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► **To cite this version:**

Guillaume Tusseau. Democracy and Information: The Perspective of Jeremy Bentham's Political Panoptism. Ferrer, Jordi, Iglesias, Marissa. Law, Politics, and Morality: European Perspectives I. Globalisation, Democracy, and Citizenship - Prospects for the European Union, Duncker & Humblot, pp.175-197, 2003. hal-01027762

HAL Id: hal-01027762

<https://sciencespo.hal.science/hal-01027762>

Submitted on 22 Jul 2014

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Democracy and Information: The Perspective of Jeremy Bentham's Political Panoptism

Guillaume Tusseau¹

Introduction

1.

As regards political commitment, Halévy's seminal study (1995) has made Bentham known as a member of the 'Radicals' who, at the end of the 18th century in England, defended the equal vote, the secret ballot, and the principle of 'No taxation without consent'. He is undoubtedly less known for proposing an almost complete plan of a utilitarian democracy, which he conceived in 1822 at the request of the Portuguese *Cortes*. Bentham worked on this project for ten years, trying to have it implemented in Greece, Tripoli, Portugal, and South America. He died in 1832, leaving the *Constitutional Code* unfinished.

One cannot help but draw a parallel between this failure of Bentham's reformism and that of the famous project of a prison called the *Panopticon*, which was both psychologically and financially ruinous for him. The naive philosopher who hoped that Parliament would allow him to manage a *Panopticon* according to his plans has frequently been mocked. Similarly, he may be laughed at for the universal disregard of his recommendations in the field of constitutional reform. A closer look at those recommendations may even encourage the promoters of human rights to think that forgetting them was indeed the best thing to do.

2.

But the similarities between the two projects, which are both at the same time intellectual creations and political battles, cannot be reduced to their somewhat ridiculous collapse and misunderstanding. Bentham's constitutional writings, which are truly monuments of constitutional theory, do reflect the *Panopticon* project, which was undertaken more than thirty years earlier.² This proximity has been highlighted, giving rise to a violent criticism of Bentham's obsession with social control and his neglect of the integrity of human beings. The more he promoted reforms, the more he designed a utopia of confinement. By transposing the principles he had designed for prisons to the political sphere, he foreshadowed the totalitarian state.

The meaning of 'panoptism' follows from how Bentham coined the word. The Greek etymology suggests the idea of seeing everything everywhere (Bentham 1997b, 16). The purpose is to catch sight of everything people do, to know everything about them, and to register them. And the people, knowing that they may be watched, are under a control that is permanent in its effects even if it is not actually performed at every

¹ *Universities of Paris X – Nanterre and Versailles – Saint-Quentin-en-Yvelines*. It is a pleasure for me to express my gratitude to Laure Domy and Alice Annandale who helped me with the translation of this paper. I also wish to thank warmly Emmanuelle de Champs for her careful discussion of an earlier draft and for correcting my English.

² The *Panopticon writings* consist of letters written in 1787, and of two Postscripts written in 1790 and 1791.

moment.³ They are thus deterred from conducts that would anger their warder and provoke sanctions. The device guarantees the omniscience and omnipotence of power, which acts upon the conscience.

3.

Today, panoptism has become possible on a wide scale, due to technological advances, computer files, video, web cams, and the internet. Forms of panoptism have been noticed in movies,⁴ and are becoming more and more frequent on television (Kerviel 2001). Therefore, it seems appropriate and even necessary to understand the nature of the power that is at stake here. Paying attention to the works of the major theoretician of this form of power thus seems a natural approach. Bentham's writings also prove very interesting from a philosophical perspective, for the similarities between his penal and constitutional thoughts pose great difficulties of interpretation.

I will first attempt to demonstrate that drawing a parallel between Bentham's two reflections, the penal and the constitutional, seems unavoidable (I). I will then attempt to prove that a full appreciation of this convergence has given rise to many debates as to the nature of Bentham's work and its contemporary significance (II).

I. From Prison Panoptism to Political Panoptism: the Similarities of the Projects

If the government must possess all the necessary power to do well, i. e. to promote the greatest happiness of the greatest number, one needs to ensure that it actually has this end in view. In Bentham's constitutional theory, this requisit inspires devices of perfect and total visibility, which can be seen as a metaphorical universalization of panoptism (I.1). In the *Constitutional Code*, this universalization also has a more specific dimension (I.2).

1. *A Double Dynamics of Information: the Metaphorical Universalization of Panoptism*

In order to contribute to the greatest happiness, the ruling few must pay constant attention to individual utilities and assess them by adequate means (I.1.1). Such omniscience must be controlled by a set of 'securities against misrule' that rest on publicity (I.1.2).

³ Bentham 1995, 34: "The more constantly the persons to be inspected are under the eyes of the persons who should inspect them, the more perfectly will the purpose of the establishment have been attained. Ideal perfection, if that were the object, would require that each person should actually be in that predicament, during every instant of time. This being impossible, the next thing to be wished for is, that, at every instant, seeing reason to believe as much, and not being also able to satisfy himself to the contrary, he should conceive himself to be so"; *ibid.*, 43: "It is the most important point, that the persons to be inspected should always feel themselves as if under inspection"; *ibid.*, 94: "The object of the inspection principle is [...] to make [the prisoners] not only suspect, but be assured, that whatever they do is known, even though that should not be the case."

