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## *Jeremy Bentham on Fallibility and Infallibility*

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Arguments on behalf of human fallibility, and against the assumption of infallibility, comprise a justly famous dimension of John Stuart Mill's democratic theory. These familiar claims ground Mill's defense of the liberty of thought and discussion in *On Liberty*. But fallibilism also justifies Mill's support for a deliberative assembly, and for the sorts of activities that take place in such a forum. Members of such an assembly, the fundamental activities of which include the changing of beliefs, commitments, and institutions, engage in "self-revision and learning."<sup>1</sup> Only through recognizing their own fallibility, both individually and collectively, can representatives adopt the critical perspective necessary to undertake these tasks. As C. L. Ten has suggested, in Mill's view those who lack freedom of discussion—premised upon the assertion of infallibility—will hold a belief "in a rigid and dogmatic way, and they are unable to adapt it to changing circumstances. If, for example, there are strong arguments limiting the area of application of a rule, they will not appreciate them."<sup>2</sup> Likewise, John Skorupski has emphasized the importance of fallibility as a means of ensuring the "corrigibility of beliefs: reasonable judgments can turn out to be mistaken—by the same token they can also be improved."<sup>3</sup>

Although these are in essence epistemological arguments, Mill recognized their political and even rhetorical force, especially with respect to

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<sup>1</sup> Nadia Urbinati, *Mill on Democracy* (Chicago: University of Chicago Press, 2002), 83.

<sup>2</sup> C. L. Ten, *Mill on Liberty* (Oxford: Oxford University Press, 1980), 126.

<sup>3</sup> John Skorupski, *John Stuart Mill* (London: Routledge, 1989), 380.

matters of legal and political reform. In supporting a parliamentary reform bill that would expand working-class electoral power, Mill argued, “There is a better way of persuading possessors of power to give up a part of it: not by telling them that they make a bad use of their power—which, if it were true, they could not be expected to be aware of—but by reminding them of what they are aware of—their own fallibility.”<sup>4</sup> In this context, Mill invoked Tocqueville’s praise for the self-correcting nature of American legislatures, and insisted that Parliament ought not to stop at simply “repealing bad laws which Parliament itself had made” but instead enact significant legislation aiming at the improvement the welfare of society.<sup>5</sup>

These arguments were not original to Mill; he himself recognized that they were derivative, and prefaced his account of the liberty of discussion in *On Liberty* with a request for the indulgence of “those to whom nothing which I am about to say will be new.”<sup>6</sup> Where might Mill have encountered such arguments? Recently Nicholas Capaldi has identified Milton’s *Areopagitica* as the source of the arguments against the critique of censorship, and argued accordingly that that Mill is not purely indebted to utilitarian thought on these matters. Yet we need not turn to this relatively remote source for such an answer.<sup>7</sup> Rather, Mill’s account of fallibility and infallibility may reflect the strong influence of Jeremy Bentham. Mill had ample opportunity to learn Bentham’s views on the topic informally. More specifically, the young Mill edited Bentham’s *Rationale of Judicial Evidence*, in which he would have encountered Bentham’s critique of human infallibility in the context of juries and the exclusion of evidence.<sup>8</sup> (“I have no great opinion of infallibility; and if it were necessary to believe in it, I would go to work by degrees, and begin with the pope,” Bentham wrote.)<sup>9</sup> Though it is possible that Mill could have had alternative or multiple sources for

<sup>4</sup> *The Collected Works of John Stuart Mill* (hereafter *CW*), gen. ed. John M. Robson (Toronto: University of Toronto Press; London: Routledge and Kegan Paul, 1963–91), 28: 64; cited in Urbinati 2002, 83.

<sup>5</sup> *CW* 28: 67.

<sup>6</sup> Mill, *CW* 18: 227.

<sup>7</sup> Nicholas Capaldi, *John Stuart Mill: A Biography* (Cambridge: Cambridge University Press, 2004), 289.

<sup>8</sup> Capaldi, 42, 51–52.

<sup>9</sup> Jeremy Bentham, *The Works of Jeremy Bentham* (hereafter *Works*), 11 vols., ed. John Bowring (Edinburgh: W. Tait, 1838–43), 7: 388 (*Rationale of Judicial Evidence*, 9:3:2). Further, in his essay on Bentham, Mill highlighted Bentham’s critique of those who would assert their knowledge of the law of nature and the “eternal and immutable Rule of Right” (*CW* 10: 85).

these arguments, it is nonetheless plausible that he would have drawn them from Bentham.

Mill's arguments for fallibility and against the assertion of infallibility are widely recognized as a critical feature of his thought. In comparison, Bentham's formulations are neither widely known nor appreciated. Yet the political force of Mill's arguments—particularly the critical and reformist dimensions of Mill's work—is not only prefigured in Bentham's writings, but receives sustained elaboration there, illuminating the democratic dimension of these claims. Fallibilism provides significant grounding for Bentham's political radicalism, especially in the arena of legal reform, and through examining Bentham's challenge to legislative infallibility, we can gain fresh insights into his political thought in general and his democratic theory in particular.

Here, I will not assess the epistemological merits of Bentham's arguments from fallibility and against infallibility: indeed, such analytical scrutiny may have encouraged previous scholars to dismiss them out of hand. Perhaps the primary cause of this lacuna in the study of Bentham has been H. L. A. Hart's unequivocal dismissal of Bentham's work in this area.<sup>10</sup> In his introduction to his *Essays on Bentham*, Hart suggested that although Mill acknowledged Bentham's influence on these matters, Bentham's treatment of the topic was utterly unsatisfactory. In fact, he claimed that in the discussion of fallibility Bentham's "limitations as a philosopher begin to appear." Arguing that Bentham failed to demonstrate why the claim to infallibility by authorities was incorrect, Hart maintained that Bentham's account of fallibilism was a manifestation of his misguided subjectivism, tied up in a defective logical relationship between expressions of statements of fact and of opinions. Imperfect as his arguments may be from the standpoint of analytic philosophy, however, they did appear with regularity through Bentham's voluminous scholarship, especially when questions of reform were at stake. Bentham chose his language with almost obsessive care, and given their repeated presence in his work, his deployment of these arguments is a worthwhile object of investigation for scholars of political thought. Further, such an investigation sheds light on other salient debates in Bentham studies: in particular, it is worth noting that these arguments appear prior to any of the supposed turning points for Bentham's "conversion" to radicalism, sometimes attributed to his acquaintance with James

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<sup>10</sup> H. L. A. Hart, *Essays on Bentham: Jurisprudence and Political Theory* (Oxford: Oxford University Press, 1982), 12.

