

Nineteenth-Century Experts and their Expertise: Essays in Constitutional Political
Economy

A dissertation submitted in partial fulfillment of the requirements for the degree of
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CONSTITUTIONAL POLITICAL ECONOMY

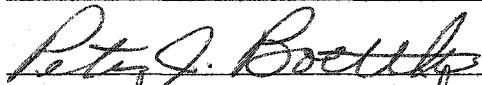
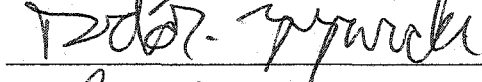
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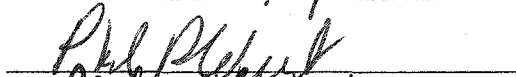
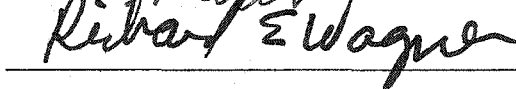
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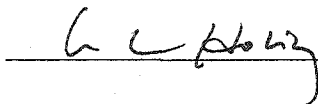
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ABSTRACT

NINETEENTH-CENTURY EXPERTS AND THEIR EXPERTISE: ESSAYS IN CONSTITUTIONAL POLITICAL ECONOMY

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In this dissertation we offer an extension of the rational choice paradigm to the work of economic agents qua experts within the framework of the tradition of worst-case thinking in political economy. This analytical apparatus will be applied, in a series of essays, to historical narratives, in particular to the work of two 19th century foreign experts: Jeremy Bentham and Jean Gustave Courcelle-Seneuil.

In the first paper we examine Jeremy Bentham's interest in the transfer of institutions and argue that in his proposals on codification we are presented with a clear portrayal of the work of an expert; in particular, of an expert in codification. Our reading of these proposals, as well as the history of Bentham's determination to secure the implementation of his codification designs, further suggests that the work of experts can be understood within the context of a rational choice framework.

In the second essay we carefully examine the specific views that Jeremy Bentham held on the subject of the transfer of institutions. In this respect, we argue that Bentham visualized his institutional designs as a starting point, not as a one-size-fits-all model as it has sometimes been argued, and that he was a much more careful scholar than what is commonly believed. Yet we also contend that Bentham still falls short in terms of not really recognizing all the worst-case implications of his system and designing the appropriate securities so as to avoid them.

In the final essay we examine the problem of selecting a foreign expert when an advice-seeker has imperfect information regarding the field in which he wants to acquire expertise. In the context of our view of experts as rational choice agents, such a problem may be quite important. And this was the problem faced in 19th century Chile, when the French economist Jean Gustave Courcelle-Seneuil was hired as professor of political economy and economic advisor to the government.

1. An Expert at Work: Revisiting Jeremy Bentham's proposals on codification

He has offered constitutions for the New World and legislated for future times.

(Hazlitt 1969[1825], 19)

Your works give you the glorious title of legislator of the world. (José del Valle to

Jeremy Bentham (1826), reprinted in "Supplement to Codification Proposal";

Bentham 1998, 370)

Introduction

Jeremy Bentham's interest in the transfer of institutions and his determination that his proposals illuminate the course of institutional design throughout the world during his era can be distinctly appreciated from the quotations that open this paper. In terms of his writings, it is in his papers on codification that such views are most clearly expressed. In this sense, in this essay we will principally focus on Bentham's *Papers Relative to Codification and Public Instruction* (1817), *First Lines of a Proposed Code of Law for any Nation Compleat and Rationalized* (1821), and *Codification Proposal, Addressed by Jeremy Bentham to all Nations professing Liberal Opinions* (1822), all of which are edited in Bentham (1998). In these works Bentham not only outlines the content of his

codification designs, but also proposes a vehicle for the adoption of such schemes by “nations professing liberal opinions”. Thus, here we are presented with a fascinating portrayal of Bentham as an expert in codification.

That Jeremy Bentham was vain and egocentric is well known¹. Yet in a more general sense, it is interesting to note how most (all?) experts claim they are pursuing the truth; trying to do good and convincing others to do so as well. However, and as Paul Drake has reminded us, foreign advisors act in a political setting. Thus, more than simply promoting the public interest or conveying new knowledge, it seems fair to argue that experts (both foreign and domestic) indeed constitute a “political device for multiple actors” (Drake 1994, xviii). But more than that, they are also economic agents like the rest of us, who have preferences, face constraints, and optimize. In light of these considerations David Levy (2001, Levy and Peart 2003) has argued against the notion that scholars should be viewed as truth seekers. When we take motivational homogeneity among agents as our starting point this claim is quite natural. After all, whatever walk of life we pursue we are still economic agents, and that includes the occasions when we are scholars or experts. In this sense, and following Levy, it is important to recognize that

¹ On this see, for example, the following by J. Semple; “In the summer of 1793 the panopticon seemed to have a fair wind behind it and to face only a few slight obstacles. And Bentham seemed near to realizing his ambition to create a field of practical endeavor in which he and his brother could labour for the public good” (1993, 110); “He [Bentham] lacked an imaginative tolerance for the short-comings of others; he was over-optimistic, he was ruthless, and he was pre-eminently egocentric” (id, 322). M. Williford, on the other hand, argues that “The letters [between Bentham and his Spanish American correspondents] range from his recommendations of friends and acquaintances to his desire to find translators for his works, to his hopes for seeing his panopticon plans adopted, to his botanical curiosity; but always there remains his love of praise and his search for recognition” (1980, 119). In his reminiscences with John Bowring, Bentham provides us with a first-hand impression in this sense; “J.B. the most ambitious of the ambitious. His empire—the empire he aspires to—extending to, and comprehending, the whole human race, in all places, -in all habitable places of the earth and at all future time” (Bowring 1962, xi: 72).

economists, and in general scholars, do have preferences over outputs. As D.N.

McCloskey (1990) has likewise put it, we should be suspicious if an expert taught us how to pick up big bills lying on the sidewalk. That is, we should be skeptical of the supposed high-mindedness of experts, and even, according to McCloskey, of the very notion of their expertise².

At any rate, we must explain that when we talk about economic advisors, or in general, about experts as choosers, we also have to consider the demand for advising services. At the same time, we must emphasize that the problems we are indicating with expertise occur even when the advisor is intellectually honest; indeed, so far we have made no claim about any dishonest behavior on the part of economists, economic advisors, or scholars. But these are issues we will lay out more carefully below.

Our discussion in this paper will proceed as follows. In the first part, which comprises the first three sections, we will examine Jeremy Bentham's theoretical and practical interest in codification. In particular, we will focus on the foundations and the nature of his *Codification Proposal*, which is where we have found the clearest portrait of Bentham as an expert. In the second part, which consists of the next two sections, we will attempt to explain Jeremy Bentham's work as an expert in codification within the context

² Moreover, see the following from McCloskey (1996); "Economists have believed for about a century that they are *wertfrei*, practitioners of the positive rather than the normative. I believed it myself. It is wrong. I report what I have heard from friends on the frontier of science studies, sociologists and philosophers and historians of science. They have concluded that scientists are not the romantic yet objective, passionate yet masculine heroes they would like to be considered, and which the philosopher Karl Popper made them out to be. Scientists are *actual people*. This startling assertion from science studies over the past quarter century means that science, like the rest of life is an ethical matter, not a matter of applying the Meccano toys of statistical significance or blackboard theorizing or social engineering. I take 'ethos' in its Greek meaning as 'character', the character we live moment to moment in the home or the laboratory or the library" (125-126).

of a simple rational choice model. And in doing so, and following the record of his experience as an expert, we will remark on some general issues that influence the success of an expert in the advising business.

Jeremy Bentham and codification

As is well known, Jeremy Bentham's interest in codification was international; thus the accurateness of his designation of "legislator of the world". In effect, since the early 1810s Bentham proposed his services and was engaged in consultations, personally or through intermediaries, to draw codes for the United States, Russia, Poland, Geneva, Spain, Portugal, Tripoli, Greece, Buenos Aires and Guatemala, roughly in that order³. Earlier than that, starting in 1808, he even planned to relocate to South America, first to Mexico and later to Venezuela, to work as a "native" legislator, maybe even taking James Mill with him⁴. Since, as the previous footnotes show, this story has been told several times, we will not pursue this narrative any further here, although we will return to some of these events below. Given that we will be dealing with Bentham's interest in

³ On these efforts by Bentham to see his codification plans implemented see, for example, Halévy (1955), Dinwiddy (1992b) and Schofield (1998); also see the Introductory essays to Bentham (1998) and Bentham (1983), Bentham's correspondence vols. vii through xi (1988-2000), and Bowring (1962), vols. x and xi.

⁴ As is well known, however, these schemes ended unsuccessfully since Bentham was not able to obtain the permission of the Spanish government that was required for such a move to Mexico, while his plans for a voyage to Venezuela were terminated with the arrest in that country of his host-to-be, Francisco de Miranda. For a narrative of these events, which suggests that Bentham's plans regarding his relocation to Spanish America were quite farfetched, see Williford (1980) as well as the works cited in footnote 3. On the other hand, we should mention that while the literature does not discuss this point, Bentham also seems to have been interested to relocate to Chile together with his brother and his family; on this see Bentham to Francis Place, January 1 1819 (Bentham 1988-200, ix: 316-318), and George Bentham to Jeremy Bentham, August 6 1819 (id, 343-344). Regarding the Mill connection, see Bowring (1962), x: 483.

codification, however, some remarks should be made regarding his fascination with this subject. In particular, the question we should address is, where did Bentham's interest in codification come from? Because his interest in, and espousal for codification were very strong and profound. As Ross Harrison has argued, "[t]he centre of gravity of his thought throughout his long life was political or legal reform. His thought, that is, was centrally concerned with the organisation of social, or public institutions; firstly more specifically with the organisation and content of the law; latterly with developing a blueprint for a complete administrative state" (1983, 4)⁵. Furthermore, it has even been argued that Bentham was obsessed with the idea of securing "the drawing up and the promulgation of his entire Code, everywhere, somewhere, no matter where" (Halévy 1955, 149). It seems clear, then, that Bentham's latter years were consumed by his work on codification and his interest in seeing his system of law implemented.

Bentham's interest in codification stems from his equally intense distaste for the common law system and his desire to see it replaced by a rational codified system. And this, in turn, follows from way back in his career. In effect, while Bentham studied the law, he did not end up becoming a lawyer since he rebelled against the condition of the common law in England. And yet the law did end up forming the main focus of his life in the sense that "he turned at an early age from the idea of ... practicing law as it is and instead concentrated on the study of law as it ought to be" (Harrison 1987, 53). Before we

⁵ Further, "He [Bentham] believed no less firmly, however, that most of those conditions of good order and sound policy [which he considered important] were still unsatisfied, in Britain and in the rest of Europe. The intellectual task that he set himself was to look for ways of satisfying them, and thus of completing and perfecting the institutions of the modern state" (Hume 1981, 57).

continue, it is important to mention that the intermediate steps between Bentham's early specific proposals for the betterment of government and his later more integral plans for institutional design are of no concern to us here. Likewise, the evolution of his political views, particularly regarding his post-French Revolution reaction against democracy and his later conversion to radicalism, in the early 19th century, are of no immediate relevance for our present analysis. And in the same way, the details of Bentham's definitive institutional designs are of no interest to us here. Thus, for our purposes, it suffices to center on Bentham's advocacy for the implementation of a comprehensive codified system as depicted in his *Codification Proposal* (1822) and the earlier *Papers Relative to Codification and Public Instruction* (1817), and *First Lines of a Proposed Code of Law for any Nation Compleat and Rationalized* (1821). These have all been re-published in Bentham (1998). While we are aware that many of the themes developed herein were present in previous works, here we will only focus on these latter papers⁶. To be sure, at a first glance these works do not seem fully harmonious together; indeed, much of the material of *First Lines* was incorporated by Richard Doane in the *Constitutional Code*

⁶ We should, however, mention that because Bentham's later works suffer from important literary-style problems we have also had to resort to some of his earlier works and the secondary literature to understand what Bentham was saying. Regarding Bentham's stylistic problems note, for example, the following from W. Hazlitt, "his style is unpopular, not to say unintelligible. He writes a language of his own that *darkens knowledge*. His works have been translated into French—they ought to be translated into English" (1969, 33). J.R. Dinwiddy (1992b), on the other hand, quotes a former secretary of his, Walter Coulson, as saying that "[h]e seems every where to have laboured to express his opinions with a degree of accuracy, and a number of reserves, quite inconsistent with fluency. He has parenthesis within parenthesis, like a set of pill-boxes; and out of this habit have grown redundancies which become tiresome to the reader" (295). For a similar statement regarding in particular the works we are examining here, see the following from Samuel Romilly's review of Bentham's *Papers Relative to Codification and Public Instruction*, originally published in the *Edinburgh Review* in 1817; "His frequent inversions, his long parentheses, the novelty and harshness of many of the terms which he has so often, and, we must say, on many occasions, so unnecessarily invented, and the length and complication of his periods, have rendered his compositions illegible to all who will not . . . persevere in the difficult task of studying them rather than reading them" (quoted by Thomas 1979, 32).

that was published by John Bowring (Bentham 1998, xxxviii). But as the editors to Bentham's writings on codification argue with greater erudition, and as we shall also discuss below, this work belongs both chronologically as well as thematically to Bentham's proposals on codification (id, xxxix).

As one would expect, all of Jeremy Bentham's work on codification was based on the utilitarian philosophy. It was building on the utilitarian principle of "the greatest happiness of the greatest number" that Bentham's reformist efforts and his interest in the "science of legislation" were based. In this sense, and as we shall see below, Bentham strongly believed that he was able to design institutions that would promote the greatest happiness of the greatest number⁷. The foundations of Bentham's enterprise, of course, were based not only on the principle of utility as an end, but also on the psychological principle that people act according to their self-interest. In any case, it was his acceptance of the utilitarian principle, as well as his emphasis on the use of reason as a foundation of a legal system, that were at the basis of Bentham's rejection of the English common law. That is, Bentham believed that a codified system had the great advantage that it could be purposely constructed so as to be coherent and complete, while at the same time serving the greatest happiness principle, thus avoiding the main problems of the common law. Because indeed, Bentham was particularly critical of the fact that since the common law

⁷ In this respect note that Bentham's *Codification Proposal* interior title page has the very suggestive following text: "Codification Proposal addressed by Jeremy Bentham to all nations professing liberal opinions; Idea of a proposed all-comprehensive Body of Law, with an accompaniment of REASONS, applying all along to the several proposed arrangements: These REASONS being expressive of the Considerations, by which the several Arrangements have been presented, as being, in a higher degree than any other, conducive to the *greatest Happiness of the greatest Number*, of the Individuals of whom the Community in question is composed" (1998, 243; italics and uppercases in the original).

system was unwritten, it was uncertain, and thus lead to a disappointment of the expectations of agents. Further, this resulted in insecurity and corruption. And all of this, in turn, implied that the societal utility was not being maximized in any relevant sense. As is well known, there are several works of Bentham's opus where these points have been developed, but in the papers we are examining we also find several references on these points⁸.

Given these convictions by Bentham, it should then come as no surprise that he advocated codification, since presumably statute law could, when written down by a methodical rational legislator, avoid these problems. Of course, and for the reasons stated above, Bentham was aware that there would be several "sinister interests" opposing any such type of legal reform but, then, this provides a further argument in favor of reform⁹. To be sure, controlling the wide scope of sinister interests requires a careful political

⁸ As an example, note the following quotations from the *Papers Relative to Codification and Public Instruction*, and its *Supplement*: "Of *unwritten* (for such is the term in use), but more properly of *uncomposed* and *unenacted* law ... of this impostrous law, the fruits, the perpetual fruits, are -in the *civil* or *non-penal* branch, as above; *uncertainty*, *uncognoscibility*, *particular disappointments*, without end, *general sense of insecurity* against similar disappointments and loss; -in the *penal* branch, *uncertainty* and *uncognoscibility*, as before; and, instead of compliance and obedience, the *evil of transgression*, mixed with the *evil of punishment*" (Bentham 1998, 20); "From the *uncertainty* comes not only *insecurity* but *corruption*: *insecurity*, in the situation of the *non-lawyer -corruption* [or] at least a most powerful and perpetual temptation to it, in the situation of the *Lawyer*, and in particular in that of the *Judge*" (id, 134; italics in the original).

⁹ The influence of sinister interests is a theme Bentham addressed many times throughout his life; on this see, for example, Hume (1981). For statements to this effect in the documents we are examining see, for example, the following: "Unfortunately for the interest of the majority of the people of all classes taken together, the interest of the great majority of the body composed of the men of law -say in one word the interest of *the man of law*- is, throughout the whole field of law, with very inconsiderable exceptions, in a state of hostility -irreconcilable hostility- with that universal interest" (Bentham 1998, 146-147); "'To the glorious uncertainty of the law', in the character of the *lawyer's* toast, to whom is the adage unknown? and, of the proposition implied in it, in whose eyes was the truth ever matter of doubt?" (id, 147; italics in the original); "Thus, by the particular and sinister interest of the lawyers, was the reformation of the law obstructed [referring to episodes in 17th century England]" (id, 160).

design. In particular, given his behavioral foundations, an important problem of his enterprise is that of facing the problem of “combining duty and interest” and of devising “securities for appropriate aptitude”. That is, someone must fulfill the task of designing institutions so that the self-interested behavior of each individual person leads to the greatest happiness of the population as a whole. Thus, the project has to “start with the device, actual or fictional, of someone called a legislator, who is constructing a system of rewards and punishments for his citizens so that they fulfil a given end” (Harrison 1983, 118). Before we deal with the problem of who the legislator is, it is interesting to note that as it has been set up the problem of incentive compatible utilitarian legislation involves very strong knowledge requirements both on the part of the legislator and his subjects. At the same time, note that the problem of who the legislator himself is, and how he may be directed into doing what he ought to do, also involves strong motivational assumptions. Be that as it may, Bentham’s answer to the unification problem is that “the greatest number” of people shall be the legislator; thus we shall find a junction of interest with duty. And this, then, is the foundation of Bentham’s defense of representative democracy, and of his proposals for the extension of the suffrage and for periodic elections.

