

# **The Rise of Liberal Utilitarianism: Bentham and Mill**

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## **I. Introduction**

By the turn of the nineteenth century, Jeremy Bentham (1748-1832) was a well-known moral and legal reformer. A child of the Enlightenment, writing at the time of the American and French revolutions, Bentham had offered wide-ranging critiques of customary institutions and ways of thinking. He was particularly critical of appeals to natural law and intuition that, consciously or not, provided mere cover stories for people's preferences. Such appeals, he argued, fail to provide real reasons:

The various systems that have been formed concerning the standard of right and wrong... consist all of them in so many contrivances for avoiding the obligation of appealing to any external standard, and for prevailing upon the reader to accept of the author's sentiment or opinion as a reason in itself. (*An Introduction to the Principles of Morals and Legislation* [IPML], II.14; B i.8)<sup>1</sup>

Because these cover stories are guided by people's preferences, Bentham also argued that they are incapable of grounding a principled and well-organized set of public institutions. They instead protect established powers, whose likes and dislikes carry the most weight. His earliest writings, for instance, detail how the vagaries of the common law served entrenched interests rather than the public at large.

What Bentham needed was a public principle that could guide a scientific program of legal codification and political reform. In *A Fragment on Government* (1776), he therefore introduced *the principle of utility*, according to which "it is the greatest happiness of the greatest number that is the measure of right and wrong" (B i.227). Over the following half century, he demonstrated that this principle required comprehensive political and legal reforms, including an overthrow of the traditional aristocracy in favor of democracy, social equality, and personal and economic

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<sup>1</sup> Bentham citations marked "B volume#.page #" refer to the Bowring edition of his *Collected Works*. IPML passages are also cited by chapter and paragraph number.

liberty. Earlier philosophers had declared that utility or happiness was central to morality and public life, but it was Bentham who finally laid out a systematic utilitarian moral and political theory, as well as a set of institutional reforms based on those ideas.

Bentham's historical significance is underappreciated today, but the civil, constitutional, and penal codes he developed to promote the general happiness had wide influence in Great Britain and beyond. He became an inspiration for the radical politics of the early nineteenth century, arguing in particular that democratic accountability is needed to ensure that government works for the *universal* interest, and not for the *sinister* (or partial) interest of a person or group. The principle of utility requires that each person's happiness count *equally* in the justification of policy, regardless of social rank, race, or gender.

In Britain, Bentham's arguments motivated an impressive collection of thinkers and political reformers loosely referred to as the Philosophical Radicals.<sup>2</sup> Most influential among them at the time were James Mill (1773-1836) and, later, his son John Stuart Mill (1806-1873). If Bentham was the intellectual godfather of this group, James Mill was initially its strongest personality and practical leader, whose "Essay on Government" (1820) served as a guiding text. Like Bentham, he argued especially that good government required democratic accountability to maintain an "identity of interest" between the rulers and the ruled (Mill 1992, 22). Despite his own philosophical achievements, however, perhaps his greatest contribution was training his son into the utilitarian fold. Like Bentham, John Stuart Mill was a child prodigy. By his teens he became a significant contributor to the radical program and, owing to later works such as *Principles of Political Economy*, *On Liberty*, *Utilitarianism*, and *The Subjection of Women*, he is now widely regarded as the greatest theorist and expositor of liberal utilitarian political philosophy.

Interestingly, John Stuart Mill's reputation as a moral and political philosopher derives in part from his coming to reject Benthamite utilitarianism in favor of a theory that is more deeply liberal and humanistic. On the now familiar story, Mill thought Bentham's utilitarianism focused too much on the material and external determinants of happiness, such as institutional arrangements and incentive structures, and ignored the development of individuals' own faculties, sentiments, and character as a way to promote happiness. Insofar as Bentham did focus on character, Mill also thought he had a woefully deficient understanding of people's capacity to develop a sense of moral obligation and fellow-feeling. Raised to be a Benthamite rational thinking machine, Mill was forced to confront these defects both personally and philosophically during a "mental crisis" at the age of twenty (CW I.137ff). Personally, he realized that his own emotional deficits had left his capacities for happiness and fellow-feeling severely limited. Philosophically, he applied this realization to utilitarianism itself, arguing that Bentham's view ignored what Mill now took to be a significant part of the moral life: the inner development of the individual.<sup>3</sup> To

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<sup>2</sup> John Stuart Mill himself used the term "philosophic radicals" ("Autobiography" (1873), CW I.203), but the label was not accepted by all those identified with it. Mill citations marked by "CW volume#.page #" refer to his *Collected Works*.

<sup>3</sup> See Donner 1991 for a detailed discussion of this theme in Mill.

solve his crisis, Mill turned to romantic poetry (which Bentham had disdained) for inspiration. The result was not only a more well-rounded Mill, but a more humane utilitarianism.

Without denying the basic truth in this story, my aim in this chapter is to push back against the tendency to emphasize Mill's break from Bentham rather than his debt to him.<sup>4</sup> Mill made important advances on Bentham's views, but I believe there remains a shared core to their thinking—over and above their commitment to the principle of utility itself—that has been underappreciated. Essentially, I believe that the *structure* of Mill's utilitarian thought owes a great debt to Bentham even if he filled in that structure with a richer conception of human nature and developed it in more liberal directions. This commonality is revealed, in particular, in Mill's own institutional designs and practical reform proposals in *Considerations on Representative Government* and related writings. If this is right, then the tendency of interpreters to highlight their differences rather than their similarities has been to the detriment of both Mill and Bentham scholarship, and so to our understanding of the rise of liberal utilitarianism.

To make this case, I first outline some of the basic aspects of Bentham's political thought that informed his institutional reforms, not all of which are commonly recognized. In section III, I then consider Mill's own published comments, positive and negative, on Bentham's work. I argue that, despite some rhetorical flourishes, Mill's critical comments are carefully qualified and quite specific, and do not touch large parts of Bentham's utilitarian reform project. From there, I try to articulate what Mill in fact carries over from Bentham, revealing the continuing significance of both these great utilitarian thinkers.

## II. Bentham's political philosophy

Bentham's moral philosophy is often introduced as an object lesson in the failures of simplistic utilitarianism. But attending to Bentham's *political* philosophy reveals ways in which his normative thought is more complex than is commonly appreciated. In the political realm, his philosophy is structured by key ideas not contained within the principle of utility itself (though they are meant to help apply it). Because these ideas also appear in Mill, they have implications for our understanding of liberal utilitarianism more generally. What follows, then, is an outline of the basic elements of Bentham's political philosophy.

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<sup>4</sup> A few leading Mill scholars, most notably Isaiah Berlin, have entertained the thought that, in rejecting Bentham's view, Mill gave up on utilitarianism altogether. In Mill, Berlin writes, "the true Utilitarian spirit... has fled" (Berlin 2002, 226). I argue below that this claim flies in the face of any careful reading of Mill's *Collected Works*, but it points to the fact that many of Mill's readers are inspired more by his liberal conclusions than by his utilitarian foundations. Others hold that although Mill did not give up on utilitarianism, he did give up on Bentham. There is a tendency to see the more expressly liberal Mill as *supplanting* Bentham rather than as building on him in any significant philosophical respect other than their shared commitment to the principle of utility. I want to reject this impulse as well.

## *The principle of utility*

At the bottom of everything for Bentham is the principle of utility, which he introduces as “that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question” (IPML, I.2; B i.4). He emphasizes that the party whose interest is in question, at least in the case of government action or policy, is the entire community. Later he would state the principle differently, commonly referring to it as “the greatest-happiness principle” and sometimes specifying the “universal interest” as the end of all action and policy. Strictly, these are meant to be just notational variants. He explains that “[b]y utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness” (IPML, I.3; B i.1-2), and that to promote someone’s “interest” just is “to add to the sum total of his pleasures” (IPML, I.5; B i.2).

It is worth distinguishing five elements of Bentham’s view of the principle of utility, three of which concern his utilitarian theory of value, while the final two concern his theory of right action. First, on Bentham’s view, happiness is the ultimate value for persons. Whether we are evaluating actions or policies or practices or institutions, what is fundamentally important is how much happiness is produced and how much suffering is avoided or alleviated. The key implication of this claim is that the value of everything else is to be explained in the end by its contribution to one or more individuals’ happiness.

Second, happiness (or interest or benefit or good) is to be cashed out in terms of the balance of *pleasure* and *pain*. In perhaps the most famous passage from all of Bentham’s works, he writes: “Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do” (IPML, I.1; B i.1). Pleasure and pain are concrete bits of experience that are uniquely able to give meaning to, and ground, otherwise vague and unclear moral claims. Other moral systems, he contends, “deal in sounds instead of senses, in caprice instead of reason, in darkness instead of light” (IPML, I.1; B i.1).