Mill, sometimes attributed to the failure of the Panopticon scheme. Their presence suggests that at least this dimension of his radicalism may have emerged quite early.<sup>11</sup>

Rather than focusing on either the development of Bentham's "metaphysics" or the temporal evolution of his political thought, I wish to suggest that Bentham's arguments regarding fallibility and infallibility comprise a fundamental and distinctive dimension of his democratic theory. These arguments were not merely a rhetorical device deployed against those who would seek to protect "sinister interests" (although they were surely that), for Bentham's concerns about fallibility ran deeper. To check sinister interests—particular interests harmful to the community—the people would require undistorted faculties of judgment, faculties sufficiently sharp to enable critical inquiry and rational argumentation. Belief in the infallibility of political and religious authority would profoundly corrupt these faculties. For example, legislative revision constituted a primary means of checking sinister interests. By enacting immutable laws, legislators implicitly asserted their own infallibility. The procedural entrenchment of law would be harmful enough, since it would inhibit the capacity of law to adjust to the shifting demands of utility, but the assertion of infallibility further encouraged people to adopt an uncensorial perspective with respect to law and to authority more generally. This would be truly hazardous to the public utility.<sup>12</sup>

In what follows, I briefly trace the epistemological account of fallibility. I then examine Bentham's use of the arguments against infallibility and in favor of fallibilism as a means of countering those who would seek to place their religious, political, or legal authority literally beyond question. In so doing, I emphasize the independent force of these arguments from critiques of sinister interest more generally. Again, attempts to assert infallibility are a means by which powerful actors can shape their subjects' faculties of judgment, and thereby reduce the capacity of the members of their commu-

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<sup>11</sup> The classic view that James Mill converted Bentham to political radicalism appears in Elie Halévy, *La Formation du Radicalisme Philosophique* (Paris: Presses Universitaire de France, 1995), and John Plamenatz, *The English Utilitarians* (Oxford: Blackwell, 1949) and, in a revised fashion, by J. R. Dinwiddy, "Bentham's Transition to Political Radicalism, 1809–1810," *JHI* 36 (1975): 683–700, contained in *Bentham: Selected Writings of John Dinwiddy*, ed. William Twining (Stanford: Stanford University Press, 2004), among other sources; the argument about the importance of the Panopticon scheme is in both Plamenatz and L. J. Hume, *Bentham and Bureaucracy* (Cambridge: Cambridge University Press, 1981).

<sup>12</sup> Bentham's concerns about legal inflexibility on this score has received much attention, notably in Gerald Postema's magisterial work, *Bentham and the Common Law Tradition* (Oxford: Oxford University Press, 1986).

nity to engage in the reform necessary for progress towards human happiness. In conclusion, I return to the implications of Bentham's use of these arguments for our understanding of John Stuart Mill's thought.

## THE FOUNDATIONS OF FALLIBILITY

Bentham's "metaphysics," as his theories of logic and language are termed, are challenging and have been ably recounted elsewhere. Thus, I here offer only a sketch of Bentham's views on fallibility in this work.<sup>13</sup> As Postema and Schofield have both noted, Bentham's epistemology rested on his ontology, and Postema has written that "from the beginning of his long career Bentham believed that systematic reflection on language and its relationship to thought and reality was the key to understanding and improving the world."<sup>14</sup> Bentham distinguished between real entities, objects existing in the physical world, and fictitious entities, those entities that lacked physical substance but for which it made sense to speak of as if they had substance, such as "relation," "faculty," and "power." Human knowledge about the physical world, in Bentham's view, depended on the receipt of sense-perceptions from real entities, and the processing of these perceptions through language.

Our sense-perceptions, in general, were to be taken as infallible. At a minimum, Bentham argued, it was unhelpful to think of them as fallible, as a degree of confidence in our perceptions would be necessary to make the most elementary of choices. Real entities were divided into two categories, perceptible real entities—those directly accessible through our senses—and inferential real entities, those which required a chain of reasoning to know, of which God was an exemplar. Although we might depend on the accuracy of our sense-perceptions, once judgments were required—as they were, in Bentham's examples, to distinguish between a distant hill and a cloud, or between the sound of falling rain and whistling wind—we became much more likely to be incorrect. "Simple perception is not capable of erring, no, nor sensation neither. But judgment is, on the part of every person, and on almost every occasion exposed to error."<sup>15</sup>

<sup>13</sup> See particularly the account in Ross Harrison, *Bentham* (London: Routledge, 1983).

<sup>14</sup> Philip Schofield, in "Political and Religious Radicalism in the Thought of Jeremy Bentham," *History of Political Thought* 20 (1999): 277. Gerald Postema, "Facts, Fictions and the Law: Bentham on the Foundations of Evidence," *Archiv für Rechts- und Sozialphilosophie*, Beiheft 16, 37–64, 45.

<sup>15</sup> Bentham, *Works*, 8: 320.

We might know our own will and perceive external objects accurately, but beyond that, our intellectual abilities were strictly bounded (“All that the mind is capable of containing is an act of the judicial faculty—an opinion, a judgment,”<sup>16</sup>) and all that could be communicated through language was opinion. When, through the use of language, fictitious entities were introduced, we were even more likely to err. To explain these fictions required linguistic techniques of “paraphrasis” and “phraseoplerosis,” through which we might assess whether a fiction is meaningful by reference to its relationship to a real entity. Judgment would be required at every step of these processes.

The inescapability of judgment was central to Bentham’s theory of logic and language. Bentham argued that even simple statements such as “Eurybiades struck Themistocles” were elliptical, because they did not adequately capture all that was entailed by such a statement, i.e., “It is my belief that Eurybiades struck Themistocles.” H. L. A. Hart rejected this point in criticizing Bentham for facile, and potentially dangerous, subjectivism, arguing that although normally we might think that the speaker of the first sentence implied the second, there is no reason to believe that the first logically entails the second. In contrast, Postema has offered a somewhat more sympathetic reading of Bentham’s subjectivism, claiming that Bentham simply believed that each of us makes use of our imperfect judicial faculties in assigning the probability of a given hypothesis—that Eurybiades struck Themistocles—based on evidence. Although our capacity to rationally assess the probability of events will vary considerably, based in part on our background beliefs and the extent to which superstition, prejudice and ignorance have affected our judgment, in principle if we stripped away these “obstacles to rational judgment and human progress . . . the clear and pure light of truth will shine through, the same for everyone.”<sup>17</sup> It is this ability to engage in rational assessment, as we shall see, that is harmed by belief in the infallibility of political, religious, or legal authority.