It is evident much more could be said about these subjects. We believe, however, that these points, which constitute the basic theoretical foundations for Bentham’s all-comprehensive body of laws which, following the Greek usage, he called a “Pannomion”, should suffice for our present purposes.

At any rate, notwithstanding whatever judgement one may have of Bentham's influence, despite his best efforts such a complete code of laws never came to be materialized and, thus, neither was it fully implemented (on this, see the references cited in footnote 3 above). Regarding Bentham's efforts in this respect, John R. Dinwiddy has argued that "[b]y the second decade of the nineteenth century, when he was in his sixties, he [Bentham] seems to have become convinced that if such an opportunity [an invitation for codification] was to materialize before it was too late, he must actively seek to create it" (1989, 14). Thus, Bentham really appears to have labored determinedly in this respect. Indeed, such was his absorption in this work that some of his friends and followers seem to have been irked by his insistence and obstinacy to pursue these topics. Hence we find that, for example, John Herbert Koe, Bentham's former secretary, is quoted as saying that "an invitation, from any government, to make a code, if it should ever come, would put an end to all thought of a [constitutional] code forever –that although he thinks an invitation would give him courage, it would do the reverse; and that he would immediately shrink from the task" (Bentham 1983, xii). As we know, Koe was wrong. Regarding the codification of constitutions, for example, the historical record suggests that Bentham was most probably induced to start the *Constitutional Code* by the invitation he received from the Portuguese Cortes in April 1822 in response to his codification offer of November 1821. And once embarked in this project neither disappointments in this country, or later in Greece and elsewhere, would bring this work on codification, to a halt, although in the end this work never came to be materialized.

But let us start from the beginning, focusing on the catalysts of Bentham's work as an expert in an all-comprehensive codification.

Jeremy Bentham as a foreign advisor I

Given our earlier examination of the foundations of Jeremy Bentham's system of laws, we must now explore how Bentham visualized the task of going about to secure an invitation to implement his institutional designs. The main text for our analysis in this sense will be *Codification Proposal Addressed by Jeremy Bentham to all Nations professing liberal opinions* (Bentham 1998, 241-384), originally published in 1822. As its very title suggests, this was a work that portrayed Bentham as an expert, and was intended to secure the adoption of his code.

We are aware, of course, that Bentham had been involved in offers of codification to different countries prior to this date. For one, his interest in Spanish America referred to above, which Miriam Williford refers to as his "utilitarian utopia" (1980, xiii), dates from at least 1808. And although his plans to emigrate to this region ended unsuccessfully, "Bentham determined that this area should not be deprived of his ideas, thoughts, and plans even if he were not present to develop them" (id, 13). The importance of Spanish America for Bentham is underscored by the fact that Williford has argued that Venezuela was the original source of Bentham's codification proposals. Thus, in her book she refers to an 1810 manuscript by Bentham entitled "Caracas Necessity of an all Comprehensive Code" (1980, 16-19) as an early statement of Bentham's practical plans

for codification¹⁰. In terms of material that was effectively circulated, however, Bentham's first offer to draw up a code of law was made in a letter addressed to James Madison, then President of the United States of America, dated October 1811, which is edited in the *Papers Relative to Codification and Public Instruction* (originally published in 1817; Bentham 1998, 1-63). Here Bentham not only makes Madison a codification offer, but also methodically explains the purposes and advantages of his proposal, and even refers to some "[a]dvances already made towards the Execution of the proposed Work" (id, 29-35). Whatever the case may be, this offer was followed by other proposal letters to Simon Snyder, Governor of Pennsylvania (transmitted via Albert Gallatin, Minister of the United States to England, in 1814), and to Alexander I, Emperor of Russia (in 1814), which are also edited in the *Papers*¹¹. The other episodes in which Bentham was engaged in consultations or offered his services as a foreign advisor, and which we mentioned above, also form part of this class of what we would call "direct" propositions. Because in effect, these codification offers by Bentham were really part of his correspondence with different leaders throughout the world, conducted personally or via

¹⁰ These documents were, presumably, intended for the use of the Venezuelan General Francisco de Miranda; on this, see footnote 4 and references cited therein.

¹¹ So as to be more precise, it is important to note that the exchanges between Bentham and these correspondents of his are much more extensive than what we are narrating here. For example, the codification offers to Alexander I are contained in two letters, dated 1814 and 1815, one reprinted in the *Papers*, and the other edited in the *Supplement to Papers Relative to Codification* (Bentham 1998, 44-47 and 82-104, respectively). At the same time, the Polish Prince Adam Czartoriski and the Russian Admiral Pavel Chichagov also seem to have served as intermediaries in Bentham's Russian communications. For more on this, see the introductory essay to Bentham (1998), especially pp. xxi-xxiii, and the Bentham correspondence, especially volume viii.

intermediaries¹², where little analytical argumentation of the sort Bentham was famous for, with the exception of the letters to Madison and Alexander I, can be found. Of course, these letters are a delight to read. But the fact that they are more informative and entertaining than useful documents really worthy of analysis in terms of our interests in this paper has led us to avoid including references to them here¹³.

It is interesting to note that a letter by Bentham to the “Citizens of the several American United States” dated July 1817, and included as a *Supplement to Papers Relative to Codification* (Bentham 1998, 65-185) seems to represent an intermediate step in the configuration of Bentham’s codification offers. In effect, here we find the first offer to codify laws in the form of a specific proposal document, if that is what we may also call the 1822 work we will examine presently. This is because this work seems to have been originally intended for publication in American newspapers (id, xvii)¹⁴. Thus,

¹² Regarding the Bentham correspondence, which we have already referred to previously, Bowring (1962) contains some selections. The Bentham Committee at University College London, on the other hand, is in the process of publishing the full correspondence of Jeremy Bentham, as far as it has been preserved. So far, eleven volumes have been published, covering till June 1824.

¹³ As an example of this point, in his important codification offer to the Portuguese Cortes (Bentham to Portuguese Cortes, 7 November 1821; Bentham 1988-2000, x: 415-417), the material that is interesting for our purposes in this paper is relegated to a secondary position. The main part of the letter is cast in terms of a charming communication, although as we explain below, some information can be gathered from here regarding Bentham’s motives for writing a codification proposal. In any case, here Bentham writes that, “[s]ubjoined to this address is an Appendix. In Part I. are *Testimonials*: in Part II. *Reasons for acceptance*. It is for your *table* this Appendix: -not for your ears”. This appendix, however, is not included in this volume. Nevertheless, the editor of Bentham’s correspondence notes that this presumably represented the substance of the *Codification Proposal* Bentham published the following year. Of course, we should also note that once the *Papers Relative to Codification*, and later *Codification Proposal*, were printed, these were the real explanatory elements that accompanied Bentham’s correspondence on codification.

¹⁴ Incidentally, in this letter Bentham also refers to his correspondence with Madison and Simon Snyder, and mentions that a circular letter by him (dated June 1817), and copies of the *Papers Relative to Codification*, “are in their way to the respective Governors of your States”. It seems that this June letter was also both printed in the *Papers Relative to Codification*, and issued as a separately printed work (Bentham 1998, xvi).

in a series of documents (which he calls “letters”) Bentham distinctly outlines the properties desirable in a body of laws (Letter II) which for him are, “1. *Notoriety*, or rather aptitude for *notoriety*, in respect to its contents; 2. *Conciseness* in respect of its bulk; 3. *Clearness* in respect of its language; 4. *Compactness* in respect of its form; 5. *Completeness*, or say *all-comprehensiveness*, in respect of its extent; 6. *Intrinsic usefulness* in respect of its character; 7. *Justifiedness*, i.e. *manifested usefulness*, in respect of the body of *instruction*, by which in the form of *principles* and *reasons*, it ought to be illustrated, justified, recommended and supported” (id, 117; italics in the original). At the same time, Bentham discusses the nature of opposing interests that would arise against this proposal of his (Letter VI), and includes testimonials “as to this Proposal and its Author” (Letter I) and “as to the Species of Work here offered, and its Utility” (Letter VII). Since we believe that these points have been superseded, or at least presented in a different form, by the 1822 *Codification Proposal*, we will only analyze them there¹⁵. On the other hand, and as we have noted in footnote 13 above, in his proposal to the Portuguese Cortes we find that Bentham’s proposals have a different format; indeed, from then on, *Codification Proposal* would be a part of all his codification offers.

¹⁵ Bentham raises the point as to how his new writings supersede his previous work regarding his proposals for codification in the following passage:

“In a work intituled *Papers on Codification* and published in the same year 1817 a Proposal to this same effect was contained: and in support of it arguments and testimonials were given there as here. But as well under the head of arguments as under the head of testimonials, documents of the importance of which the reader will have to judge have made their appearance” (1821 manuscript by Bentham, quoted in Bentham 1998, xl).

Before we proceed to an analysis of this important work, however, it seems necessary to address the question as to why Bentham thought it necessary to write *Codification Proposal* in the first place. This document itself gives us some clues on this point; in particular note the explanations for the rationale of a code contained therein. In effect, in §.2, §.3, and §.4 of *Codification Proposal*, Bentham carefully explains why the laying out of a code of law must be accompanied by their rationale, in the sense that these reasons be explicative of the arrangements to be contained in the code. Of course, these matters would also be incorporated in the codes themselves. Yet the point remains that including the rationale for implementing a codified system in the first place is a very important element in offering a “codification proposal”.

As we already mentioned, the historical record shows that Bentham first intended to emigrate to the nations that were to be the natural experiments for his codification efforts and work as a codifier there himself, and only when that proved impossible did he undertake the writings of his proposals. In this sense, these setbacks must have been an important catalyst of his proposals for the consideration of nations engaged in the task of institutional design. Because one can imagine that had Bentham emigrated to Spanish America following an invitation from a sympathetic legislator, he would have proceeded (or tried to proceed) to work on his system of laws immediately, without having to make any type of codification proposal (or would he?). At the same time, and maybe more importantly, it also seems clear that Bentham was dreaming high illusions with respect to a work that he considered as very important for the continuance towards the utilitarian goal throughout the world. As mentioned above, his desire to see his code implemented

internationally was very strong¹⁶. And yet, at the same time, and as we have also suggested above, Bentham was feeling older. Thus he not only needed a more orderly framework to present his work, but it also seems that he was not willing to start this work unless he were given sufficient encouragement in terms that his work would receive serious consideration of being implemented¹⁷. In this sense, note that in 1814 Bentham went as far as writing “*Approbation* is one thing; *adoption* is another” (Bentham to Alexander I, reprinted in *Papers Relative to Codification and Public Instruction*, Bentham 1998, 45). In other words, and although it may sound trivial, it was the very fact that Bentham was interested in securing an invitation to complete the Pannomion that made him prepare the *Codification Proposal*. Therein the connection between the documents we are examining here, in particular, between *First Lines* and *Codification Proposal*, which we have suggested above. The importance Bentham assigned to his work on codification can also be gathered by noting some details of a portrait of Bentham that stands at the National Portrait Gallery in London, and which Catherine Fuller has

¹⁶ In this sense, despite the pains the panopticon fiasco must have caused him, Bentham continued to be strongly interested in the public good; “But despite his growing disillusionment with the process of government, Bentham’s overriding ambition to achieve practical reforms had remained unquenched” (Semple 1993, 241). On this see, also, Hume (1981).

¹⁷ In Bentham’s own words, “Legislators! Such is the mite I offer to cast into your treasury. But before the cast, or the mite itself, can have been made, something on your part must have been done: something to this effect you must have said to me. ‘Friend of man, send in these works of yours, they shall be laid upon our table...’ ‘Well but,’ (says somebody) ‘this present of his –why all this talk about it? why not send it to us at once?’ Legislators! it is *not* made: and because it is not, therefore it is that I thus offer it. Without acceptance, such as that I have spoken of, I am not sure that it ever can be made: what, I am sure of, is –that it cannot be made either so promptly or so well. At the age of three and seventy, the current of the blood runs slow: something is wanting, something from without to quicken it. One short word more. Let there be no mistake. *Acceptance* is what I call for; *acceptance*; nothing more: no such thing as *preference*, much less *exclusive preference*.” (Bentham to Portuguese Cortes, 7 November 1821; Bentham 1988-2000, x: 416).

recently called to attention. Here, Bentham sits next to a table where three books which, presumably, “give us an insight into the works with which Bentham most wanted to be identified” (2000, 4) are clearly discernible; these are Locke’s *An Essay Concerning Human Understanding*, his own *An Introduction to the Principles of Morals and Legislation*, and a copy of the *Diarios das Cortes*, which contained the proceedings of the Portuguese Cortes when they accepted Bentham’s codification offer.

Since Bentham involved himself in so many codification offers and was, further, absorbed by the idea of engaging an interested party who would realize his codification designs, one can understand why a one-serves-all proposal document would seem preferable to a series of direct letters, as he had been doing so far in this respect. In all, it seems that it was the response by Madison to his October 1811 letter, and which he received in 1816, that first illuminated Bentham’s interest in publishing the *Papers Relative to Codification* (Bentham 1998, xv)¹⁸. Later, “the positive responses which he had received to *Papers relative to Codification and Public Instruction* had no doubt given him sufficient encouragement to make another formal offer to draw up a code of law” (Bentham 1998, xxxv). Thus, and notwithstanding our previous discussion, this is as far

¹⁸ It is important to note, however, that in this letter Madison declines Bentham’s offer. His reasons are twofold; on the one hand, he doubts the “practicability” of Bentham’s proposal. On the other, he diplomatically writes that “I see much to admire in the comprehensive and profound views taken on its subject... and it is with the feelings naturally flowing from these considerations, that I find myself constrained to decide, that a compliance with your proposals would not be within the scope of my proper functions” (Madison to Bentham, reprinted in “Codification Proposal”; Bentham 1998, 36-37).

as we can go regarding the precise trigger for Bentham's writing of *Codification Proposal*¹⁹.

It is important to stress, in any case, that our argument thus far should not be understood as implying that was it only through his *Codification Proposal*, which incidentally seems to have been well circulated, that Bentham was known in the countries where he was engaged in consultations for codification. Thus, for example, his codification efforts in Geneva were tied to the work of his Genevan editor and translator, Etienne Dumont. On the other hand, it is mainly through his published works that he was known in Spain, particularly during the liberal phases of Spain's political evolution. And in Spanish America he was also known through the diffusion of his work by followers of his, also liberal politicians and thinkers who first came across his ideas in Europe and later imported them to their native countries²⁰.

¹⁹ We should, however, note that a series of draft manuscripts of *Codification Proposal* have been preserved. The introductory essay to Bentham (1998) contains an analysis of the evolution of Bentham's writings in this respect (see, especially, pp. xxxix-lv). In our following analysis, however, we will only follow the final published version of this document. This was edited early in 1822, with a Supplement containing the acceptance letter Bentham received from the Portuguese Cortes and which, presumably he would very much have liked to print in the original papers, appearing later in that same year. These letters, by the way, were also included in an expanded Supplement published in 1827, which added to the list of testimonials. At the same time, a second Supplement appeared in 1830 (on these issues, see id, liv). We should also note that a Spanish translation of *Codification Proposal* appeared in 1822 and was sent by Bentham to correspondents in Spanish America (Williford 1980, 16; see, also, Bentham 1988-2000, xi, for the letters he sent to José de San Martín and Bernardino Rivadavia enclosing this document). However, it seems that the translation was not a felicitous one; indeed Bentham himself remarked that “[f]rom several quarters I have heard it [the translation] spoken of as full of misconceptions: the translator himself ... spontaneously acknowledged its being so, mentioning as the cause the degree of despatch which had been required of him” (Bentham to Bernardino Rivadavia, 5 April 1824; Bentham 1988-2000, xi: 429-433).

²⁰ For more on these issues see, for example, Schwartz (1978), and Dinwiddy (1992b). At the same time, Bentham's correspondence is also highly illustrative of these points.

Jeremy Bentham as a foreign advisor II

Codification Proposal was a work “addressed by Jeremy Bentham to all Nations Professing Liberal Opinions”. Thus, and as a starting point, it seems interesting to inquire how much this qualification reduced the set of Bentham’s potential clients in his codification efforts. In this respect, it is important to first of all keep in mind that Bentham’s epoch, and in particular the early 19th century was a period where liberal opinions were progressively gaining ground throughout the world. Indeed, Bentham’s addresses seem to have aroused greater interest in those places that were engaged in nation-building efforts, which were precisely those regions where liberal ideals were very popular. Thus, for example, the curiosity his ideas aroused in Spanish America, and his own interest in this region as his “utilitarian utopia”, which we have referred to above²¹. Of course, and as Dinwiddy (1980) has explained, both the Benthamite circle, and Liberal groups centered around Holland House and the *Edinburgh Review* influenced Spanish American thinkers during these years, and as is well known these held different positions on many issues. At any rate, Bentham’s own interests were in the domain of radical political liberalism and, thus, it is natural that his proposals on institutional design would

²¹ Indeed, Hazlitt has argued that “His name is little known in England, better in Europe, best of all in the plains of Chile and in the mines of Mexico” (1969, 19). While this surely seems an exaggeration, note that Bentham’s works had a differential impact in common law as opposed to roman law countries. As David Levy has called to my attention, the fact that “codification” is more intelligible in the context of the roman law tradition could help explain this fact.

involve the development of these ideas²². Moreover, it surely seems fair for an advisor to only serve a certain market segment, so to speak. This is, after all, part of the very nature of this business, at least as we understand it nowadays.