⁴ Cf., e. g., P. Almodóvar, *Kika*, 1993; M. Poulette, *Louis XIX. Le roi des ondes*, 1994; P. Weir, *The Truman Show*, 1998; R. Howard, *Ed TV*, 1999. This is, however, far from a purely recent phenomenon, cf. Carrière 2001.

1.1. From individuals to the legislator: from the science of passions to the science of legislation

1.1.1. Bentham assigns four goals to governments: “subsistence, abundance, security, and equality; each maximized, in so far as is compatible with the maximization of the rest” (Bentham 1823, 4). By establishing the rights and duties of individuals, legislation defines a public framework of social interaction and induces individuals to behave in a way that contributes to the greatest happiness. This method requires precise knowledge of human behaviour.⁵ *An Introduction to the Principles of Morals and Legislation* analyses simple forms of pleasures and the corresponding pains, the complex forms of pleasure and pain in which they can result, and the circumstances that influence sensibility, intentionality and consciousness, thus drawing a complete anatomy of human behaviour:

“Pleasure then, and the avoidance of pains, are the *ends* which the legislator has in view: it behoves him therefore to understand their *value*. Pleasures and pains are the *instruments* he has to work with: it behoves him to understand their force, which is again, in another point of view, their value.” (Bentham 1970a, 38)

Bentham’s arithmetical process⁶ allows to calculate the value of any sensation and to compare it with other pleasures and pains, so as to promote the sensations that maximize happiness. By acting on the motives of human action, the legislator intends to direct individuals to a behaviour that, once it is artificially coordinated with the behaviour of others, leads to a combination of actions that maximizes global happiness. Due to constant variations in the utility of individuals, the legislation must constantly be adapted, thus becoming an active day-to-day work. Bentham’s tools are conceived to deal with this set of data. A utilitarian government is thus an investigating government.

1.1.2. Collecting information on the utility of the population is one of the tasks of Bentham’s new logic, which he distinguishes from Aristotle’s propositional logic. His aim is to provide a logical treatment of sentences expressing volition, of which interrogations are one kind among others. This *Logic of the Will*

“is more particularly applicable to the business of government: that subdivision which concerns the forms of imperation at large having a more particular regard to legislation; that which concerns the forms of interrogation, to the less dignified but not less necessary business of collecting verbal information: a process subservient to the business as well of the legislative as of the executive departments” (Bentham 1970a, 300 n. b2).

The government must collect information in diverse fields, such as agriculture, finance, industry, and so on. A large bureaucracy must gather statistical evidence and interpret it in order to be ready for any circumstance: natural disasters, epidemics, crises, famines, etc. In the Legislature, a “legislation enquiry judicatory” (Bentham 1991, 93-111), and

⁵ *Pannomial Fragments*, in Bentham 1838-1843, vol. III, 224-230.

⁶ Bentham 1970a, 38-41; *Bentham MS dealing in particular detail with the principles of a moral calculus*, in Baumgardt 1952, 554-566.

at the local level, a “local registrar” have this function,⁷ which is indispensable to the utilitarian production of law.

In Bentham’s democratic theory, information is conveyed through the vote. The election system must allow everybody to express what maximizes their utility. He introduces the principle of “virtual universality of suffrage” (Bentham 1819). Because everyone experiences utility, the total sum of which is to be maximized, the only exclusions admitted are those contributing to the greatest happiness, viz. those of the insane, of minors, of soldiers used to obeying, and of some criminals. It is noteworthy that Bentham admits the vote of women.⁸ So as to reflect sincerely the utility of the individuals, suffrage must be free and secret. It thus provides reliable information for the legislative calculus.

Parallel to this first dynamics of information from individuals to the legislator, there is another which runs from the governors to the citizens.

1.2. From the governors to the citizens: the transparency of power

1.2.1. According to Bentham, only a complete body of law can function as law. Law is essentially a means to induce a particular behaviour through words (Bentham 1977, 59, 72; 1970b, 82). It must be clearly, briefly and precisely written, and systematically organized within published codes. All its provisions, rights, duties, powers, liberties, and prohibitions must be traceable to sensations.⁹ Only then will the law be understandable, contrary to the English law of his time, which he criticises as complex (Bentham 1977, 141-144, 153; Lieberman 1985) and expensive, resorting to fiction and jargon, and which remains the domain of a minority. According to him, the *Common Law* is not conveyed by any intelligible sign but is a matter of conjecture from the courts’ decisions. It cannot provide a public and stable reference for the coordination of social life and the guidance of behaviour.

In contrast, by permitting a detailed calculus of the utility of individual behaviours, Bentham’s law allows everyone to determine their own rule of action:

“In a *map* of the law executed upon such a plan there are no *terrae incognitae*, no blank spaces: nothing is omitted, nothing unprovided for.” (Bentham 1970b, 246)

At the same time, as it influences the individuals’ self-control (Lyons 1991, 131), the law seems an overwhelmingly powerful instrument. Such a risk of misrule must be addressed by Bentham.

1.2.2. The instruments of all governments are the same. The difference between ‘good rule’ and ‘misrule’ depends on the way they are used. Bentham rejects traditional

⁷ *Constitutional Code*, in Bentham 1838-1843, vol. IX, 625-636.

⁸ Bentham 1990, 58: “Not excluded from this judicatory [the Public Opinion Tribunal] are, as such, any persons of the female sex. From the exercise of a share of the Constitutive power by means of votes in the election of the possessors of the Supreme operative power or a share in it, they the gentler half of the species stand as yet excluded by tyranny and prejudice.” Cf. also *Essay on Representation*, in Mack 1968, 448-453, where Bentham denies them this right, but underscores the weakness of his reasons before carefully leaving the subject.

