Jeremy Bentham, the French Revolution, and the political economy of representation (1788 to 1789)

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1. Introduction

In 1788 the news coming from Paris that the Estates-General had been summoned incited Jeremy Bentham to write a series of proposals on the arrangement of the new representative system and on the most urgent policy measures.1

This paper studies these proposals, on the assumption that Bentham examined the problems of French constitutional reform with a politico-economic approach. The close connection between political representation and political economy emerged many times in his writings of this period. On the one hand, Bentham was convinced that many crucial decisions the new Parliament was called to take concerned market policies and public finance. In the analysis of these problems, Bentham heavily relied on Adam Smith, even though on some issues – such as that of usury laws – he dissented from him.

In this paper I will focus on the reverse side of the connection; that is, on those parts of Bentham’s analysis in which an economic methodology is employed to study the characteristics of representative institutions.

In his early manuscripts on punishment and reward and on the principles of civil and penal law – the materials Etienne Dumont assembled together to compose the Traité de législation civile et pénale

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1 A critical edition of these texts, most of which remained in manuscript, is now available thanks to the editors of the Bentham Project (Bentham 2002).
Bentham developed an accurate ‘economy’ of incentives, penalties, norms and institutions, which was grounded on hedonistic standards and was intended as a basis for the utilitarian reform of law (Hume 1981; Lieberman 1989; Guidi 2002). It was natural for him, in 1788 and 1789, to apply the principles there established to the analysis of French constitutional reform. Such an ‘economic’ approach allowed Bentham to offer a systematic analysis of the mechanisms of representation and to deal with a large array of questions. These can be classified under two broad categories: on the one hand there were the genuine problems of constitutional choice. Taking as a guideline the ‘variables’ listed by Buchanan and Tullock (1990 [1962]: 223), Bentham examined the following issues:

- the rules for electing members to the legislative assembly (the extent and limits of suffrage);
- the basis of representation (the right to be elected, the formation of constituencies); and
- the degree of representation (the optimal dimension of an assembly and the optimal duration of parliaments and sessions).

The other general category is that of the incentives to ensure the smooth functioning of representative institutions: here Bentham discussed the question of the timing of parliamentary speeches, the reasons of absenteeism, the phenomena of lobbying, logrolling, bribery in election, and the role of public opinion in controlling the operations of Parliament.

Bentham’s writings on the French Revolution were not an isolated attempt to apply an economic analysis to the study of political institutions: further evidence can be found in his works on parliamentary procedure (‘political tactics’ in Bentham’s terminology) (Bentham 1999 [1788–89]; see Guidi 2008a) on the Panopticon prison (Bentham 1838–43 [1791]; see Guidi 2004), and on Poor management (Bentham 2001; 2009). Obviously, this does not mean that these texts can be read only with economic lenses. There are genuine questions of legal and political normativity that appear, for example, in the analysis of the right to vote and of the (for Bentham fallacious) language of natural law and natural rights. The thesis advanced by the present paper is more limited: I suggest there is an independent and recognisable set of economic arguments that are mixed with, and contribute to, Bentham’s political theory.

2 The history of these texts has been recently reconstructed by Blamières (2008).
A thesis underlying this paper, albeit not developed here for reasons of space, is that Bentham’s interest in the ‘economy’ of political phenomena derived from an idea of the nature and scope of political economy that was broader than the nineteenth-century notion of ‘the science of wealth’. Bentham shared this view with Smith, Edmund Burke and many other contemporaries, although he formulated it in a peculiar way: political economy was the ‘art-and-science’ of the legislator concerned both with commercial and financial policies, and with the efficient organisation and administration of the social and political machinery. Bentham’s proposed reform of this branch of knowledge consisted less in the delimitation of its scope than in the utilitarian restatement of its goals, focusing on the rational economy of punishment, reward, motivation, information, and resources, in order to attain ‘the greatest happiness of the greatest number’.  

For reasons of brevity, this paper concentrates on two questions: after a brief survey of the literature on Bentham’s political ideas at the time of the French Revolution (Section 2), it studies his ideas on the optimal dimension of parliaments as an example of economic analysis of constitutional choice (Section 3), and his peculiar opinions on bribery in elections as a case of reflections on the incentives for a correct functioning of representative institutions (Section 4).

2. On Bentham’s political attitude at the time of the French Revolution

The publication of Bentham’s manuscripts on France sheds some light on one of the most controversial issues in the interpretation of his political thought. The origin of this controversy dates from Élie Halévy’s publication of the ‘Essai sur la représentation’, an abridged version of one of Bentham’s manuscripts, as an appendix to volume one of La formation du radicalisme philosophique (Halévy 1995 [1901–03]: 314–21). Taken in isolation, this text seemed to demonstrate that, as soon as 1788, Bentham had already embraced some democratic ideals. However, Halévy was careful in arguing that this was just an antecedent: the crucial date for Bentham’s ‘conversion’ to radicalism was 1808 to 1809, when he met James Mill and started writing on parliamentary reform. In 1962 Mary Mack

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3 For more details on this interpretation of Bentham’s economic ideas, see Guidi (1990; 2002).
4 Bentham’s manuscript was actually entitled ‘Considérations d’un Anglois sur la composition des États-Généraux y compris réponses aux questions proposées aux Notables &c.’ (hereafter ‘Considérations’). See Bentham (2002 [1788b]).
published the English translation of the ‘Essai’ (Mack 1962), claiming that, contrarily to Halévy’s opinion, Bentham definitively converted himself to representative democracy in 1788 and 1789. His apparent return to more conservative views after the massacres of September 1792 could be explained as a ‘tactical’ or ‘Fabian retreat’. John Dinwiddy (2004 [1975]: 123) agreed on Bentham’s early ‘conversion’ to universal suffrage, although he was convinced that the conservative evolution of the 1790s was sincere rather than tactical (see also Burns 1966). Later, James Burns (1984) pointed out that in 1788 and 1789 Bentham considered representative democracy and universal suffrage only as solutions to the French political crisis, while all along the revolutionary period he never raised doubts about the virtues of the British constitution.