It is clear that Bentham’s epistemology included a substantial commitment to fallibilism. Even if this did not extend either to skepticism or even to radical subjectivism, he held that the human mind could be easily derailed on its path to truth. In Bentham’s view, our imperfect judicial faculties, shaped in part by our flawed background beliefs, limit our intellectual capacities, and to make sense of the world we require language, which is itself imperfect and capable of being distorted for all sorts of purposes.

<sup>16</sup> Bentham, *Works*, 8: 321.

<sup>17</sup> Postema, “Facts, Fictions and the Law,” 60–61.

Given these vulnerabilities, Bentham aimed at the improvement of human understanding in a variety of ways, including through a perfected scheme of language. Yet the possibility of progress toward human happiness required us simultaneously to recognize the interests that rulers and legislators might have in asserting their infallibility, and the deleterious effects that believing their claims would have on the public's faculty of judgment. As we shall now see, Bentham's account of fallibilism (whatever its philosophical merits) served as a foundation for both his religious and his political radicalism.<sup>18</sup>

### NATURAL RELIGION AND THE APPEAL TO INFALLIBILITY

Throughout his work, Bentham challenged natural religion's aversion to reform, its embrace of natural law against scientific inquiry, and its doctrine of the infallibility of church dogma and leaders, arguing that they cultivated habits of belief that would hinder utilitarian progress. Although the bulk of these arguments date to the latter part of Bentham's career (the papers for *Analysis of the Influence of Natural Religion on the Temporal Happiness of Mankind* were sent to George Grote in December 1821), they are taken up first here because of the relative clarity and power of Bentham's critique of the Church. Even in the *Fragment on Government*, however, Bentham targeted those who would invoke natural and divine law (against which no human law "should be suffered"). He suggested that doing so would encourage disobedience to any law that one disliked, since "there be scarce any law whatever but what those who have not liked it have found, on some account or another, to be repugnant to some text of scripture."<sup>19</sup>

Bentham defined natural religion as religion "when there exist no written and acknowledged declaration, from which an acquaintance with the

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<sup>18</sup> See Philip Schofield, in "Political and Religious Radicalism in the Thought of Jeremy Bentham," *History of Political Thought* 20 (1999), whom I follow, in contrast to James Crimmins, *Secular Utilitarianism: Social Science and the Critique of Religion in the Thought of Jeremy Bentham* (Oxford: Oxford University Press, 1990), and Crimmins, "Bentham's Religious Radicalism Revisited: A Response to Schofield," *History of Political Thought* 22 (2001): 494–500.

<sup>19</sup> Bentham, *Fragment on Government: A Comment on the Commentaries and A Fragment on Government*, eds. F. Rosen and H. L. A. Hart (London: Athlone Press, 1977), 482, 483.

will and attributes of this almighty Being may be gathered.”<sup>20</sup> The Enlightenment, Bentham suggested, had served to counter the conservative tendency on the part of natural religion, but too often the laws of nature are invoked against reform, which would “prohibit all improvement whatsoever.”<sup>21</sup> In Bentham’s view, natural religion led to the rejection of inquiry in every area: “All fresh facts, all acquisition and application of knowledge, introduce a change in these sequences, and therefore break in upon the laws of nature.”<sup>22</sup> The Church succeeded in stifling inquiry through cultivating habits of uncritical belief in its adherents, Bentham argued. It prized ignorance and prejudice at its foundation, because of the unknowability of God’s will. Although it was impossible to know of which behaviors God would or would not approve, the Church encouraged men to reject practices without harmful consequences, and in this way “contributes to distort or disarm public opinion in its capacity of a restraint upon injurious acts.”<sup>23</sup>

The capacity of the community to judge the viciousness or virtue of a given act was thus corrupted, and the individuals comprising the community were left with compromised faculties of judgment. Whereas a person uncorrupted by natural religion would require evidence to assent, and would dissent in case of refutation, faith distorted the judgment of an individual, and “foist[s] in, by means of his hopes and partiality, a belief which unbiased reason would not have tolerated.”<sup>24</sup> Hope and fear provided motivations for a belief supported by only fragmentary evidence, leading one to reject contradictory claims out of hand. Indeed, in the absence of compelling evidence for doctrinal “truths,” the more important faithful belief would become. The person would begin to take pride in the triumph of belief over reason: “He accordingly speaks in the most degrading terms of the fallibility and weakness of human reason, and of her incapacity to grasp any very lofty or comprehensive subject. It thus becomes a positive merit to decide contrary to reason, rather than with her.”<sup>25</sup>

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<sup>20</sup> Bentham, *The Influence of Natural Religion on the Temporal Happiness of Mankind* (INR) (Amherst, N.Y.: Prometheus Books, 2003), 30–31. The authorship of this text remains in dispute: Bentham sent George Grote the initial manuscripts, but it is unclear how much of the published text was Bentham’s and how much was contributed by Grote. The work was published under the pseudonym Philip Beauchamp.

<sup>21</sup> INR, 119.

<sup>22</sup> *Ibid.*

<sup>23</sup> INR, 113.

<sup>24</sup> INR, 137.

<sup>25</sup> INR, 139. Note that the appeal to fallibility is here, in a rare example, treated as potentially harmful, insofar as it serves as a defense on the part of clerics and believers for the triumph of faith over reason. Bentham may have sought to demonstrate that the

Corrupting as faith may have been to faculties of judgment, even more pernicious was the church's claim that priests possessed infallible knowledge as to God's will, a belief which, when linked to the power of the state, could cause the total submission of the population. The claim to infallibility was certainly false—man was fallible in judging matters far more accessible via sense-perception than God's will—yet the assertion of unchallengeable wisdom, combined with the moral salience of the priest, would have disastrous consequences for the general utility. The disapproval of an action by a priest would be sufficient for its inclusion in the immutable moral code, whatever its consequences. (This is a version of the famous “principle of antipathy,” by which “disapprobation” constitutes a “sufficient reason” for punishment.<sup>26</sup>) Moreover, often because of the absence of demonstrably harmful consequences of a particular action, appeal to religion and to morality would be necessary for it to be denounced.<sup>27</sup>

The pretended perfection of organized religion's articles of faith was even more harmful than priestly infallibility, because its effects reached further. In “Swear not at all,” Bentham criticized the use of compulsory oaths, particularly the Coronation Oath. He did so both because the commitments the oaths required inhibited the ability to make utilitarian choices in an ongoing fashion,<sup>28</sup> but also because the articles of faith asserted by organized and (worse) established religion were identified as infallible and immutable, and thus not subject to question or improvement. These oaths, Bentham argued, “corrupt[ed] the National Morals and Understanding,” in part from their very foundation in the “infallible” church—“that is, that a set of professors, who at the expense of the people, are paid by the sovereign” to interpret the Bible and make their particular gloss immutable.<sup>29</sup> In this way, opinions were turned into articles of faith, which, emerging from authoritative sources, became law, and were thus converted into “what certain laws of the Medes and Persians were once pretended to be—*everlasting*

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priests qua human beings could not have been immune from the deficiencies of reason that they were so keen to emphasize.