Third, Bentham is famous for arguing that pleasures and pains can be quantified according to their intensity, duration, probability, proximity, the number of people affected by them, and their causal relationship to further pleasure and pain (IPML, IV.2-5; B i.16). His quantification of happiness in the service of utilitarian decision-making has come to be called the “felicific calculus,” though he seems not to have used that term himself. Crucially, Bentham makes no further distinction among pleasurable experiences in terms of *quality*: “the game of push-pin is of equal value with the arts and sciences of music and poetry. If the game of push-pin furnish more pleasure, it is more valuable than either” (*Rationale of Reward*, B ii.253).

Fourth, the principle of utility holds that the proper end of human conduct, including government policy and law, is the maximization of the *universal* interest or “the greatest happiness

of all,”<sup>5</sup> and not the interest or happiness of some subgroup or class of individuals. In a characteristic statement, he writes: “The right and proper end of government in every political community is the greatest happiness of all the individuals of which it is composed” (*First Principles Preparatory to a Constitutional Code* [FP], 232).

Fifth, and finally, in calculating the general happiness or universal interest, each person’s happiness must be considered impartially or equally: “every individual in the country tells for one; no individual for more than one” (*Rationale of Judicial Evidence*, B vii.334). Mill would later emphasize this aspect of Bentham’s account of the principle of utility:

That principle is a mere form of words without rational signification, unless one person's happiness, supposed equal in degree (with the proper allowance made for kind), is counted for exactly as much as another's. Those conditions being supplied, Bentham's dictum, “everybody to count for one, nobody for more than one,” might be written under the principle of utility as an explanatory commentary. (*Utilitarianism*, CW X.257)

Uniting these elements, and setting aside some disagreements about how best to interpret Bentham’s understanding of the principle of utility, the basic idea is that what makes any action or policy right is its tendency to promote the greatest overall balance of pleasure over pain, given an impartial consideration of the interests of all those involved. This relatively straightforward moral principle became a powerful weapon in the cause for social and political reform, and remains influential to this day.<sup>6</sup>

For many readers, however, this is where their understanding of Bentham’s moral and political philosophy ends. Familiar objections are raised against the elements just outlined. Is pleasure all that is ultimately valuable? Does it really not matter whether we get our pleasure from push-pin or poetry? Is the felicific calculus a practicable method for moral decision-making? Negative answers to these questions have led philosophers to turn away from Bentham. But, while I cannot do justice to the full range of Bentham’s thought, a fair treatment of his views must include some of the distinctive ways that he puts the principle of utility into practice. These are crucial to any understanding of his legacy as a moral and political philosopher. In the remainder of this section, I therefore propose to look at three important and distinctive features of his utilitarian thought: his introduction of four subordinate ends to guide public morality and law, his account of “official aptitude,” and his “assumption of infallibility” argument.

#### *Four subordinate ends and the universal interest*

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<sup>5</sup> He is more commonly associated with the phrase “the greatest happiness of the greatest number,” but it is important to appreciate that, for Bentham, this formulation is required only by cases of competition in which the greatest happiness of *all* is not possible (FP 3; *Constitutional Code*, B ix.5-6).

<sup>6</sup> Perhaps most prominently in the works of Peter Singer.

Bentham's utilitarian morality, at least his political morality, is immediately complicated by his work on civil and constitutional codes. In that work, he introduces four subsidiary ends that, for most practical purposes, are meant to define the universal interest: subsistence, abundance, security, and equality.<sup>7</sup> For instance, in "Principles of the Civil Code" he writes that while "the legislator... should have for his end the happiness of society," when we investigate "more distinctly in what happiness consists" we discover "four subordinate ends: Subsistence. Abundance. Equality. Security" (B i.302). Their significance should not be underestimated. "All the functions of law," he argues, "may be referred to these four heads" (B i.302).<sup>8</sup> Similarly, in his "Leading Principles of a Constitutional Code, For Any State," after noting that the greatest happiness or universal interest is the "general end in view" of a constitution, he adds:

Immediately specific, and jointly all comprehensive, ends of this constitution are – *subsistence, abundance, security, and equality*; each maximized, in so far as is compatible with the maximization of the rest. (B ii.269; emphasis added)

These are striking passages for anyone who thought Bentham was committed to our regular use of the felicific calculus for moral, political, or legal decision-making. We are asked not to maximize happiness by calculating and weighing all pleasures and pains, but rather to guide our public decisions by just four subsidiary ends that define the universal interest, and to try to strike the optimal balance among them. In his earlier work, Bentham had warned that "[i]t is not to be expected that this process [the felicific calculus] should be strictly pursued previously to every moral judgment, or to every legislative or judicial operation" (IPML IV.6; B i.16).<sup>9</sup> In his work on civil and constitutional codes, then, he develops this thought by introducing shared, public ends to give order to legal codes and to guide the decision-making of public officials and citizens.

Striking the optimal balance among the four subordinate ends is not entirely straightforward. They overlap and interact in a variety of ways. For example, Bentham sees abundance partly as security for subsistence. He also emphasizes that the tradeoffs to be made among them are not always as evident as one might wish. But he argues that, taken together and properly understood, these ends constitute the public standard of utility. Before we consider the

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<sup>7</sup> For further discussion on how these subsidiary ends might be related to, or (more controversially) even constitute, the universal interest, see Postema 2006 and 2018. A helpful introduction to the four subordinate ends generally can be found in Harrison (1983, 244ff).

<sup>8</sup> "Principles of the Civil Code" is from his *Theory of Legislation*, a widely-read recension of Bentham's work produced by his friend Étienne Dumont. For a useful historical account of Dumont's project and Bentham's enthusiastic endorsement of it, see Rosen (2011, 258, 260-3).

<sup>9</sup> Despite the way utilitarianism is sometimes presented, I do not believe that any of the leading utilitarians ever proposed that moral agents should normally make decisions by consciously calculating all of the pleasure and pain likely to result from different actions.

significance of Bentham's having introduced them at all, a few general remarks about how they relate to each other are in order. First, because security and subsistence are required for life itself, and so for the existence of any society at all, they have priority over abundance and equality. Bentham describes security as "the principal object of the laws" (B i.307) because it establishes the social conditions for the other three: it creates and maintains shared expectations that allow for the coordination on which other goods depend. This means, in practice, that any reforms must be consistent with maintaining security, and so—despite Bentham's reformist zeal—there is an anti-revolutionary streak in his thought.

Second, security encompasses a great deal: security against natural disasters, security against enemies, security against misrule by one's own government, security of property, security of person, and more ("Leading Principles of a Constitutional Code," B ii.269-270). Even our regard for liberty, on Bentham's view, is contained within security: personal liberty is, roughly, security of the person, and political liberty is security against misrule. But *constraints* on liberty are also fundamentally justified by security, because we must have enforced social rules to maintain our social life and protect our rights. Security is thus a complicated end, even on its own.

Third, Bentham argues that social, political, and economic equality are important to the greatest happiness, but within limits. He recognized that many of the evils of the traditional aristocracy in Britain stemmed from inequalities. He was, for instance, anti-slavery and pro-women's suffrage.<sup>10</sup> On voting rights, he saw that "a share in the supreme constitutive power is a means of, or security for, happiness" and should therefore be extended to "the most helpless and most indigent" as well as the "the most powerful and the most opulent" (*Constitutional Code* [CC], B ix.108). Bentham was also in favor of limiting property rights, largely for reasons of diminishing marginal utility. In fact, over time and through piecemeal reforms, he believed that security and equality could be made fully compatible. But it is worth reiterating the priority of security. In the near term, he argued, "When security and equality are in opposition, there should be no hesitation: equality should give way" ("Principles of the Civil Code," B i.311). And thus, for example, when he called for giving women the franchise, he also noted that the "contest and confusion" caused by the proposal would be reason to put it off (CC, B ix.109).

There is a great deal more one might say about the relationships among security, subsistence, abundance, and equality, but my main point is to highlight the fact that, in much of his writing, Bentham pursued the greatest happiness or universal interest through those subsidiary ends. We might now ask: why? As Gerald Postema (2018) has argued, the answer seems to be Bentham's recognition that in order to promote happiness there is a need for a public standard, accessible to all, that each person has an interest in achieving and supporting. This public standard is required by security itself; it is necessary for setting the shared expectations that allow for all of the goods that depend on social coordination. It cannot, then, be constituted by the particular ends of an individual or small group. And it cannot be made up of *private* ends that others cannot appreciate or evaluate. Only generally recognized values can (1) provide a framework within

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<sup>10</sup> For Bentham's view of slavery, see Rosen 2005.

which we can specify what we may reasonably expect of each other, and how we may hold each other accountable for our failures and (2) facilitate public deliberation about how to revise and develop that very framework going forward.