The new critical edition of Bentham’s writings on France reveals a different story; there was surely no ‘conversion’ to representative democracy in 1788. Despite an abstract formulation of the principle of universal suffrage, ‘Considérations’ recommended property qualifications that de facto excluded the large majority of the French population from the vote. Only in a manuscript written in autumn 1789, entitled ‘Projet of a Constitutional Code for France’ (Bentham 2002 [1789b]), he went so far as to include the non-propertied among electors (Schofield 2006: 89–91). As for Britain, Bentham’s attitude was largely inspired by the tenets of Whig politics. In a text entitled ‘Lettre d’un Anglois à M. le C. de M. sur l’objet soumis aux Notables de 1788’ (hereafter ‘Lettre’) (Bentham 2002 [1788a]: 7), he argued that in the case of Britain almost all that had to be made to secure a free constitution was ‘already done, and well done’.5 And he concluded: ‘Finally, despite all my zeal to see established in your country a perfectly equal representation, I must confess that I have not yet found sufficient reasons to express the same wish with regard to my homeland’. Nonetheless, during a short parenthesis in 1789, Bentham’s manuscript notes make a clear case for electoral reform in Britain. But doubts about the opportunity to introduce radical changes already rose in 1791, well before the most dramatic turn of French politics (Schofield 2006: 94–100).

Recent research has also shown that Bentham’s ‘transition to political radicalism’ was a process gradually developing during the first decade of the nineteenth century, rather than the fruit of a sudden ‘conversion’ favoured by Mill. Its starting point in 1803 was Bentham’s disappointment for the failure of the Panopticon scheme (Semple 1993; Blamires 2008: 84–94; Schofield 2009: 11), followed by the discovery of the notion of ‘sinister interest’ in 1804 (Dinwiddy 2004 [1975]: 115–16; Schofield 2006: 110–11

5 All translations from the original French in which these texts were written are mine.
and 137–40). As Philip Schofield observes, the anti-radical political climate established in Britain in the 1790s retarded:

the creation and propagation of the utilitarian case for democracy. Bentham was edging towards the development of a democratic utilitarian politics until the excesses of the French Revolution persuaded him to abandon this course, and instead to defend the existing institutions of the British polity. (2006: 108)

3. The optimal degree of representation

Among the aspects of the economic analysis of constitutional choice that Bentham’s manuscripts contain, one of the most critical questions is that of the ‘degree of representation’ (Buchanan and Tullock 1990 [1962]: 213–14); that is, the proportion of the population that should sit in the representative assembly. Bentham read that in the decree calling the Estates-General the number of representatives had been fixed at 1200, and he avowed his scepticism:6

What shall we do of 1200 members at the same time? How to preserve order? How to come to any resolution? It would even be difficult to listen to all this multitude in a proper way. (Bentham 2002 [1788a]: 31)

To justify his perplexity, Bentham developed an original theoretical analysis, focusing on the question whether there was an optimal dimension for a Parliament. In the ‘Lettre’ he stated:

It is certain that the probability of a wise decision rather than of a bad one increases with the number, and so does the probability against reaching any decision, and the slowness of such a decision, assuming that it will be reached. (Bentham 2002 [1788a]: 35)

This passage presents two striking features:

1. it defines a functional relation between a domain (the number of voters) and a number of different co-domains (probability and quickness of decisions); and
2. two of three dependent variables are probabilistic.

Let us examine these characteristics one by one. To begin with, Bentham formulates three distinct functional relations:

1. the probability that a ‘wise’ decision is taken, and its contrary – the probability that a ‘bad’ decision is not taken – are a positive function of the number of members;

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6 For more details, see Schofield (2006: 277–8).
2. the probability that a decision, ‘wise’ or ‘bad’, is actually taken is negatively correlated to the number of members; and
3. the duration of the decision-making process is positively correlated to the number of members.

Obviously, the notion of ‘wise decision’ is not falsifiable. However its meaning is easy to grasp, reminding that in *An Introduction to the Principles of Morals and Legislation* – written in 1780 although published only in 1789 – Bentham stated that the only meaning of ‘the words *ought*, and *right* and *wrong* and others of that stamp’ is that the action prescribed is ‘conformable to the principle of utility’, and such conformity occurs ‘when the tendency it has to augment the happiness of the community is greater than any it has to diminish it’ (Bentham 1970 [1789a]: 12–13). A ‘wise decision’ is then a ‘useful decision’; that is, a decision that maximises the total utility of the ‘community’: in the case of a representative assembly, the utility of the represented.\textsuperscript{7}

In the cardinal utility approach adopted by Bentham, this is an unambiguous criterion for assessing the validity of the decisions taken by an assembly. The first relation means that, assuming a population equal to \(n\), the more the degree of representation becomes inclusive; that is, the more the number of representatives moves from \(1/n\) to \(n/n\), the higher are the chances that the decision taken will maximise total utility. It is important to observe that a decision that maximises aggregate utility is not \textit{per se} any decision taken by a simple majority \((n/2+1)/n\).\textsuperscript{8} Bentham became increasingly dissatisfied with the formula for ‘the greatest happiness of the greatest number’ he had initially adopted, and in the *Introduction* he replaced it with ‘the principle of utility’. Then, in a note added to the 1822 edition, he declared to prefer the formula ‘\textit{greatest happiness or greatest felicity} principle’ (Bentham 1970 [1789a]: 11, note a),\textsuperscript{9} because, as he explained in the *Article on Utilitarianism*, if we divide a community into two unequal parts, and we maximise the interest of the majority, the result is a loss of happiness because of the entire sacrifice of the minority (Bentham 1983 [1829]: 309–10). In the present case, there is room for improving the utility of a decision as the number of

\textsuperscript{7} See Bentham (2002 [1788c]: 161): ‘Utility, the greatest possible amount of enjoyment, the least possible amount of sufferings, this is the measure and the test for the goodness of any government, and this measure, if not incontestable, is at least the one I would like to be regarded as such’.

\textsuperscript{8} Notice that so far we have examined the degree of representation, not the decision rule. More on this later.

representatives approaches the total population; that is to say, the larger the number of different and potentially diverging interests that are represented in Parliament.