As a further development of the ideas first advanced in the *Papers Relative to Codification and Public Instruction, Codification Proposal* comprises both an explanation of the work proposed, and testimonials on the author's aptitude with relation to the contemplated work. In this respect, and as we have previously mentioned, it is interesting to note that the explanation of the work proposed is accompanied by "Proofs by Reasons"²³. Let us then proceed to examine these justifications and their associated rationales more carefully.

In §.1 Bentham states the inspiring principle of his work; "[i]n every political state the greatest happiness of the greatest number requires, that it be provided with an all-comprehensive body of law". This is, then, the basis of all the codification proposal enterprise. Note, of course, the emphasis Bentham places on the required all-comprehensiveness of the proposed code. Indeed, what Bentham implicitly seems to be saying here is that while the common law is deficient, any codified system would not do. In any case, the required completeness of the code was a point Bentham had stressed

²² Of course, it also seems reasonable to presuppose that a non-liberal nation would not really need any type of constitution whatsoever; after all a 19th century dictator would probably only do as he wished, with little need or interest in a constitution to tie his hands.

²³ This, we should explain, is a typical Bentham device; as Harrison explains, as a "man of the Age of Reason, Bentham again and again stresses reason; he bases utility on reason or identifies it with reason" (1983, 9). See, also, Hume (1981).

throughout the years and which, we would presume, posed a heavy weight on the enterprise he was attempting to embark upon.

Once it is established that a codification proposal must be grounded on reason, that such reasons be explained, and that the way in which the respective provisions of the code are conducive to the greatest happiness is also explained (see §.2, §.3, and §.4)²⁴, we come to the issue of who is to be responsible for undertaking such a task. Thus, in §.5 Bentham writes that “[t]he greatest happiness of the greatest number requires, that, for the function exercised by the drawing of the original draught of such a Code, the competitors admitted be as many as, without reward at the public expense, can be obtained: and so for that of proposing alterations in such draught as shall have been adopted”²⁵. This seems a smart and fair proposal; indeed, Bentham gives a straightforward reason in support of such an idea, namely that “[c]hance for the greatest possible degree of the work, *a maximum*: to sinister interest, and other causes of inaptitude, on the part of those on whom the quality of the work in its ultimate state depends, the strongest *bridle* applied that the nature of their situation admits of” (Bentham 1998, 261-262). Note, by the way, that this competitive process also implies that the legislators within government are now constrained in their capacity to draw the rules of the political game as they wish. In Bentham’s words, “[b]y the competition thus

²⁴ Before we continue it is important to note that §.2 also contains a very interesting discussion on why a code should be accompanied by its rationale. In the main, the explanation of the code serves as a “guide” and a “bridle” for citizens and legislators. As those familiar with Bentham’s work will realize, these are issues we also see in several others of his writings (on this see, for example, Rosen 1983).

²⁵ As is well known, Bentham highly esteemed the virtues of competition. In his *Constitutional Code*, for example, competitive processes appear repeatedly; on this see Bentham (1983). For a discussion of these issues see, for example, Rosen (1983).

proposed, a *bridle* will be applied to the power of the constituted authorities: a bridle, and *that* an unexceptionable and indispensable one” (id, 269). Thus, this “open mode” system stands in stark contrast to the case when it is the legislature that undertakes the task of codification, and which Bentham calls the “close mode” of codification²⁶. Since this is a particularly important element of Bentham’s proposal, next we will proceed to review the working of this “open mode” system more carefully.

The main point of this procedure proposed by Bentham is that the offers for codification will be considered by invitation. Of course, such a system gives rise to several complications, but Bentham was already aware of that; “[i]n the name of the constituted authorities, or of the legislative body alone, let invitation be given to all persons without distinction, who, (with the exception of the members of the legislative body during the time of their serving in that capacity,) regarding themselves as competent, may feel inclined to transmit to the legislative body, each of them a general sketch or outline of the proposed original draught of a work of the sort in question: with the sample or samples, of the mode in which it is proposed to execute it” (id, 263). Then, some decision must be made among these competing samples which, by the way, should attempt to fulfill the all-comprehensiveness requirement of the code. In this respect the Bentham proposal is that, “[f]or the giving in of these samples, some determinate day, it

²⁶ Regarding the “close system”, Bentham’s major remarks are located in §.7, where he examines the single penmanship requirement. Another careful examination of this alternative system is in the *Papers Relative to Codification and Public Instruction* and the associated *Supplement*. It is important to note, by the way, that the sinister interest argument is not the only argument Bentham construes in rejecting the “close system”. In this respect, he also refers to the fact that a legislature has or should have better things to do with their time (Bentham 1998, 267-269). On the other hand, it is important to mention that implementing

should seem, would unavoidably be to be fixt. That day arrived, it will then be to be put to the vote which sample shall be preferred; or whether, for want of any satisfactory sample, the time shall be enlarged” (id). Unfortunately, as Bentham goes into further details we find greater complications, and Bentham’s literary style does not help in making matters clearer. Note, for example, the following passage, “[l]et intimation be at the same time given, that, in proportion to the aptitude of the work according to the estimate formed of it by public opinion, evidence will be regarded as having been given, of appropriate aptitude on the part of the work man, with relation to many of the most important public offices, to which pecuniary emolument stands *already* attached” (id, 263). What Bentham seems to be saying here is that the quality of the work submitted, as judged by public opinion, will be considered proof of the ability of the person who presented it to hold many of the most important public posts, which have a salary assigned to them²⁷. Note, by the way, that for public opinion to participate in this process, the discussion of the competing drafts would have to be conducted through the press and, thus, public money would have to finance the copying and distribution of the drafts; “[w]ere it not for this, the expense might be a bar to the work of the least affluent competitors” (id, 264). In all, these points seem important in order to motivate codifiers-to-be to answer the invitation by the legislature (for more on this see id, 266-267). We

the “open mode” of codification would also provide the opportunity of establishing a “school” for legislation, which for Bentham is a very important institution (see id, 265-266).

²⁷ The reference to public opinion (and the associated issue of transparency) should come as no surprise to those familiar with Bentham’s work. In the *Constitutional Code* (Bentham 1983), the Public Opinion Tribunal represents an essential check against the pernicious use of power by government officers (on this, see also Rosen 1983). At the same time, public opinion also plays an important part in the Panopticon proposals (on this, see Semple 1993).

may then presume that for Bentham these benefits in terms of having a competitive and universal system of codification (together with the additional advantages of establishing a school of legislation, mentioned above), are greater than the additional costs this proposal involves in terms of greater public expenses.

For the selection process of the chosen draft, some intricacies are likewise involved; “[b]y the preference thus given in the main to this or that sample, or to this or that draught, the legislative body would not be precluded from giving indication of this or that portion of this or that other draught, as being regarded fit to be employed in the draught most approved” (id, 264). In particular, note the non-trivial issue that now arises with regards to the compatibility of this point with the requirement that the code should be the work of a single hand (see our discussion of §.7 below). Let us, then, review some of the exemptions that restrict or, to be more precise, regulate Bentham’s “open mode” system. In this respect, Bentham argues that the composition of the draft codes should be a non-remunerated task (§.6); that the code should be, if possible, the work of a single hand (§.7), that this be known to be so (§.8) and that it also be known who the author is (§.9), and finally that foreigners not only be admitted into the competition, but also if everything else were equal, should actually be favored (§.10). Let us proceed to examine these points in turn.

Why would we want that the code be drawn for free? Bentham recognizes that a reward could be viewed as an inducement for better work. Yet a reward would also be associated with several “evils” (id, 273-279). The main point here is that a remuneration

would not only lead to government waste, but also, according to Bentham, to a lessening of the number of competitors, since it will lead to the “non-appearance of all such otherwise apt competitors as by the apprehension of the want of *interest* (in the English phrase) of the want of *protection* (in the French phrase) –in a word, of the want of *appropriate favor* in the eyes of those on whom the choice depends, will be deterred from entering the list” (id, 274). In other words, the fear of patronage will lead potentially able codifiers to avoid participating in this process. And this, in turn, implies that “the chance in favor of the best possible workmanship will ... be diminished by every diminution in the number of candidates” (id). In any case, Bentham adds that the problem of choosing a compensation mechanism also demonstrates the unfeasibility of such a solution, in the sense that according to the mode of payment with respect to time a reward may lead either to precipitation or delay in the production of the code (id, 275-277).

Why should only one hand write down the code? For Bentham this point can be divided in two parts. On the one hand, each part of the code should be the work of not more than one hand. And all of them should “if possible” be the work of the same hand. This is because once we have more than one person, the average moral aptitude is diminished, since “two, or any greater number of workmen, will not be so effectually disposed to take the greatest happiness of the greatest number for the object of the work, as any single one of them would: comparative want of appropriate *probity* is the cause of the inferiority in this case” (id, 279). On the other hand, since the code is required to be consistent, having one author will better guarantee such consistency. Further, note that in Bentham’s open mode system it should also be known that one hand is responsible and

whose hand it is. This would assure that the “good inducements to good workmanship afforded by the singleness”, take place (id, 287, and also 288). In other words, these elements induce a sense of responsibility on the codifier as to the quality of the work performed. In this sense, note that this point is closely linked with the requirements for transparency that are essential to the Benthamite enterprise. And with public opinion playing an important role in the whole process (see our discussion of §.5 above), we have an enforcement mechanism for “good” workmanship in codification.

The last point mentioned above (§.9) seems more controversial. This refers to the fact that not only should foreigners be admitted into the competition, but “in so far as applicable, unless it be in all particulars taken together decidedly inferior, the draught of a foreigner [should] be employed in preference” (id, 289). Was this a case of limiting the set of eligible candidates such that only one (i.e. Jeremy Bentham) remained as a viable candidate? Once again, however, Bentham includes a rationale for this point. In his opinion, a native will be influenced by a “swarm ... of personal connections [and] thence of particular and *sinister interests and affections*, from the irresistibly-tempting and seductive influence of which, the situation of the foreigner bespeaks him free” (id, 290). Note that, according to Bentham, not only do these arguments not apply in the case of a foreigner, but for these same reasons, prejudices will also be less important in the case of a non-native codifier. Bentham, of course, is aware that natives have more of what we would call the local knowledge that the codification enterprise requires. But once again, he has some counter-arguments against this point; “[t]he *deficiency* is not so *great* as it will be apt to appear”, because “[i]n comparison of the *universally-applying*, the extent of

the *exclusively applying circumstances* will be found very inconsiderable” (id, 291; for more on this, see Bentham 1962)²⁸.

The two final points included in *Codification Proposal* speak of the “Draughtsman’s test” (§.11) and the “Legislator’s test” (§.12). Here Bentham argues that the evaluative criteria of a “good” codification proposal is whether it satisfies the comprehensiveness requirement, its rationale is “interwoven” (such that the several reasons are attached to the arrangements to which they apply), the universality of admission applies, and a single hand is chosen; “[i]f what has been said above... has proved satisfactory, -the position, which forms the title of the present section [namely, “willingness as to rationale, draughtsman’s test”]...will already have received its proof: if not, nothing further, that can with propriety be ranked under this head, affords any promise of being of use” (id, 296). This is, then, the vital test in relation to the aptitude of the codifier. And in the same manner, the legislator’s test as to his willingness to see a good code established is also determined by the satisfaction of these same points.

As we have explained before, *Codification Proposal* closes with “Testimonials” on the author’s aptitude with relation to the work proposed, notably selected for their

²⁸ It is interesting to note that in an early draft of *Codification Proposal*, Bentham added that “matters of detail” could always be filled in afterwards by the national legislature, if necessary (Bentham 1998, xliii). This point, however, does not appear in the published version of this paper. What is included is a consideration in the sense that in the case of a foreigner, with less local knowledge, “by virtue of his comparatively greater command over the whole field, it might be in his power, by means of *instructions* furnished by him in general terms, to afford, to any natives, on whom the task devolved, superior assistance: assistance, of such a sort, as should enable them to give a more apt execution to it, that without him, it would have been in their power to give to it” (id, 293). This, then, would represent an additional advantage of a foreigner as opposed to a native codifier.

positive portrayals of Bentham²⁹. The original document includes 20 “testimonials”, emanating from writings from 10 different countries. The first *Supplement to Codification Proposal* includes 17 additional “testimonials”, and the *Second Supplement* has 5 more “testimonials”. Here it is important to stress that these supplements only contain new testimonials, thus presumably complementing the previous statements and providing a more complete picture of Bentham’s experience and abilities. In this sense, the wonderful letter from the Guatemalan liberator José del Valle received by Bentham in 1826, and which we have quoted at the beginning of this paper, is included in the first *Supplement* (id, 370-371)³⁰.

It is our belief that our previous discussion speaks for itself. Yet here we cannot avoid the opportunity to make a general appraisal of this work by Bentham. First of all it is important to note that, as it should be clear, what Jeremy Bentham was doing in *Codification Proposal* was, in modern parlance, outlining a plan for mechanism design. That is, he was designing the rules by which the process of institutional design itself would be conducted. But note that given the form these rules take, in this case the expert rule-setter has a clear comparative advantage in all the points he propounds. This would be so from the determination of the requisite contents of the system, to the qualifications required for the completion of the job. Of course, it could be argued that since

²⁹ In Bentham’s own words from the Advertisement of *Codification Proposal*: “This part consists of divers papers, expressive of the conceptions entertained by divers Constituted Authorities, in divers States, in relation to the proposed Author: conceptions, concurring, as supposed, in affording a presumption in favour of his aptitude, with relation of the proposed work” (Bentham 1998, 244).

³⁰ Regarding del Valle and his contacts with Bentham, see Valle (1942). See, also, Bentham (1998), xxxiv-xxxv.

Codification Proposal was written so as to secure for Bentham an invitation to codify, it would have been illusory to expect him to write something less accommodating to his interests. In this sense, recall that this work only claims to be a proposal “addressed by Jeremy Bentham” to nations interested in institution-building efforts and, as noted, includes testimonials as to the author’s aptitude in this respect. But, at the same time, and as we hope to have already transmitted, the language in which the proposal is written leads to the appearance that the author is engaged in a larger enterprise, that of promoting the public interest, or seeking the truth. Because as noted, there is a close relation between the methodology of codification and the system of laws to be implemented, particularly since Bentham essentially took for granted that he would win the contest to draft the codes in question. And what greater task can there be than that of being engaged in codification, thus leading to the solution of the problems caused by an imperfect common law or generating political order in newly established liberal nations. In Bentham’s own words, which here deserve to be considered at length;

‘The good which I could do to mankind if I were in the House of Commons, or even if I were minister, is inconsiderable of that which I may hope to do if I go there [to Spanish America, in particular, to Venezuela]: for having, by the ignorant and domineering Spaniards, been purposely kept in ignorance, they have the merit of being sensible of it, and disposed to receive instruction from England in general, and from your humble servant in particular. Whatever I give them for laws they will be prepared to receive as oracles: for the case is, though I have neither time nor room to give you particulars, that now at length, when I am just

ready to drop into the grave, my fame has spread itself all over the civilized world; and by a selection only that was made A.D. 1802, from my papers, by a friend, and published at Paris, I am considered as having superseded everything that was written before me on the subject of legislation.’ (Bowring 1962, x: 458)³¹

Given the role the expert assumes in this case, then, it would seem natural that the proposed system to achieve such ends be very restrictive. And, in effect, we find that Bentham basically argues that the intended objective of pursuing the “greatest happiness of the greatest number” will only be realized if his proffered guidelines are followed. And this not only applies to the fact that Bentham seems to believe that only his all-comprehensive Pannomion would satisfy the utilitarian principle; he also states that drafts of some of the components of the Pannomion must be presented by potential codifiers who want to participate in the open mode universal system (Bentham 1998, §.5; especially page 263). Note, then, that in this situation legislators are not receiving “draughts from all hands”, but only from that subset of such experts who regard these elements as important enough to merit consideration in their codes, or are induced to compose such constituent codes of Bentham’s Pannomion so as to participate in this process. Further, since apart from the “all-comprehensiveness” requirements there are additional provisions, particularly in terms of “interwoven rationale”, which we have referred to above (for more on this, see *id.*, §.4; also see the “draughtsman’s test” §.11), it should be clear that the Bentham model is not very flexible. At this point it is important

³¹ This text comes from a letter from Bentham to John Mulford, dated November 1 1810. See, also, Bentham (1988-2000), viii: 76-78.

to stress that here we are not referring to the flexibility, or lack thereof, of Bentham's system of laws, but of the rules under which the codification itself would take place. Of course, both these issues are related, especially since, as just noted, following Bentham's offer to write down an all-comprehensive code of laws, the adoption of his own system tends to follow quasi-naturally. At any rate, let us next proceed to analyze the implications of our view of Bentham's work as an expert on codification more carefully within the context of a theoretical examination of the work of a foreign expert.

A foreign expert within a theoretical model

Our argument thus far views Jeremy Bentham as an expert who saw himself as an illuminated sage, pursuing the public interest, striving for the truth. This is not, we strongly believe, a caricature of what Bentham thought he was doing and, further, we are not accusing him of any hypocrisy. Indeed we would argue that he was very honest with respect to his concern with the public interest and his presumed ability to construct utilitarian-efficient institutions. Yet it should be clear that this is a caricature of what foreign advisors, or more generally, experts do in reality. Foreign advisors act in a political setting (Drake 1994), and we also know that political agents are not really truth seekers (for a forceful statement in this respect see, for example, Buchanan 1999b). Thus, instead of viewing foreign advisors as simply diffusing new knowledge or promoting the public interest, we should view them as economic agents who have preferences and face constraints, just like everybody else. After all, the axioms of rational choice postulate that

all economic agents are self-interested and will act accordingly, given the constraints they confront.