<sup>26</sup> See, most notably, *Introduction to the Principles of Morals and Legislation (IPML)*, ed. J. H. Burns and H. L. A. Hart (London: The Athlone Press, 1970), ch. II.

<sup>27</sup> *INR*, 177.

<sup>28</sup> Bentham also targets the Coronation Oath in *The Book of Fallacies (Fallacies)*, arguing that any king of Great Britain and Ireland who invoked the oath as a justification for refusing to assent to a law (rather than because of its disutility) should receive in response a vote of Parliament that the king had abdicated his royal authority. In *Bentham's Handbook of Political Fallacies*, ed. Harold A. Larrabee (Baltimore: The Johns Hopkins University Press, 1952), 71.

<sup>29</sup> *Swear not at all* (hereafter *SNA*), in Bentham, *Works*, 5: 209.

and *immutable* laws or ordinances.”<sup>30</sup> Both articles of faith and laws had the essential character of infallibility, Bentham claimed, and, as a consequence “the minds of men are by these their rulers to be kept in a state of perpetual *dependence*: of dependence as abject and entire as possible.”<sup>31</sup>

The concept of infallibility linked Bentham’s challenges to natural religion and to legal immutability. As we shall shortly see, the latter comprised a major target of his critiques of infallibility. On these grounds, both would lead to tyranny, to ignorance, and to disutility. Once linked to the power of the state explicitly, as in the coronation oath, the population was virtually doomed. The third clause of the coronation oath, administered by the Archbishop or Bishop, asks the King whether he will “maintain the laws of God,” and Bentham objected to a proposed amendment that would read, “And will you, to the utmost of your power, resist all innovations in religion and government, church and state?”<sup>32</sup> In an extended meditation on the term “innovation,” Bentham argued that the word’s pejorative connotation had given novelty such a bad name that even reform for the sake of clear amelioration is condemned. By deploying the language of “popish innovations,” the Church of England had succeeded in demonizing all forms of modifications, either religious or governmental, except those that the clergy themselves found to their benefit.

The way in which this claim could serve as a basis for an argument in favor of political reform is now clear. It was not simply that the Church sought to secure sinister interests against the population: it was that the Church diabolically distorted the faculties of judgments, in part through encouraging its adherents to accept the infallibility of its authority. Although Bentham no doubt sought to target the Church for advancing rules harmful to human happiness and instead substituting those norms beneficial to the Church and the sovereign, his criticism of the pretense of infallibility went even deeper. The very capacity to check sinister interest and advance human happiness *depended* on people recognizing the fallibility of their authorities. It is surely true that Bentham’s criticism of religious and political rulers was not simply that they might err, but that they deliberately sought to deceive those over whom they held power. Yet the ability to discern and counter these efforts subversive of the promotion of human happiness required popular awareness that these rulers were indeed liable to error. The problem, in Bentham’s view, was in part that the Church used

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<sup>30</sup> SNAA, 209; italics in the text.

<sup>31</sup> SNAA, 210; italics in the text.

<sup>32</sup> SNAA, 208.

sinister influence rather than rational argument. In discussing Bentham's criticism of the teaching of the Anglican Catechism to children enrolled in the National Society schools of the Church of England, James Crimmins has written, "the episcopacy fully understood the human psyche and consciously employed methods calculated to influence, to shape and control it."<sup>33</sup> The appeal to infallibility was arguably the worst of these methods. Through encouraging the belief that the Church could not err, the ability of its members to exercise the judgment necessary to challenge the Church's power was threatened, and the possibility of improvement greatly diminished.

### POLITICAL REFORM AND INFALLIBILITY

The opposition to the assertion of infallibility, seen so clearly in his critique of religion, manifested itself almost simultaneously in his "Constitutional Code Rationale," in which Bentham attacked absolute and mixed monarchy by focusing on the question of whether the king could err, taking up the theories of "impeccability" and "infallibility." Under the former, the monarch could do no wrong, in the sense that his happiness was the sole criterion of "rightness," regardless of the happiness or unhappiness of his subjects.<sup>34</sup> Under the theory of infallibility, the monarch should act to promote the greatest happiness of his subjects, but the monarch would be the sole judge of what actions would contribute to such happiness.<sup>35</sup> In the case of absolute monarchy, the theories should be viewed as practically interchangeable (although the theory of impeccability was appropriate for an absolute monarchy): "let that which is done by him in itself be ever so wrong, in its effects ever so mischievous and productive of human misery, he being the person by which it was done, it follows that by him it was judged to be in the highest degree contributory to the universal happiness," and thus judged by others to be equally contributory and commended as a result.<sup>36</sup> The mixed monarchy combined the impeccability of the (infantile) monarch with the supposed infallibility of Parliament: "The wisdom of Parliament? the wisdom of Parliament! of a member of that august body, when

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<sup>33</sup> James E. Crimmins, ed., *Utilitarians and Religion* (Bristol, England: Thoemmes, 1988), 251.

<sup>34</sup> "Constitutional Code Rationale" (CCR), in Bentham, *First Principles Preparatory to Constitutional Code*, ed. Schofield (Oxford: Oxford University Press, 1989), 273.

<sup>35</sup> *Ibid.*, 274.

<sup>36</sup> *Ibid.*

is the ear or the mouth ever tired of these awful sounds, the wisdom of Parliament.”<sup>37</sup> Finally, Bentham wrote, whether this “theory of impeccability and infallibility” emerged in a madhouse or in a den of thieves would be a question suitable for a debating club—were it not that under this theory “all debating clubs, all meetings that can produce discussion on topics the most interesting to human happiness, are silenced.”<sup>38</sup> One might note here the remarkable extent to which the link Bentham draws here between infallibility and the liberty of discussion foreshadows Mill.