As for the second and third relationships, Bentham’s reasons recall Buchanan and Tullock’s (1990 [1962]: 45) notion of ‘decision-making costs’. However, Bentham has in mind the technical problem of managing a large assembly rather than the objective difficulty of reaching a compromise between diverging interests: negotiations become arduous when the number of members is elevated, and even keeping order in a large assembly is impossible. The crucial obstacle to decisions is the high number of speeches before voting: ‘what threatens the embarrassment, is less the mass of voters than the mass of speakers’ (Bentham 2002 [1788a]: 37).

There is a trade-off between inclusiveness and efficient decision-making, and the problem consists of finding an optimal compromise between them. To solve this problem we can observe that the three relationships listed above are reciprocally independent. Nonetheless, the first and second are not completely disconnected, considering that *ex post* the amount of useful decisions is a subset of the total number of decisions actually taken, the other subset being that of ‘bad’ or ‘non-conformable’ decisions.

A similar connection can be established *ex ante* between the probability that a single decision (useful or harmful) is taken \( p_D \), and the probability that the same decision (assuming that it will be taken) be useful \( p_U \), both considered a function of the number of members \( n \). Although Bentham does not specify their laws of variation, we may assume that as the number of representatives increases, the probability of a decision decreases more than proportionally, while the probability of a useful decision increases although in a decreasing proportion. Therefore:

\[
p_D = p_D(n), \quad \text{with } p_D' < 0
\]

\[
p_U = p_U(n), \quad \text{with } p_U' > 0, \quad \text{and } p_U'' < 0
\]

How should the legislator decide the optimal number of representatives elected in an assembly if he/she intends to maximise useful decisions? The product of the above probabilities \( p_U p_D \) could provide the required criterion: it expresses the idea that for any decision to be taken, the probability that this decision will be useful *if taken* is a subset of the probability that the decision will *actually* be taken. When the number of representatives is low, \( p_D \) is high, but the proportion of useful decisions is very low because \( p_U \) is low. Then this proportion increases under the influence of increasing \( p_U \), until it reaches a maximum. After this, it starts...
decreasing under the prevailing influence of \( p_D \). The value of \( p_u p_D \)
converges to \( p_D \) when the latter is equal to zero. Therefore an optimal
dimension of the assembly is for \( \max p_u p_D \). Figure 1 describes these
relationships.

Although a rational reconstruction of Bentham’s arguments, this
solution is entirely consistent with his assumptions and captures the nature
of the trade-off between the two variables.\(^{10}\)

As for the relationship between the number of members and the
‘slowness’ of decision-making, we can reformulate it as a positive relation
between duration and the number of participants. Assuming that this
relation is linear, we can reduce our variables from three to two: the
probability of a useful decision and the duration of the process, both
functions of the number of members. Figure 1 can then be represented by
replacing members with duration on the horizontal axis, all other things
being unchanged. The duration of negotiations is then an index (or a
phenomenon) of the reasons why the probability of decisions decreases as
the number of representatives increases.

However, Bentham cautiously concludes that the theory only provides a
framework to assess the optimal dimension of Parliament. The choice of
the actual number of representatives could be made only by comparing a
large number of empirical data on the membership of different
parliaments. But parliamentary experiences were so limited at his time
that no conclusion can be certain.\(^{11}\)

\(^{10}\) Although the variables chosen are different, it is easy to see the isomorphism
between this analysis and Buchanan and Tullock’s (1990 [1962]: 71) solution,
consisting of minimising ‘the sum of the expected external costs and expected
decision-making costs’. The external costs are those imposed on an individual by
other individuals (including those imposed by the decisions of the legislative
body itself), and the decision-making costs are the costs of negotiation. The
external costs decrease as both the number and the proportion (1990 [1962]:
106–9) of participants increase for reasons that are similar to those Bentham
adduces to explain the upward-sloping shape of the probability of a useful
decision curve. The decision-making costs increase with the number of
participants, just as the probability that a decision is taken decreases. Note that
Buchanan and Tullock’s choice to deal with the problem in term of costs only
instead of costs and benefits is presented as a device to simplify the analysis

\(^{11}\) ‘We do not have enough experience to decide in one sense or another. Modern
politics provides us with no example of so numerous a body keeping a constant
administration’ (Bentham 2002 [1788a]: 35). In his later works on parliamentary
reform Bentham recommended a quite large number of representatives,
(1989: 99), Condorcet had the same concern for the empirical verification of his
‘models’.
As noticed above, the fact that the key variables in this analysis are the probabilities of decisions raises the problem of the connection between Bentham and Condorcet’s famous study of voting in the Essai sur l’application de l’analyse à la probabilité des décision rendues à la pluralité des voix (Condorcet 1785). Was Bentham implicitly referring to it? Was he attempting to reformulate Condorcet’s conclusions in a way he considered more consistent with the greatest happiness principle? And was his contribution original vis-à-vis that of Condorcet?\(^{12}\)

The discussion on the dimension of the Estates-General makes no allusion to the ideas of the French philosopher. However, in ‘Considérations’ Condorcet is mentioned along with Pierre-Jean-Baptiste

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\(^{12}\) A preliminary question is that of Bentham’s concept of probability. Although we cannot deal with it here for reasons of space, Bentham dealt extensively with the nature of probability in his writings on evidence, where the apparent influences are David Hume and Richard Price (and therefore Thomas Bayes). See Bentham (1838–43 [1808–10 ca.]: 45–7; 1838–43 [1827], VI: 243 and VII: 4–5). But probability is also one of the ‘circumstances’ or ‘dimensions’ in the calculation of utility examined in Chapter 4 of the Introduction. See Bentham (1970 [1789a]: 38–9).
Gerbier, Gui-Jean-Baptiste Target, Pierre-Louis Lacretelle and the Count of Mirabeau in a list of expert ideal candidates for a seat in the French Assembly (2002 [1788b]: 95). Although he was not among his correspondents, Condorcet is mentioned in a draft of a letter to André Morellet (28 April 1789) concerning the French translation of Tactics, as a potential interested reader of this work (Bentham 1981: 50, note 10), while in a letter to Adam Smith dating from early July 1790 he refers to Condorcet’s Vie de Turgot (1786). There are some other references in the correspondence of these years, but no mention is made of the Essai. Ironically, it was Condorcet who made reference to Bentham’s works on representation. When he became a member of the Legislative Assembly, he experienced the chaotic operation of parliamentary activities, caused inter alia by the unfit shape of the Manège des Tuileries in which MPs gathered (Badinter and Badinter 1988: 394–6). In the ‘Révision des travaux de la première législature’ (Condorcet 1847 [1792]), he argued that chaos prompted factions, conflict and demagogy, repeatedly quoting Bentham’s Political Tactics (Baker 1975: 307).