Bentham's increasing use of the term "universal interest" in his later work reflects his commitment to this public standard. In particular, it allows him to express two related thoughts about what is right and wrong in political arrangements and the actions of public officials. On the positive side, Bentham comes to identify the universal interest with those interests that each individual holds in common with others. He sometimes suggests that the universal interest is constituted by *public* interests in which we each have a share, and which benefit each of us without sacrificing any of us (CC, B ix.7, 127; *The Book of Fallacies*, B ii.475; FP 192). To *maximize* the universal interest on this picture looks rather different than before. On the negative side, he introduces the notion of "sinister interest" (CC, B.ix.128, 136ff; *The Book of Fallacies*, B ii.475) to refer to those interests that are partial to an individual or small group, and which conflict with the promotion of the universal interest:

Be the community what it may, to every member of it belongs two opposite and continually conflicting interests: 1. His share in the universal interest—that interest which is common to himself and every other member of the community: 2. That interest which is particular and peculiar to himself, with or without some comparatively small number of associates. (CC, B ix.127)

Bentham does not doubt that sinister interests are real interests or that their realization would contribute to an individual's happiness. He also believes that the typical individual is, most of the time, more motivated to pursue his sinister interest than to secure his share of the universal interest. As we shall see in a moment, this is especially important when it comes to public officials, but it is also true of regular citizens who might benefit from freeloading or otherwise taking advantage of their fellow community members. The more Bentham's own efforts at political and legal reform failed (notably his Panopticon prison design), the more he believed that sinister interest was the chief obstacle to promoting the general happiness.<sup>11</sup>

The four subsidiary ends defining the universal interest provide Bentham with a public standard of utility: they express a set of shared expectations capable of grounding a process of public decision-making and accountability. Unlike the preferences that underlie appeals to intuition or natural law to justify self-serving aristocratic institutions, these subsidiary ends are recognizable by all, everyone has a share in them, and the default assumption is equality. This is a significant contribution to the public reason tradition in political philosophy that has become only more pronounced since Rawls. Bentham's elaboration of the principle of utility is not nearly so flat-footed as it might have seemed.

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<sup>11</sup> See Schofield 2006, 109-136.

## *Official aptitude*

There remains the problem of ensuring that the universal interest will, in fact, be pursued and promoted. For, even with a public standard of utility in hand, the rulers in any government will be tempted to serve their own interests rather than the universal interest. And even if they are committed to serve the universal interest, the rulers might lack the relevant knowledge and judgment needed to do so. And even if they want to serve the universal interest and possess the relevant knowledge and judgment, they might lack any talent or energy for putting their beliefs into action. What we need, then, is what Bentham calls “security against misrule” (CC, B ix.9) due to each of these failures.

Bentham’s answer to the problem of misrule is to specify “appropriate official aptitude,” that is, the set of qualities that will reliably result in good decision-making by government officials, as well as the institutional arrangements needed for those qualities to obtain. Philip Schofield does not exaggerate when he writes: “The whole of Bentham’s legal and political thought, underpinned by the principle of utility with its ‘real source’ in pleasure and pain, culminated in the notion of official aptitude” (2006, 275). As Bentham puts it, “maximization of *appropriate official aptitude* on the part of the rulers” is the “principal means” of achieving the four subsidiary ends (“Leading Principles of a Constitutional Code,” B ii.272; see also FP 4). Only by understanding official aptitude (what we might now refer to as competence), and what is required to secure it, can we hope to promote the universal interest.

Appropriate official aptitude has three components: *moral* aptitude, *intellectual* aptitude, and *active* aptitude. In general terms, moral aptitude concerns one’s public-spiritedness or disposition to promote the universal interest. Intellectual aptitude concerns, roughly, one’s expertise and ability to weigh information related to some matter. Active aptitude concerns one’s capacity to put one’s beliefs into action. Failure in any of these respects threatens good government, but moral aptitude is perhaps the most important because if the rulers are not disposed to work for the public interest, then there is little hope of achieving anything beneficial. This is the core of Bentham’s case for democracy, despite its problems in other respects. He argues that it is simply impossible to secure the moral aptitude of rulers in a monarchy or aristocracy. Officials in these systems are unavoidably “an enemy to the people” or “enemies of the many” (CC, B ix.127; CC, B ix.143; FP 152ff). Only democracy offers the possibility of public accountability necessary to maintain an “identification of interests” between the rulers and the ruled (see, e.g., FP 125ff).

Good government also requires knowledgeable and capable representatives, ministers, civil service officials, judges, and law enforcement officers. To varying degrees, they must understand the relevant empirical data as well as the costs and benefits of pursuing and enforcing different policy options. Depending on their roles, they must have a talent for writing and passing legislation, or for public administration, or for interpreting statutes, or for maintaining order within the bounds of the law. To accomplish this, Bentham proposed that appropriate intellectual and active aptitude be secured by public signs of achievement, such as education, or examinations, or a previous track record of service. In these aspects of his institutional designs, Bentham aimed to

create a meritocratic system based on objective measures of talent for the work required. It is difficult to convey the extent of Bentham's detailed expositions of how officials might be found lacking in moral, intellectual, or active aptitude, and his proposed remedies for each of them.<sup>12</sup> Such failures might be found in citizens themselves, in the executive branch at every level, in legislative bodies, or in the courts, and in each case different sorts of fixes might be needed. Because securing appropriate aptitude is the primary means by which the universal interest is served, these remedies take up a large portion of Bentham's work on constitutional codes.

Bentham also proposes to limit the opportunities for public officials to make mischief. This is done, for instance, by limiting the power of individual offices and officers, including the amount of public funds they control. He allows that government is necessary to promote the public interest, but he wants it to be as efficient as possible by avoiding "expense" in the form of unnecessary coercion, punishment, taxation, or any other harm or cost. The motto that guides his institutional designs is therefore: "Aptitude Maximized; Expense Minimized" (FP, 4; CC, B ix.150, 200).

The details of his designs matter less to us than the fact that the principal means by which Bentham proposes to maximize the universal interest is not by prescribing particular laws (though he also does that), but by focusing on the promotion of official aptitude and the division of decision-making labor. Bentham argues that to promote happiness one needs to secure competent decision-making by groups or individuals, and then allow the competent parties to do their work. As David Lieberman puts it: "The so-called 'maximization of official aptitude' was a relatively late addition to Bentham's political lexicon, but by the time of the *Constitutional Code*, it had become the designated goal of constitutional arrangements" (2008, 621). In designing institutions, then, the first practical matter is to maximize official aptitude in each domain in which decisions are made, and not to secure particular outcomes. We thereby see that certain substantive commitments—such as public accountability in the form of elections and free discussion—are justified primarily as ways to promote appropriate official aptitude. They provide security against misrule, and (some) hope that over time decisions and policies of public officials will promote the universal interest.

In these three elements—the principle of utility, the four subordinate ends, and the notion of official aptitude—we now have the basic structure of Bentham's political philosophy. As he summarizes his own view:

These same uncontrovertible ends of all good government, I once more acknowledge accordingly, and in these few words bring together and recapitulate:—*Greatest happiness of greatest number maximized; national subsistence, abundance, security, and equality*

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<sup>12</sup> The topic of securing appropriate official aptitude takes up much of his *Constitutional Code*, and is the organizing theme of at least two volumes of the new edition of Bentham's *Collected Works* produced by the Bentham Project at UCL under the direction of Philip Schofield: *First Principles Preparatory to a Constitutional Code* and *Official Aptitude Maximized, Expense Minimized*. For a brief overview, see "Leading Principles of a Constitutional Code," B ii.272-3.

*maximized; official aptitude maximized; expense, in all shapes, minimized.* (CC, B ix.200; see also CC, B ix.127).

These elements together also provide a more appropriate measure by which to evaluate Bentham's legacy, especially his influence on Mill, and the unifying themes of nineteenth century utilitarianism.

### *The assumption of infallibility*

Before moving forward, however, I want to add a further consideration that is not as commonly discussed in connection with Bentham, but which seems both important in itself and relevant to his relationship to Mill. Bentham emphasizes that, even when we have secured appropriate official aptitude, there is a limit to the decisions any official, including the sovereign authority, may legitimately make: current decision-makers, whether an individual or an entire parliament, should not be able to bind future decision-makers indefinitely, or even for an extended period.

