham (1843_IX_ConstCod): 48.: "(...)from the fear of sufferance, actual sufferance is inseparable (...)." - Bentham (1843_II_Fallac): 466: ",(...)" it is by hopes and fears that the *end* of action is determined; (...)."

¹¹⁸ See also Long (1977): 215.

¹¹⁹ Pitts (2005): 108.

¹²⁰ Bentham in *Rid Yourselves of Ultramarina*, quoted after Campos-Boralevi (1984): 129.

¹²¹ Campos-Boralevi (1984): 129.

not lack the appropriate consideration of liberty, argues Campos-Boralevi (and one could add equality), but

because as far as remedies are concerned, security of property and the maintenance of social order are given priority over any other principle, even over the calculation of the greatest happiness of the greatest number.¹²²

When arguments of security essentially always carry more weight than other concepts of value and security is basically the only justification to legitimize political actions, this has crucial consequences for the democratic praxis of the society in which Bentham's theory would be applied. Even though civil liberties have an important position in Bentham's draft of a more appropriate political order and a society of happy individuals, extremely liberal interpretations miss his exceptional desire to provide and stabilize security.

The same applies for the somewhat eerie interaction of Bentham's notion of security and his perfectionism and for the influences this interplay has to have on a society that wants to be democratic. Paul Kelly writes, "that expectations are dependent upon the minimization of contingency, and that these are necessary conditions of interest formation and realization."¹²³ Of course, he is correct in saying so, but what happens to a society that is striving with Bentham's extreme measure for the reduction of contingency? Douglas Long in this context points to a 'vacuum' that Bentham wants to eradicate:

There can be no doubt that it is a principle of Bentham's social thought that political society as a whole, in order to exist, must eliminate the sociological vacuum created by unrestricted "natural" liberty and erect the idols of authority and security within the space thus annexed.¹²⁴

This 'obsession' to reduce contingency as much as possible can also be discovered with respect to the recently described method of Bentham, only to allow unambiguousness and to avoid any appearance of controversies. It also becomes apparent if one considers the construction of his codices, his model of political governance. Bentham organizes a state according to the structure of insurances and the individual parts of the Pannomion remind of insurances, too. In a time, in which the amount of insurances skyrocketed (especially in England)¹²⁵ and in which reinsurances were beginning to be established, Jeremy Bentham also tried to insure state and citizens against any form of risks. In doing so, he overlooked the limits of insurances - an insurance cannot secure life, it just pretends that it is possible to assign a calculable value to 'life'. In Bentham's system accomplished calculability can lead to perfect protection and security. Yet, this hope of him cannot come true, neither in the miniature mode of the panopticon nor on a state-level. But if the expectations towards

¹²² Campos-Boralevi (1984): 186.

¹²³ Kelly (1990 a): 94.

¹²⁴ Long (1977): 25.

¹²⁵ See also Conze (1984): 856.

calculability and towards the guarantee of absolute security that follows from such calculability cannot be met, this will have to lead to - here Bentham would agree – disappointment and a greater amount of fear.

3. Conclusion

“Yet he adopted his method not because he was indifferent to human feelings, or denied the complexity of human life, but because he could not accept the ordinary risk of living. Thus he could not reconcile himself to the ambiguity of words, to believing that however well or honestly men tried to communicate with one another, something would be misunderstood, or perhaps discovered without being said.”¹²⁶

Of course, we do not know if it is true that Jeremy Bentham could not accept the common risks of life every individual is confronted with. Nor do we know to what extent Bentham felt confident about overcoming this ordinary risk. Regardless of his motivation, however, it is quite obvious that Bentham throughout his life committed himself to the task of providing and establishing security for individuals in a society. In this paper I tried to illustrate that security indeed is one of the most crucial concepts in Bentham’s sophisticated theory and at the same time a necessary instrument for its practical implementation. Thereto I have presented a distinction of three different dimensions of security in Bentham’s thought - security against offences, security against disappointment and security against misrule – and pointed out the characteristics and qualities of the respective dimension as well as arguments for my distinction. Thus, I wanted to show that a better understanding of security as one of Bentham’s key concepts might lead to a deeper insight into Bentham’s thought in general and could be another interesting starting point to address Bentham’s ideas.

Furthermore, an analysis of Bentham’s conception of security also allows for various links to essential questions in political theory. In the last section of the paper I turned to one of these questions, namely to the question which impacts Bentham’s conception of security has to have on his idea of democracy. Concerning this subject, I argued that Bentham doubtlessly wanted to introduce democratic principles, but that he predominantly sought to strengthen and stabilize the state according to his conception of security, using democracy as means only in order to achieve this aim. The idea that sovereignty actually lies with the people and not the legislator however, did not seem to appeal to him too much or, as Lieberman notes: „Bentham’s democratic theory was thus overwhelmingly an account of democratic statecraft. Conspicuously absent, in contrast, was any corresponding account of democratic society.“¹²⁷ There is no question that Bentham intended to design and to establish a commonwealth that should be an idyll, a perfectly organized, perfectly governed, perfectly

¹²⁶ Letwin (1998): 198.

¹²⁷ Lieberman (2008): 622.

secured society. Unfortunately, Bentham ignored as long as he lived that his theoretical approach – due to his overwhelming desire for security - could lead to insecurities and increasing mistrust in its practical implementation. According to Bentham’s own utilitarian credo, one wonders if the practical consequences resulting from his theoretical constructs may be ignored.

4. References

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