David Levy has recently addressed this point and its implications in the context of a very interesting framework. Building on the theoretical construct first developed in Feigenbaum and Levy (1996), Levy (2001, Levy and Peart 2003) has opposed the notion that expert witnesses or scholars should be viewed as truth seekers. Of course, the more general claim that economic agents should not be viewed in such a manner also holds within this framework, as Levy himself acknowledges³². Let us, then, explain the form of this model. Before that, however, we should note that since the subject of our inquiry is Jeremy Bentham as a foreign expert, it is this economic figure that will be the main focus of our analysis.

Since an expert is an economic agent just like everybody else, he will have preferences and, thus, will have a general disposition in favor of his preferred alternatives. And yet, at least in abstract terms, it seems safe to presume that there will exist a general unique efficient recommendation a consultant can give regarding any given problem at hand. This is the point the advisor would seek to maximize in a first-

³² To be sure, models that assume rational choice type agents are nowadays mainstream in most fields of economics. Incentive questions within the context of problems of imperfect information form the basis of important research in many areas of economics. And yet, the notion that scholars are not truth-seekers seems to be less recognized. Even Buchanan, who rejects the truth-seeking assumption in politics, does not seem to be willing to go that far; see Buchanan (1999a) as an example of his faith in the disinterestedness of an economist qua political economist. And the relatively new literature on the problem of eliciting the truth through social interactions (see, for example, Dewatripont and Tirole (1999), Li, Rosen and Suen (2001), and Milgrom and Roberts (1986)), suffers from the same problem in that it essentially assumes that experts or members of organizations want to seek the truth. Leamer (1983), on the other hand, represents a convincing argument for viewing econometricians as rational choice scholars or policy analysts, in the same spirit as Levy's work; in this same vein see, also, McCloskey (1990, 1996).

best world³³. Thus, in the real world an advisor faces a tradeoff; in technical terms, and following Levy, we confront a tradeoff between bias and efficiency. At the same time, however, an advisor faces constraints, particularly in terms of maintaining a reputation as a serious professional. Considering constraints is relevant for two reasons. On the one hand, and as should be uncontroversial, approbation is valued; consultants, as everybody else, positively value the fact that they are considered famous or are highly admired. And this will prevent them from indulging their biases only when making hard choices. On the other hand, if an advisor wants to participate in the consulting market in the long run, he has to show that he is a serious expert who is guided, at least to some extent, by efficiency considerations; otherwise, his career in this market will be very short.

In the specific problem at hand we are dealing with the question of a mechanism for institutional design (and the system of laws that is almost directly associated to such mechanism, as discussed above) and the recommendations of a foreign advisor in this respect. Now it is surely quite easy to distinguish several possible biases an advisor could have regarding the nature of a system of law and the best way to secure its adoption. Note, by the way, that this would hold independently of any dishonorable motivation on the part of the advisor. The nature of his beliefs, after all, does not influence his intellectual honesty. And this certainly holds for the case of Bentham who, by now it should be clear, had specific predilections for certain types of institutional structures and for a given mode of codification. On the other hand, and although this may be harder to

³³ We are aware that this point may require certain qualifications, in particular regarding the uniqueness and/or ability to reach such unique maximum. At the same time, the question as to whether the advisor knows where such a maximum lies is also relevant here. While we believe that the general point mentioned in the main text remains valid in a general abstract sense, we will return to the latter point below.

imagine, it is also possible to define an “efficient” system of law and an “efficient” mechanism design system, at least in an abstract sense. Of course, the qualifications we briefly mentioned in footnote 33 would be particularly strong here. However, most of the arbitrariness regarding the definition of this efficient system may be removed if we consider that such a system may not have yet been discovered and, thus, may not be known a-priori. In any case, and for the sake of simplicity, let us for the present time assume that this condition holds. Now, with respect to the constraints the advisor faces in the case of interest to us, no special point need be raised since the general points are fully appropriate.

Let us, then, translate this discussion into diagrammatic terms. In this sense, here we will resort to a figure first developed by Feigenbaum and Levy (1996), and which has also been used by Levy in his analysis of the “expert witness problem” and in the problem of a “rational choice scholar” (2001, Levy and Peart 2003)³⁴. This figure, figure 1 below, represents a standard optimization problem. On the one hand, we have typical indifference curves for “Bias” (which in turn can be either “Positive” or “Negative”) and “Efficiency” (or whatever other “Good stuff” one would like to label the vertical axis). At the same time, we have constraint sets that represent the societal common knowledge of the efficiency of the advisor’s recommendation which, as noted above, affects the expert’s reputation in the market for consulting services. Thus, when public opinion knows more about the kind of recommendations the consultant is giving, it is better able

³⁴ Note, by the way, that as we have drawn this figure, we have assumed, following Levy, that maximal efficiency (“Good stuff”) is associated with zero bias. Given our previous discussion of efficiency, this simplification does not seem difficult to justify.

to evaluate the task of the advisor and thus influence his reputation in the market for such advising. In this case, then, these constraints will be tighter and the solution to the optimization problem will be E2. When the constraints are looser, on the other hand, the solution will be E1.

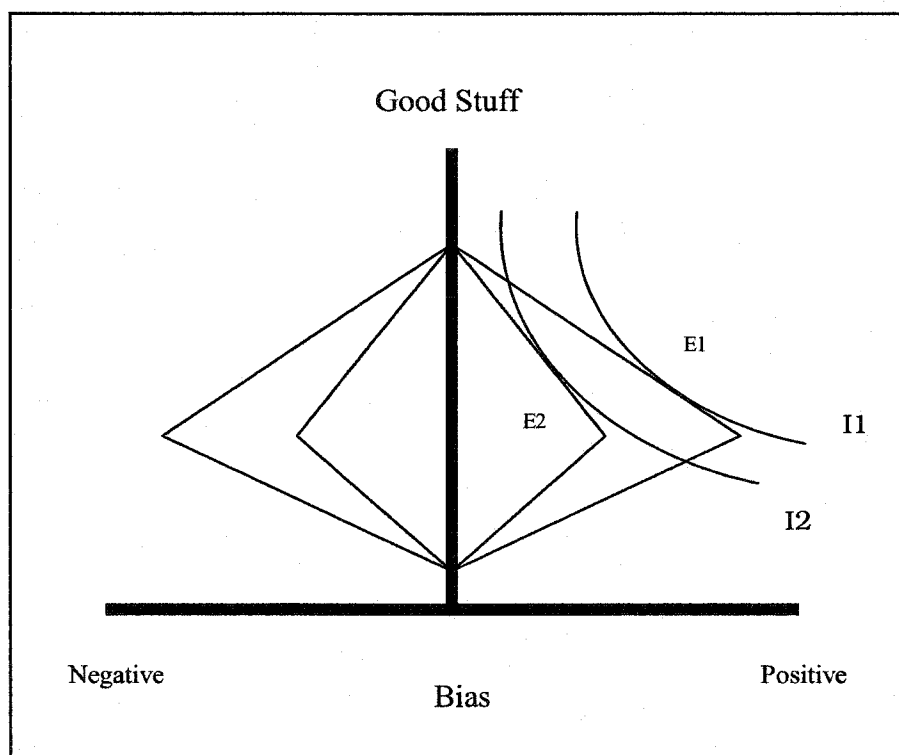


Figure 1

An alternative way to interpret this figure is to assume that if E1 represents the equilibrium where the consultant was an unknown domestic advisor, E2 would represent the fact that Jeremy Bentham was a well-known international foreign expert, as he indeed

was. Being well-known would thus represent an additional constraint; reputational considerations in the market for international consulting services represent farther restrictions than those that domestic reformers face, where no such notions are at play (or if they are, are less important, and maybe even somewhat different in nature). Because being famous (and vain), as Bentham was, the advisor will be less willing to indulge only his preferences if he knew that his professional reputation was at risk. Moreover, since via the *Auto-Icon* (Bentham 1832) Bentham's time horizon was very long, such considerations would surely turn out to be much more important in this case than what they would otherwise be. In this sense, fame related considerations serve to restrain an agent from pursuing his biases only³⁵. And thus we would be led closer to the "efficient" policy recommendation by the advisor³⁶.

Note, then, that through this simple rational choice model of an expert we have been able to provide structure to the "Bentham problem" we have been examining. The problem, let us repeat, is that Bentham's rules for mechanism design spelled out in his *Codification Proposal* represent the work of a foreign expert in action. In the context of our work we have viewed the expert rule-setter as a self-interested agent, who is not simply pursuing the truth, as is often claimed in this type of work. In this sense, we have

³⁵ For a discussion of fame related issues in Bentham's *Auto-Icon*, see Levy (1992) and Cowen (2000). Cowen and Sutter (1997) provide an argument similar to ours regarding the effect of fame considerations on the part of policymakers, on the efficiency of public policies.

³⁶ On the other hand, note that it is also possible to argue that Bentham's very idiosyncratic character may also have limited his being influenced exclusively by reputational considerations, which leads us to avoid the "dark side of fame" problems examined by Cowen (2000). And this, in turn, would also presumably lead to an efficient outcome, although through a different way.

shown how transparency-related and reputational considerations may constrain a foreign expert in terms of advancing his preferences only when engaging in this type of work.

Jeremy Bentham as a foreign expert revisited

Notwithstanding the simplicity and analytical strength of our model, it is only fair that we fully examine its implications on our narrative on Jeremy Bentham's activities as a foreign advisor. That is, while we believe we have been able to interpret much of Bentham's work in the context of this model, we must also address the problem as to why, if hiring Bentham as a foreign advisor was, according to our framework, a superior alternative did it not succeed in practice. Because while measuring influence is not an easy task, Bentham's codification offers were only accepted in one country, namely Portugal (although this work fell apart in the end) and, as we briefly mentioned above, his system of laws was not successfully implemented where he wanted it to be so. It is important to explain, of course, that parts of Bentham's system of laws were implemented in some places and, moreover, he seems to have been content with this being so. At the same time, it must be acknowledged that his ideas were influential during the 19th century (on this see, for example, Conway 1990, and Dinwiddy 1992b). But the fact remains that Bentham's offer for an all-comprehensive system of laws was never realized.

The manifestation that, as we have explained above, the Pannomion was not completed at the time when Bentham was offering his work as a codifier may help in

explaining this puzzle. Indeed, the record indicates that initially Bentham was not really willing to fully start with this work unless he received a security that his designs would receive serious consideration of being implemented (on this, see footnote 17 and the related discussion above). We can be fairly confident, then, that this fact must also have discouraged potential interested parties and help explain why Bentham was not fully successful with the implementation of his work on codification. Because while an outline of the proposed work may give an idea of the expected outcome, there is nothing like seeing a significant preview of the work in question, or even having a timetable as to how long it would take to complete the work. Regarding, in particular, this latter point, as far as we can tell Bentham did not provide such a timetable. Would you hire an expert under these conditions? At any rate, we should note that this argument does not provide an explanation for Bentham's lack of success in terms of seeing his codification offers, as presented in *Codification Proposal*, accepted or realized.

In this respect, a logical answer to this question is given by the possibility that the institutional-efficiency norms he was proposing were not shared (or being demanded) by his potential clients. Here, then, we are at last examining the role of the demanders of advising services. But why would we face a situation where supply does not match demand? The fact that the requirements for engaging in the task of codification may have been considered as being very steep, as they indeed seem to have been, may be one reason in this respect. On the other hand, the apprehension that Bentham was too radical, or too eccentric, may also have played a role here (on these issues see Dinwiddy 1992a; see, also, footnote 6). In the same way, the perception that the advisor was not willing to

compromise even on the outcome of the codification process (i.e. on the content of the law), may also have limited his influence. If we realize that *Codification Proposal* may have been viewed as offering a tied-sale of a form of laws together with Bentham's integral Pannomion (and such a reading is not too difficult to make), such a belief regarding the flexibility of Bentham's system of laws would not be farfetched. Now, here it is important to note that whether these perceptions are right or wrong does not really matter. As a matter of fact, and as we will argue below, Bentham was willing to make concessions in his system of laws, in particular with regards to the "exclusively-applying circumstances", such that whoever was to implement his system could "fill in the details" and thus adapt it to the existing local peculiarities. Still, it is probable that his potential success may have been affected by the fact that his form of laws was not really open to negotiation, and the manifestation that his work seemed too much of a one-man-show³⁷. Because from these accurate statements regarding Bentham's work, it is only a short step to the other not so correct perceptions mentioned previously. The fact that even such a careful writer as Thomas Carlyle was not capable of discerning such a subtlety should be suggestive of the problems Bentham had in conveying an accurate picture of his work (on these issues, see Chapter 2 below).

Our discussion, then, suggests that Bentham's character may have limited the potential influence of his work. We have referred to his vanity at several parts of this work. Indeed, we strongly believe that it was such a trait of his personality that caused

³⁷ Note, incidentally, that these facts also precluded him to engage in a true process of discovery of institutional solutions. The fact that Bentham believed that, in the main, he knew the truth in these respects was, surely, a limitation in this respect. In any case, we will return to this issue below.

him to have been perceived as inflexible, and caused some of the problems just mentioned. The different statements from Bentham we have quoted throughout this paper are truly suggestive of, in particular, his intellectual vanity. The importance of the enterprise he was engaged in must surely have justified this position in his mind, but the external perceptions of his work surely suffered in this respect.

On the other hand, note that the mismatch between the demand and supply of advice we have been dealing with may also be due to the fact that the advisor does not know what an “efficient” mechanism design, or institutional design is like, and thus his misconception. The important point to consider here, then, is that in terms of our explanation, knowledge of the real model is important only in a predictive sense, and not in an explanatory sense.

In a similar vein, here we should reiterate that nothing of what we have said in this section (or the previous section) has anything to do with truth seeking on the part of experts, foreign or domestic. As we hope to have made clear, the reputational considerations we have discussed in our model do not involve truth seeking, the public interest, or any other special disinterested motivational consideration on the part of any agent. At the same time, the fact that Bentham or any other foreign or domestic advisor may be or may have been wholly mistaken with respect to his recommendations has no connection to the way our argument has been developed. Moreover, and in a more general sense, the fact that the efficiency norms we are interested in may be wholly erroneous or misconstrued has no relevance for our positive analysis. And this, then, serves to get rid of a potential weakness of our argument (see, in particular, footnote 33).

Final comments

In this paper we have interpreted Jeremy Bentham's activities as a foreign expert in the context of a simple rational choice model. The historical narrative we have discussed is, we believe, straightforward. Our theoretical interpretation has, on the other hand, allowed us to see the importance of the exercise Bentham was involved in. In particular, it has entitled us to see both the advantages and limitations of the enterprise Bentham was embarked upon. And we have been able to do so within the context of a simple optimization problem, without assuming unrealistic altruistic motivations on the part of Jeremy Bentham as an expert, while at the same time also rejecting any dishonorable motive.

The more general conclusion we would offer from our analysis is the tentative claim that honesty and rationality are not enough if one wants to be successful in the consulting business. Our analysis of Jeremy Bentham's activities as a foreign advisor suggest that being willing to compromise with regards to the foundations of the work to be undertaken, and being able to genuinely convey such openness, also seem to be important elements in this respect.

Bibliography

- Bentham, Jeremy (1998). *'Legislator of the World': Writings on Codification, Law and Education*. Edited by P. Schofield and J. Harris as a volume of *The Collected Works of Jeremy Bentham* (Oxford: Clarendon Press).
- Bentham, Jeremy (1988-2000). *The Correspondence of Jeremy Bentham*. Edited by J.R. Dinwiddy (Vol. 7), S. Conway (Vols. 8-10) and C. Fuller (Vol. 11) as part of *The Collected Works of Jeremy Bentham* (Oxford: Clarendon Press).
- Bentham, Jeremy (1983). *Constitutional Code, Volume I*. Edited by F. Rosen and J.H. Burns as part of *The Collected Works of Jeremy Bentham* (Oxford: Clarendon Press).
- Bentham, Jeremy (1962). "Of the Influence of Time and Place in Matters of Legislation", in J. Bowring, *The Works of Jeremy Bentham* (New York: Russell & Russell), Vol. 1, pp. 170-194.
- Bentham, Jeremy (1832). *Auto-Icon; or, farther use of the dead to the living. A fragment* (Unpublished).
- Bowring, John (1962)[1838-43]. *The Works of Jeremy Bentham*. Published under the superintendence of his executor, John Bowring (New York: Russell & Russell), Vols. 10 and 11.
- Buchanan, James M. (1999a)[1959]. "Positive Economics, Welfare Economics, and Political Economy", reprinted in Vol. 1 of the *Collected Works of James M. Buchanan* (Indianapolis: Liberty Fund Inc.), pp. 191-209.