This caveat is especially important for a view like Bentham's, in which securing and giving power to appropriate official aptitude is seen as the principal means for promoting the universal interest. Even the most competent party may not legitimately undermine the means necessary for public accountability and future improvement. As we shall see, Bentham called doing so an *assumption of infallibility*. This phrase does not mean that someone consciously adopts their own fallibility as a premise in a chain of reasoning but rather that one assumes a position of superiority with respect to the future that only infallibility could justify.

As Melissa Schwartzberg (2007) has shown, this theme appears in many places in Bentham's work, as in his skepticism of the Church and his criticism of political oaths that bind one indefinitely to already-established laws.<sup>13</sup> But it is clearest in his work on constitutional codes, when he argues that constitutions must not be made immune to revision. Rather, he argues, they must contain within themselves the means to their own improvement. The failure to do so amounts to an assumption of infallibility. In "Necessity of an Omnicompetent Legislature," for example, he criticizes the decision of the French Constituent Assembly to make it very difficult to amend the constitution despite their acknowledgment that individual elements of it could be improved: "You are not persuaded of your own infallibility; and yet you act as if you were; you engage in a measure which nothing but infallibility could justify" (NOL, 273).<sup>14</sup> He objects that the "perpetuity of the constitution" will "tie the hands of authority for ever" (NOL, 274, 275). Similarly, he criticizes the Spanish constitution for including an "immutability-enacting, alias the infallibility-assuming clause" that restricts amendments: "I, who have been thinking of such matters for more than fifty years, would no more think of giving a twelvemonth's immutability to any such work of

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<sup>13</sup> See Schwartzberg 2007, 569, 571.

<sup>14</sup> See also Schwartzberg 2007, 578, and Turner 2013, 96-99.

mine, than I would set myself up for that Being who is as immutable as infallible” (“Three Tracts Relative to Spanish and Portuguese Affairs,” B viii.483).

Bentham argues that an immutable constitution could be justified only if present decision-makers could rationally assume that they are more competent than all succeeding generations to judge future circumstances. But this is absurd:

On one supposition alone can it be supported, namely, that on the part of the constitutive and legislative, at the time at which it received its establishment, *appropriate aptitude had place in a greater degree than it can have place at any succeeding point of time...* The untenableness of this supposition has been already exposed. (CC, B ix.119; emphasis added)<sup>15</sup>

Such a “veto on remedy and improvement,” he argues, is the result of “moral inaptitude—the fruit of sinister interest, and intellectual inaptitude” working together (CC, B ix.119). Part of appropriate moral and intellectual aptitude, then, is to recognize the limits of one’s own competence.

I will pick up this theme again in section IV, because the “assumption of infallibility” argument is more commonly associated with Mill’s *On Liberty* than with Bentham. But I have tried to show that this argument provides a crucial constraint in Bentham’s political philosophy, in which official aptitude is seen as the principal means to achieving the universal interest. In section IV, I will argue that the basic picture just outlined remains central to Mill’s moral and political philosophy. It is now time to consider Mill’s own published comments on Bentham.

### III. Mill’s comments on Bentham

Having offered an overview of Bentham’s political philosophy, in these last sections I want to try to take stock of Mill’s debt to Bentham as he developed the liberal utilitarian tradition. Mill’s own explicit criticisms of Bentham have significantly influenced how subsequent scholars have perceived their relationship, and so it makes sense to start there. One challenge is that, even on Mill’s telling, there is a shift in emphasis over time. In his posthumously published *Autobiography*, he worries that a pair of early essays made too much of Bentham’s shortcomings, though he also states that his criticisms were “just” (CW I.227). He expresses satisfaction at having “balanced” the early criticism “by vindications of the fundamental principles of Bentham’s philosophy” in later work such as “Whewell on Moral Philosophy” (CW I.227). Although Mill’s emphasis does shift over time, my sense is that it is possible to tease out a consistent account from Mill’s various

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<sup>15</sup> Further discussion of the “untenableness of this supposition” can be found in Bentham’s discussion of “the fallacy of irrevocable laws” (*The Book of Fallacies*, B ii.401–3, 409). See also his comment that the French Declaration of Rights implies that “[g]overnments, citizens—all to the end of time—all must be kept in chains” (*Anarchical Fallacies*, B ii.501).

comments about Bentham by attending to the content and scope of the criticisms rather than focusing on how they are expressed.

Above all, despite stinging criticisms of Bentham in particular respects, it seems clear to me that Mill's overall assessment is enormously positive. It has been more common to linger on their disagreements than their shared projects. But even if Mill thought Bentham "one-sided" as a philosopher (CW X.112, 498; CW I.169), it would be a mistake to infer that Mill thought Bentham not worth reading for the part of the truth he supplies, or that Bentham's part was insignificant. His essay "Bentham," the source of many of Mill's sharpest criticisms, is a good example. In that critical piece Mill nevertheless writes that Bentham, with Coleridge, is one of "the two great seminal minds of England in their age" (CW X.77) and "a source of light to a generation" (CW X.80). He says that "[a] place, therefore, must be assigned to Bentham among the masters of wisdom, the great teachers and permanent intellectual ornaments of the human race" (CW X.82). After criticizing Bentham at length, he concedes "[i]t is an ungracious task to call a great benefactor of mankind to account for not being a greater—to insist upon the errors of a man who has originated more new truths, has given to the world more sound practical lessons, than it ever received, except in a few glorious instances, from any other individual" (CW X.100). And he concludes the essay with these words: "there remains to Bentham an indisputable place among the great intellectual benefactors of mankind. His writings will long form an indispensable part of the education of the highest order of practical thinkers" (CW X.115).

Mill expresses similar sentiments in private. In an angry 1851 letter to William E. Hickson, he describes Bentham as "a man who has done more for the world than any man of modern times" (CW XIV.78). Mill was upset that Hickson, his successor as editor of the *Westminster Review*, had published unfair criticisms of Bentham. And in an 1871 letter he writes, "On the whole I can think of no books so likely to be useful, both from their intrinsic merit and from their cosmopolitan character as some of Bentham's writings" (Letter to Furnivall, CW XVII.1812). If Bentham's achievements have been overlooked, it is not because John Stuart Mill failed to appreciate him.

So let us begin by noting four general points of clear agreement recognized by Mill. First, Mill greatly admired Bentham's introduction of the scientific method into moral and political philosophy. He asserts more than once that by providing a systematic, publicly accessible, and empirically grounded method for the derivation of moral conclusions, Bentham did for moral and political philosophy what Bacon had done for physics.<sup>16</sup> This, Mill argued, has "a value beyond all price" (CW X.83) because it offers a necessary alternative to the *a priori* moral philosophy of Immanuel Kant and others.<sup>17</sup>

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<sup>16</sup> "Remarks on Bentham's Philosophy," CW X.9; "Bentham," CW X.83; "Whewell on Moral Philosophy," CW X.174.

<sup>17</sup> Mill's main comment on Kant is found in *Utilitarianism*: "[T]o all those *a priori* moralists who deem it necessary to argue at all, utilitarian arguments are indispensable. It is not my present purpose to criticize these thinkers; but I cannot help referring, for illustration, to a systematic treatise by one of the most illustrious of them, the *Metaphysics of Ethics*, by Kant. This remarkable

A second point of agreement is Mill's wholehearted endorsement of Bentham's criticisms of intuitionist, common sense, and natural law moral philosophers who—unintentionally—set up their own feelings of approval and disapproval as the standard of right and wrong. Mill's "Whewell on Moral Philosophy" repeats the main lines of Bentham's criticisms, including a lengthy quotation from *An Introduction to the Principles of Morals and Legislation*. Morality, they both argue, requires an *external* standard:

Whether happiness be or be not the end to which morality should be referred—that it be referred to an end of some sort, and not left in the dominion of vague feeling or inexplicable internal conviction, that it be made a matter of reason and calculation, and not merely of sentiment, is essential to the very idea of moral philosophy; is, in fact, *what renders argument or discussion on moral questions possible*. That the morality of actions depends on the consequences which they tend to produce, is the doctrine of rational persons of all schools; that the good or evil of those consequences is measured solely by pleasure or pain, is all of the doctrine of the school of utility, which is peculiar to it.

In so far as Bentham's adoption of the principle of utility induced him to fix his attention upon the consequences of actions as the consideration determining their morality, so far he was indisputably in the right path... (CW X.111; emphasis added)

This passage seems to leave room for disagreement between them about whether happiness is the correct consequentialist standard. But, despite thinking Bentham's account of happiness was limited in ways that mattered a great deal, Mill always accepted the principle of utility.