Despite this poor evidence, it is tempting to see a parallelism between Bentham’s and Condorcet’s analyses. The complex study of the French philosophe, based on the mathematics of probability calculus, turns around a very similar set of questions. The four ‘essential points’ he aims to study are the following:

1. the ex-ante probability that an assembly will not produce a false decision;
2. the ex-ante probability that it will produce a true decision;
3. the ex-ante probability that it will produce a decision, true or false;
4. the ex-post probability that a decision actually taken by (a) an unknown majority; (b) a known majority, will be true rather than false (Condorcet 1785: xviii–xix; Baker 1975: 235).

The analogy between the first three points and the variables of Bentham’s analysis is striking and bears out the thesis of a direct line of inspiration. There are, however, some important differences. Condorcet’s study deals at the same time with decisions taken by legislative assemblies and tribunals. Indeed, the very origin of the Essai is related to discussions between Condorcet, Beccaria and Turgot about the reform of the French penal code announced by Maupeou in 1771 (Baker 1975: 231–3). As Keith Baker writes, the aim of the Essai is to understand ‘[u]nder what conditions will the probability that the

13 However, Condorcet was not elected. See Badinter and Badinter (1988: 263–73).
majority decision of an assembly or tribunal is true be high enough to justify the obligation of the rest of society to accept that decision’ (Baker 1975: 228). This may explain why Condorcet’s decisions are ‘true’ or ‘false’ rather than ‘useful’ or ‘harmful’. There is, however, a stronger reason: Condorcet is convinced that the rational use of probability calculus will transform political decisions from procedures based on passions, prejudices and corporative interests into a collective method for discovering the truth. There are ‘true’ political decisions, that is to say decisions based on reason and science. Never does he think of a political arena as a place in which individual or group interests are discussed and efficiently reconciled. In his view, it was rather a vice of ‘the constitutions of ancient peoples’ that they ‘attempted much more to counterbalance the interests and passions of the various bodies which took part in the constitution of a State, than to obtain from their decisions results that were consistent with truth’ (Condorcet 1785: iii, quoted by Granger 1989: 95–7).

But what is ‘true’ in a political – that is, in a normative – decision? According to Condorcet, true is conformable to reason and to the law of nature. He rejected utilitarianism in favour of a theory of the rights of man that was deeply rooted in the natural law tradition (Baker 1975: 214–25). Bentham was hostile to this approach, and in the early years of the French Revolution he wrote an attack to the declarations of rights that implicitly challenged Condorcet’s ideas (Bentham 2002 [1795]). For him, a ‘true’ political decision, especially if true meant ‘conformable to natural rights’, was ‘nonsense upon stilts’, a statement that ostensibly violated Hume’s is–ought distinction (Schofield 2006: 51–77). Bentham’s strategy of political enlightenment was opposed to that of Condorcet: from passions and prejudices to utility maximisation rather than to the triumph of the law of nature.

A second difference between Condorcet and Bentham relates to the analysis of the means through which a ‘true’, or ‘efficient’ decision can be reached. In Condorcet’s case, the crucial criterion is the extent of the required majority. Since every individual has a subjective probability to discover the truth, and this probability can be either higher or lower than 0.5, a simple majority may not produce a reasonably true decision. Roughly speaking, the majority qualification must increase as the average probability of individual votes decreases. The assembly size is taken into account essentially in relation to this problem. The higher the number of participants, the lower will be the average enlightenment of members (see Granger 1989: 116–17). Therefore, the majority qualification must increase with the size of the assembly, to compensate for the diminishing lumière of participants and keep the probability of a true decision unchanged (Condorcet 1785: xxxiii and 53–4). In a famous example,
Condorcet demonstrates that, with the same majority of 15 votes, the probability of a true decision is lower in an assembly of 425 members in which the ayes outnumber the nays by 225 to 205, than in an assembly of 25 people splitting by 25 to 5 (Condorcet 1785: cxxix and 242). Similarly, the time required to take decisions increases as the majority required increases (Condorcet 1785: cxv).

Bentham reveals no interest for majority qualifications. Taking as a guideline the functioning of the British Parliament, he assumes simple majority as a rule. Nor is his analysis of the number of members grounded on any specific assumption about the probability of individual votes, still less on interpersonal differences in this probability. In a way, there is no reason why there should be such a difference, since in the first sections of ‘Considérations’ – as in the initial page of the Defence of Usury (Bentham 1952 [1787]: 129), and in many other texts – Bentham explicitly formulates the principle that every individual is the best judge of his own interest. It is this interest that is represented in Parliament, not any abstract notion of common good; and consequently the larger the number of participants, the more faithful will be this representation. On this point Bentham’s conclusion is opposed to that of Condorcet, who is convinced that extending the size of an assembly reduces the enlightenment of participants, and consequently, ceteris paribus, its capacity to discover the common good. Condorcet prefers representative democracy to direct or ‘pure’ democracy on this ground. The complicate mechanisms for the election of representatives he proposes in the Essai sur l’application de l’analyse (Condorcet 1785) and in the Essai sur la constitution et les fonctions des assemblées provinciales (Condorcet 1788) aim at limiting the function of ordinary citizens to the right to elect, and leave the responsibility of taking decisions in Parliament to the most enlightened. Bentham’s preference for representative democracy is only based on efficiency considerations and derives from the balancing between the cost of negotiation and the benefit of a faithful representation of individual interests. It is for this reason that the question of the degree of representation, rather than that of the decision rule, is so central for him. Bentham seems to be directly critical of Condorcet when he argues that: ‘The chance of wisdom increases with the number of members. So many members, so many sources of enlightenment’ (Bentham 2002 [1788b]: 122).