- Buchanan, James M. (1999b)[1979]. "Politics without Romance: A Sketch of Positive Public Choice Theory and Its Normative Implications", reprinted in Vol. 1 of the *Collected Works of James M. Buchanan* (Indianapolis: Liberty Fund Inc.), pp. 45-59.
- Conway, Stephen (1990). "Bentham and the nineteenth-century revolution in government", in R. Bellamy (Ed.), *Victorian Liberalism: Nineteenth-century political thought and practice*, pp. 71-90.
- Cowen, Tyler (2000). *What Price Fame?* (Cambridge: Harvard University Press).
- Cowen, Tyler and Daniel Sutter (1997). "Politics and the Pursuit of Fame", *Public Choice*, Vol. 93 (1), pp. 19-35.
- Dewatripont, Mathias and Jean Tirole (1999). "Advocates", *Journal of Political Economy*, Vol. 107 (1), pp. 1-39.
- Dinwiddy, John R. (1992a)[1984]. "Early-Nineteenth-Century Reactions to Benthamism", reprinted in his *Radicalism and Reform in Britain, 1780-1850* (London: The Hambledon Press), pp. 339-361.
- Dinwiddy, John R. (1992b)[1978]. "Bentham and the Early Nineteenth Century", reprinted in his *Radicalism and Reform in Britain, 1780-1850* (London: The Hambledon Press), pp. 291-313.
- Dinwiddy, John R. (1989). *Bentham* (Oxford: Oxford University Press).
- Dinwiddy, John R. (1980). "Los Círculos Liberales y Benthamistas en Londres, 1810-1829", in Fundación La Casa De Bello (Ed.), *Bello y Londres: Segundo Congreso del Bicentenario, Tomo I* (Caracas: Fundación La Casa De Bello), pp. 377-397.

- Drake, Paul W. (1994). "Introduction: The Political Economy of Foreign Advisors and Lenders in Latin America", in P.W. Drake (Ed.), *Money Doctors, Foreign Debts and Economic Reforms in Latin America from the 1890s to the Present* (Wilmington: Scholarly Resources Inc.), pp. xi-xxxiii.
- Everett, C.W. (1931). *The Education of Jeremy Bentham* (New York: Columbia University Press).
- Feigenbaum, Susan and David M. Levy (1996). "The Technological Obsolescence of Scientific Fraud", *Rationality and Society*, Vol. 8 (3), pp. 215-232.
- Fuller, Catherine (2000). "'Primer e mais antigo Constitucional da Europa': Bentham's contact with Portuguese Liberals 1820-23", *Journal of Bentham Studies*, No. 3, at www.ucl.ac.uk/Bentham-Project/journal/index.htm.
- Halévy, Elie (1955)[1928]. *The Growth of Philosophical Radicalism*. Translated by Mary Morris (Boston: The Beacon Press).
- Harrison, Ross (1989)[1987]. "Jeremy Bentham", in J. Eatwell, M. Milgate and P. Newman (Eds.), *The Invisible Hand; The New Palgrave* (New York: W.W. Norton & Co.), pp. 53-60.
- Harrison, Ross (1983). *Bentham* (London: Routledge & Kegan Paul).
- Hazlitt, William (1969)[1825]. "Jeremy Bentham", in his *The Spirit of the Age: Or Contemporary Portraits*. Edited by E.D. Mackerness (London: Collins Publishers), pp. 19-35.
- Hume, L. J. (1981). *Bentham and Bureaucracy* (Cambridge: Cambridge University Press).

- Leamer, Edward (1983). "Let's Take the Con out of Econometrics", *American Economic Review*, Vol. 73 (1), pp. 31-43.
- Levy, David M. (2001). *How the Dismal Science Got Its Name: Classical Economics & the Ur-Text of Racial Politics* (Ann Arbor: The University of Michigan Press).
- Levy, David M. (1992). *The Economic Ideas of Ordinary People: From preferences to trade* (London: Routledge).
- Levy, David M. and Sandra J. Peart (2003). "Why Would Truth-Seekers Need a Code of Ethics?", Paper presented at the Joint Statistical Meetings, San Francisco.
- Li, Hao, Sherwin Rosen and Wing Suen (2001). "Conflicts and Common Interests in Committees", *American Economic Review*, Vol. 91 (5), pp. 1478-1497.
- McCloskey, D. N. (1996). *The Vices of Economists –The Virtues of the Bourgeoisie* (Amsterdam: Amsterdam University Press).
- McCloskey, D. N. (1990). *If You're So Smart: The Narrative of Economic Expertise* (Chicago: The University of Chicago Press).
- Milgrom, Paul and John Roberts (1986). "Relying on the information of interested parties", *Rand Journal of Economics*, Vol. 17 (1), pp. 18-32.
- Rosen, Frederick (1983). *Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code* (Oxford: Clarendon Press).
- Schofield, Philip (1998). "Jeremy Bentham: Legislator of the World", *Current Legal Problems*, Vol. 51, pp. 115-147.
- Schwartz, Pedro (1978). "Work in Progress: Bentham's Influence in Spain, Portugal and Latin America", *The Bentham Newsletter*, Vol. 1, pp. 34-35.

Semple, Janet (1993). *Bentham's Prison: A Study of the Panopticon Penitentiary*

(Oxford: Clarendon Press).

Thomas, William (1979). *The Philosophic Radicals: Nine Studies in Theory and Practice*

1817-1841 (Oxford: Clarendon Press).

Valle, Rafael H. (1942). *Cartas de Bentham a José del Valle* (México D.F.: Editorial

Cultura).

Williford, Miriam (1980). *Jeremy Bentham on Spanish America: An account of his letters*

and proposals to the New World (Baton Rouge: Louisiana State University Press).

2. You Fill in the Details: Jeremy Bentham on the Transfer of Institutions

Introduction

Jeremy Bentham's model of institutional design and his views regarding its transfer across nations has long been an object of examination. But at least in the province of political economists, there remains some confusion regarding what Bentham was really saying in these respects³⁸. In this paper we will re-examine these issues and argue that Bentham's "codification proposals", i.e. his offers of an all-comprehensive system of laws, should not be interpreted as suggesting that he visualized his system as a "one-size-fits-all" model of institutional design only, as has often been claimed. His framework, instead, is more like a "starting point", whereby the authorities that were to implement his designs could adapt his model as necessary by "filling in the details". This, then, suggests that for Bentham the implementation of his system of laws could also be by parts, so to speak. Indeed such behavior is perfectly rational in terms of a simple model of the allocation of effort of an economic agent, as we shall show here.

³⁸ While the issue at stake was more than just Bentham's views on codification, Hayek (1960) represents a notorious example of the confusion existing in this sense. Robbins (1961), in turn, is a particularly early challenge to Hayek's reading of Bentham. I am grateful to Andrew Farrant for the reference to Robbins.

From our narrative a series of important implications follow. In the first place, it follows that Bentham must be recognized as a much more careful scholar than what is commonly believed, and as much more thoughtful than later utilitarian reformers who claim to have been building on his work. Note, for one, that in his approach to the transfer of institutions he implicitly pays high estimation to tacit knowledge, which is an important element of the task of institutional design (North 1990).

In an essay originally published in 1959, James Buchanan argued that political economists have a non-normative role in terms of “discovering ‘what people want’” (1999, 207). In this framework we are faced with a value free exercise in terms of the economist qua positive economist while, at the same time, it is assumed that the economist’s personal propensities do not contaminate his work. Such a type of belief, however, really seems to represent something more like a wish which, moreover, may be quite dangerous to entertain. After all, as economists we believe that economic agents are self-interested and will act accordingly, given the constraints they face. In this sense, the consequences of viewing economists as truth-seeking experts seem very fragile to changes in this high-mindedness assumption (Levy 2001). As we shall show below, some features of Jeremy Bentham’s work present a strong resemblance to Buchanan’s approach; in particular, the assumptions he imposes on the motivations of legislators clearly seem too conscientious to be true. Thus, here we will argue that despite whatever may be said of Jeremy Bentham’s model of government, with all its mechanisms so that people may control their rulers, his analysis does not seem to recognize all the worst-case implications of his system and design the appropriate securities so as to avoid them. In

other words, Bentham's model does not seem robust in the sense of David Levy (2002), who refers to robustness in constitutional political economy in terms analogous to the concept of robustness in statistics. Our work suggests, then, that the model of an expert, whatever type of expert, as a rational choice agent is a much more robust construction if we want to avoid potentially dangerous consequences.

Jeremy Bentham and the Transfer of Institutions

In this paper we will assume that Jeremy Bentham's interest in codification is well known; consequently, this is an issue we will not examine here³⁹. We should stress, in any case, that his interest in this area was not only theoretical, but also political. After all, Bentham's advocacy for codification was directly related to his desire to further the "greatest happiness of the greatest number"⁴⁰ through practical institutional reforms. In this sense, and as is well known, his work on how the law ought to be was the central motivation of his long and productive life. The problem comes when we examine what type of model Bentham was promoting, and how he was advocating the implementation of such a system. We have examined the configuration of Bentham's codification offers at some length above (see Chapter 1). But there we deliberately omitted a consideration of the structure of the institutional designs to be implemented by Bentham the expert

³⁹ The literature on Bentham's interest in codification is very extensive. For an introduction to this work see, for example, Dinwiddy (1989), Hume (1981), or the introductory essay to Bentham (1998).

⁴⁰ As David Levy has reminded me, Bentham's principle of utility went through several re-formulations over the years; on this see, for example, Dinwiddy (1989), pp. 25-28. For a fascinating discussion of the history of Bentham's phrase "the greatest happiness of the greatest number", see Shackleton (1993).

codifier. This is the problem we will now attempt to tackle. Before we start, however, we should explain that throughout the years Bentham's model of institutional design has been interpreted in many different ways. And this will force us to examine the issue with great care so as to avoid further misinterpretations.

The portrayal of Jeremy Bentham's work as the transfer of a one-size-fits-all system of laws has been particularly common. A contemporary picture of the Benthamite system in this sense is that provided in 1829 by Thomas Carlyle;

Thus it is by the mere condition of the machine; by preserving it untouched, or else by re-constructing it, and oiling it anew, that [according to the English utilitarians] man's salvation as a social being is to be insured and indefinitely promoted. Contrive the fabric of law aright, and without farther effort on your part, that divine spirit of freedom, which all hearts venerate and long for, will of herself come to inhabit it; and under her healing wings every noxious influence will wither, every good and salutary one more and more expand. Nay, so devoted are we to this principle, and at the same time so curiously mechanical, that a new trade, specially grounded in it, has arisen among us, under the name of "Codification", or code-making in the abstract; whereby any people, for a reasonable consideration, may be accommodated with a patent code, -more easily than curious individuals with patent breeches, for the people does *not* need to be measured first. (1885, 191)⁴¹

⁴¹ For a different line of criticism of Bentham's system, see the following from William Whewell, as quoted by J.S. Mill in his "Whewell on Moral Philosophy"; "There is in every national code of law a necessary and fundamental historical element; not a few supplementary provisions which may be added or

But does this accurately represent what Bentham was advocating? While, as is well known, John Stuart Mill had an ambiguous relation with the Benthamite system in his 1838 essay on Bentham, he defended him against the claim that he advanced a “one uniform suit of ready-made laws for all times and all states of society”, and explains that,

The doctrine of codification, as the word imports, relates to the form only of the laws, not their substance; it does not concern itself with what the laws should be, but declares that whatever they are, they ought to be systematically arranged, and fixed down to a determinate form of words. (Mill 1969, 104-105)

While the differences between these authors may seem subtle, they are in fact important. After all, there is a substantial difference between proposing the transfer of a one-size-fits-all system of laws, and transferring a set of principles or a technique for codification. More problematic, however, is the fact that at a first glance, it seems that both these positions can be sustained by a reading of Bentham’s works on codification. For an account supportive of Carlyle’s position, consider that the *Constitutional Code* (Bentham 1983b) essentially seems to represent an instance of Bentham writing a code for the implementation by any liberal state⁴². On the other hand, for an argument supportive of

adapted to the local circumstances after the great body of the code has been constructed: not a few touches of local colouring to be put in after the picture is almost painted: but an element which belongs to law from its origin, and penetrates to its roots: a part of the intimate structure; a cast in the original design. The national views of personal status; property, and the modes of acquisition; bargains, and the modes of concluding them; family, and its consequences; government, and its origin; these affect even the most universal aspects and divisions of penal offences; these affect still more every step of the expository process which the civil law applies to rights in defining penal offences” (Mill 1987, 264). Here we will not follow through this argument since our interests lie, instead, in the different depictions of Bentham’s work in codification, as opposed to the problems such a system may present. At any rate, Mill himself refutes these observations in the following paragraphs of this work; see Mill (1987), pp. 264-265.

⁴² As Thomas (1979), where we found the previous reference to Carlyle, remarks, it was Carlyle’s reading of one of Bentham’s “Papers Relative to Codification and Public Instruction”, that led him to make these

Mill, see Bentham's "Codification Proposal" (1998), or "Of the Influence of Time and Place in Matters of Legislation" (1962), where as its very title suggests he recognized the problem that different circumstances of time and place could pose to the codification enterprise. What are we then to make of this quandary? Does this represent but another instance of the development of Bentham's thought? Or was Bentham really working in parallel in two different dimensions of his work on codification? Or maybe much simpler still, is it that one of these authors is incorrect in his appreciation of Bentham's work? Before we proceed to examine these issues, let us briefly consider some issues regarding the methodological foundations of Bentham's theory of institutional design that may be important for our ensuing discussion⁴³.

Jeremy Bentham's model of man and his model of institutional design are based on two basic principles. On the one hand, people are supposed to act so as to maximize their interests, in terms of seeking pleasures and avoiding pain. On the other, the stated aim of legislation is to maximize the "greatest happiness of the greatest number"⁴⁴. In this sense, we can say that his was a purely motivational theory of institution building. This

comments (1979, 30). In particular, Thomas is referring to a circular letter from Bentham to the Governors of the United States, dated June 1817 (Bentham 1998, 52-54), which implies that if they were to accept his services, every State would obtain the same codes of law.

⁴³ Here it is important to explain that in this paper we will not really be concerned with the specific details of Bentham's blueprint for institutional design. Since, as is well known, he never completed the *Pannomion*, whenever we deal with specifics regarding Bentham's institutional designs, we will be referring to his *Constitutional Code* (Bentham 1983b), which comprises that part of the code that Bentham himself completed (as opposed to the reconstruction of Bentham's manuscripts by Richard Doane, published in Bowring's volumes). For an analysis of this work see, for example, Rosen (1983). For a chronicle of Bentham's composition of this work, see the introduction to the "Collected Works" edition of the *Constitutional Code* (Bentham 1983b), as well as Hume (1981). On the other hand, for a general overview of Bentham's general code of laws, see Bentham (1839).

⁴⁴ In this sense, note that here we will not really examine Bentham's system of ethics or how it relates to his motivational and behavioral model.

attitude can be unambiguously perceived from the opening paragraphs of *An Introduction to the Principles of Morals and Legislation*, where he states that, “Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do” (Bentham 1996, 11). Consequently, “The business of government is to promote the happiness of the society, by punishing and rewarding” (id, 74). To be sure, an intermediate step is necessary here in terms of combining duty and interest, such that people not only follow their interests, but act as they ought to behave so as to effectively promote the greatest happiness of the greatest number (Harrison 1983). Indeed, this problem of defining who will perform this junction, and how we should guarantee that he does so, is no easy task. Bentham’s solution in this respect is that the “greatest number” should be the legislator; therein his advocacy in favor of representative government, the extension of the suffrage, periodic elections, and his care in defining the administrative state. Even so, we now have the problem of bringing about such a system in the first place. This is an issue, however, that Bentham never seems to have faced in all its magnitude. And yet it seems clear that here there is a role for great men, who could make use of whatever opportunities became available to them to advance the utilitarian goal. Or maybe these great men had to cause, or work with others to create such opportunities; is it here, then, that Bentham viewed himself in this respect?

Whatever the case may be, it should be clear that the greatest limitation of this approach lies in its behavioral structure. To be sure, we cannot expect to examine all the

details of Bentham's view of the psychology of man in one paragraph or less. But from an examination of his *An Introduction to the Principles of Morals and Legislation* (Bentham 1996), and *A Table of the Springs of Action* (Bentham 1983a, 3-115) it does seem that something is missing from Bentham's model. This does not refer to the fact that "self-regard" narrowly understood is an incomplete guide to human behavior, because Bentham was very careful in terms of his treatment of this term. Instead, the missing ingredient seems to be the ideology and beliefs that people hold, and which surely also act as a spring of action. Of course, since any exercise of defining all the springs of actions is at the same time limited and ambiguous it could be that beliefs are implicit in Bentham's model. Recall, now, that the Benthamite system works from interests to motives and from motives to action⁴⁵. And in this respect, as Ross Harrison has explained, Bentham discusses beliefs in relation to interests; "[b]eliefs can be explained in terms of interests of groups, of classes" (1983, 200)⁴⁶. Thus, beliefs can be said to be endogenous to his system. There seems to be no role for original or independent beliefs in this model; everything, including every belief, is explained in terms of an individual's quest for pleasures and the avoidance of pains. But is this a realistic representation of the world? Surely not. In any case, the more general claim regarding the incomplete standing of Bentham's model of man has been more articulately stated by J.S. Mill in his essay on Bentham referred to above. As Mill plainly spells out,

⁴⁵ "[T]here exists not ever any voluntary action, which is not the result of the operation of some *motive* or *motives*, nor any motive, which has not for its accompaniment a corresponding *interest*, real or imagined" (Bentham 1983a, 99-100; italics in the original).

⁴⁶ Further, "[s]o interest influences belief by making people reluctant to refute beliefs in which they want to believe, if they have them, or eager to establish them, if they don't have them" (Harrison 1983, 204).