A third general point of agreement, then, is their common acceptance of the greatest happiness principle as the external standard needed for moral evaluation. In his *Autobiography*, Mill describes his youthful conversion to utilitarianism upon finishing Dumont's edited French editions of Bentham's writings:

When I laid down the last volume of the *Traité* I had become a different being. The "principle of utility," understood as Bentham understood it, and applied in the manner in which he applied it through these three volumes, fell exactly into its place as the keystone which held together the detached and fragmentary component parts of my knowledge and

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man, whose system of thought will long remain one of the landmarks in the history of philosophical speculation, does, in the treatise in question, lay down an universal first principle as the origin and ground of moral obligation; it is this:—'So act, that the rule on which thou attest would admit of being adopted as a law by all rational beings.' But when he begins to deduce from this precept any of the actual duties of morality, he fails, almost grotesquely, to show that there would be any contradiction, any logical (not to say physical) impossibility, in the adoption by all rational beings of the most outrageously immoral rules of conduct. All he shows is that the consequences of their universal adoption would be such as no one would choose to incur" (CW X.207).

beliefs. It gave unity to my conceptions of things. I now had opinions; a creed, a doctrine, a philosophy; in one among the best senses of the word, a religion; the inculcation and diffusion of which could be made the principal outward purpose of a life. (CW I.69)

Despite coming to criticize Bentham later, there is no evidence that Mill ever gave up his commitment to the greatest happiness principle. Rather, he flatly restates his commitment to it, and spends many pages defending it. In his great work on method, *A System of Logic*, he writes, “the general principle to which all rules of practice ought to conform, and the test by which they should be tried, is that of conduciveness to the happiness of mankind, or rather, of all sentient beings” (CW VIII.951). His essay “Sedgwick’s Discourse” is a sustained defense of utilitarian ethics, as is “Whewell on Moral Philosophy,” in which he observes, “[w]hen real reasons are wanted, the repudiated happiness-principle is always the resource” (CW X.192). Mill’s greatest work on moral philosophy, *Utilitarianism*, is an argument for his preferred version of utilitarianism. He aims to “contribute something towards the understanding and appreciation of the Utilitarian or Happiness theory, and towards such proof as it is susceptible of” (CW X.207). Noting that “utilitarian arguments are indispensable” (CW X.207), he observes that “the very imperfect notion ordinarily formed of its meaning, is the chief obstacle which impedes its reception” (CW X.208). And, after attempting to clear the ground, he articulates in chapter 2 what he takes to be the best general statement of the view:

According to the Greatest Happiness Principle, as above explained, the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality... This, being, according to the utilitarian opinion, the end of human action, is necessarily also the standard of morality; which may accordingly be defined, the rules and precepts for human conduct, by the observance of which an existence such as has been described might be, to the greatest extent possible, secured to all mankind; and not to them only, but, so far as the nature of things admits, to the whole sentient creation. (CW X.214)

Mill spends the remainder of that chapter defending this account against common objections, and the rest of the book working out different aspects of it. In a summary of the argument, written in his diary some years earlier, he begins this way: “The only true or definite rule of conduct or standard of morality is the greatest happiness” (Diary, CW XXVII.663).

Mill’s abiding commitment to the greatest happiness principle is also implied in the positions he takes on particular subjects, such as animal rights, where he defends Bentham’s view that all sentient creatures deserve moral consideration (“Whewell on Moral Philosophy,” CW X.185-7). It is apparent in his repeated observation that particular moral or political debates turn on each side having raised a secondary principle to the level of a first principle, and that resolving the debate requires appealing to the principle of utility itself (“Bentham,” CW X.111; “Thornton

on Labour and Its Claims” CW V.651). As we shall see, all of this is consistent with Mill’s criticism of the limited Benthamite conception of human happiness. In accounting for Mill’s commitment to individual liberty, we must appreciate—as he did—that its significance and scope is ultimately determined by the greatest happiness principle. As he writes in *On Liberty* itself: “It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions: but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being” (CW XVIII.224). Mill thought Bentham was “one-sided,” but this was primarily because the latter lacked a sufficiently rich notion of the factors affecting human happiness and motivation, a failing which does not undermine the basic mechanics of the utilitarian view.

Fourth, Mill took over from his father and Bentham core political views that formed the basis of philosophical radicalism. Chief among these, Mill writes, were “representative government, and complete freedom of discussion” (CW I.108). Below we will consider his own reasons for supporting these positions. I simply want to register that by the time Mill was writing, it was already understood that the greatest happiness principle, as a reforming political doctrine, required representative democracy in place of hereditary aristocracy, and freedom of discussion to provide a public check on power. Crucial to both of these commitments is the idea of securing the moral aptitude of those in power. Mill thus echoes his teachers when he writes: “[f]rom the principle of the necessity of identifying the interest of the government with that of the people, most of the practical maxims of a representative government are corollaries” (“Appendix to *Dissertations and Discussions*, Vol. I,” CW XIX.648).

Given these points of agreement between Bentham and Mill, it is now for us to consider the main ways Mill found Bentham’s views lacking. There are at least five substantive points of disagreement mentioned by Mill. The first two of these concern Bentham’s failure to appreciate the role of character within a utilitarian moral theory. The next two speak directly to Bentham’s conception of the felicific calculus. And the last concerns Bentham’s single-minded focus on public accountability in his democratic theory. In all of these, Mill can be seen to be pushing utilitarianism in a more liberal direction.

### *The importance of character in the evaluation of consequences*

Perhaps the most important criticism Mill laid at Bentham’s feet was his failure to recognize that, because people’s actions affect their own character, they have ramifications well beyond the particular consequences associated directly with the initial action. Mill thought Bentham’s consequentialism was “indisputably in the right path,” but he continued: “...though to go far in it without wandering, there was needed a greater knowledge of the formation of character, and of the consequences of actions upon the agent's own frame of mind, than Bentham possessed” (“Bentham,” CW X.111-112). To make a proper assessment of consequences—to be a good utilitarian—one must account for more than just the “specific consequences” of that action:

[T]he great fault I have to find with Mr. Bentham as a moral philosopher... is this: that he has practically, to a very great extent, confounded the principle of Utility with the principle of specific consequences, and has habitually made up his estimate of the approbation or blame due to a particular kind of action, from a calculation solely of the consequences to which that very action, if practiced, would itself lead. (“Remarks on Bentham’s Philosophy” [RBP], CW X.7-8)

Mill thought the study of the formation of character—a science he called “ethology”—was a necessary development in the utilitarian tradition if there was to be any hope of taking proper stock of people’s actions: “All acts suppose certain dispositions, and habits of mind and heart, which may be in themselves states of enjoyment or of wretchedness, and which must be fruitful in other consequences, besides those particular acts” (RBP, CW X.7). Our actions affect how we think and feel, and these changes can then manifest themselves in many different ways that need to be taken into account.

This seems a fair criticism of Bentham, but it does not strike at the fundamentals of the principle of utility so much as point to causes and effects that previously had been overlooked.

#### *The importance of developing character to promote happiness*

Mill also argues that, to the extent that Bentham did consider character, he incorrectly assumed a relatively selfish, narrow, and static conception of human feeling and motivation. Bentham failed to appreciate fully the possibility of developing “feelings of moral obligation” (RBP, CW X.13) and the more altruistic aspects of human nature: “Bentham’s idea of the world is that of a collection of persons pursuing each his separate interest or pleasure, and the prevention of whom from jostling one another more than is unavoidable, may be attempted by hopes and fears derived from three sources—the law, religion, and public opinion” (“Bentham,” CW X.97). Mill thought Bentham’s acceptance of this predominantly selfish view of human motivation was “doing very serious evil” because its perpetuation dims “all rational hope of good for the human species” (RBP, CW X.15). By contrast, Mill thought it was possible to educate people to develop a greater “fellow-feeling with the collective interests of mankind” (*Utilitarianism*, CW X.215) and that doing so was an important driver of overall happiness: “Utilitarianism... could only attain its end by the general cultivation of nobleness of character” (*Utilitarianism*, CW X.213-214; see also CW X.95, 215, 233, 394, 421).