⁹ The *Essay on Logic*, in Bentham 1838-1843, vol. VIII, 247 f., elucidates the word ‘obligation’ in terms of oppression by a heavy body, viz. a sensation of pain.

means, such as the separation of powers¹⁰ or a second House in Parliament (Bentham 1831, 1926). For him, the quality of a ruler relies upon his “moral aptitude” – i. e. the will to promote the greatest happiness –, his “intellectual aptitude”, and his “active aptitude”. Bentham designs a system of securities that applies to all officials (Bentham 1991, 117). Aptitudes rest on responsibility, brief incumbency, non-immediate reeligibility for elected officials, immediate revocability, and an obligation of assiduity. Officials also must pass exams and undergo a training period before taking office. For Bentham, the maximization of the aptitudes essentially rests on the dependence of the governors on the governed,¹¹ hence the necessity of making voters one of the constitutional authorities of the state (Loche 2000, 340-342; D’Alessandro 1981, 77-78). In Bentham’s conception of bureaucracy, tasks are precisely distinguished and defined, so they can each be assigned to a single responsible agent. Both the efficacy of the power and the control of the people depend on the intelligibility of the tasks. The transparency¹² of public activity is the essential remedy to misrule.¹³ These devices are useful for the *Public Opinion Tribunal*. It consists of all those persons who can know anything about governmental activity, form an opinion about it, and express it (Bentham 1990, 28). This fictitious *Tribunal* receives claims and accusations, collects evidence, listens to arguments, forms an opinion, expresses it and executes it accordingly. Whereas officials are responsible for enforcing legal sanctions, the *Public Opinion Tribunal* enforces the popular sanction, which arises from the people’s spontaneous disposition towards the rulers:

“For all these operations, one and the same article presents itself as the effectual and the only effectual instrument. This instrument is no other than a Newspaper: multitude of instruments of the same sort employed by so many sets of hands, and multitude of copies of each, as great as possible. In this instrument may be seen not only an appropriate organ of the Public Opinion Tribunal, but the only constantly acting visible one.” (Bentham 1990, 44 f.)

Through reading, discussing and voting, the political education of individuals is improved. Hampering the action of the Tribunal, for example by restricting the freedoms of the press, of communication and association, by public lies, and, in general, “every act, whereby [...] a man seeks to weaken the effective power of the Public Opinion Tribunal [...] is evidence, of hostility on his part to the greatest happiness [...]. He may, without fear of injustice, be numbered among the enemies of the human species” (Bentham 1991, 41; cf. also Bentham 1991, 40; *Constitutional Code Rationale*, in Bentham 1989, 292).

Bentham’s system of cross-information guarantees that a government knows everything about its society, while the society knows everything about the activities of its

¹⁰ *On the Efficient Cause of and Measure of Constitutional Liberty*, in Mack 1968, 453-457; *Sophismes anarchiques*, in Bentham 1829-1830, vol. I, 564.

¹¹ *On the Efficient Cause and Measure of Constitutional Liberty*, in Mack 1968, 456.

¹² *Economy as Applied to Office*, in Bentham 1989, 102.

¹³ Bentham 1990, 25: “One word – *misrule* – will serve for conveying a general conception of the disease: another word – *publicity*, for conveying the like conception of the remedy.”

government. This amounts to the universalization of panoptism from a metaphorical point of view. Besides, the similarities of Bentham's penal and constitutional theories also have a more concrete dimension.

2. Similarities of Constitutional and Prison Devices: the Real Universalization of Panoptism

A common perspective inspires the Panopticon writings and the constitutional writings, first, on the level of the basic principles (I.2.1), but also on the level of their practical implementation (I.2.2).

2.1. The basic principles

2.1.1. Whenever one intends to guide the behaviour of individuals according to the requirements of economy and security, panoptism seems to be natural. Bentham's device is adapted to "any sort of establishment, in which persons of any description are to be kept under inspection; and in particular to penitentiary-houses, prisons, houses of industry, work-houses, poor-houses, manufactories, mad-houses, lazarettos, hospitals, and schools" (Bentham 1995, 29, cf. *ibid.* 76-95), and eventually to keep watch even on the governors. In penal as well as in constitutional law, the purpose is to monitor actual or would-be delinquents. This is the reason why Bentham insists on a "confidence-minimization principle" (Bentham 1991, 118) with respect to the rulers, and offers a political theory that does not rest on hiding the mechanics of power. He distinguishes between private offences detrimental to identifiable persons, semi-public offences detrimental to some part of the population, self-regarding offences detrimental primarily to the offender himself, and public offences detrimental to all members of a state (Bentham 1970a, 187-191). Governors are in a position to commit public offences on a large scale. It is necessary preventively or curatively to orient their behaviour.

In the *Panopticon*, inspection has five configurations, every one of which is conducive to the greatest happiness: (1) prisoners are watched by the warders; (2) the governor of the *Panopticon* watches his subordinates; (3) the subordinates watch the governor; (4) the prisoners watch one another because of a system of mutual responsibility; (5) the whole structure is open to the public at large (Bentham 1995, 45-48). The only "dark spot" is that prisoners cannot watch their warders. This is the only limit to the analogy between the *Panopticon* and Bentham's democratic state. In the latter, panoptism is perfect. Bentham himself suggests this analogy, writing that "in regard to the exercise of the power of the supreme constitutive [i. e., the electors], either in the dislocation or the punishment of its supposed offending agents, what is desirable is, that the actual application of it, be as rare as possible, and at the same time in the breasts of those same agents, the expectation of its eventual application, as strong as possible" (*Constitutional Code*, in Bentham 1838-1843, vol. IX, 106). Like the prisoners of the *Panopticon*, the rulers' imagination is to be acted upon.