“Man is conceived by Bentham as a being susceptible of pleasures and pains, and governed in all his conduct partly by the different modifications of self-interest, and the passions commonly classed as selfish, partly by sympathies, or occasionally antipathies, towards other beings. And here Bentham's conception of human nature stops” (1969, 94)⁴⁷. And following this argument, he then goes on to comment on the problems of developing a theory of institutions on these characteristics;

It may there be seen that the different exigencies of different nations with respect to law, occupied his attention as systematically as any other portion of the wants which render laws necessary: with the limitations, it is true, which were set to all his speculations by the imperfections of his theory of human nature. For, taking, ... next to no account of national character and the causes which form and maintain it, he was precluded from considering, except to a very limited extent, the laws of a country as an instrument of national culture... (Mill 1969, 105)⁴⁸

From this discussion it should be clear that for Bentham human homogeneity is to be the building block of all his theoretical and practical constructions. To the extent, then, that it is possible to devise an efficient system of laws, can we suppose that it will be feasible to further the diffusion of greater happiness through the transfer of this code? In other words, granting human homogeneity, is it the case that an institutional arrangement that

⁴⁷ Note that here we are not claiming that Bentham's own limited mind frame may have limited his view of the world, as Mill argues. This is a point that has been contested by Everett (1931), and more recently by Semple (1993).

⁴⁸ Moreover, “A philosophy of laws and institutions, not founded on a philosophy of national character, is an absurdity” (Mill 1969, 99).

is appropriate for a particular place will be appropriate everywhere or at every time?

Bentham's answer to this latter question is no. This is a point that he made very clear in an essay entitled "Of the Influence of Time and Place in Matters of Legislation", originally published in 1802⁴⁹. In this work Bentham starts from the same model of human nature we have referred to above, whereby the happiness of society is to be promoted by punishments and rewards, and then asks whether it is necessary to alter the (optimal) institutions of one country when transferring them to another. His answer can be gathered from the following quotation:

Laws need not be of the wild and spontaneous growth of the country to which they are given: prejudice and the blindest custom must be humored; but they need not be the sole arbiters and guides... Legislators who, having freed themselves from the shackles of authority, have learnt to soar above the mists of prejudice, know as well how to make laws for one country as for another: all they need is to be possessed fully of the facts; to be informed of the local situation, the climate, the bodily constitution, the manners, the legal customs, the religion, of those with whom they have to deal. These are the data they require: possessed of these data, all places are alike. (Bentham 1962, 180-181)⁵⁰

⁴⁹ As Bahmueller (1981) has explained, this piece, originally composed in 1782 (see, also, Halévy 1955, 519) should really be titled, "The Influence of Place and Time in Matters of Legislation", which is the heading that appears in Bentham's manuscripts of this essay. According to Bahmueller, it was mis-titled by Richard Smith, who edited the "incomplete and often erroneous version" for Bowring's volumes (220, footnote 18). At any rate, note that before that (in 1802) Dumont had also titled it "The Influence of Time and Place...".

⁵⁰ Further, "To assist him in the execution of it, the legislator should be provided with two sets of tables. Those of the first set would exhibit a number of particulars relative to the body of laws which have been pitched upon for a standard, as contemplated in different points of view: for example, a table of offences; tables of justifications, aggravations, extenuations, and exemptions; a table of punishments; a table of the

Regarding the influence of time, on the other hand, the issue is whether institutions that are in some way efficient at present would also be so in the future, and would have been so in the past; that is, we are interested in both a prospective and a retrospective view on the matter. In particular regarding the retrospective view, Bentham argues the following:

But were the imperfect laws which obtained then [in times past], better for that time than the most perfect which we can imagine now would have been for the same time? The affirmative is what seems to have been insinuated, but, as it should seem, without sufficient cause. (id, 189)⁵¹

In these paragraphs Bentham seems to be suggesting that the essence of the codification enterprise, relating to the legislative technique, so to speak, is unique both temporally and geographically. The legislator, of course, faces severe knowledge and incentive problems. Yet at least in Bentham's mind, it is still possible to give each country the best institutional design once we know all the necessary "data". In other words, Bentham believes that it is possible to build an efficient system of laws, both with respect to its form and its substance. Moreover, he argues that the problem of passing from a locally to a globally efficient system of laws is not as hard as it seems. Because in terms of the implications for legislation, the differences between peoples are less important than the

titles of the civil code; a table of the titles of the constitutional code, and so on. Those of the other set will be: a general table of the circumstances influencing sensibility; tables or short accounts of the moral, religious, sympathetic and antipathetic biases of the people for whose use the alterations are to be made; a set of maps, as particular as possible; a table of the productions of the country, natural and artificial; tables of the weights, measures and coins in use; tables of its population, and the like" (id, 173; footnote omitted).

⁵¹ Regarding the prospective view, on the other hand, Bentham argues that while perfection may perhaps not be attainable "[w]e may hope, then, that in future time improvements will be made, among other things, in the practice of legislation" (id, 193). Following this he suggests that the implementation of what seem to be many of his proposals relating to legislation, morality, and economic issues could lead towards perfection.

similarities; in Bentham's terminology, the "universally-applying" circumstances are of greater significance than the "exclusively-applying" circumstances. This is, after all, the main lesson from our previous discussion on Bentham's model of man. But notice also that for Bentham an institutional arrangement that is appropriate for a particular place will not necessarily be appropriate everywhere and, thus, alterations could and should be implemented to the general institutional mold when the case demanded it⁵². As he so eloquently put it, the fact that "Stripping a man stark naked, might cause death in Siberia, in circumstances in which it would only be play in the East Indies" (id, 173) has important implications for legislation; in this case for penal legislation.

The fact that from an examination of his work for Greece, Frederick Rosen argues that Bentham "was aware that conditions in new states were different from those in established ones" (1992, 99), is also suggestive for our argumentation in the sense that in the Benthamite system "exclusively-applying" circumstances do matter for codification⁵³.

⁵² "If the difference lies not in the pains and pleasures themselves, it must lie, if any where, in the things that are, or are liable to be, their causes ... The same effect, an event of the same description, nay, even the same individual effect, which would produce pain or pleasure in one country, would not produce an effect of the same sort, or if of the same sort, not in equal degree, in another" (Bentham 1962, 172). And then Bentham proceeds to refer the reader to Chapter VI of the *IPML*, entitled "Of Circumstances Influencing Sensibility"; note in particular §. 6 (Bentham 1996, 52).

⁵³ Lea Campos Boralevi, on the other hand, provides some tricky evidence on this point when examining Bentham's early writings on colonialism. In particular, she focuses on the following paragraph by Bentham; "A word is enough for your *East India* possessions. Affections apart, which are as yet unknown, whatever applies to the West Indies, applies to the East with double force. The islands present no difficulty: the population there is French: they are ripe for self-government. There remains the continent: ... Would the tree of government grow there, if planted? Would the declaration of rights translate into *Shanscrit*? Would *Bamin*, *Chetree*, *Bice*, *Sooder*, and *Hallachore* meet on equal ground? If not, you may find some difficulty in giving them to themselves. You may find yourselves reduced by mere necessity to what we should call here a practical plan. If it is determined they must have masters, you will then look out for the least bad that could take them: and after all that we have heard, I question whether you would find any less bad than our English company" (quoted by Campos Boralevi 1984, 31). From this she infers that Bentham was concerned with "objective circumstances". But note that, more importantly, here Bentham seems to be

At the same time, “Codification Proposal” (1998, 241-384) provides additional support to the view that Bentham was advocating a unique form of laws. In essence, this work is a quasi-catechism of how to approach the task of designing a form of laws that would be conducive to the greatest happiness of the greatest number. Short of the content of the laws itself, a comprehensive list of requirements that would govern the codification enterprise is set forth herein. But note that while he does not discuss the specific content of the law, Bentham is fully aware that task of codification must recognize that there are some issues where locals must fill in the details of the law. In particular, when discussing the fact that foreigners should be preferred as codifiers (1998, §.9), he argues that natives are influenced by local interests, and though they have better knowledge of time and place, “[t]he *deficiency* is not so *great* as it will be apt to appear”, because “[i]n comparison of the *universally-applying*, the extent of the *exclusively applying* *circumstances* will be found very inconsiderable” (id, 291)⁵⁴. In other words, even if their influence may be “inconsiderable” in the usual cases, “exclusively applying” may still

renewing from his assumption of human homogeneity. This puzzle may seemingly be explained by the fact that this was an pre-radical writing of Bentham, but it seems that in his later writings, he insisted that “backward Indians” were “not ripe for self-government”, and needed an “enlightened despotism to lead them on their way towards civilization and progress” (1984, 132-133).

⁵⁴ And in a paragraph highly reminiscent of “Of the Influence of Time and Place”, essay, although in a weaker sense, Bentham adds, “Moreover, throughout the whole of the field, the exclusively applying circumstances will be found to be circumscribed, as it were by, and included in, the universally applying circumstances. The great *outlines*, which require to be drawn, will be found to be the same for every *territory*, for every *race*, and for every *time*: only in this or that *territory*, only for this or that *race*, only for this or that *time*, as distinguished for this or that other, will the *filling* up of those lines be found to require to be, on this or that point, more or less different. In every country, and for every race, at every time, –of the all-comprehensive and only defensible end –the *greatest happiness* of the greatest number –of the four most comprehensive particular and subordinate *ends*, viz. *subsistence*, *abundance*, *security* and *equality* – with their several divisions and subdivisions, will the description be found the same: only the *means* best adapted to the accomplishment of those great *ends*, in this or that country or for this or that race, at this or that time, will the description, in this or that particular, be found, in a greater or less degree, different.” (1998, 291-292; italics in the original)

matter in particular cases. But this is a point where we find a more straightforward statement by Bentham elsewhere, as we shall see below.

In other writings, however, we find that Jeremy Bentham seems to advocate a rigid one-size-fits-all system of laws. Since the early years of the 19th century Bentham started to seriously engage himself in trying to achieve the implementation of his codification designs (on this, see our discussion below). Is it, then, possible that as the plausibility of him taking part in the task of institutional design became closer, or seemed more real, Bentham desired to get himself more involved in the matter, such that he would not only sell a form of laws, but a ready-made code of laws? All throughout his life Bentham always searched for completeness or as he called it comprehensiveness within each of his works, such that there were no loose ends, while at the same time, the whole represented a coherent totality⁵⁵. Given this facet of his work we can easily imagine that a unique form of laws would, in his mind, be naturally and logically associated to the conception of a unique formal code. One can also imagine that the vanity of Bentham the advisor would also be a strong motivating force in the respect. Whatever the case may be, probably the most important evidence in this sense is that he seems to have been obsessed with the idea of securing “the drawing up and the promulgation of his entire Code, everywhere, somewhere, no matter where” (Halévy 1955, 149). The fact that Bentham was probably induced to commence work on the

⁵⁵ “It must be realized, however, that one aspect of the panopticon cannot be separated from another. Each proposal is not an isolated entity but a cog in a mechanism. Each part is symbiotically linked. The principle of lenity, the position of the governor’s urinal, the junction of interest and duty, and trays of steamed potatoes are bound inextricably together. The panopticon must stand, or fall, as a whole” (Semple 1993, 111-112). On this feature of Bentham’s work see, also, Everett (1931).

Constitutional Code by the invitation he received from the Portuguese Cortes in 1822, and yet no mention of Portugal appears in the text of the code also seems to provide evidence in the sense that he was seeking to implement his same model everywhere. While Bentham suffered disappointments in Portugal, and later also in Greece and elsewhere, it very much seems that it was the same constitutional code he wanted to “sell” in each of these countries. In all, in the preface to his *Constitutional Code*, whose full title is *Constitutional Code; for the use of all nations and all governments professing liberal opinions*, Bentham explains that,

The political communities, whose benefit this foremost part of my *all-comprehensive Code* (or say, in one word, of my *Pannomion*) has had principally in view –these communities have been for the time *present*, those, more particularly, which have grown out of the wreck of the Spanish monarchy (not to speak as yet of the Portuguese) in the American hemisphere. (1983b, 3-4)⁵⁶

And the opening part of the code proper starts in the following way:

State of {...} Its Constitutional Code. (id, 11)

The manifestation that the first two articles of the code likewise have a “{...}” to be filled in by that nation that procures and implements the code is also very suggestive. In

⁵⁶ Bentham then proceeds to explain that “To time future –whether before the present generation has passed away or not till a length of time after, and what length, I cannot take upon me to pronounce- was all along referred the applicability of the work to the use of the British Empire. In saying the *work*, I meant the whole of it, considered as a *whole*: for, as to *parts* of it, in no small quantity, if applicable to any one form of government, so are they to every other; and this, without any diminution of the proportions of power at present possessed by the several constituted authorities.” (1983b, 4; paragraph break omitted, italics in the original).

this sense, it would seem that the same codification model and the same code itself were to be available for the use of any country “professing liberal opinions”.

The fact that Bentham may have viewed the Pannomion as being suited of being adopted everywhere does not, however, imply that it was an exact facsimile of this code of laws that was to be applied everywhere. The *Constitutional Code*, and more generally the Pannomion, was a model to be adopted and adapted only as considered appropriate by the authorities of a liberally oriented nation. Of course, we can easily imagine that the implementation of his proposals as a whole would also have been very satisfactory for Bentham. But the point that is important to emphasize is that he was willing to see his codes implemented by parts. As the editors of his *Constitutional Code* have demonstrated, Bentham sent, or offered to send this work to many correspondents, including the monarchs of Bavaria and the Netherlands to whom he explained that, ““Though, as a whole ... it would be incompatible with Monarchy, several parts are alike suitable to every form of Government”” (1983b, x1)⁵⁷. In other words, there are parts of his code of laws that are applicable everywhere; more generally, and as the very terms suggest, the “universally-applying” circumstances are valid in every place. On the other hand, the matters of detail, the “exclusively-applying” circumstances, whether considerable or inconsiderable, could be filled in by each legislature (on this, see also footnote 54). Because as noted above, Bentham was open to the consideration of the local situation, climate, bodily constitution, manners, legal customs and religion when analyzing the problems of codification and the transfer of institutions.

⁵⁷ Bentham’s letter to the King of Bavaria is also reprinted in Bowring (1962), x: 578-581.

In the same manner, we can argue that the requirement that a code of laws be complete and consistent does not signify that for Bentham his work was of “take it or leave it” type, such that it was to be taken as a whole or not at all. In this respect, it is interesting to consider that with regards to a solicitation from Etienne Dumont for his help for his work on a penal code for Geneva, Bentham reports that he told Dumont that,

‘I can not put patches upon a work thus executed by other hands: I must do all or nothing: when I have executed the whole in my own way, it will for you to do with it as you think best.’ (Bentham to Plumer Jr. December 1818; quoted in Bentham 1998, xxiv)⁵⁸

Note, incidentally, that in this paragraph Bentham is not only saying that his general form of laws is unique, but also that the specific content of the law is likewise to be unique. But the point we wish to emphasize here is that in this quotation Bentham is also telling us that he was open to the possibility that the authorities that were to implement his proposals could make whatever adaptations to such design as they deemed necessary to make. It is here that the circumstances of “time and place” we have encountered above would enter into his system.

⁵⁸ This letter is also found in Bentham (1988-2000), ix: 305-315. Note, incidentally, that this argument would introduce a qualification on the claim that, “Bentham indeed believed that the sort of systematic, comprehensive, internally consistent code he envisaged would have to be the product of a single mind, and *would then have to be either accepted or rejected by the sovereign legislative power*” (Dinwiddy 1992, 308; italics added). And likewise it would also trump the following type of argument; “The code of laws which he [Bentham] was slowly competing was *meant to be taken all of a piece or not at all*, and this proprietary feeling made him feel averse (in theory as well as by temperament) to the concessions and compromise between different interests which are inseparable from parliamentary government” (Thomas 1979, 19-20; italics added). It is interesting to note, however, that elsewhere Thomas poses the different argument that “*On [sic] the Influence of Time and Place in Matter of Legislation*, offers a middle course between closely adhering to native customs and tactlessly ignoring them” (1979, 105). We would have no problem with an argument of this type.

As a final point, it is important to explain that the fact that Bentham started his work in constitutional codification following an invitation from first Portugal and later Greece is also of no real significance to our argument. This is only a reflection that, as we have explained above, Bentham was not willing to fully start with his work on codification unless he received a security that his designs would receive serious consideration of being implemented (see Chapter 1; also see Bentham 1998). Thus, our discussion suggests that the claim that Bentham advocated a one-size-fits-all mode of codification is simply incorrect. Notwithstanding this, we would grant that the claim by Bentham in the sense that he must “do all or nothing” with regards to codification, reviewed above, would lead to some confusion regarding his ideas on these points, especially when interpreted in isolation.

As Bentham scholars have explained the *Constitutional Code* should, then, be viewed as an exercise in normative political theory⁵⁹. To be sure, this is a treatise that is worked out at a much greater degree of detail than is common among political theorists. But this is how Bentham was. As T.P. Peardon (1993) has argued,

Bentham could never be content with mere analysis. Once he had been brought to concern himself with political questions, it was inevitable that his incurably

⁵⁹ “Seldom read today, Bentham’s *Constitutional Code* (1820-1832), nevertheless ranks among the most significant political treatises of the last century” (Peardon 1993, 621). “It is argued that the *Code* is the classic utilitarian text on representative democracy ... and that it contains arguments and insights of great importance to democratic theory today” (Rosen 1983, 2). “It belongs very definitely to the realm not of what Bentham called expository, but of censorial jurisprudence” (Schofield 1991-92, 40) where, we should explain, censorial jurisprudence deals with what the law ought to be like; that is, with the “*art of legislation*” (Bentham 1996, 294, italics in the original).

constructive mind should busy itself with devising the institutions of a well-governed state. (622)⁶⁰

It is within this context that we can really understand the comments by Bentham, in 1826, in the sense that his work was utopian⁶¹. At the same time, from all of this it also follows that Bentham's preparatory work for the code should also be interpreted, essentially, as a work in political theory (see, also Schofield 1991-92, 41)⁶². And this is so even though the fact that much of the groundwork for the *Constitutional Code* was based on his interest in practical reform (Hume 1981). In this sense, his particular emphases (in particular his campaign against "misrule" and his advocacy for "securities" against all

⁶⁰ Likewise, as Everett (1931) has explained, "One of the major problems concerning the life of Bentham is the reason for his slowness to publish ... We can only say that it was so because Bentham was Bentham and that it was so he worked. His very abilities often seemed to work against his success. On one side, his mind was that of a medieval school-man, a belated Abelard or William of Paris. This analytical power, and his control of logic, served him well in attacking smooth generalizations ... The other side of Bentham's mind, and as he thought the most important, was the systematic. He had the ability to conceive great systems, and to organize the most intricate of plans. These he saw first as an organic whole, and then down to their most minute articulations ... To him the great work of synthesis was never complete, however satisfactory it might seem to his friends. The outlines were not enough; he must push some phase to completion. Then seeing the disparity between that treatment of a relatively insignificant part and a number of more important parts, he would set himself to years of careful work necessary for completion of the whole." (101-102).