Generally speaking, Mill thought that because Bentham took “next to no account of national character and the causes which form and maintain it, he was precluded from considering, except to a very limited extent, the laws of a country as an instrument of national culture” (“Bentham,” CW X.105). For the author of *On Liberty* more specifically, the problem with this is two-fold. First, Bentham did not attend enough to the value of allowing human thought and feeling to develop freely so that there might be “as many possible independent centres of improvement as

there are individuals” (*On Liberty*, CW XVIII.272). Mill’s constant focus on progress through social diversity and “discussion and experience” (CW XVIII.231) marks a real difference with Bentham, who paid relatively little attention to the possibility that creating room for individuals to develop in different ways might allow for different institutions in the future. Second, Bentham also failed to appreciate that intellectual and emotional self-development, what Mill called “individuality,” is itself “one of principal ingredients of human happiness” (CW XVIII.261). Not everyone is capable of fully realizing the self-determination Mill had in mind, but pursuing one’s own path in life exercises one’s faculties (CW XVIII.262) and thereby develops in the person a greater capacity for happiness. In both of these points—concerning diversity and individuality—Mill made important innovations that gave shape to the liberal utilitarian tradition.<sup>18</sup>

Mill regarded Bentham as having failed to see that helping individuals to develop their own capacities and feelings, and specifically encouraging dispositions of fellow-feeling and moral obligation, were powerful ways of promoting the greatest happiness. Bentham was expert in the “business” side of ethics—that of designing incentive and decision-making structures—but he “committed the mistake of supposing that the business part of human affairs was the whole of them” (“Bentham,” CW X.100). Having felt its effects personally, Mill came to believe that this lack of attention to character development stunted utilitarianism unnecessarily:

Morality consists of two parts. One of these is self-education; the training, by the human being himself, of his affections and will. That department is a blank in Bentham's system. The other and coequal part, the regulation of his outward actions, must be altogether halting and imperfect without the first; for how can we judge in what manner many an action will affect even the worldly interests of ourselves or others, unless we take in, as part of the question, its influence on the regulation of our, or their, affections and desires? (CW X.98)

Whether Mill is right about the possibility of developing our characters in the ways he described remains a question at the heart not just of utilitarian political theory, but of all efforts at political reform.

### *Quality of pleasures*

Mill’s attention to character development is also relevant to his proposal that there are higher and lower *quality* pleasures. Bentham had thought two pleasures were equally valuable if they provided the same *quantity* of pleasure in terms of intensity, duration, etc. But if mindless children’s games are potentially as valuable as poetry, it might seem that utilitarians should encourage only the pursuit of common and easy pleasures, and prefer convenience and contentedness over more difficult-to-achieve and complicated forms of pleasure. If so, utilitarianism appears as “a doctrine worthy only of swine” (*Utilitarianism*, CW X.210). Mill argues that this involves a gross

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<sup>18</sup> For further discussion of Mill’s distinctive contributions to the liberal tradition, see Turner 2017.

misrepresentation of the view. Utilitarianism, fairly represented, recommends the pursuit of pleasures associated with the exercise of our higher-order cognitive and emotional faculties despite their involving greater amounts of frustration, stress, or discontent. To make this case, he argues that pleasures that involve the higher-order faculties are more valuable in virtue of their *quality*, separate from quantity. Mill believes the case can also be made on purely quantitative grounds (CW X.211), but his own view is a revision of Bentham's account.

This has been a vexed issue in Mill scholarship, in part because his discussion of it is limited to a few pages of *Utilitarianism*. The core concern is that, if Mill is a hedonist (for whom pleasure is the only thing ultimately desirable as an end), then by introducing *quality* he cannot mean that something over and above the pleasure (or pain) itself makes a moral difference. But then, for quality to contribute to the value of a pleasure, it seems it must reduce to—or be some aspect of—quantity. Isn't what makes an experience more valuable for a hedonist just that there is *more* pleasure in it?<sup>19</sup> I cannot hope to settle this issue here, though a variety of proposals have been offered, including both defenses of the notion of quality of pleasures and claims that Mill gave up on hedonism.<sup>20</sup> But whether we accept qualitative hedonism, or keep to a strictly quantitative hedonism, two common points emerge from Mill's discussion. The first point, which is the core of Mill's reply to the claim that utilitarianism is a doctrine worthy only of swine, is that "[f]ew human creatures would consent to be changed into any of the lower animals, for a promise of the fullest allowance of the beast's pleasures" (CW X.211). This fact marks out something important: that we must not confuse happiness with contentment or mere preference satisfaction. Rather, for most of us most of the time, there is great pleasure in the higher-order awareness involved in our activities—a sense of richness and wonder and complexity, as well as an appreciation of ourselves as capable of these thoughts and feelings—that more than compensates for the frustration, stress, and other discomforts that attend these capacities. This is why he concludes "[i]t is better to be a human being dissatisfied than a pig satisfied; better to be Socrates satisfied than a fool satisfied" (CW X.212; also "Diary," CW XXVII.663). But it remains an open question whether the introduction of qualities to make this case represents an advance on Bentham.

The second point that emerges is Mill's belief that our evidence of which pleasures are better or worse, greater or lesser, or higher or lower can be found only in the "decided preference" of those who have experienced the relevant pleasures (CW X.211). The feel of a pleasure is not itself publicly accessible, let alone susceptible to quantification and direct comparison. All we have to rely on are the preferences of competent judges:

On a question which is the best worth having of two pleasures, or which of two modes of existence is the most grateful to the feelings, apart from its moral attributes and from its consequences, the judgment of those who are qualified by knowledge of both, or, if they

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<sup>19</sup> The classic statement of this criticism is in Sidgwick 1962, 94.

<sup>20</sup> For some leading positions taken on this issue, see: Saunders 2010; Schmidt-Petri 2006; West 2004, 48–73; Riley 1993.

differ, that of the majority among them, must be admitted as final. And there needs be the less hesitation to accept this judgment respecting the quality of pleasures, since there is no other tribunal to be referred to even on the question of quantity. What means are there of determining which is the acutest of two pains, or the intensest of two pleasurable sensations, except the general suffrage of those who are familiar with both? (CW X.213)

This point applies whether or not we accept the introduction of qualities of pleasures. Either way, the crucial upshot of Mill's reliance on the decided preference of competent judges is that he thereby gives up on the felicific calculus.

### *Rejection of the felicific calculus*

Whether or not Mill's notion of *quality* of pleasure makes sense, it is clear he gives up on Bentham's attempt (such as it was) to provide a felicific calculus to guide utilitarian decision-making. Mill does not make much of this difference with Bentham, but he also never uses the calculus himself or expresses the hope of developing a quantitative utilitarian measuring stick. In the passage about competent judges, Mill admits that utilitarian judgments can track real differences among pleasures, but he does not expect to be able to provide exact measures of the pleasures directly. Rather, he is comfortable relying on the judgment of those who have experienced the relevant pleasures, whose judgment can then be incorporated by those charged with determining how to maximize happiness in some domain.<sup>21</sup>

It might seem, then, that one advance in Mill's thinking over Bentham is a greater acceptance of uncertainty in utilitarian decision-making. Certainly, in one of his earlier essays, Mill worries about the "cold, mechanical" impression given by Bentham, when ethical decision-making properly understood is a multi-faceted and nuanced matter ("Bentham," CW X.112). But in later writings Mill recognizes that Bentham is more cognizant of this fact than he had earlier understood. This shift can be seen in Mill's comments about Bentham's appreciation of the need for secondary maxims to apply the principle of utility. In the earlier essay, Mill accuses Bentham of a flat-footed utilitarianism according to which moral decision-making involves the calculation of the all the pleasure and pain that might result from an action: "while, under proper explanations, we entirely agree with Bentham in his principle, we do not hold with him that all right thinking on the details of morals depends on its express assertion. We think utility or happiness, much too complex and indefinite an end to be sought except through the medium of various secondary ends" (CW X.110). Mill suggests that Bentham failed to appreciate the significance of secondary maxims

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<sup>21</sup> That is to say: the preference of competent judges does not settle things practically. For instance, Mill believes competent individuals are best placed to apply (or not) the general information about the quantity or quality of pleasures, provided by the competent judges, to their own specific circumstances. Individuals' desires, commitments, and circumstances differ in many ways that are difficult, if not impossible, to express to others. See, e.g. *On Liberty*, CW XVIII.277.

in defining the practical, real-world character of a moral theory, and instead expected us to be utility calculating machines. This is surprising in light of Bentham's discussion, in works Mill had read and admired, of the four subordinate ends defining the universal interest: subsistence, abundance, security, and equality. (It is possible Mill was strictly distinguishing Bentham's moral philosophy from his political philosophy.) Regardless, in his later work Mill corrects the misimpression of his earlier essay, acknowledging that, for Bentham, "the first use to be made of his ultimate principle, was to erect on it, as a foundation, secondary or middle principles, capable of serving as premises for a body of ethical doctrine not derived from existing opinions, but fitted to be their test" ("Whewell on Moral Philosophy," CW X.173). This assessment is more in keeping with Bentham's own presentation of his theory. The felicific calculus may show us the ways in which pleasures can differ quantitatively from each other, but that does not mean we are to apply it directly in most of our real-world decision-making.