Finally, there is no trace in Bentham of Condorcet’s optimum method of voting, based on the well-known ranking of pairwise comparisons of candidates, measures, opinions, etc. (depending on the nature of the vote). In cases in which there is a choice among three or more options, this mechanism avoids ‘Borda’s paradox’, i.e. the case that an option
having a minority of opinions in its favour may prevail only because it receives a relative majority of votes (Baker 1975: 237–40; Granger 1989: 118–24).  

All this comparison leaves the question of Bentham’s debt towards Condorcet still open. On the whole, the important differences we have observed seem to reveal an independent albeit parallel – and possibly informed – reflection. They also reveal some notable elements of originality that fully justify a reconsideration of Bentham’s place in the early history of the economics of constitutional politics.  

The originality of Bentham’s contribution appears still more evident in ‘Considérations’, where the question of the degree of representation is mixed with that of the basis of representation; that is to say, the criteria for the choice of constituencies (Buchanan and Tullock 1990 [1962]: 218–19). Here Bentham examines a trade-off (‘two considerations acting in opposed directions’) between two variables, ‘both unfortunately indeterminate’ (2002 [1788b]: 119): the size of the polling districts and the number of representatives.

Bentham argues that the number of representatives ‘should not be so small that, given the size of the polling districts, and the mass of voters in each district, the influential force of each vote be reduced to a trifling value’ (2002 [1788b]: 119). The dimension of a district should be small enough to leave each elector with a significant influence on the legislative body. This may sound utopian in a large nation, where the marginal influence of an individual vote is near to zero. But Bentham is probably considering the notion of ‘influence’ in a broader sense, including the collective operation of public opinion and the strength of communication channels between the representatives and the represented, and from this point of view small districts certainly increase the voters’ influence on the elected.

On the other hand, the number of representatives ‘should not be so large to bring to an end those affairs whose difficulties appear to be

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14 However, the level of discourse of Bentham’s tracts of 1788–89 was different and more practical than the abstract point of view adopted by Condorcet in the Essai. In his political writings and discourses of 1788–93, even Condorcet put his ‘method’ aside in favour of simple majority and more standing vote mechanisms. See Granger (1989: 141–2).

15 The fact that Bentham’s manuscripts remained buried in the University College Library for more than two centuries partially explains why no mention of this author is made in Buchanan and Tullock (1990 [1962]), despite their interest for ancestors of that theory.

16 Interestingly enough, in some anti-republican drafts written in 1792 and 1793, the period of Bentham’s ‘retreat’, he uses exactly this argument against universal suffrage, maintaining that the larger the number of electors, the lower the value of each vote. See Schofield (2006: 102), and James (1982).
insuperable’ (Bentham 2002 [1788b]: 119). Again, the number of deputies should be small enough to maximise the probability of decisions, and consequently of useful decisions.

Let us try to reformulate this trade-off in terms of the optimal dimension problem. The following arguments hold:

1. the value of votes decreases as the dimension of polling districts increases;
2. in a system of single-member constituencies, there is an inverse ratio between the dimensions of districts and the number of representatives – therefore, the value of votes increases as the number of representatives increases; and
3. stretching the meaning of Bentham’s words, the value of votes can be translated into the familiar variable of the probability of a useful decision, which as we known increases with the number of representatives – by the way, this argument offers a further explanation of the latter relationship, since each representative knows better the interest of her electors when the dimension of the district is small.

We can then put together the optimal dimension of districts and the probability of useful decisions, arguing that in order to be optimal, the dimension of a district should maximise $p_U p_D$. The results are described in Figure 2. The optimal dimension of a district depends on the number of members that maximises the probability of a useful decision.

Following a usual pattern of argumentation, Bentham examines the reasons in favour of a large number of representatives, and refutes them one by one.

An interesting argument is the following: ‘The chance of probity increases […] as the number increases. The larger is the number of persons to corrupt, the more the funds available for corruption risk to be insufficient’ (Bentham 2002 [1788b]: 121). Bentham objects that this argument holds only for the corruption ‘from above’; that is, the influence of the court. It does not apply to that ‘prevarication that is found in the exorbitant personal pretensions of a class or of more classes among the members of Parliament’ (2002 [1788b]: 121). He probably alludes to the sinister interest of the aristocracy and the clergy, but this remark could be applied to any other class or group of interest.

That he has not yet experienced the strong disappointment following his attempt to implement the panopticon plan can be shown by his comment: he considers the corruption of the court as ‘the antidote offered by the happiness of the moment against innate corruption’ (2002 [1788b]: 121).
Class corruption depends in turn on the efficacy of logrolling: ‘To this effect, the absolute number of individuals has no influence: all depends on the relative proportion between classes’ (2002 [1788b]: 121). Representation by orders must therefore be rejected. Furthermore, the lack of funds to corrupt large numbers is not a valid argument in their favour: ‘Neglecting the mass, all would consist in buying the heads of factions. Corruption, instead of being made per capita, would be made per stirpes’ (2002 [1788b]: 122).

The last remark reveals another interesting relationship:

… the lower becomes the significance of each vote, the less the voter cares for it, and the lower is the force of the incentives tending to persuade him to overcome the vis inertiae of indolence, the more he submits himself to the influence of those dominant minds who offer to take charge of the pain of thinking in his place. (Bentham 2002 [1788b]: 122)

In this passage Bentham affirms that the subjective value of an ordinary representative’s vote decreases as the number of members increases, until it becomes lower than the cost of voting. Hence the role of political leaders,
who increase the ‘objective’ value of votes by controlling large numbers of representatives, and then divide the rent thus obtained with their followers.

As to the cost of voting, it is composed of two elements: the ordinary toil and trouble, and the ‘peine de penser’, or the cost of deliberating; that is to say, the cost of evaluating alternative proposals. When the vote of a representative is ‘purchased’ by a leader, the cost of deliberating is transferred to the latter, who benefits from obvious economies of scale (Figure 3).