⁶¹ "The day for the commencement of this code [i.e. the *Constitutional Code*] with the stamp of authority on the first page of it, is the day which will give commencement to the hundred and first year, reckoning from the day on which the author will have breathed his last. In the meantime, to those who have the faculty of extracting amusement from dry matter, it may serve as a second Utopia, adapted to the circumstances of the age" (Bowring 1962, v: 278). Note that the editors of Bentham's *Constitutional Code* (for the Collected Works edition) have argued that this paragraph, from his "Extract of a Proposed Constitutional Code", was not written in 1816, as it was dated, but most probably in 1826. On the other hand, for a similar statement from Bentham, see also the following from the postscript of a letter to Francis Burdett, dated 1824, "A trifle of mine, a Constitutional Code, which, should it happen to you to reach the year 2828, you will then see in force among all nations, is at the point of completion" (Bowring 1962, x: 543).

⁶² Regarding this preparatory work, see Bentham (1989).

type of misrules) should simply be interpreted as the preferences of a normative political theorist.

So far we have examined the structure of the codification designs to be implemented by Jeremy Bentham in his work as an expert. Since he was a creative and meticulous thinker we believe his work and his ideas should be taken seriously; indeed, many of his ideas have proved to be important contributions in political, social and administrative theory. But when we investigate his specific influence as an expert on codification, we come to more complicated ground; after all, there is a substantial difference between anticipating ideas and inspiring them.

Jeremy Bentham and his influence on codification

As we have already explained, Jeremy Bentham was determined that his theoretical work on codification illuminate the course of institutional design throughout the world during his era. In this sense, since the early 1810s he proposed his services and was engaged in consultations, personally or through intermediaries, to draw codes for the United States, Russia, Poland, Geneva, Spain, Portugal, Tripoli, Greece, Buenos Aires and Guatemala, roughly in that order⁶³. Earlier than that, starting in 1808, he even planned to relocate to Spanish America, first to Mexico and later to Venezuela, to work as a native legislator. As is well know, however, most of the ventures turned out to be a failure, at least from

⁶³ On these efforts by Bentham to see his codification plans implemented see, for example, Halévy (1955), and Dinwiddy (1992); also see the Introductory essays to Bentham (1998) and Bentham (1983), Bentham's correspondence vols. vii through xi (1988-2000), and Bowring (1962), vols. x and xi.

the point of view of his seeing his all-comprehensive code implemented. But that does not mean that he was not influential at all anywhere during the 19th century. Of course, measuring influence is not easy. But as Steven Conway (1990), John R. Dinwiddy (1992), and S. E. Finer (1972) suggest, Bentham was indeed an influential thinker and reformer throughout this period.

The fact that the early 19th century was a period of high activity in terms of constitutional thinking and experimentation is an important factor in terms of explaining Bentham's popularity in Spanish America⁶⁴. Despite his extensive correspondence and contacts regarding codification in Spanish America, however, his designs were never fully implemented in the region (on his communications with Spanish Americans see, in particular, the Bentham correspondence; Bentham 1988-2000). Yet it is certainly the case that he was influential as an ideologue and in terms of other less-ambitious reforms. Thus, for example, Bernardino Rivadavia based the rules governing the proceedings of the Argentine legislature on Dumont's *Tactique des assemblées législatives* (Bentham 1998, xxxiv; Rivadavia to Bentham, August 26 1822, id, 360-363)⁶⁵. In Guatemala, José del Valle also seems to have been a committed Benthamite reformer, as can be gathered from his interest in Bentham's work when drawing a civil code for his country (for an examination of these issues, and del Valle's exchanges with Bentham in this respect, see

⁶⁴ For a contemporary opinion regarding Bentham's popularity, which we should note seems to be out of proportion, see the following from W. Hazlitt; "his name [Bentham's] is little known in England, better in Europe, best of all in the plains of Chile and the mines of Mexico (1969, 25). For a more extensive discussion of Bentham's interest in Spanish America, see Williford (1980). Schwartz (1978) offers a brief introduction to a study of Bentham's influence in this region, as well as Spain.

⁶⁵ It is important, however, to keep in mind that Bentham's relationship with Rivadavia seems to have ended sourly; on this relationship, see Harris (1998).

Valle 1942). The story of the fall and rise of Benthamite thought in Colombia, on the other hand, was particularly associated to the use of Dumont's *Traité de Législation* as a textbook for the studies of law, and has been carefully examined by Theodora McKennan (1981). And regarding Bentham's influence in Chile, Alamiro de Avila (1979) has convincingly argued that this occurred mainly through the teaching of penal law by Andrés Bello, who had worked for James Mill and Bentham in London in the 1810s. Arguably, then, it was through his writings that Bentham was most influential in Spanish America, especially in terms of providing an ideology to liberal politicians in the region (on this latter point see, also, Dinwiddy 1992, Harris 1998, and Rosen 1992). Indeed, many of his works, particularly those edited by Dumont were translated into Spanish. But given that during the early 19th century French was a lingua franca of the world, it is probable that his works were also widely circulated in that language⁶⁶.

In continental Europe, Bentham's influence was also significant (Dinwiddy 1992). The cases of Spain, Geneva, and Portugal are the best known such instances, mainly because of his contacts and work on codification there. The names of Etienne Dumont, Ramón Salas and Toribio Nuñez are very important as early propagandists of Bentham, or at least of their own renditions of his thought in their own countries, as well as elsewhere; after all, their editions of Bentham's works were widely circulated (see,

⁶⁶ For a bibliography of Bentham's works translated into Spanish, see Halévy (1955), 527-545. In this respect Schwartz (1978) argues that in particular the *Tratado de Legislación Civil y Penal de Jeremías Bentham, traducidos al castellano, con comentarios por Ramón Salas* (Madrid, 1821-1822) was widely circulated in Spanish America. On the other hand, in his article on Bentham's influence in Chile, de Avila (1979) explains how well, and since when, the works of Bentham were known in Chile. In this sense, he notes the importance of *El Español*, a monthly periodical published in London between 1810 and 1814, which reviewed Bentham's works, and the French versions of Bentham edited by Dumont.

also, Schwartz 1978). The Spanish writers in particular were also very influential in the academia in their country, particularly at the University of Salamanca. At the same time, the Benthamite ideas also turned out to be very influential politically, especially during the liberal periods of the history of Spain and Portugal. Indeed, and although in the end he would not be successful in this sense, it was during these liberal epochs that Bentham thought he would see his code of laws implemented in these countries. Such, incidentally, was also the case of Greece, where it was Edward Blaquiere and Leicester Stanhope who were his main political operators. But these episodes have been recounted many times, so we will not examine this issue any further here (on this see, the references in footnote 63 above, as well as Rosen (1992) for a careful examination of Bentham's involvement in Greece). In Geneva, on the other hand, Dumont and his allies achieved what Rivadavia had managed in Argentina, in terms of instituting the rules for the Representative Council on Benthamite foundations, and more. In particular we should mention the promulgation of a code of civil procedure drawn up by Pierre-François Bellot, and Dumont's own work on a regime for a penitentiary, both of which were based on Bentham's work (on Dumont's relation to Bentham see, also, Balmires 1990).

In England, Bentham's influence was mainly in the movements for social and political reform, where his own actions and his influence on the "philosophic radicals" Elie Halévy referred to in his now classic book, were the main diffusion mechanisms. Regarding the members of this circle, among the best known and most effectual in this sense we have Francis Place, George Grote, Arthur Roebuck and Joseph Hume; but there

were certainly many others (see, also, Thomas 1979). Probably more important that all of the previously mentioned names were the Mills, father and son. Indeed, Halévy has gone as far as noting that “[James] Mill rendered Bentham as much service as Bentham rendered Mill. Bentham gave Mill a doctrine, and Mill gave Bentham a school” (1955, 251)⁶⁷. In any case, in general, historians have examined Bentham’s influence on social and economic policy in England (as opposed to his influence on jurisprudence) in the context of an examination of the “revolution in government” that took place there during the 19th century (on these issues, see Conway 1990). In this respect, nowadays it is almost unanimously recognized that Bentham anticipated many of the changes in British colonial policy, health policy, education, protection of paupers, and government administration, among many others (Conway 1990, Finer 1972, Hume 1981). But what his influence in this respect? This is where things can get tricky; and indeed, there has been some debate on this issue (on this see, Roberts 1993). Nonetheless, in one of the most recent studies in this literature, Conway (1990) has argued that Bentham’s thought did incite at least some of the participants in this revolution in government. The way in which such influence may have taken place, on the other hand, has been discussed by

⁶⁷ Note, incidentally, that this comment is very similar to that of J.S. Mill in his *Autobiography*, in the sense that “It was my father’s opinions which gave the distinguishing character to the Benthamitic or utilitarian propagandism of that time” (1989, 92). On the other hand, note the following comment by Halévy; “James Mill ... was the first of a rising group of Benthamites to try, in January, 1809, to base the theory of representative government on the principle of utility, in an article published by the EDINBURGH REVIEW, dealing with the republican constitutions of South America” (1955, 257). Whether this article by Mill (which the Wellesley Index to Victorian Periodicals suggests was co-written with the Venezuelan General Francisco de Miranda) really represents such a view we will not discuss here; for an analysis of this question see Mill (1809). Likewise, given his appointment and expertise on the subject, Mill was also influential on the issue of reform in India. But he was not alone in this respect; Dinwiddy (1992) particularly notes the role of T.B. Macaulay in reference to the production of a penal code for India based on Benthamite ideas. But this is a complicated issue we will not examine here.

Finer (1972). Here, then, we come back to some of the names mentioned above, as well as to the role of Bentham himself and of his writings, as well as of the journals he supported.

A review of this type could certainly go on; indeed, we have left out Bentham's interest in, and influence on, many other nations. Likewise, a more detailed examination of his work in some of the countries already mentioned is also possible. But such a task would surpass the objectives of this paper. Bentham's work on political reform proper, however, should not be ignored. Here we are referring to his views on the suffrage, on women's rights and, the secret ballot, among others (Campos Boralevi 1984, Hume 1981, Rosen 1983). Once again, though, we must differentiate between his advocating and anticipating these policies and the claim that he was directly (or even solely) influential in the implementation of these policies, which is something we cannot argue here.

We are aware, of course, that some of these episodes we have examined represent an analysis of Bentham's influence after his death. In this sense, many of these processes operated through the work of Bentham's disciples who, one could imagine, not always adopted his ideas as Bentham would probably have preferred⁶⁸. And notice that most of these instances represent the influence of his ideas more than of his specific plans. Moreover, only a few of these episodes delineate the influence of the proposals in the *Constitutional Code* which, in any case, had very meager sales (Bentham 1983b, xlii).

⁶⁸ Here it seems important to note that, as J. Harris has explained, the concept of Benthamite "discipleship" should be treated very carefully. In this sense, Harris has forcefully argued that historians should be mindful of the fact that "In the self-propagandizing codification circulars of the 1820s, Bentham deliberately set out to present himself as the center of a worldwide network of disciples who understood and followed his principles" (1998, 147). While this seems a very appropriate point to keep in mind, we believe our analysis does not fall into this "trap" that Bentham laid.

And yet, to the extent that as noted above this work was an exercise in theory, it seems fair to search for instances of the implementation of the foundational ideas of this code. In this sense, recall that, as we have suggested above, the *Constitutional Code* was the product of many years of thinking by Bentham (on this see, also, Hume 1981). It is in this respect, then, that we believe that from our discussion it can be gathered that Bentham's ideology was influential, and that at least some of his proposals were indeed implemented. At the same time, note that many of his plans have proved successful if we consider his influence in a more extended time frame. The fact that many of his ideas have become too common in modern times for our noticing where the original concepts came from should be suggestive in this sense.

The existing evidence also seems to suggest that Bentham was happy with this partial success of his work, at least to the extent that the adopters of his designs took his completed plans and proceeded to implement them as they saw fit. For an example in this sense, note that Rivadavia's letter informing him of the adoption of his plans in Argentine was published as a "Testimonial" of Bentham's aptitude as a potential codifier in "Codification Proposal" (Bentham 1998, 360-363). But Bentham's own remarks in this sense referred to above should also be considered here.

Whatever the case may be, the question that now arises is why did Bentham not have greater success in terms of the implementation of his plans? This is an issue we have already examined above, where we have argued that an important problem in this sense lies in the fact that not all his plans were complete or fully articulated by the time of his

death, or even by the time that he wanted to “sell” them. At the same time, we have argued that his radicalism or the perception of such radicalism, as well as his eccentric literary style must also have limited his potential influence⁶⁹. But more than this, Miriam Williford has shrewdly observed that part of the problem was that Bentham’s plans “did not grow out of the problems of Spanish America” (1980, 141). Note, of course, that they did not grow out of the problems of Greece, Portugal or Spain either. They were, as we have remarked above, an exercise in theory. But this enterprise had the peculiarity that the theorist was a vain advisor. In the endeavor of seeing his proposals implemented Bentham was inspired by a spirit of working for the advancement of humanity; indeed, his vanity may have been the primer reason for his lack of success (for a discussion of these issues see Chapter 1)⁷⁰. But the point we wish to stress now is that to write a treatise in political theory, and hope to see it implemented anywhere (although, as argued above,

⁶⁹ On the effects of Bentham’s literary style see, for example, the review by Kenny (1895) on the reception to some of his writings in Spain. While we have not referred to this, it is important to mention that Bentham also had what seemed to be weird ideas on some subjects. At the same time, his opinions were not always popular at the time they were articulated; his ideas on established religion being a case in point regarding both these issues. In this sense, political realities also hindered his success. Bentham’s reception in Colombia, referred to above (see McKennan 1981), is indicative of this problem; for more on this issue, see also Harris (1998).

⁷⁰ In his reminiscences with John Bowring, Bentham provides us with a first-hand impression in this sense; “J.B. the most ambitious of the ambitious. His empire –the empire he aspires to- extending to, and comprehending, the whole human race, in all places, -in all habitable places of the earth and at all future time” (Bowring 1962, xi: 72).

At the same time, regarding his proposed work in Venezuela he writes, “The good which I could do to mankind if I were in the House of Commons, or even if I were minister, is inconsiderable of that which I may hope to do if I go there: for having, by the ignorant and domineering Spaniards, been purposely kept in ignorance, they have the merit of being sensible of it, and disposed to receive instruction from England in general, and from your humble servant in particular. Whatever I give them for laws they will be prepared to receive as oracles: for the case is, though I have neither time nor room to give you particulars, that now at length, when I am just ready to drop into the grave, my fame has spread itself all over the civilized world; and by a selection only that was made A.D. 1802, from my papers, by a friend, and published at Paris, I am considered as having superseded everything that was written before me on the subject of legislation” (Bowring 1962, x: 458). This text comes from a letter from Bentham to John Mulford, dated November 1 1810; see, also, Bentham (1988-2000), viii: 76-78.

Bentham would also accept an implementation by parts) would seem to be the maximum of vanity of Bentham the advisor⁷¹.

The work of an expert within a theoretical model

Standard optimization analysis is a powerful tool for the analysis of the problems of choice. In this section we will set up a variant of a Beckerian problem relating to an agent that has to choose how to allocate his effort among several alternative activities. The focus of our analysis will be Jeremy Bentham's decision making in terms of allocating his efforts to advocating the implementation of his proposals and all other activities. Since Bentham had a set of designs, in particular a code of laws, that he wanted to "sell"; i.e. to see implemented, it would seem natural to examine his choices in this way. What would be the rational decision regarding his allocation of effort so as to see his proposals fully implemented? This is the question we propose to examine here.

The basic assumption we will follow here is that fame, or approbation is valued; ordinary people value the fact that they are considered famous or are highly admired. This is an assumption that has a long tradition in the social sciences (Lovejoy 1961) but which, unfortunately, has lately been neglected in economics. At any rate, recent work by

⁷¹ Courtney Kenny also finds fault in Bentham in this respect, as we can see in the following paragraph; "Bentham had written philosophically on the influence which differences of place and time should have in modifying the work of legislation; and had formulated consequent rules for adapting the laws of one nation to the circumstances of another. Yet, as we have seen, he rushed into Spanish politics with a thorough ignorance of the country to which he was offering his advice, completely forgetting that the first duty of a political writer is to take account of those local circumstances which must modify the application of his

Geoffrey Brennan and Philip Pettit (1993), Tyler Cowen (2000), and David Levy (1992) provides ample support for considering fame as an important spring on human action. To be very specific here we propose to associate approbation with policy implementation. That is, we will assume that one will tend to become famous to the extent that one's work is implemented policy-wise; indeed, fame will be the main currency with which all efforts to secure policy success will be paid. But fame is a good that presents certain peculiarities. After all, one can be famous for the right reasons or the wrong reasons; in other words, there is a difference between being famous and being infamous. In particular, then, here we will assume that in the case when one is famous for the wrong reasons the marginal costs of fame will exceed its marginal benefits; that is, being infamous will be a bad.