2.1.2. In his *Constitutional Code Rationale*, Bentham presents three principles of his constitutional politics. The first describes the end of government: the greatest happiness. The second describes human nature: self-preference (cf. also *Supreme Operative*, in Bentham 1989, 212). The last prescribes the junction of interests, i. e. "the means of bringing what is into accordance with what ought to be" (*Constitutional Code Rationale*, in Bentham 1989, 235).

As human nature remains always the same, to change those who govern is useless. On this premise, the very structure of the Constitution must provide for the pursuit of the principle of utility (*Constitutional Code*, in Bentham 1838-1843, vol. IX, 105). It must deprive the agent either of the interest or of the power to perform the “sinister sacrifice” of general utility to his personal utility. In the first case, the objective is to act upon his motivations, so as to make the pursuit of the greatest happiness the most preferred course of conduct.¹⁴ The main technique to reconcile duty and interest rests on the “pleasures of good name” (Bentham 1970a, 44), gained through the citizens’ gratitude. This principle is at the very core of panoptism.¹⁵ In the second case, the limitation of the power to perform the “sinister sacrifice” rests on subjecting officials to constant monitoring.

The common perspective of Bentham’s two projects seems obvious. And this also applies to the level of their specific application.

2.2. *The details of the constructions*

2.2.1. Bentham constantly underscored the importance of architecture.¹⁶ The object of the *Panopticon Letters* is to have “*Morals reformed – health preserved – industry invigorated – instruction diffused – public burdens lightened – Economy seated, as it were, upon a rock [...] – all by a simple idea in Architecture!*” (Bentham 1995, 31). In the *Code*, Bentham states that “on architecture good Government has more dependence than men have hitherto seemed to be aware of”,¹⁷ and dedicates to it pages that clearly echo the *Panopticon* (Bentham 1991, 438-457). The thirteen ministers should occupy thirteen buildings set in a circle near the Prime Minister. Communication tubes permit permanent contact between them. This parallels the communication, water and heating tubes of the *Panopticon* (Bentham 1995, 110-114).

The structure of the Panopticon is well known. It is circular, with a tower in the centre from which one can watch the individuals situated in the cells all around the building. These cells are open on their interior side, so that all inmates can be seen or known. The prisoners, in turn, cannot see their warder in his tower (ibid., 35-37). They do not know when he watches them, but at the same time they are aware of the constant possibility of being watched. Bentham offers many technical details concerning lighting, heating, ventilation (ibid., 83 f.), food preservation (cf., e. g., the remarkable *frigidarium*, in Cohen 1997), and the materials to be used, which are evidence of his technical competence and innovative spirit. In the *Constitutional Code*, the interior building of the ministries consists of a central office, surrounded by “waiting boxes” where citizens can secretly monitor their agents’ work. The watcher is no longer at the centre, and the watched is no longer a delinquent. Bearing the constant and omnipotent censure of the people is one of the fundamental duties of public officials (Bentham 1991, 40).

2.2.2. For Bentham,

¹⁴ *Constitutional Code Rationale*, in Bentham 1989, 240; cf. also the principle of “duty and interest junction” in Bentham 1823, 12.

¹⁵ Cf. Hume (1981, 161) listing Bentham’s basic principles.

¹⁶ And until today, this remains a preoccupation in the penal field; cf. Demonchy 1998.

¹⁷ Bentham 1991, 55; cf. also *Tactique des assemblées politiques délibérantes*, in Bentham 1829-1830, vol. I, 442.

“publicity is the first of cautions, it perfects everything. It is the best means to put the moral motives and the intellectual aptitudes into action. This prison, built according to the panoptic principle, is just as if transparent” (Bentham 1997b, 32).

Managers must publish their methods, accounts, details of their whole management, so that anyone can see whether they do their job. They are made “examinable and cross-examinable *viva voce* upon oath at any time” (Bentham 1995, 53).

In the *National Charity Company*, a *Panopticon* for the poor, Bentham also advocates scientific management (*Tracts on Poor Laws and Pauper Management*, in Bentham 1838-1843, vol. VIII, 358-439). A system of “book-keeping” records information on the population (who works, what tools they own, what income they receive, what they produce), on stock (history of the means, their acquisition and use), on public health, on individual behaviour, and on interpersonal correspondence:

“The responsibility to prepare and publish reports or to allow open access to certain documents was a common feature in most of his schemes. These arrangements were intended partly to facilitate internal control and decision making [...] and partly to promote public oversight and control.” (Hume 1981, 151)

At all levels, the *Constitutional Code* organizes a system of inspection and registration (Bentham 1991, 276-282). According to the principle of “public account keeping” (Bentham 1993, 293-301), standard documents describe the activities of the governors.¹⁸ Service books describe the operations through which the job is done. Loss books summarize the quantities and causes of losses. The outset book describes the means of the ministries. It is divided into personal, immoveable, moveable, and money books. The Journal books display the movements of means. All these data require an appropriate and economic method to be collected, ordered, reproduced and diffused. With many details, Bentham advocates a system of abbreviation and reproduction (Bentham 1991, 159-162), so as to register every moment in life.