### *Fears of the democratic majority*

Finally, Mill clearly felt that the democratic theory of his father and Bentham was limited by its almost single-minded focus on establishing an identity of interest between the rulers and ruled—as a security for official moral aptitude—through public accountability mechanisms. Mill does not deny the importance of public accountability, or that democracy is the best form of government, but he also recognizes that there are problems with "riveting the yoke of public opinion closer and closer round the necks of all public functionaries" ("Bentham," CW X.108). With Tocqueville, he argues that because the majority itself could be tyrannical, protections beyond public accountability are needed to promote the greatest happiness: "it is necessary that the institutions of society should make provision for keeping up, in some form or other... a shelter for freedom of thought and individuality of character, a perpetual and standing Opposition to the will of the majority" (CW X.108). This is also one of the main themes of the opening pages of *On Liberty*, in which he argues that even in a democracy we must attend to the appropriate limits on government: "The limitation, therefore, of the power of government over individuals loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein" (CW XVIII.219). Democracy alone will not secure good government; we need also to consider the scope of what Mill calls "centralization" ("Centralisation," CW XIX.581).

Consistent with his attention to character development, Mill also argues in *Considerations on Representative Government* that forms of government should be evaluated in terms of their "educative" benefits.<sup>22</sup> Because of its participatory elements, he writes, democracy is a "school of public spirit" (CW XIX, 412). Through public discussion, voting, serving on juries, holding local offices, and other public involvement, individuals become educated on public affairs and develop

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<sup>22</sup> The educative element of Mill's democratic theory is emphasized by Pateman 1970 and Thompson 1976.

a concern for the social good (CW XIX, 469). In emphasizing these benefits of democratic participation, as well as the need for precautions against the tyranny of the majority, Mill makes important and original contributions to democratic theory that give further shape to liberal utilitarianism.

Mill's comments on Bentham collectively suggest the following general observations. It is clear that, in his early essays, Mill intended to separate himself from Benthamite utilitarianism. His criticisms in those essays are often pointed, and at times he seems to go out of his way to bring home Bentham's deficiencies as a moral philosopher. But I would suggest that Mill's criticisms amount to less than many scholars have assumed. His differences with Bentham do help to explain the liberal shape of many of his own original and significant contributions, but those differences also stay within limits. Specifically, Mill's key criticism concerns Bentham's lack of attention to character development as way of maximizing happiness. While I would not wish to minimize this consideration, Mill's appeals to individuality, diversity, and the development of the sentiments essentially amount to the claim that Bentham had a limited theory of human motivation and happiness, or what Mill called a "theory of life" (CW X.99, 210, 211). Properly understood, this criticism shows Mill reaffirming his commitment to utilitarianism rather than pulling away from it. Moreover, while Bentham may have had a narrower set of concerns, and failed to recognize important sources of human motivation and happiness, in the end he could have accepted Mill's criticisms without sacrificing his most fundamental commitments or the general shape of his utilitarian approach.

#### **IV. Mill's debt to Bentham**

In this last section, I will not rehearse the general points of agreement between Mill and Bentham mentioned earlier: the rejection of intuitionism and natural law, a scientific approach to ethics, acceptance of the greatest happiness principle, and support for representative democracy and free discussion to secure "identity of interest" between rulers and the ruled. Rather, I want to highlight some of the specific ways in which Mill carried forward Bentham's approach outlined in section II above, especially in his political philosophy. Again, this is not to deny Mill's own great innovations within the liberal utilitarian tradition. He wrote original and lasting works on social scientific method, political economy, and moral and political philosophy. As we saw, he was much more sensitive than Bentham to the important role of character in both moral and political philosophy. *On Liberty* sets out a general case for liberal utilitarianism, based on "experiments in living" as a key means to social progress and on individuality as an element of human well-being, that Bentham could not have produced. The same is true of *The Subjection of Women*, despite Bentham's own support for women's suffrage, because Mill was simply more attentive to the nuances of interpersonal and social dynamics.<sup>23</sup> Mill's liberal utilitarianism also included support

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<sup>23</sup> In these and other matters, one must note the influence, gratefully acknowledged by Mill himself, of his collaborator and wife, Harriet Taylor Mill.

for a form of socialism that that went well beyond Bentham.<sup>24</sup> And yet, these all strike me as developments that are consistent with important basic elements that he shared with Bentham. Here I try to make the case that Bentham’s mechanics remain just below the surface of much of Mill’s work, revealing a common utilitarian approach.

### *Publicity and social morality*

I start with the observation that Mill, like Bentham, emphasizes the need for a shared, public standard to set social expectations and adjudicate disputes given conflicting personal interests: “[S]ocial existence is only possible by a disciplining of those more powerful propensities, which consists in subordinating them to a common system of opinions” (*A System of Logic*, CW VIII.926, 921).<sup>25</sup> Without a common system of opinions—a social morality expressing our widely-shared expectations—we would end up with “perpetual quarrelling” (Letter to Grote, CW XV.762) that risks returning us to a Hobbesian state of nature (*Considerations on Representative Government*, CW XIX.377; *Chapters on Socialism*, CW V.749). Social stability and coordination thus require that we provisionally accept, as a starting point, the set of widely-accepted secondary rules that currently constitute our social morality.<sup>26</sup> Although these social expectations are often supported in public opinion by a dominant religion within a country, Mill argues that social morality needn’t be religious: “religion receives the credit of all the influence in human affairs which belongs to *any generally accepted system of rules for the guidance and government of human life*” (“Utility of Religion,” CW X.407; emphasis added).

Mill then argues that certain moral judgments—namely, those concerning the appropriateness of blame or punishment—should not appeal to any standard beyond social morality. But he also emphasizes that as our shared expectations and social morality evolve, so does the domain of moral obligation.

[I]nasmuch as every one, who avails himself of the advantages of society, leads others to expect from him all such positive good offices and disinterested services as the moral improvement attained by mankind has rendered customary, he deserves moral blame if, without just cause, he disappoints that expectation. Through this principle the domain of moral duty, in an improving society, is always widening. When what once was uncommon virtue becomes common virtue, it comes to be numbered among obligations, while a degree exceeding what has grown common, remains simply meritorious. (*Auguste Comte and Positivism*, CW X.338)

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<sup>24</sup> See McCabe, manuscript.

<sup>25</sup> This section draws on an extended discussion of Millian social morality in Turner 2018.

<sup>26</sup> For further discussion of the idea of social morality as set of shared expectations, see Gaus 2011 and 2015.

Importantly, changes to social morality (and law as part of social morality) can be effected by conscious moral and political reform efforts. But to revise social morality in a stable way, further public principles such as Bentham's four subordinate ends—security, subsistence, abundance, equality—are needed to help frame public discussion. As far as I am aware, Mill explicitly refers to Bentham's discussion of the subordinate ends in just one place, but like Bentham he proposes a number of public principles to help in the task of guiding or reforming social morality.<sup>27</sup> For instance, he argues for a *default* commitment to both liberty and equal consideration:

The *à priori* presumption is in favour of freedom and impartiality. It is held that there should be no restraint not required by the general good, and that the law should be no respecter of persons, but should treat all alike, save where dissimilarity of treatment is required by positive reasons, either of justice or of policy. (*The Subjection of Women*, CW XXI.262)

These presumptions in favor of liberty and equality, justified on the basis of widely-shared experience, can help to orient public disagreements about particular social expectations. For example, he appeals to the principle of equal consideration when he argues that the basic principle of fair taxation, with some qualifications, should be one of equal sacrifice: “The just principle of taxation, I conceive to be, to impose as far as possible an equal sacrifice on all...” (“The Income and Property Tax” CW V.472). He believes that “All persons who profess any regard for justice or morality, are advocates, at least in words, of equal taxation” (“Errors and Truth on a Property Tax,” CW XXIII.552). And in arguing for women's suffrage he appeals to the common belief that “It is not just to make distinctions, in rights and privileges, without a positive reason” (“The Admission of Women to the Electoral Franchise,” CW XXVIII.152).

Perhaps his most famous public principle is his liberty principle, which limits social and governmental interference with individual liberty by ruling out paternalism (*On Liberty*, CW XVIII.223). This principle rests to a great extent on the widely-held claim that individuals are the best judges of their own good—a principle Bentham also accepted.<sup>28</sup> Whatever we might think of these proposals, it seems clear that Mill and Bentham both worked to articulate secondary rules capable of guiding the public process of revising our social morality.

It is true that Bentham and Mill both also thought that we will sometimes need to appeal directly to the greatest happiness principle. But recall that even the principle of utility is proposed as a publicly accessible standard by which we may criticize the social morality of a given place and time: “If utility is the ultimate source of moral obligations, utility may be invoked to decide

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<sup>27</sup> Mill writes: “We hold with Bentham, that equality, though not the sole end, is one of the ends of good social arrangements” (“Vindication of the French Revolution of February 1848,” CW XX.354).