Let us call $R$ the ordinary representative, $L$ the leader, $a$ the cost of voting including the cost of deliberation, and $b$ the cost of the ordinary toil and trouble. Then $(a - b)$ is the cost of deliberation. By assumption, costs $a$ and $b$ are equal for $R$ and $L$. We then call $v_R(n)$ the function of the value of votes for $R$, and $v_L(n)$ that of $L$. The distance between the two resulting curves represents the benefit from aggregation.18 If we suppose that the number of representatives is equal to $n_1$, $R$ obtains no value from his individual vote without participating in coalitions. If he ‘sells’ his vote to $L$, he reduces his cost to $b$. On her side, as a result of aggregation, $L$ obtains an extra value equal to $r$. Who appropriates the difference $a - b$? As $R$ is indifferent whether to vote or not, $L$ can ask him a fee for the cost of deliberating, equal to this difference. Therefore, the leader’s rent is $r - b$, and that of the

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18 They run parallel by assumption.
ordinary representative is null. However, \( n_1 \) is not the maximum number of representatives for which voting is beneficial to \( L \). Moving right of \( n_1 \), \( L \) has to drop an increasing amount of fees, to compensate \( R \) for the loss of welfare, until the number of representatives is equal to \( n_2 \). Beyond that size, if there is still some profit in voting, \( L \) will have to pay \( R \) a premium as now \( R \)'s value of voting is lower than the toil and trouble. However, \( L \) has still an interest in buying votes until her benefit equals the reimbursement paid to \( R \) \((n_3)\).

A property of this relationship is that \( R \) has an interest in selling his vote to \( L \) whatever the number of representatives, since in any case he reduces his cost of voting from \( a \) to \( b \). However, his reserve price is higher when the value of his vote is higher than \( a \). So \( L \) must leave \( R \) a share of the total ‘rent from coalition’ \([v_L(n) - b]\) at least equal to the benefit he would reap from voting independently \([v_R(n) - a]\). This implication is not fully grasped by Bentham, who plausibly points out that \( R \)'s inducement to sell his vote increases as its value tends to equal the cost.

Finally, Bentham examines the new trade-off that appears by opposing the decreasing value of voting to the increasing probability of useful decisions (2002 [1788b]: 122). Wisdom and enlightenment increase as the number of participants increase; however, ‘the strength of motives required to bring such an enlightenment forward’ diminishes, because the value of individual votes decreases. However, Bentham adds that in modern times ‘wise’ proposals are formulated by the public opinion, and there is no reason to increase the number of representatives for this reason (2002 [1788b]: 122–3). Paradoxically, Condorcet’s obsession with the representatives’ enlightenment is replaced by a perspective in which an assembly of ‘trained monkeys’ cleverly execute the dictates of an enlightened public opinion.

4. ‘Bribery laws bad’

One of the most astonishing arguments found in the manuscripts of 1788 concerns bribery in elections. The surprise rises from the fact that in Bentham’s later works on constitutional law bribery is considered a means in the hands of the ‘ruling few’ to favour their ‘sinister interest’, and secret ballot is indicated as a solution against this evil (Schofield 2006: 346–7). Conversely, in ‘Considérations’ Bentham declares himself against the so-called ‘Bribery laws’. In Britain a statute against bribery in elections had been introduced in 1728 (2 Geo. 2. c. 24). According to this act, whenever:

19 More practically, a light discount on this fee will suffice to induce \( R \) to participate in the coalition.
any person claiming a right to vote at any election shall ask, receive, or take any money or other reward by way of gift, loan, or other device, or agree or contract for any money, gift, office, employment or other reward whatever, to give his vote, or to refuse or forbear to give his vote, or if any person by himself, or any person employed by him, shall, by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure any person or persons to give his or their vote or votes (Anonymous 1826: 9)

then that person had to pay a penalty of £500 and his vote was declared void.

This practice was usual before the Reform Bill of 1832 especially in the famous ‘rotten boroughs’, in which the number of electors was limited to some units. Historians of economics know very well that David Ricardo, supported by James Mill, became MP for Portarlington in 1819 exactly in this way.

However, Bentham’s explicit rejection of bribery laws was quite unconventional, if not tainted with radical libertarianism. In his words: ‘the good produced by these laws is doubtful: the evil is indisputable’ (2002 [1788b]: 97). It would be tempting to associate Bentham’s analysis to Buchanan and Tullock’s (1990 [1962]: 171) theory of ‘vote-trading’ and ‘side payments’. Both theories share a common emphasis on efficiency as a result of ‘bribery’. However, whereas Buchanan and Tullock consider side payments as a way of reducing the ‘resource-wasteful aspects’ of less-than-unanimity voting, Bentham reasons in terms of agency, arguing that bribery allows the most motivated and apt representatives to emerge in elections:

Those who accept to give so much for this office reveal the strength of their desire to obtain it: now, this desire is not one of the most important conditions for a good exercise of its functions. For, although it is possible to desire an office without exerting its functions, at least it is difficult to well exert its functions if there is no relish for the office. (Bentham 2002 [1788b]: 97)

Explicitly referring to Tactics, Bentham adds that some additional incentives to assiduity can easily encourage the effort of those who bought an office.

The opinion that being prepared to pay for a public office is a mark of preference for its functions is one of the constants of Bentham’s thought. It was already developed in the manuscripts on reward of the 1780s, as far as we can see from the recension published by Dumont in 1811 under the title of Théorie des récompenses.