Therefore, one cannot fail to associate Bentham’s constitutional reflections and his prison reflections, either as regards the basic principles or in the tiniest details. As Hume puts it,

“Bentham developed many of his ideas about organization and management as solutions to particular problems in particular institutions. But once he had devised them, they were available to be used again and he himself rarely saw them as having only a local application. He freely translated them from one institution to another.” (Hume 1981, 161)

One necessarily has to concentrate on this quite problematic convergence.

II. From Prison to Society: the Ambivalence of Bentham’s Doctrine

¹⁸ Cf. Bentham 1991, 218-267: the “statistic” and “recordative” functions are exposed, according to several books that are in their turn detailed.

The similarities of his writings have provoked divergent interpretations among “Bentham Scholars” (II.1). Without siding with either detractors or supporters, it is worth underscoring the coherence of Bentham’s project, so as to measure its contemporary interest (II.2).

1. A Controversy Between Scholars

According to some writers, Bentham’s doctrine provides evidence for a pathological obsession with social control (II.1.1). Others offer a more indulgent reading, which insists on the limited scope of the *Panopticon* project (II.1.2).

1.1. Panoptism, a harmful obsession

1.1.1. Political panoptism seems to reveal the essence of the utilitarian vision of power, which is associated to the obsession of an absolute social control (cf. Bahmueller 1981, e. g., 156-163, 201-217). Bentham’s obsession leads him to universalize the inferno of the *Panopticon*, and to make the *Constitutional Code* the pattern [I don’t know if my sentence is correct here. I want to say that according to some authors, the Cstit code is a model for totalitarian states. Anyway, I can’t write that Bentham organized the Code around the pattern of the totalitarian state, for this would be an historical mistake] of the totalitarian state (Posner 1976; Himmelfarb 1968, 1970). Himmelfarb even regards the *Panopticon* as embodying the very principles of philosophical radicalism, whereas for Bahmueller, this vision of power is Bentham’s own, and is detachable from utilitarianism itself (Bahmueller 1981, 212 f.).

As Foucault puts it, panoptism acts on the very structure of the mind. “Thus discipline is internalised, while the inspector himself has become superfluous” (Božovič, Introduction to Bentham 1995, 17). Bentham was indeed a far subtler analyst of human psychology than is usually acknowledged (cf. Cléro/Laval 1997; Marí 1982, 209). He fully understood the power of symbolism and the impact of panoptism (Božovič, Introduction to Bentham 1995, 1-27). And he noted that “being constantly under the eyes of an inspector, is to lose as a matter of fact the power to do evil, and even the very thought of willing it” (Bentham 1997b, 16). With a more frightening tone, he added that:

“Inspection: here is the unique principle, to establish order and to maintain it, but an inspection of a new sort, which strikes the imagination rather than the senses, which makes hundreds of men depend on one, by giving to this one man a sort of universal presence. [...] The inspector, being invisible, reigns like a spirit” (ibid., 15 f.).

From this derives the automatic and permanent efficacy of the power (Foucault 1975, 234), just as if the inmates were subject to an omnipresent, omniscient, and omnipotent God (Božovič, Introduction to Bentham 1995, 1-27).

1.1.2. Bentham’s objective seems to be to build a utilitarian society on a real scale. In the *Panopticon*, people lose vicious habits and are re-educated to a so-called “sane” practice of the felicific calculus. In the end, inmates have become “new men” (Bentham 1997b, 47). Bahmueller (1981) repeatedly underscores the oppressive and confining

character of the institution, which eventually allows the individuals' "utilitarianization" (ibid.; cf. also Long 1977) through the mechanics of pain and reward.

Bentham's purported moral reform rests on a battle against idleness, and shows a kind of protestant asceticism (Marí 1982, 208; Semple 1993, 122), inculcated by means of a repressive and rationalized paternalism. The discipline of work is very strict. The administrator of the *Panopticon* has at his disposal a numerous and cheap labour force for whatever he wants to be done,¹⁹ which indicates that panoptism serves the interest of the industrial middle-class.²⁰ Bentham is intent on collecting even the smallest share of productive work, according to the capacities of each inmate (Bentham 1995, 54-59, Letter XIII: "Means of Extracting Labour"), and constantly wants costs to be minimized, both in the *Panopticon* and in government. This is the reason why Bahmueller (1981, 121) writes: "when Bentham heard the words 'increased costs' he reached for his gun". The allusion does not seem a happy one, but it illustrates a reading of Bentham's work that underscores its dangers. For this author, it is clear that "Panopticon prison was a particular application of a general principle of social discipline" (ibid., 58), based on the most absolute, the most efficient, and the deepest control of human individuality.

Facing such a utopia (Bentham's word: 1995, 56), one wonders what inferno would look like (Bahmueller 1981, 104). Nevertheless, this vision has been disputed.

1.2. Panoptism, a limited and beneficial project

1.2.1. According to Campos Boralevi, the *Panopticon* is a punctual answer to a precise problem. Rosenblum²¹ and Semple also think that the *Panopticon* is simply an instrument of government (as Bentham says: cf. 1995, 93), and not a paradigm of government. Indeed, it seems necessary to put the project in its historical context. Within a larger criticism of a severe penal policy, Bentham intended to deal with the problems of delinquency, alcoholism, idleness and poverty in 18th-century-England. He introduced an economical method of surveillance. Economy did not only apply to money (Bentham 1995, 51-54), but also and even more to human suffering.²² Punishment is a pain, which as such had to be minimized (Bentham 1970a, 158). A correction-book recording any punishment, and open to the public, had to be kept.