Through the assertion of infallibility, a monarch or a parliament was able to create legislation that entirely disregarded public utility. Bentham knew well that rulers would have interests opposed to that of the people, and only through making the rulers accountable to the people as a whole could their private interests be ensured of harmony with the universal interest (i.e., the majority share of the aggregation of the interests of the individual members of the community).<sup>39</sup> Yet note again that although Bentham clearly targeted the monarchy in these writings, the matter is not simply one of sinister interest but of the work that the assertion of infallibility does as a means of inhibiting criticism—and although the theory of infallibility is surely a means by which political or religious authority might seek to stave off challenges to authority and sinister interest, it is effective because it does in fact inhibit the faculty of judgment. Even if the rulers’ interests were in line with that of the people as a whole, the assertion of infallibility would serve to thwart progress: such a claim excluded the possibility of reform, as it left no room for improvement, and the capacity even to imagine what might improve the general utility would be considerably weakened. The point that arguments from infallibility can stifle inquiry and secure judgments against challenge is also made in a footnote to chapter 2 of the *Introduction to the Principles of Morals and Legislation*: “If a man is an infallible judge of what is right and wrong in the actions of private individuals, why not in the measures to be observed by public men in the direction of those actions? accordingly (not to mention other chimeras) I have more than once known the law of nature set up in legislative debates, in opposition to arguments derived from the principle of utility.”<sup>40</sup>

The imprimatur of infallibility comprises a remarkably effective means

<sup>37</sup> *Ibid.*, 276.

<sup>38</sup> *Ibid.* In a footnote, Philip Schofield notes that the Seditious Meetings Act of 1819 restricted public political meetings.

<sup>39</sup> Philip Schofield, “Bentham on the Identification of Interests,” *Utilitas* 8 (1996): 223–34, 227.

<sup>40</sup> *IPML*, 28.

by which political and religious authority can secure sinister interests, and, as we shall see in a moment, legislation reflecting these interests, against challenge. In this light, the claim that the pressure for reform constituted the “dynamic force within his conception of democracy,” as Frederick Rosen has rightly suggested, takes on a new cast.<sup>41</sup> Bentham saw as a deficiency of monarchical rule the assumption of infallibility, which he thought had a profoundly conservative effect that would inevitably lead to a decline in human happiness. His support for representative democracy, and his suspicion of what we would today consider “constitutional law,” higher norms that are relatively immune to change, was at least in part attributable to his objection to infallibility on both epistemological and on political grounds. Through linking the appeal to infallibility to the enactment of immutable law, Bentham unified his theory of logic and language, his political theory, and his recommendations for concrete legal and constitutional reforms.

## LEGAL IMMUTABILITY AND THE FRENCH REVOLUTION

Bentham regarded the French Revolution as an opportunity to influence the course of constitutional developments, and the Revolution in turn shaped his political theory in critical ways. Most saliently, he developed his utilitarian justification of political equality in this context and his famous dismissal of natural rights. In addition, in his writings to the French, he developed the political rejection of infallibility and linked it explicitly to the creation of immutable law.

The writings on the French Revolution, which were largely critical of the revolutionaries and their “terrorist language,” might seem like a surprising place in which to locate incipient radicalism. Yet at the beginning of the French Revolution, as Crimmins and Schofield have suggested, Bentham advocated democratic reforms that were to find their fullest expression in his writings twenty years later. During this period, he endorsed universal suffrage (subject to a literacy test) and emphasized harmonizing the interests of the legislature with that of the community as a whole.<sup>42</sup> Further, in

<sup>41</sup> Frederick Rosen, *Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code* (Oxford: Oxford University Press, 1983), 14.

<sup>42</sup> Philip Schofield situates these democratic reforms in Bentham’s “*Projet of a Constitutional Code for France*” written in autumn 1789, against the widespread view that these arguments can be located earlier on the basis of an extract from the “*Essai sur la Représentation*” (formally, the “*Considérations sur la Composition des États-Généraux*”). See Schofield, *Utility and Democracy* (Oxford: Oxford University Press, 2006), 81–94. Yet another dimension of his democratic thought was exhibited in his call to the Spanish,

his writings about the “Necessity of an Omnipotent Legislature,” Bentham suggested that the French people as a whole ought to authorize their Assembly to engage in constitutional change and counter the implicit assertion by the Constituent Assembly that they were infallible and had created a perfect constitution. Even once Bentham turned against the revolutionaries, he rejected their efforts at enacting immutable law, and their efforts at binding future governments, on fallibilist grounds. Throughout Bentham’s writings on the French Revolution, then, the charge that actors had assumed their own infallibility comprised an element of his reformist rhetoric.

Bentham’s first effort at connecting infallibility with immutability seems to have appeared in “Necessity of an Omnipotent Legislature,” written no later than December 1791.<sup>43</sup> In “Necessity,” Bentham criticized the Constituent Assembly’s decision to make the French Constitution virtually impossible to amend. The entire constitution was entrenched for ten years. After that period only an Assembly of Revision could amend the constitution, and only then after three successive legislatures had approved the proposed amendment.<sup>44</sup> Bentham argued that real sovereignty required an omnipotent authority, and that a legislature bound by the will of a past legislature was in fact impotent. In his introductory remarks to “Necessity,” Bentham wrote, “The attempts made by Lycurgus, of Numa, the Medes and Persians, by the lovers of raree shews among the Athenians, and so many other pretenders to infallibility with or without inspiration, have been hitherto quoted only for the absurdity, as so many imitations of Salmoneus who, by making a noise, thought to rival Jupiter, the King of gods and men, and as so many attempts to transform finite power into infinite.”<sup>45</sup> Yet in its effort to create a substantively unamendable constitution, the Constituent Assembly emulated these lawgivers in their claims to infallibility.

Bentham’s argument about the use of infallibility and immutability in the consolidation of power consisted of three steps. In the first place, Bentham rejected any assertion of infallibility whatsoever. Again, Bentham’s epistemology emphasized the role of judgment, which he regarded as highly

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French, and British empires to “Emancipate Your Colonies!” which was written during this period, as elegantly detailed by Jennifer Pitts in “Legislator of the World: A Rereading of Bentham on Colonies,” *Political Theory* 31 (2003): 203–34.

<sup>43</sup> The link between infallibility and immutability in Bentham’s work and in other constitutional writings is developed in Melissa Schwartzberg, *Democracy and Legal Change* (New York: Cambridge University Press, 2007).

<sup>44</sup> Tit. VII. De la revision des décrets constitutionnels.

