

Résumé des articles

"Hierarchy and Liberty. Functionaries in the *Constitutional Code*" by Emmanuelle de Champs

The first volume of Bentham's *Constitutional Code* details the organisation of the government and focuses on the duties and rights of functionaries. This article explores the status of functionaries in a utilitarian political system. The greatest happiness principle requires that all their actions be conformable to the interest of the greatest number, which is ensured by a strict official hierarchy and a series of checks. However, functionaries are also individuals whose happiness cannot be neglected. This article uses Bentham's theory of fictions to explore the relationship between an individual and a class in the utilitarian system. Official functions limit the individual's ability to serve interests contrary to those of the greatest number, but they are also understood by Bentham as a means of enhancing individual happiness.

Each individual being the best judge of his own interest, the first task of a utilitarian government is to allow the people to voice a common interest. Bentham's theory of representative democracy focuses on the means by which elected representatives can best put forward the interests of the people at large. Official functionaries belonging to the Operative and Legislative authorities are delegated in order to fulfil the will of the voters (who make up the Constitutive Authority). Are elected representatives bound to follow the dictates of their constituents? Bentham's answer is not univocal. The mechanisms of representation cannot ensure the exact conformity of the functionary's actions to the will of the majority of voters. The Public Opinion Tribunal, open to all citizens (including non-voters) acts as a necessary check on official behaviour.

Building on an analysis developed as early as *Of Laws in General*, Bentham distinguishes two ways of exercising power: *de classibus* (on classes) and *de singulis* (on individuals). The complex network of powers and checks at work in the *Constitutional Code* can be seen as the interplay of those two types of powers. The Constitutive authority exercises power *de singulis* by electing representatives. The Legislative authority legislates *de classibus* by making general laws. Throughout the "Official Establishment", subordination is effected by a combination of general orders and individual control (for instance, locating and "dislocating" a given functionary). The network of power described in the *Constitutional Code* is both vertical (resting on a strict hierarchical principle in which responsibility is established by accountability to one's immediate superior) and horizontal (all functionaries being subjected to the moral sanction of the Public Opinion Tribunal).

The theory of fictions casts light on the way in which Bentham understands classes such as that of functionaries. Classes are fictions, official functions are used to aggregate individuals into a class. Functions are "receptacles" in which individuals are "located". The sartorial metaphor of "investment" also underlines the fact that there is no ontological relationship between an individual and the category he belongs to. The utilitarian legislator does not address individuals directly but *de classibus*. It is only insofar as individuals can be included in a given category that the law can influence or control their behaviour.

The notion of "official aptitude" casts light on the relationship between an individual and his function. Aptitude in its three branches – "moral", "active" and "intellectual" – reflects the interplay between personal and innate talents and qualities developed by the structure in which individuals are placed. Moral aptitude, that is the ability to further one's interest by promoting that of the greatest number, is not innate but depends on the system in which individuals are placed. Active aptitude, or personal motivation, also varies according to the opportunities offered by the system. Intellectual aptitude, Bentham writes, depends on the level of instruction and of public debates on political issues. The *Constitutional Code* describes a society in which structure strongly influences personal development.

Throughout the *Code*, Bentham multiplies checks and controls to avoid the formation of "sinister interest" within the class of functionaries. The danger is compounded by the power vested in them. However, the happiness of functionaries is an important component of utilitarian government, mostly because reducing the cost of government implies individual satisfaction on their part (the selective system of examination and patriotic auction implies individual motivation). By creating a legal status for functionaries, the *Code* imposes strict duties but also opens rights, thereby protecting them from oppression by their hierarchical superiors. Beyond the "security-maximization-principle", Bentham also means to apply the "contentment-maximization-principle". The class of functionaries can therefore be studied as a model for the way in which the utilitarian legislator deals with other classes of individuals.

"The invisible chain' : Jeremy Bentham and néo-libéralism" by Christian Laval

Bentham's thought cannot be reduced to the usual oppositions between « natural freedom » and government's interference. From this point of view, the text shows that Michel Foucault understood Bentham's originality better than Isaiah Berlin. For Bentham, freedom in a political society is determined by the existence of a legal system which creates obligations for some people and rights for the others. The government's task does not directly consist in respecting a sacred natural right, but aims at producing the « arrangements » which have to direct the interests of the greatest number towards beneficial goals to the community as a whole. The legislator is to know, form and guide the individual interests. He has to set a direct and indirect legislation which will influence the objects and the degrees of desire as well as the modes of satisfaction. For this purpose, he has to summon public opinion in order to control individual action. On this point, we have to correct Michel Foucault's interpretation of panoptism. The main form of power in modern society is not exerted by a central State but by each individual on the others. That is the meaning of a very important idea in Bentham's theory which appears under the metaphor of the « invisible chain ». The habit of watching and judging the others in the permanent Public Opinions Tribunal is the best way to learn self-discipline. Bentham's ideal is the self-government of individuals by the calculation of pleasures and pains.

Bentham's reflection on power is particularly relevant to understand what is at stake today when we talk of « neoliberalism ». Foucault had clearly underlined this aspect in *Naissance de la biopolitique*. The opposition between the State and the Individual, sometimes presented as the touchstone of liberal philosophy, has no grounds in an intellectual frame which rejects the idea of natural rights.