¹⁹ Bentham 1995, 55: "One thing [the contractor] would not fail to say to me is – *What trades may I put my men to when I have got them?* My answer is soon given. *Any whatever than you can persuade them to turn their hands to.*"

²⁰ Bentham 1995, 71: "In what points a manufacturer setting up in such establishment would be in a worse situation than an ordinary manufacturer, I really do not see; but I see many points in which he is in a better."

²¹ Rosenblum 1978, 19 f.: "Panopticon was a practical design for an institution – a prison, school, factory, or workhouse – and no more. It was not a microcosm of the state, and Bentham did not use it to criticize actual states. [...] Panopticon was not meant to serve as a model of anomic or authoritarian relations generally."

²² *Economy as Applied to Office*, in Bentham 1989, 5: "Expense" is any type of cost in terms of pain; Bentham 1995, 49: "Rendering unnecessary that inexhaustible fund of disproportionate, too often needless, and always unpopular severity, not to say torture – the use of *irons*"; ibid., 63: "I don't know that I should be for allowing [the contractor] the power of beating his borders, nor, in short, of punishing them in any shape"; ibid., 81 f.: "separate cells, exposed, as in the case of prisons, to inspection, would render the use of chains and other modes of corporal sufferance as unnecessary in this case as in any."

Opposing the conditions of detention and banishment of criminals, the outcome of which was frequently death,²³ opposing other reforms that were too severe, too mild or too expensive, Bentham proposed an undoubtedly more humane project. It rested on a strong utilitarian basis, for its preventive and curative effects were superior to those of the other projects. Moreover, they were achieved at lower financial cost, because of private administration (Bentham 1995, 51 f.), and without involving useless sufferings.

1.2.2. The profit of the private manager of the *Panopticon* depended on the work he imposed on the inmates. Their motivation depended on their remuneration (ibid., 67). Thus the interest of the manager was to take care of his prisoners. He also had to pay a penalty for every inmate that died in his establishment, whereas he could save money for every preserved life (ibid., 64 f.). Bentham intended to remedy the problems of hunger, cold, filth, infection, diseases, and ill treatment (Bentham 1997b, 32, 40; 1995, 37-38n, 46 f., 62 f.).

The *Panopticon* ensures that the manager is watched (Semple 1993, 140-152; Bentham 1995, Letter XII: “Contractor’s Checks”), which links his interest to the maximization of utility. The population at large, named the “tribunal of the world” (Bentham 1995, 48), is admitted to visit the institution. On the one hand, this deters individuals from breaking the law:

“In Bentham’s eyes, punishment is first and foremost a spectacle [...] insofar as punishment is not intended for the punished individual, but for all others” (Božovič, Introduction to Bentham 1995, 4; cf. also Bentham 1995, 100-101n).

Moreover, due to sympathetic sensibility,²⁴ the people at large feel compassion, which will, along with financial incentives (Bentham 1995, 68 f.), facilitate the reintegration of former inmates in the society. On the other hand, the manager is induced not to make the prisoners suffer more than necessary.

Again, the construction rests on the “duty and interest junction principle”. It is ordered so that the interest of the manager is not to mistreat his inmates, but to allow their emancipation. From the inmates’ perspective, working allows them to earn some money, to recover their capacity to form expectations, and to think of a better future, by making an effort on themselves. As Dube (1991, 314-334) puts it, the project intends to restore in the individuals the dignity of industrious and honest men. Its main spring is the valuation of utilitarian behaviours through reward, instead of punishment.

Nowadays, many prisons are undoubtedly far less humane than Bentham’s propositions (Moreso 1992, 375), as the reports of the *International Prison Watch* testify year after year. Vice, violence, overpopulation, and sanitary problems remain and even increase (Gentilini 1994; Vasseur 2000). Therefore, one cannot deny the “moral” dimension of panoptism (Semple 1993, 112 ff.). This is reflected on the political level by the maximization of what is also called the “moral” aptitude of governors.

²³ Bentham 1995, 75 f. Cf. also *A View of the Hard Labour Bill*, in Bentham 1838-1843, vol. IV, 1-35; *Panopticon versus New South Wales*, in Bentham 1838-1843, vol. IV, 37-172.

²⁴ Bentham 1970a, 57: “By sympathetic sensibility is to be understood the propensity that a man has to derive pleasure from the happiness, and pain from the unhappiness, of other sensitive beings.”

Though it has been criticized for its totalitarian dimension, panoptism must be judged, as Bentham would have intended it, according to its consequences (Bentham 1970a, 100). From this point of view, it may not be so harmful. If one insists on an internal reading of Bentham, panoptism turns out to be significant for his whole enterprise.

2. Bentham's Enterprise

Bentham's doctrine is derived from one principle (ibid., 1). Panoptism is perfectly inserted in this coherent and all-embracing strategy (II.2.1). Today, Bentham's enterprise seems feasible (II.2.2).

2.1. A coherent and all-embracing enterprise

2.1.1. Bentham's ideal of the transparency of power is not simply the product of an obsession with social control. It is the result of his ambition to promote the greatest happiness and to reveal usurpations stemming from force, moral corruption, and language (Bentham 1996b, 1997a). Within Bentham's panoptic devices, a self-sustaining dynamics of power increases the aptitudes of the prisoners, the warders, the people and the governors. Having worked out the tiniest details, first on a limited scale and then on the level of the whole society, of the concrete possibilities of the principle of utility is one of Bentham's major contributions to philosophy. Panoptism guarantees that each individual, whatever his situation, contributes to the greatest happiness.