A chapter of this book (II, 9) is devoted to the sale of offices. Venal offices had been a peculiar characteristic of the French monarchy for many

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20 On the foundations of the theory of agency, see Ross (1973) and Arrow (1985).
centuries. Since 1522 offices in judicial, military and commercial activities were sold essentially to feed public finances, and grew exponentially until the time of the French revolution. This practice created a crazy and hardly reformable system of ‘ridiculous offices’ (Voltaire 1830 [1752]: 285), duplicates, privileges, exemptions, rents, arbitrary fees, ennoblement opportunities, hereditary rights, in which social climbers were entangled for the short-term benefit of the public treasury. In the intellectual debate of the Enlightenment, only Montesquieu defended this institution as peculiarly adapted to monarchies, arguing that it encouraged people motivated by family prestige, rather than by civic virtue, to discharge their duties. Furthermore, without ‘official’ venality, intrigue would prevail in the choice of public officers (Montesquieu 1748, V: 19). Conversely, the sale of offices was severely criticised by Voltaire, d’Holbach, Condillac, Necker, and by such rival economists as Mirabeau and Forbonnais, who argued that venality deflected productive investment and weighed hard on taxpayers. The sale of offices was attacked in the *cahiers de doléance* and was suppressed by the Constituent Assembly in the famous night of 4 August 1789, together with aristocratic privilege and the system of judicial fees.²¹

It is difficult to understand how Bentham could approve of such a system, and surely he had in mind something very different from what had existed before him. This difficulty is increased by the circumstance that we do not know whether the text published by Dumont is faithful to Bentham’s manuscripts (dating from before the Revolution) or it contains additions made after 1789. What is certain is that he was aware of the intellectual audacity of his proposal. His defence of venality was based on his typical aversion to the ‘tyranny of sounds’ (see Schofield 2009: ch. 5) – he wrote:

> Public opinion […] is at present adverse to the sale of public offices. It more particularly condemns their sale in the three great departments of war, law, and religion. This prejudice has probably arisen from the improper use to which it has sometimes been applied; but whether this be the case or not, the use of the word *venal*, seldom if ever but in an odious and dyslogistic sense, has tended to preserve it. (Bentham 1838–43 [1825]: 247)²²

His opinion was in a way closer to those who argued in favour of reform, rather than suppression, of venality. Thus, for example, Condillac (1776: 457–8) – in line with Voltaire – criticised the multiplication of useless offices, although he saw them as a possible source of finance for the

²¹ This reconstruction is based on Doyle (1996) and Nagle (2008).
²² We quote from the English translation of *Récompenses* published in 1825.
government. But Bentham insisted more on the efficiency of the selection allowed by venality:

If it be desirable that the public servants should be contented with small salaries, it is more desirable that they should be willing to serve gratuitously, and most desirable that they should be willing to pay for the liberty of serving, instead of being paid for the services. (Bentham 1838–43 [1825]: 246)

Applying the ‘axiom of mental pathology’ that ‘by the nature and constitution of the human frame, sum for sum, enjoyment from gain is never equal to suffering from loss’ (Bentham 1954 [1800–04]: 348), Bentham observes that ‘[t]he loss of a salary paid by the public, is merely the cessation of so much gain; the loss of an office which has been purchased, is the positive loss of so much capital which the individual has actually possessed’, since ‘[t]he cessation of a gain is generally much less severely felt, than a loss to a corresponding amount’ (1838–43 [1825]: 246). Consequently, those who purchase an office will take care of it and will try to avoid its loss. However, this policy is efficient only when the appointment is purely honourable or when the emolument attached to it is fixed: in this case it ‘does not differ from a perpetual rent’ (1838–43 [1825]: 247). When, on the contrary, the profits of the office are variable, the sale is bad economy for the State, in that ‘it is not probable that these uncertain profits will sell for so large a price as would willingly be paid for a salary equal to their average amount’ (1838–43 [1825]: 247). In other words, only those offices will be bought for which the return is higher than the investment: Bentham had in mind those venal offices that were allowed to receive fees (like those of judges and attorneys), in which the interest of their possessors was opposite to that of justice and produced social discrimination.

That there is a continuity in this aspect of Bentham’s thought is proven by Constitutional Code (1983 [1830]: 338), where he again proposed a ‘patriotic auction’ as an efficient mechanism to select civil servants (Schofield 2006: 299–300). Bentham suggested that those who had been ranked high in preliminary public examinations to ascertain their ‘intellectual’ and ‘active’ aptitude should take part in a competition either to accept the lowest salary, or even to offer a sum of money in exchange for the office. According to Bentham, the willingness to pay was a proof of ‘moral aptitude’; that is, of disinterestedness and devotedness to the public good. His concept of public selection was purely individualistic, and he never thought that this procedure could be perverted by monopolies and powerful lobbies supporting their candidates. Nevertheless he was not that

23 For a discussion of this axiom see Lapidus and Sigot (2000) and Guidi (2007).
naïve: he was only convinced that a system which had created corruption and strengthened inequalities, when combined with appropriate mechanisms and incentives, would be converted into a powerful instrument against corruption and inefficiency.

In the papers written in 1788, a similar analysis is applied to bribery in elections. Once more, Bentham’s starting point is the tyranny of sounds: ‘from the venality of offices, the venality of the titular has been inferred. The contrary conclusion would have been more reasonable’ (2002 [1788b]: 97). Then he observes that ‘the policy of anti-venalists is in stark contradiction with the policy of pecuniary qualifications’ (2002 [1788b]: 97): if the possession of a certain fortune must have ‘an antiseptic virtue vis-à-vis the hearts’, why should wealth be rejected as a proof of aptitude when used to purchase an office? Furthermore, bribery is more individualised than a fixed pecuniary qualification:

One will be well-off with a rent of two thousand pounds; another will be poor with two hundred thousand. The presumption inferred from the quantity of possessed wealth is only based on the species of wealth: the presumption inferred from the amount of money spent goes back to the individual. (Bentham 2002 [1788b]: 97–8)

Bentham almost paradoxically employs these arguments to answer the further objection that those who bribe electors are rent seekers looking for personal advantages. The candidate who is willing to spend money to purchase an office ‘shows that he can do without that money at least for a certain time’ – even for many years: on the other hand, the individual in possession of a pecuniary qualification at a certain moment, ‘can find himself, relatively to his needs, in the most extreme state of necessity right at the instant following his election’ (2002 [1788b]: 98).

Bentham almost dogmatically concludes that bribery is liable to produce a favourable selection. ‘Only those people who have great talents and great ambitions can conceive of the hope of obtaining an office the value thereof can indemnify them against the expense necessary to purchase a seat’ (2002 [1788b]: 98). Obviously the ‘value’ to which he refers here is honour and self-fulfilment rather than pecuniary profits, otherwise this argument would be self-contradictory.