<sup>45</sup> *Necessity of an Omnipotent Legislature* (NOL), in Bentham, *Rights, Representation, and Reform*, 265–66.

vulnerable to error. Although human reason could certainly progress, particularly through language, it required the assumption of fallibility to do so. The assertion of infallibility stifled inquiry and would necessarily lead to a regrettable stagnation or even diminution of human happiness. Second, the creation of highly entrenched or immutable laws, premised on the assumption of the legislators' infallibility, would have grave consequences. Immutable laws were undesirable, because necessary adjustments could not be made to protect happiness in light of circumstantial changes or improvements in knowledge. Once this formal exclusion of amendment was reinforced through a widespread belief in the infallibility of the legislators and the products of their judgment, the laws would have particular normative weight: the laws would be viewed as transcendentally valid and correct and permanently beyond the bounds of alteration whatever their utility. Third—and this is a critical point—the rulers might well possess interests opposed to that of the people, which they could attempt to secure through legislation. Giving self-interested rulers the veneer of infallibility and the ability to enact immutable law would be disastrous—and, even worse, the people would not even wish to alter their laws, believing their rulers to be incapable of error. Legislators, through the implicit assertion of their infallibility via the creation of immutable laws, could thus permanently secure their interests against those of the people.

In Bentham's view, the effort to assert infallibility in creating immutable law was particularly egregious insofar as the Assembly was an aggregation of people with particular interests. In comparison, Bentham wrote, "The infallibility of the Pope *rentre dans l'ordre de la nature*. Twelve hundred infallible persons deriving their infallibility like the Bramins from birth, like the Popes from election, or like the Grand Lama from something between both, to all this I am ready to subscribe without difficulty."<sup>46</sup> To be certain, fallible men, "brought into the world without a miracle, subject to human infirmities and passions,"<sup>47</sup> composed the Assembly. The idea that any product of the Assembly could be infallible, Bentham argued, was outrageous: every act of the constitution emerged from a process of arguing and bargaining. The Assembly spent two and a half years "doubting, disputing, changing, struggling," and at some point, upon voting, "all of a sudden at a certain hour of a certain day have worked itself up into infallibility."<sup>48</sup> The product was the outcome of a series of compromises,

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<sup>46</sup> *NOL*, 279.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

and not a single member would have agreed to every provision in the document.

Bentham acknowledged that the Assembly might have had a response. They had not attempted to preserve particular pieces of legislation, nor did they regard these details as perfect; indeed, they might well be improvable. However, “were we to expose any one article to innovation, the change, the spirit of innovation, might extend to the rest—as there is no drawing of the line, it is for the sake of the whole that we must protect the parts.”<sup>49</sup> Yet, Bentham countered, if you, the Assembly, acknowledged the possible defectiveness of individual articles, this in turn suggested that “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.”<sup>50</sup>

The entrenchment of laws had further consequences for utility. If a law were to be deemed inexpedient in a relatively flexible constitution, a petition for redress could be offered and the law changed with minor difficulty. In the case of the French constitution, however, such a petition could not be formulated, and a challenge would therefore take the form of a “protestation of invalidity” to the constitution as a whole, leading to disobedience and, inevitably, to rebellion.<sup>51</sup> This tendency, Bentham suggested, could be seen in the Assembly’s attempt to use immutable law to give the “finishing stroke to the hopes of the Aristocrates.”<sup>52</sup> Through enshrining their constitution, they could quash aristocratic incursions; yet, Bentham argued, there was little risk that the aristocracy would be able to modify the constitution given their numbers. By leaving the constitution capable of amendment, the assembly would have offered the aristocrats some possibility of eventually modifying the constitution—yet what would have been the harm in so doing, as the possibility of the aristocrats gaining sufficient force was quite remote? In fact, amendable law might have stabilized the constitution, Bentham suggested. By permitting the possibility of amendment, the aristocrats might have been able to accept the constitution and work through normal procedures with the hopes of eventually acquiring enough power to make changes. As a consequence of the unamendable constitution, however, the aristocrats were driven to “desperation” and to fight, rather than to resignation and quiet endurance.<sup>53</sup>

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<sup>49</sup> *NOL*, 273.

<sup>50</sup> *Ibid.*

<sup>51</sup> *NOL*, 267.

<sup>52</sup> *NOL*, 277.

<sup>53</sup> *NOL*, 278.

Further, habits of obedience—that is, the disposition on the part of the members of the community to follow the rules created by an authoritative legislator<sup>54</sup>—could not develop when minor challenges would result in the shaking of the very foundations of the constitution. The loss of such a disposition to obey, because of uncertainty about the stability of the constitution more generally, would have profoundly disruptive consequences: the security of expectations that well-formulated norms enable would disappear. Successive legislatures would find themselves “judges in their own cause” in determinations of the coherence of their laws with the constitution, or would simply distort the meanings of the constitutional provisions to suit their needs, resulting in uncertainty and unpredictability.<sup>55</sup> Expectation of utilities, the prospect of receiving a future pleasure, required laws that stabilized patterns of behavior, and their loss would lead to misery.<sup>56</sup>

Bentham drew an analogy between the unchecked introduction of an incoherent law into a constitutional code and the “authoritative introduction of an absurd article of faith, of speculative theology”: for this to be permissible, “the whole mass of the understanding, the reasoning faculty, must have been vitiated and rendered weaker and less fit for use in every instance in which it can be employ’d.”<sup>57</sup> Through creating a largely immutable constitution, far from making laws familiar and predictable, the Assembly had doomed the French people—particularly the poor, he noted—to a life under legal uncertainty. In attempting to improve the defects of unamendable law, the legislature and lawyers alike would need to augment the law with “pretended explanations and interpretations straining the import of that language and putting forced constructions upon words.”<sup>58</sup> Like legal immutability, the use of legal jargon made the law inaccessible and inhibited the people from adopting a critical attitude with respect to both law and to legislators. In turn, this further weakened the faculty of judgment on the part of the people, making them especially vulnerable to sinister interests.<sup>59</sup>

By the time Bentham wrote “Nonsense upon Stilts,” the supposedly

<sup>54</sup> Habits of obedience, as Postema suggests, no doubt are “interactional”; they are in part coordinative in the sense that my decision to obey the law depends on my belief that others will do likewise (Postema, 249, and chapter 7, *passim*).

<sup>55</sup> *NOL*, 268.

<sup>56</sup> For a sustained discussion of expectation utilities, see P. J. Kelly, *Utilitarianism and Distributive Justice* (Oxford: Oxford University Press, 1990).

<sup>57</sup> *NOL*, 269.

<sup>58</sup> *NOL*, 268.