<sup>28</sup> See Schofield 2006, 48.

between them when their demands are incompatible. Though the application of the standard may be difficult, it is better than none at all: while in other systems, the moral laws all claiming independent authority, there is no *common umpire* entitled to interfere between them” (*Utilitarianism*, CW X.226; emphasis added). And only such a recognized standard allows for the rational revision of social morality through public discussion: “The contest between the morality which appeals to an external standard, and that which grounds itself on internal conviction, is the contest of progressive morality against stationary—of reason and argument against the deification of mere opinion and habit” (“Whewell on Moral Philosophy,” CW X.179).

Mill’s account of social morality is different from Bentham’s subordinate ends in some ways. But he took over from Bentham a picture in which shared, public standards are central to the utilitarian approach—a consideration which I think has gone underappreciated. How these public standards interact with the principle of utility is a complicated matter, and certainly it is controversial whether the principle of utility itself succeeds as a public principle. But the present point is that this picture bears little resemblance to the caricatured utilitarian decision-making associated with the direct application of the felicific calculus.

### *Competent decision-making*

Perhaps the most striking way in which Mill carries forward Bentham’s political philosophy is his concern with appropriate aptitude or competence as the principal means to promote the greatest happiness. Like Bentham, Mill’s institutional designs in *Considerations on Representative Government* and elsewhere are shaped largely by the question of how to promote moral, intellectual, and active aptitude, and then how to give decision-making control to whichever party is most competent:

The first question in respect to any political institutions is, how far they tend to foster in the members of the community the various desirable qualities, moral and intellectual; or rather (following Bentham’s more complete classification) moral, intellectual, and active. The government which does this the best, has every likelihood of being the best in all other respects, since it is on these qualities, so far as they exist in the people, that all possibility of goodness in the practical operations of the government depends. (CW XIX.390)

Not surprisingly, Mill tends to focus more than Bentham does on the aim of *developing* moral, intellectual, and active aptitude in the people themselves, and not merely fitting institutions to people as they are. Good institutions improve the state of society in part by allowing for the intellectual and moral growth of the people themselves. This is again to emphasize Mill’s progressiveness. But Mill clearly echoes Bentham when he argues that we must also “organize” the aptitude as it currently exists into an effective decision-making structure. The result, he proposes, is a “twofold division of the merit which any set of political institutions can possess”:

It consists partly of the degree in which they promote the general mental advancement of the community, including under that phrase *advancement in intellect, in virtue, and in practical activity and efficiency*; and partly of the degree of perfection with which they *organize the moral, intellectual, and active worth* already existing, so as to operate with the greatest effect on public affairs. (CW XIX.392; emphasis added)

To bring home the centrality of appropriate aptitude or competence in Mill's political thought, consider some of his organizational proposals. For example, in his justification of representative government itself, he writes:

A representative constitution is a means of bringing the general standard of intelligence and honesty existing in the community, and the individual intellect and virtue of its wisest members, more directly to bear upon the government, and investing them with greater influence in it, than they would in general have under any other mode of organization. (CW XIX.392)

Any democratic system will provide some security for moral aptitude, but representative government allows moral and intellectual aptitude to have a greater voice. Instructively, competence considerations also *limit* the representative assembly's decision-making authority. Mill argues that the assembly should not assume everyday governing authority because the executive branch is better trained for *that* task: "Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government" (CW XIX.432).

At the electoral level, Mill's proposed plural voting scheme—in which the educated (and others who can demonstrate their intellectual aptitude) receive extra votes—is justified on similar competence grounds: "Now, it can in no sort be admitted that all persons have an equal claim to power over others. The claims of different people to such power differ as much, as their qualifications for exercising it beneficially" ("Thoughts on Parliamentary Reform," CW XIX.323). Yet, in order to preserve moral aptitude, he also specifies that the votes of the educated must not be able to outweigh a majority opposing it. In the course of *Considerations on Representative Government* and related essays, Mill thus generates a many-leveled democratic decision-making structure by balancing moral and intellectual aptitude.

Mill's attention to competent decision-making also plays an important part in justifying his anti-paternalism in *On Liberty*, where he argues that the individual is the most competent judge of his own good:

But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it... with respect to his own feelings and circumstances, *the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed*

*by any one else...* In this department, therefore, of human affairs, Individuality has its proper field of action. (CW XVIII.277; emphasis added)

At least in part, Mill's elitist plural voting scheme and his anti-paternalism are expressions of the very same underlying approach to institutional designs that he inherited from Bentham.

Mill's account of moral decision-making also reflects his concern with competence. In a number of passages, he argues that epistemically-limited individuals should not try to calculate consequences for the whole world but should typically follow general practical rules. For instance, he writes:

The great majority of good actions are intended, not for the benefit of the world, but for that of individuals, of which the good of the world is made up; and the thoughts of the most virtuous man need not on these occasions travel beyond the particular persons concerned, except so far as is necessary to assure himself that in benefiting them he is not violating the rights—that is, the legitimate and authorized expectations—of any one else. (CW X.220)

In these instances, Mill recognizes that there are limits to the competence of individual moral agents, and that we typically do best to stay within general rules expressing shared expectations.<sup>29</sup>

My claim is that Mill's approach in these respects is explicitly drawn from Bentham's discussion of appropriate official aptitude as the principal means of promoting overall utility. Although both men have a great deal to say about the costs and benefits of particular rules, practices, and policies, they seem to think the first question in designing institutions is not directly "what should the result be?" but rather "how can we maximize competence and secure competent decision-making?" To fail to appreciate this point of commonality between them is to miss a crucial structural feature of their utilitarianism.

### *The assumption of infallibility*

Crucially, then, Mill also takes over from Bentham the thought that even the most competent party is not entitled to undermine the means to revising current laws, policies, or practices in the future. In *On Liberty*, Mill famously asserts that "All silencing of discussion is an assumption of infallibility" (CW XVIII.229). This claim is often misunderstood, but Mill is making the same point as Bentham in the cases we saw earlier: insofar as some social or political authority undermines the opportunities for criticism and change indefinitely into the future, it takes up a position that only infallibility could justify.

The instrumental, progressive value of free discussion and experiments in living is arguably the central point of *On Liberty*. For Mill, freedom of discussion is not only a security for identity

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<sup>29</sup> See Turner 2015.

of interest between rulers and the ruled, but also the primary engine of social improvement. Mill argues that free discussion—understood as sincere, truth-oriented debate—is absolutely vital: “In government, perfect freedom of discussion in all its modes—speaking, writing, and printing—in law and in fact is the first requisite of good because the first condition of popular intelligence and mental progress. All else is secondary. A form of government is good chiefly in proportion to the security it affords for the possession of this” (“Diary” (1854), CW XXVII.661–62). The point of the assumption of infallibility argument is that it is absurd to indefinitely undermine the means to improvement, as if the received view on some matter were incontrovertible. As Mill writes elsewhere: “It would be monstrous, if one generation could thus tie up the hands of all succeeding ages, and impose its institutions upon the most remote posterity, against their will. ... Happily, though self-conceited legislators may say to their own handiwork *esto perpetua*, it is out of their power to make it so” (“Political Oaths,” CW VI.187).<sup>30</sup>

As with Bentham, the assumption of infallibility argument appears repeatedly in Mill’s writings. He also explicitly credits this aspect of Bentham’s work on constitutional codes:

[Bentham] demonstrated the necessity and practicability of codification, or the conversion of all law into a written and systematically arranged code ... one containing within itself all that is necessary for its own interpretation, *together with a perpetual provision for its own emendation and improvement*. (CW X.104; emphasis added)

For Bentham and Mill, focused as they were on promoting appropriate aptitude and competent decision-making, the assumption of infallibility argument places a crucial principled limit on what even the most competent party may legitimately decide.

## V. Conclusion

I have tried to reveal a shared utilitarian approach between Bentham and Mill focused on these elements: the need for widely-shared secondary ends or social morality to ground public reasoning; the promotion of competence as the principal means to achieving the greatest happiness; and the assumption of infallibility arguments as a constraint on the decisions of even the most competent party in some domain. Mill correctly thought Bentham’s theory of life extremely limited, and he was right to give greater attention than Bentham did to personal development, social diversity, and the experimental conditions required for progress. It is only in Mill that liberal utilitarianism fully takes shape. But some of the most basic structural elements of his account were first articulated in Bentham, and we fail to understand Mill’s theory if we ignore them. If this is right, then we have

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<sup>30</sup> For more examples, see Turner 2013, 100-101. I argue in that paper that these reasons also explain Mill’s contention that a person may not sell himself into permanent slavery.

both a clearer sense of Mill's debt to Bentham, and a better appreciation of the rise liberal utilitarianism in the nineteenth century.<sup>31</sup>

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