Bentham's *Constitutional Code* portrays the 20th-century state, possibly including its worst trends. It nevertheless presents the fundamental aspects of the contemporary constitutional state (Pendas García 1988), based on representative democracy, universal suffrage, political responsibility, active local and central institutions, and basic prerogatives granted to individuals. From the stone to the metaphor (D'Alessandro 1981, 102), from the circumscribed space of prison to the whole society, Bentham's invention, despite the horror it may inspire, is fascinating. Its mechanics seem to have a supernatural force, but is only the necessary result of the principle of utility. Bentham's republic and the *Panopticon* are natural parts of his philosophy.

2.1.2. Bentham's writings are very rich. They are concerned with legal issues (legal philosophy, jurisprudence, legal politics) as much as with political science (political communication, sociology of organizations, sociology of power, theory of the elites, social psychology), and with linguistics, logic and economics. The idea of transparency of information and communication provides a link between the different elements of his works and allows a global reconstruction of his thought. Willing to reform society according to the principle of utility, he ponders over the law. In order to implement his technology of social reform, he develops an original theory of law as an expression of volition, and a new logic, foreshadowing the logic of norms of the 20th century (Tusseau 2001, 103-127). The will of the legislator is to be known through language, which is where his interest for language and his properties derive from. He aims at an analysis of language in terms of real entities, without fallacies, and elucidates the function of fictions in it (Bentham 1996b, 1996c, 1997a; cf. also Božovič, Introduction to Bentham 1995, 1-27, who links panoptism and the theory of fictions). Transparency and the diffusion of information seem to set the very framework of his enterprise. Language, be it written or symbolic as in panoptism, must convey information as clearly and as efficiently as possible to realize the utilitarian direction of behaviours.

The analogies between Bentham's projects are evidence of the coherence and scope of his reformism. Nowadays, these projects seem practicable.

2.2. *A practicable enterprise*

2.2.1. Starting from a teleological principle that can hardly be contested, Bentham provides a wide range of technical devices to put it into practice. This interest is deepening today, as technical improvements make panoptism possible. Thanks to computers and video, registering and stocking data have become fast, easy, and reliable. The internet makes their diffusion on a wide scale possible, with great certainty and authenticity.

Reflections on cyber-democracy or "e-democracy", which could renew both the participation of citizens and the control of governing bodies, are on the rise.²⁵

"One can conceive of electronic democracy as the use by all citizens of all technological and interactive means [...] to get informed on public action, to voice proposals [...] and then to vote on that public action".²⁶

Interactivity permits reaction in real time, immediate proposals, a genuine dialogue,²⁷ and a permanent system of *referenda* that revives the concept of direct democracy. In France, both legislative assemblies and the government have websites that inform on their activities. It is also possible to follow legislative debates on television. Official sites and public services have common access points.²⁸ At the European level, the Interchange of Data between Administrations program aims at improving the free movement of public information,²⁹ and policies have been undertaken in order to develop the internet.³⁰ Finland and Ireland have undertaken strong policies aiming at developing public political discussion *online*.³¹

In the field of public administration, the internet is seen as a means to improve public management (Schnäbele/Beauvais 2001). The French Ministry of Economy, Finance

²⁵ See the associations Admiroutes (www.admiroutes.asso.fr), Agoranet (www.agoranet.org), Euro citizen action service (www.eacas.org), Veille européenne et citoyenne sur les autoroutes de l'information (www.vecam.org).

²⁶ "Démocratie électronique en France. Situation en mars 2001", www.admiroutes.asso.fr/action/theme/democratie/demoelec.htm.

²⁷ P. Mathias, "Internet et démocratie", <http://barthes.ens.fr/scpo/Presentations99-00/Esclatine/esclatine.htm>. See www.democratieinteractive.com.

²⁸ Cf., e. g., www.admifrance.gouv.fr, www.service-public.fr.

²⁹ Public sector information: a key resource for Europe. Green Paper on public sector information in the information society COM/98/0585 final; www.europa.eu.int/ispo/ida.

³⁰ Catinat 2000; Europe's way to the Information Society. An Action Plan, Communication from the Commission to the Council and the European Parliament and to the Economic and Social Committee, and the Committee of Regions, COM/94/347 final.

³¹ K. Holkeri, "Share Your Views with Us. A Finnish Experience of Involving Citizens with ICT", www.univ-paris1.fr/droit-internet-2002/pdf/en/Holkeri.pdf; R. Kavanagh, "The Public Service Broker. A Model for Delivering ePublic Services", www.univ-paris1.fr/droit-internet-2002/pdf/en/Kavanagh.pdf.

and Industry initiated a program of “e-ministry”,³² as part of a larger Program of Governmental Action for the Information Society.³³ A recent symposium held by the Conseil d’Etat and Paris I University insisted that new technologies could help the administration to offer better services to the citizens.³⁴ Laws and administrative regulations can be discussed with a wider consensus as regards their opportunity and implementation. The internet offers a simple, fast and cheap means to express oneself, and grants new instruments to the Public Opinion Tribunal.