<sup>59</sup> See also Bentham, *Scotch Reform*, V13, quoted in Harrison 1983, 34, and the discussion by Dinwiddy in Twinings, ed., 2004.

immutable constitution had been out of force for three years. In the years since the beginning of the Revolution, he had become increasingly disenchanted, and although he had voiced objections to the Declaration of Rights previously, his rejection of the declaration prefacing the 1795 Constitution was vituperative, as if, in his language, he was assaulting it with a “pick-ax.”<sup>60</sup> Although the revolutionaries lambasted in “Nonsense Upon Stilts” could not make sense of the nonsensical term “natural right,” this did not keep them from enshrining it with an aim toward universal insurrections, secure in their superior knowledge. “In us is the perfection of virtue and wisdom: in all mankind besides the extremity of wickedness and folly.”<sup>61</sup> In creating “imprescriptible rights, these unrepealable laws,” the revolutionaries arrogated to themselves normative control over all future governments and citizens, forbidding them from determining the utility of this legislation. The “true source” of these immutable laws, Bentham suggested, was “Power turned blind by looking from its own height: self-conceit and tyranny exalted into insanity.”<sup>62</sup> The revolutionaries did not even acknowledge their own agency in creating these laws; instead, they pretended that they had merely discovered these laws, which derived not from God—“they allow of none: but their Goddess, Nature.”<sup>63</sup> In so doing, they created what they deemed to be inalterably correct and valid legislation, and secured for themselves nearly divine status.<sup>64</sup> Yet despite Bentham’s disillusionment with the French revolution, as Schofield notes, he was not inclined to ally himself with Burke: “The system of the democrats is absurd and dangerous: for it subjugates the well-informed to the ill-informed *classes* of mankind. Mr. Burke’s system, though diametrically opposite, is absurd and mischievous for a similar reason, it subjugates the well-informed to the ill-informed *ages*.”<sup>65</sup> Incoherent as the revolutionaries’ concept of rights might have been, at least it did not fall prey to the ancestor-worship endemic to the common law.<sup>66</sup>

<sup>60</sup> Bentham to Cobbett, 30 June 1801, *Correspondence*, vi. 409; Bentham Papers, University College London cxlvi, 239; quoted in Schofield et al., *Rights, Representation, and Reform*, xlvi.

<sup>61</sup> *Nonsense Upon Stilts* (NUS), in Schofield et al., *Rights, Representation, and Reform*, 331.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> See also Harrison, 104.

<sup>65</sup> Schofield et al., *Rights, Representation, and Reform*, lix.

<sup>66</sup> Bentham would develop this argument in *Political Fallacies*, in which he held that the “fallacy of the wisdom of our ancestors” was “pushed to the highest degree of extravagance and absurdity” in the fallacies of irrevocable laws and of vows (*Fallacies*, 54).

## IMMUTABILITY AND INFALLIBILITY IN BENTHAM'S LATER CONSTITUTIONAL WRITINGS

In his later work, Bentham again targeted immutable law for its “infallibility-assuming” nature, yet the discussion found in the *Third Tract on Spanish and Portuguese Affairs* is distinctive. Here, Bentham addressed the “Portuguese Nation,” telling them that he was an “unexpected friend” who had spent fifty years considering these matters.<sup>67</sup> He encouraged them to adopt a slightly modified version of the Spanish constitution, superseding the “stale” constitution of 1640. The crucial insight of the Spanish, Bentham argued, was the harmony of interests between ruler and ruled: “The one thing needful is that by which the interest of ruler is made the same with that of subject; of representative of that with constituent. This is what the Spanish constitution may be brought to do for you.”<sup>68</sup> The Spanish constitution, in this regard, embodied a key element of Bentham’s democratic thought. Simultaneously, however, it subverted his conception, as it included an “*immutability*-enacting, *alias* the infallibility-assuming clause.”<sup>69</sup> Bentham began his discussion of this clause by explaining the mechanism by which a time-limited entrenchment of the constitution might turn into the unamendable status of the constitution as a whole.

This is what my respect for Spain makes me almost ashamed to name. Amendment—none for eight years to come, and nobody can say for how much longer! As well might it have been said, no amendment till the end of time. The longer the thing continued without change, the stronger would be the reasons against change: the longer would be the experience of the needlessness of change.<sup>70</sup>

Amendment, like all other legal practices, required the cultivation of habits. For constitutional flexibility, a law permitting amendment had to be included from the start, so that there could be a general belief in the potential utility of change on which future reformers could draw in proposing changes. A habit of amendment, then, should develop alongside a habit of obedience, recalling Bentham’s famous phrase from the *Fragment* that the good citizen should “obey punctually” and “censure freely.”<sup>71</sup> If citizens

<sup>67</sup> *Third Tract on Spanish and Portuguese Affairs* (TTSPA), in Bentham, *Works*, 8: 482.

<sup>68</sup> TTSPA, 483.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Fragment*, 399.

did not actively regard their laws as fallible, and were inhibited from modifying their laws for a period of time, even once the “sunset clause” elapsed they would not recognize bad laws as amendable; eight years of entrenchment would quickly become forever. The rapidity with which the decision was made, Bentham argued, made the matter all the more grave. He would not have thought about establishing even a year’s immutability in a constitution of his own devising, Bentham wrote, despite the fact that he had been thinking of these matters for more than fifty years.

Although Bentham was clear that the Portuguese should not make their constitution unamendable, it is worth noting that he seems to have been of two minds on the value of entrenchment in Spain. In the “Letter to the Portuguese Nation” sent on October 31, 1820, Bentham initially defended the use of entrenchment in Spain, though with considerable regret: “Alas! this is not the only instance in which what is most absurd on the face of it may be not reasonable but necessary, by a reason which is not, because it cannot be, avowed. For this absurdity, glaring as it is, Spaniards (so they tell me) had a reason, and I fear too good a one.”<sup>72</sup> The reason, Bentham explained, was that constitutional collapse posed a substantial challenge during the transition from monarchy. In this context, immutable law served as a device “to anchor the constitution at the highest mark at which the flux should carry it, and thus to guard against the reflux which the remnant of despotism could not but labour to produce.”<sup>73</sup> A transitional political society, in which habits of obedience were not fully developed, might not be able to provide the legal certainty necessary for its citizens to anticipate the outcomes of actions. In the absence of such laws, not only could a person not expect to have her desires satisfied in the future, she could not even contemplate such future benefits. Bentham seems to have conceded here that the general utility was in this instance served by the time-limited use of unamendable law, although it was a cause for substantial regret: his pragmatic inclination seems to have trumped his general rejection of immutability as infallibility-assuming.