Similarly to Defence of Usury (Bentham 1952 [1787]: 147–50), he claims that this practice is very difficult to check and prohibition easy to evade: ‘When there are so many people who want to purchase, and so many others who have the corresponding willingness to sell, what is harder than preventing them from making the deal?’ (2002 [1788b]: 98). And similarly to usury laws, Bentham sees in these useless norms an undue encouragement to treachery and weakening of the social bonds (2002 [1788b]: 99).
There are only two ways of reducing the occasional ‘bad economies’ related to venal offices: punishment for corruptors, and an extension of the franchise, so that bribery becomes more and more costly (Bentham 2002 [1788b]: 99).

Connected with this theme is Bentham’s discussion of the representation of the aristocracy. While some parties demanded that only the most ancient noblesse d’épée was allowed to vote, he turned a more favourable eye upon the aristocracy of more recent origin:

It is certain that [the recently ennobled person] is a proprietor, and quite rich a proprietor. Even though he acquired his title for money, he would have never spent in so trifling a merchandise beyond what was superfluous to him. (Bentham 2002 [1788b]: 103)

However, Bentham’s view of aristocracy is quite critical. In a way, his opinion negatively mirrors that about the motivated middle-class individual who is willing to pay to obtain a seat. ‘The distinctions introduced by the word aristocracy present some remarkable and multiple shortcomings, without the least advantage’ (Bentham 2002 [1788b]: 104). Firstly, aristocracy ‘is a source of peculation, to the expense of the public purse’ (2002 [1788b]: 104). Since members of the aristocracy demand financial support to the government because they believe to be ‘too illustrious to work’ – and a support equal to their dignity – the result is to encourage the moral hazard of this class:

Here is the origin of pensions for the impoverished aristocracy: so much peculation at the expense of the public purse. It would be easy to show that this prodigality produces the opposite effect of increasing the evil itself they try to remove: and the more it is given, the more the need to give is increased. (Bentham 2002 [1788b]: 104)

Second comes an economic argument: the custom of derogation produces ‘a defalcation from the mass of national wealth’; and third, a social argument – that is, the encouragement of conflicts and envy (2002 [1]788b: 104). Finally, this custom reduces the efficacy of rewards: it is a ‘[s]ource of value reduction for both natural and factitious recompenses, hence a discouragement to all kind of merit obtained for providing true services. The more one enjoys consideration without pain, the less one will find a motive to make efforts’ (Bentham 2002 [1788b]: 104–5).

Bentham also comments upon Montesquieu’s reasons in favour of aristocracy. To the argument that this class contributes to ‘[m]itigate the power of the monarch’, Bentham replies that such a belief is ‘illusory’, and there are more efficacious securities against misrule. To Montesquieu’s statement that aristocracy is there ‘to support the useful power of the monarch’, he answers that in France, like in Britain, the government will be sustained ‘by the persuasion of its utility’. Lastly, to the idea that this class can

Bentham’s representative government is based on merit as much as it is based on free competition.

5. Concluding remarks

The subjects discussed above represent only some of the instances in which Bentham applied an economic method to the study of political problems. It is tempting, on their ground, to read the utilitarian philosopher as a forerunner of the contemporary economic analysis of politics, and indeed his contribution to the foundations of this approach seems to merit careful reconsideration. Nonetheless, and despite the rational reconstruction that I have occasionally attempted, I hope I have been able to show that such an economic approach derives from reasons that are entirely embedded in Bentham’s theoretical framework and do not demand retrospective interpretation.

The utilitarian framework that underpins Bentham’s analysis of representative institutions requires that political relationships are analysed as an economy of (material and human) resources and regulations that – if correctly designed – can improve the general welfare. Bentham very often uses the term ‘economy’ to describe this half-positive, half-normative approach to social and political phenomena. This economic dimension can be seen as a functional relation between material, social and institutional conditions on the one hand, and individual performances on the other, and this relationship takes the typical subjective form of a system of incentives to personal behaviour.

The papers of 1788 and 1789 on political representation offer a variegated analysis of this system of incentives. Firstly, there is a relationship between time, space, and human numbers, on one side, and, on the other, the efficient communication and representation of interests, plus the orderly and efficacious working of collective deliberation. The dependent variables are the probabilities of favourable or unfavourable decisions, although behind these probabilities lie individual values and individual motives, as illustrated by the analysis of the value of votes. Bentham’s analysis suggests that there is an optimum scale at which political processes can maximise general utility because they provide the correct incentives to individual behaviour.

Secondly, Bentham’s analysis of representation reveals that there are many instances of asymmetric information between the principal (the represented) and the agents (the representatives), and this asymmetry
can be opportunistically exploited to pursue interests that are in opposition to those of the public. Again, the problem consists in sorting out the incentives that minimise opportunism, adverse selection and moral hazard: this is for Bentham the problem of how to harmonise interest and duty. Punishments and rewards are seen as incentives to which individuals react, modifying the existing behaviour in ways the utilitarian legislator thinks appropriate.

Thirdly, Bentham’s treatment of these relationships is systematic and, more importantly, careful in formulating falsifiable statements that can be corroborated by empirical evidence.

This does not mean that the legislator must set up an authoritarian policy based on imposition and minute control. Foucaultian panopticism is not the ideal of utilitarian politics: on the contrary, the emphasis on market competition as the best mechanism of selection confers to Bentham’s economic analysis of representation a distinctive libertarian flavour.

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References


Jeremy Bentham and representation


**Abstract**

This paper examines the texts Jeremy Bentham wrote in 1788 and 1789 for the upcoming meeting of the Estates-General in France, focusing on the arrangement of a representative assembly. Bentham examined the problems of constitutional choice with an economic method, answering the fundamental questions of the efficiency of decisional mechanisms and of the correspondence between the interests of the representatives and that of the represented. The paper studies two problems in particular: that of the optimal degree of representation, and that of the role of bribery in elections. The optimal dimension of parliaments is established as a function of the probability that decisions are taken and that these decisions are useful. Anti-bribery laws are criticised with the radical argument that being willing to pay signals a strong commitment to political activity. The paper argues both that Bentham’s place in the early history of collective choice should be restated, and that no retrospective reading is necessary to this end, since Bentham’s economic approach is entirely embedded in his utilitarian philosophy.

**Keywords**

Representation, utilitarianism, constitutional choice, Jeremy Bentham, Condorcet