A first experiment in internet voting has taken place in Arizona, March 7-11, 2000. In France, for instance, A. Santini, the mayor of Issy-les-Moulineaux, has made his town a pioneer in this field. On March 16, 2000 the first world forum of e-democracy took place.³⁵ Many towns take advice from their citizens before undertaking projects. Voting machines have been tested in cities such as Lyons, Marseilles, Bordeaux, Strasburg, and Brest. While preserving the anonymity of the vote, they economize on paper and time (as well as on public administration; Beloulou 2001). Each machine costs € 4,573, so that its cost is written off by the third polling day.³⁶ Strassman, the director of the *Campaign for Digital Democracy*, presented a sophisticated system to allow individuals to react on all public matters while insuring an anonymous and secure vote. The system can immediately interpret the entire spectrum of opinions. Therefore the net allows the popular will to become permanent, ubiquitous, omniscient and omnipotent.

Precise statistics are at the legislators’ disposal to enact the utilitarian law, with the constant possibility to consult the people and to know about the evolution of their utility (Bonney 1964; Heilbronner/Drago 1959; Weber 1968; cf. also *supra* n. 31). Law is more widely diffused and accessible, thanks to official political and legal websites. The new technologies of information and telecommunication allow an increased administrative efficiency (Catinat 2000). The double dynamics of information that link the rulers and those being ruled enjoys new and functional structures. Here are the means to promote the greatest happiness along Bentham’s framework. If the *Constitutional Code* looked like a utopia, now it is within reach.

2.2.2. Underscoring the fact that the conditions are present for a form of panoptic democracy should not necessarily imply blind enthusiasm.³⁷ Several monographs by the *Communauté d’études pour l’aménagement du territoire* relating to experiments in Basel, Bologna and Lausanne (Guyaz 2000) have underlined the limits of e-democracy. The websites of political institutions are not frequently visited. One of the main difficulties is the limited and unequal access to the internet among countries (this is one of the major preoccupations of the EC; cf. Catinat 2000; Blanchard 2001, 15). France is

³² B. Pêcheur, “L’administration électronique comme facteur de modernisation et de simplification : l’exemple de l’e-ministère lancé au MINEFI”, www.univ-paris1.fr/droit-internet-2002/pdf/en/Pecheur.pdf.

³³ Comité interministériel pour la société de l’information, *Programme d’action gouvernemental pour l’entrée de la France dans la société de l’information*, 1998.

³⁴ Conseil d’Etat, Université Paris I – Panthéon Sorbonne, L’administration électronique au service des citoyens, 21-22 janvier 2002, cf. www.conseil-etat.fr/ce-data/index2.htm.

³⁵ www.professionpolitique.com/forum/default_new.htm.

³⁶ “Démocratie électronique en France. Situation en mars 2001”, *supra* n. 26.

³⁷ See www.democratieinteractive.com.

developing “public Internet access points” in post offices, stations, and the Paris metro. Individuals must also be educated to use the new technologies.

From a technical point of view, one cannot neglect the risks of interception, control, censorship, and the doubts raised concerning the secrecy of the vote and the identification of voters. These problems have caused considerable concern for the EC.³⁸

The new technologies of information also give rise to a new criminality which proves very hard to control (Martin/Martin 1998; Blanchard 2001, 5).

The virtual *agora* can rapidly degenerate into a din of isolated voices. There is also considerable risk that along with the three traditional powers, and the fourth of the press, a fifth power is going to develop, to wit, that of computer experts. Instead of a new democracy, it could be the birth of a new oligarchy. Monopolies concentrating publishing houses, radios, TV channels, websites – i. e., both the technologies and their diffusion – may rapidly gather the whole real power.³⁹ The internet also permits the spread of rumours or “hoaxes”.⁴⁰ Errors and lies can work more rapidly and effectively than ever. In a nutshell, one cannot disregard the potential nuisance of e-democracy. Bentham’s work, nevertheless, still offers tools, such as his theories of fictions and political fallacies, to develop controls and keep a critical spirit awake.

Conclusion

My purpose with this paper was neither to defend nor to criticize Bentham’s panoptism. I only meant to focus on a reflection that offers a conceptual framework within which our present situation can be understood. A first thesis was presented, according to which it may be said that Bentham’s political theory, since he was pursuing the same goal, has its roots in the principles of the Inspection House. His democratic theory is actually a generalization of the principles of the *Panopticon*. However, in contrast to other authors who come to the same conclusion, I have not taken this as a ground for a criticism of Bentham’s thought in terms of an obsession with social control. According to my second thesis, his projects illustrate the coherence of his thought, constantly directed towards a goal one can hardly disagree with. I have then introduced a third thesis, according to which today Bentham’s panoptism is feasible.

³⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the regions, Ensuring security and trust in electronic communication. Towards a European framework for digital signatures and encryption COM/97/0503 final; Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector; Decision No. 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a multiannual Community action plan on promoting safer use of the internet by combating illegal and harmful content on global networks; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. See Bischoff 1998; Kerstens 1999; Brühann 1999a, 1999b; Swetenham 2000.

³⁹ J. de Rosnay, www.professionpolitique.com/forum/default_new.htm, and the question “Who governs the Internet?”, www.strategic-road.com/dossiers/govrnint.htm.

⁴⁰ Bernaert 2001; see www.hoaxbuster.com.

Eventually, one may wonder whether one should try to implement it. But, and this is the last thesis I wish to formulate, it may be too late to wonder about this. There may be no time left to choose panoptism. Willy-nilly, we are already subjected to a panoptism, we are registered, filmed, and counted by a network of widespread and permanent powers. At this point, what we are lacking, what is missing for the greatest happiness of the greatest number, is the democratic universalization Bentham called for.

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