By March 1821, however, writing in “Rid Yourselves of Ultramarina,” Bentham seems to have changed his mind, arguing that immutability was undesirable even in Spain. Though Bentham still acknowledged that the Spanish argument for entrenchment was not “destitute of color,” he reconsidered the utility of such a provision in keeping with his earlier views on the matter. If a majority supported the “new order of things,” the Article

<sup>72</sup> *TTSPA*, 483.

<sup>73</sup> *Ibid.*

would be unnecessary, but if the majority supported restoration of the despot, the Article would be an inadequate bulwark against this effort: “[I]f you have no such majority on that side, your plea of this article will not avail you, the majority who, being against you, support the supposed liberticide article, will no more listen to your infallibility-assuming Article than you to the liberticide Article.”<sup>74</sup> This argument is consistent with Bentham’s views on the dangers of immutability and infallibility earlier in his career, notably in his response to the French constituent assembly’s efforts to stave off aristocratic incursions, and the reversion to the argument is thus not surprising. In Bentham’s final judgment, the use of entrenchment will be ineffective in thwarting a majority bent on change. At worst, identifying a harmful constitutional provision as unamendable may dupe the population as a whole into regarding it as infallible.

## CONCLUSION

Throughout his career, Bentham sought to argue on behalf of fallibility and against infallibility, and though rarely appreciated, Bentham’s discussions of these matters constitute an important link among his remarkably wide-ranging works, linking his “metaphysics,” his epistemology, his political theory, and his practical efforts at legal and political reform. Basing his arguments on his view of our imperfect faculties of judgment, Bentham sought to demonstrate that efforts on the part of established political and religious authorities to assert their own infallibility were profoundly harmful to human happiness. In particular, Bentham claimed that rulers sought to assert their own infallibility both as a direct means of securing their own interest and, even more dangerously, in order to distort the citizens’ faculties of judgments and thereby inhibit the public’s ability to criticize their actions. In the religious domain, the critique of infallibility targeted the claim that priests could perfectly determine God’s will and thus permanently fix the contours of the moral code; in so doing, the Church promoted ignorance and uncritical servility among its adherents. In the political context, similarly, rulers could not only secure sinister interests against the population, but through asserting their own infallibility could inhibit altogether citizens’ ability to evaluate the rulers’ behavior and to induce them to enact

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<sup>74</sup> *Colonies, Commerce and Constitutional Law: Rid Yourselves of Ultramarina and other writings on Spain and Spanish America*, ed. Philip Schofield (Oxford: Oxford University Press, 1995), 184.

necessary reforms. By enacting immutable provisions, whether in the form of articles of faith or constitutional laws, powerful actors at least implicitly asserted the perfection of their own judgment. By forbidding alterations, such authorities excluded the possibility of reforms in line with utility and, even worse, sought to deceive those subject to their rule that no such improvement would ever be necessary.

Powerful in their own right, Bentham's arguments may well have found an heir in John Stuart Mill. Mill most famously adopted both the language of fallibility and of infallibility in *On Liberty*; like Bentham, he used this language to target religious, political, and legal authorities. First, the assumption of infallibility extended to those who wished to forbid any debate over the existence of God. "Is the belief in a God one of the opinions, to feel sure of which, you hold to be assuming infallibility? . . . [I]t is not the feeling sure of a doctrine (be it what it may) which I call an assumption of infallibility. It is the undertaking to decide the question *for others*, without allowing them to hear what can be said on the contrary side."<sup>75</sup> Mill's account of organized religion is more charitable than Bentham's on this score: "The most intolerant of churches, the Roman Catholic Church, even at the canonization of a saint, admits, and listens patiently to a 'devil's advocate.'"<sup>76</sup> But Mill's primary target was political authority: it is in this context that he turned to the discussion of the liberty of thought and discussion. The beginning pages of chapter 2 of *On Liberty* highlight this point. Although one might argue that "there is no greater assumption of infallibility in forbidding the propagation of error, than in any other thing which is done by public authority on its own judgment and responsibility. . . . If we were never to act on our opinions, because those opinions may be wrong, we should leave all our interests uncared for, and all our duties unperformed." Further, he concurred that tyranny was readily linked to the premise of infallibility. While all acknowledged human frailty, few—particularly rulers—were inclined to view themselves as fallible: "Absolute princes . . . usually feel this complete confidence in their own opinions on nearly all subjects."<sup>77</sup> Mill adopted the language of fallibility on legal matters as well: as we have already seen, he invoked an appeal to fallibility in supporting the parliamentary reform bill. (Further, Mill identified as a major contribution of Bentham's legal thought the creation of a code that had "a perpetual provision for its own emendation and improvement"<sup>78</sup>.)

<sup>75</sup> Mill, CW 18: 234.

<sup>76</sup> Mill, CW 18: 232.

<sup>77</sup> Mill, CW 18: 230.

<sup>78</sup> Mill, CW 10: 104.

The democratic theory of both Bentham and of Mill rests in no small part on the development of the critical faculties of judgment necessary to ensure progress and to check the encroachments of sinister interests. In Skorupski's account of Mill, "A training in the intellectual virtues which are necessary for the citizens of a well-functioning democracy is impossible without the educative influence of liberty of expression. People who are shut out of free discussion are stunted and diminished—they are prone to the diseases of reason, to paranoia, to the defensive aggression that arises from ignorance and lack of self-confidence, to exploitation by demagogues."<sup>79</sup> Bentham, too, argued that in the face of unchallengeable rules and the assertion of infallibility, men's minds would be dependent, incapable of exercising the faculties of judgment necessary to ensure even their own security.

Neither Mill nor Bentham thought that these rulers necessarily had a sincere belief in their own infallibility. However; both recognized that these actors might well have manufactured this belief as a means of effectively countering the capacity of the people to marshal themselves against their interest. Further, both knew well that the language of fallibility and infallibility constituted an effective rhetorical device against authorities. But this should not minimize the extent to which we regard these arguments as important elements of their thought. Both Bentham and Mill believed that general happiness depended upon the ability of the people to see through these assertions of infallibility, thereby enabling them to perform their functions of controlling such authority. To do so, the public would need to have greater confidence in their own judgment, which, in turn, could only be justified through an awareness of its imperfection.<sup>80</sup>

Columbia University.

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<sup>79</sup> Skorupski, 387.

<sup>80</sup> This article is a revised version of a paper presented at seminars at University of Virginia, New York University, and The George Washington University, as well as at the 2003 International Conference of the International Society for Utilitarian Studies, the 2004 American Political Science Association Annual Meeting, and the John Stuart Mill Bicentennial Conference. I am grateful to commentators and participants at all these sessions.