Thus, we propose the following type of utility function for an agent qua expert; $U(t) = U(FAME(t), ALL\ OTHER\ GOODS(t))$, where an individual agent will face a tradeoff between fame (or policy implementation) and what we will label "all other goods". At this point it is important to explain that since fame seems to be a multiperiod good, our analysis should be interpreted in terms of an intertemporal framework; i.e. in discounted terms⁷². In the problem at hand we know that Bentham's time horizon was very long as the *Auto-Icon* (Bentham 1832) suggests. Moreover, as we have mentioned above, Bentham imagined that a full implementation of his system of laws would only

abstract theories" (1895, 58). This behavior, to be sure, is a major source of the misunderstanding of Bentham's views on the transfer of institutions.

⁷² In this sense, then, our model would be similar in spirit to that of Levy (1988), although Levy conducts an empirical test of his model.

occur far off in the future (on this, see footnote 61). Given our assumptions regarding the nature of fame, the graphical representation of this utility function (where fame is depicted in the horizontal axis; see below) will present some particularities. In particular, it will have a decreasing segment where we have standard positive marginal utilities for both goods⁷³. But it will also have a positively sloped segment, which depicts the fact that at some point net fame will start having a negative marginal utility; this is when we are getting recognition for the wrong reasons⁷⁴. The inflection point, i.e. the minimum point in the curve, represents the point where for a given level of utility and consumption of “all other goods”, the marginal utility of fame is zero. In this sense, this point can be interpreted as a local utility maximum for fame.

Given standard time constraints for a problem of the allocation of effort, we have now set up our optimization problem, which we will now proceed to examine graphically.

As we see in Figure 2 below, the solution to this problem is an interior solution, as opposed to a corner solution with either zero, or maximal implementation. This is a natural result given how we have drawn the advisor’s preferences and his constraint set. But, then, this is precisely the point of this graphical exercise. Since Bentham cared both about fame and about everything else, it seems fair to assume that he would have well-behaving indifference curves with respect to these dimensions. Reading about Bentham

⁷³ Note that since “all other goods” represents a normal vector of goods, utility is monotonically increasing as the consumption of this composite good increases.

⁷⁴ An alternative way to look at this picture is to imagine that there may be such a thing as “too much fame”; i.e. that fame is a good where there is satiation in consumption. The intuitive rationale for this circumstance may be that there is a “dark side of fame”, as Cowen (2000) has argued.

there is no reason to expect his preferences to be non-continuous, or non-convex. In this sense, his “radicalism” and his “eccentricities” do not affect his preferences for fame and all other goods, as examined here. As we have explained above, his work was of the form, “take as much as you want of what I’ve done, and do what you want with it”. This, to be sure, may suggest that his production function was weird. But this does not affect our argument regarding the allocation of his effort to the implementation of his work.

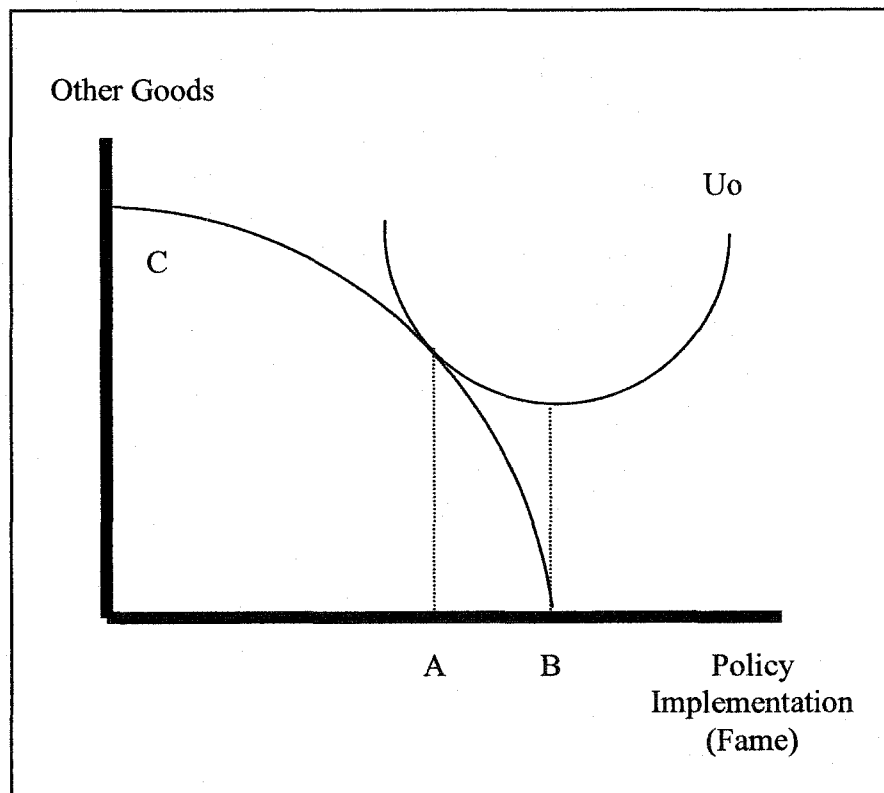


Figure 2

Another important point to note from the previous figure is that optimality occurs at a point where less than what the agent would prefer in terms of implementation is achieved. In other words, the solution to the constrained optimization problem shows that less than maximal implementation is feasible⁷⁵.

While several extensions and complications are possible, we believe that our elementary analysis has sufficed for the problem we were examining. This problem, let us reiterate, was that for an expert, the implementation of his designs by parts would be a rational choice⁷⁶. Here we have understood implementation by parts as opposed to an all-or-nothing proposal whereby you must try to secure full implementation or no implementation at all. As we have seen, however, for such a condition to be fulfilled the technical requirements are very precise and are not verified here.

Conclusion and Implications

Our main conclusion in this paper is that Jeremy Bentham deserves to be treated seriously, and that his ideas and proposals present important nuances which must be taken into account when discussing his work. In this sense, we believe we have shown that even a careful writer such as Thomas Carlyle had an incorrect appreciation of the

⁷⁵ As can be seen, for convenience, we have drawn the inflection point of the utility curve to coincide with maximal feasible implementation. However, there is no reason why this should be the general case.

⁷⁶ Note that with full implementation, the expert will not only get full praise, but also full blame if things go wrong. This may be, then, a different reason as to why a rational fame-seeking expert may want less than full implementation of his proposals; in this case, of course, the metric for fame would be success, not implementation per-se. I am grateful to Andrew Farrant for suggesting this distinction.

Benthamite enterprise regarding the transfer of institutions. And while John Stuart Mill's opinions in this respect were correct in the main, they were also incomplete⁷⁷. Our narrative, then, may be important from the perspective of the history of ideas, as well as from the practical implications that follow from our analysis. In closing, we will say a few words on this latter point.

In the context of an analysis of the social role of political economists, James Buchanan (1999) has argued that we can implement efficient normative models by relying on the revealed preference of voters. Thus a truly Pareto-improving policy would be unanimously approved if it had the required attached compensation mechanisms. It would certainly be tempting to examine Bentham's model under this light; indeed, as a first approximation, it would not seem to come out well in this sense. But here we want to pursue a different point that also follows from Buchanan's work. Buchanan's exercise is a value free exercise in terms of the economist qua positive economist, and though as a political economist an economist may have preferences, according to Buchanan, this "does not imply the infusion of an individual judgement concerning the 'goodness' of the proposal presented" (1999, 207). And yet, experts are surely ordinary people just like the rest of us in that they have preferences over different dimensions of their work (Feigenbaum and Levy 1996, Levy 2001). After all, the axioms of rational choice postulate that all economic agents are self-interested and will act accordingly, given the

⁷⁷ Note that here we are tangentially touching on the topic of "Which Bentham was Mill's Bentham"; for an exhaustive discussion in this sense, see Robson (1993).

constraints they confront⁷⁸. So there is no reason to expect that experts will do the right thing other than just hope that this will be the case. As we have argued above, Jeremy Bentham's work as an expert can clearly be examined under this light (Chapter 1). But note that this problem is also implicit in Bentham's theoretical system examined here, particularly in his discussion of the role of the legislator who will be in charge of the implementation of his system of laws. Because even if we grant the fact that, according to Bentham, a legislator can design efficient institutions if he is "fully informed of the facts", what would motivate a legislator to design correct institutional designs even if he had all the required information? Bentham, just like Buchanan, simply assumes that this is the case. But is this assumption really warranted? Are the constraints on the behavior of the legislator strong enough to induce him to make a "good" decision?⁷⁹ More importantly, what are the consequences of deviations from this assumption? We strongly believe that to the extent that the "legislator" or the "political economist" does not act as he should, in the models of both Bentham and Buchanan we can have disastrous consequences, just as we see in the field examined by Levy (2001). Viewing an expert, be it legislator or political economist, as a rational choice agent is, then, a much more robust construction. Because in this case the conclusions of the model will not critically depend

⁷⁸ Note that this is independent of any claim of dishonesty or dishonorable behavior on the part of advisors, experts or what not.

⁷⁹ The most notorious examples of the constraints Bentham imposes on legislators are the "Legislator's Inaugural Declaration", and the multiple arrangements promoting transparency in government, that appear in the Constitutional Code (Bentham 1983b), and the competitive process for the selection of a codifier in "Codification Proposal" (Bentham 1998). Moreover, in §.2 of this latter work, Bentham also explains that the importance that a code of laws is accompanied by its rationale is that this will serve as a "guide" and "bridle" to citizens and legislators, respectively.

on motivational assumptions, in particular on the fancied disinterestedness of an expert (on these robustness issues, see Levy 2002).

Related to this point, nowadays we know that there exists a close relationship between the nature of institutional designs and economic performance (see, for example, Keefer and Knack 1997, Knack and Keefer 1995). Does this mean that the importation of institutions will be a magic recipe for solving the problem of economic development? This is, after all, the main argument made by Bentham, and this is why his work seems so interesting and relevant; for Bentham institutional reform is a means to promote the greatest happiness of the greatest number. Our answer to this question is, surprisingly, a conditional yes. To be sure, history should be a lesson in this sense. The caveats and nuances in Bentham's argument that we have stressed throughout this paper should be taken seriously; ignoring tacitness or implementing imported constitutional models as they are, so to speak, will lead to disastrous consequences. As the history of early 19th century Spanish America shows, after the downfall of the Colonial system, new republican constitutions were enacted which proclaimed grand principles which were probably incomprehensible to most of the population in these countries (Safford 1985, Halperín Donghi 1973). The result was an almost widespread process of cycling over institutions⁸⁰. The point here, then, is that the constitutions implemented in early 19th century Spanish America, some of which were very well-written documents and others

⁸⁰ If we consider the nine nations of South America (excluding Brazil), we find that during the 19th century 58 different constitutional documents were enacted, even when we exclude confederal constitutions and provisional statutes of different sorts (Loveman 1993, 370). I owe the expression "cycling over institutions" to a comment by Roger Congleton.

not so, failed because they did not constitute an effective coordination device, which is the necessary feature of a successful constitution⁸¹.

Some scholars, such as F.A. Hayek have stressed the importance of evolutionary institutions as opposed to this institutional constructivism a-la Bentham (for an argument in this respect regarding the history of Spanish American, see Morse 1954). Therein, incidentally, Hayek's critique of Bentham as a constructivist scholar who neglected tacit knowledge, which we referred to above. But as we have explained, such a critique is unfair to Bentham. Since the mid-to-late 19th century, social constructivists of all types have claimed to be working based on cost-benefit calculations under a Benthamite utilitarian framework. Yet for the implementation of these policy reforms, the "Buchanan test" discussed above has rarely been followed. Moreover, these models have been imposed as they are, leaving no role for tacit knowledge, or even for allowing an implementation by parts. It is these reformers who Hayek is quite right to be quarreling with, but Bentham has no direct fault in this. And yet, it must be recognized that Bentham provided the tools for social engineering at its worst. At the same time, and as we have discussed, he was almost naive with regards to the motivations of legislators. In other words, Bentham did not really recognize the worst-case implications of his system and design the appropriate securities so as to avoid them. Bentham's normative model of

⁸¹ Viewing constitutions as conventions seems to be gaining more and more adherents within the literature. As a theoretical point, this is an issue that has been convincingly advanced by Ordeshook (1992). The main point here is that given the folk theorems of game theory, a convention does not have to be good, or efficient, to be an equilibrium. And yet to the extent that one can coordinate on an equilibrium, and there is a shared belief that coordination will be effective, coordination will be achieved. It is interesting to note, incidentally, that to the extent that Bentham underscored the importance of including the rationale of constitutions (see, Bentham 1983b), had his ideas been really taken seriously, these problems we are focusing on may have been lesser.

government is characterized by a series of “securities for appropriate aptitude”, which serve as mechanisms for subjects to control their rulers. Punishments and rewards are also resorted to as means of minimizing expense in government, and public opinion represents the ultimate check on to the pernicious use of power by government officers. And yet, despite Bentham’s distrust for political rulers, and his care in designing institutional devices so as to achieve an identity of interests between rulers and ruled, his model is not a robust model, in that it averts worst-case consequences (Levy 2002).

Bibliography

- Bahmueller, Charles (1981). *The National Charity Company: Jeremy Bentham's Silent Revolution* (Berkeley: University of California Press).
- Balmires, Cyprian (1990). "Etienne Dumont: Genevan Apostle of Utility", *Utilitas*, Vol. 2, pp. 55-70.
- Bentham, Jeremy (1998). *'Legislator of the World': Writings on Codification, Law and Education*. Edited by P. Schofield and J. Harris as a volume of The Collected Works of Jeremy Bentham (Oxford: Clarendon Press).
- Bentham, Jeremy (1996)[1789]. *An Introduction to the Principles of Morals and Legislation*. Edited by J.H. Burns and H.L.A. Hart, with a new Introduction by F. Rosen as a volume of The Collected Works of Jeremy Bentham (Oxford: Clarendon Press).
- Bentham, Jeremy (1989). *First Principles Preparatory to Constitutional Code*. Edited by P. Schofield as a volume of The Collected Works of Jeremy Bentham (Oxford: Clarendon Press).
- Bentham, Jeremy (1988-2000). *The Correspondence of Jeremy Bentham*. Edited by J.R. Dinwiddy (Vol. 7), S. Conway (Vols. 8-10) and C. Fuller (Vol. 11) as part of the Collected Works of Jeremy Bentham (Oxford: Clarendon Press).
- Bentham, Jeremy (1983a). *Deontology together with A Table of the Springs of Action and The Article on Utilitarianism*. Edited by A. Goldworth as a volume of The Collected Works of Jeremy Bentham (Oxford: Clarendon Press).

- Bentham, Jeremy (1983b)[1830]. *Constitutional Code, Volume I*. Edited by F. Rosen and J.H. Burns as a volume of *The Collected Works of Jeremy Bentham* (Oxford: Clarendon Press).
- Bentham, Jeremy (1962). "Of the Influence of Time and Place in Matters of Legislation", in J. Bowring, *The Works of Jeremy Bentham* (New York: Russell & Russell), Vol. 1, pp. 170-194.
- Bentham, Jeremy (1839). "A General View of a Complete Code of Laws", in J. Bowring, *The Works of Jeremy Bentham* (Edinburgh: William Tait), Part 9, pp. 155-210.
- Bentham, Jeremy (1832). *Auto-Icon; or, farther use of the dead to the living. A fragment* (Unpublished).
- Boralevi, Lea Campos (1984). *Bentham and the Oppressed* (Berlin: Walter de Gruyter).
- Bowring, John (1962)[1838-43]. *The Works of Jeremy Bentham*. Published under the superintendence of his executor, J. Bowring (New York: Russell & Russell), Vols. 5, 10 and 11.
- Brennan, Geoffrey and Philip Pettit (1993). "Hands Invisible and Intangible", *Synthese*, Vol. 94, pp. 191-225.
- Buchanan, James M. (1999)[1959]. "Positive Economics, Welfare Economics, and Political Economy", reprinted in Vol. 1 of the *Collected Works of James M. Buchanan* (Indianapolis: Liberty Fund Inc.), pp. 191-209.
- Carlyle, Thomas (1885)[1829]. "Signs of the Times", reprinted in his *Critical and Miscellaneous Essays, A New Edition Complete in one Volume* (New York: D. Appleton and Company), pp. 187-196.

- Conway, Stephen (1990). "Bentham and the nineteenth-century revolution in government", in R. Bellamy (Ed.), *Victorian Liberalism: Nineteenth-century political thought and practice*, pp. 71-90.
- Cowen, Tyler (2000). *What Price Fame?* (Cambridge: Harvard University Press).
- de Avila, Alamiro (1979). "The Influence of Bentham in the Teaching of Penal Law in Chile", *The Bentham Newsletter*, Vol. 5, pp. 13-28.
- Dinwiddy, John R. (1992)[1978]. "Bentham and the Early Nineteenth Century", reprinted in his *Radicalism and Reform in Britain, 1780-1850* (London: The Hambledon Press), pp. 291-313.
- Dinwiddy, John R. (1989). *Bentham* (Oxford: Oxford University Press).
- Everett, C.W. (1931). *The Education of Jeremy Bentham* (New York: Columbia University Press).
- Feigenbaum, Susan and David M. Levy (1996). "The Technological Obsolescence of Scientific Fraud", *Rationality and Society*, Vol. 8 (3), pp. 215-232.
- Finer, S. E. (1972). "The transmission of Benthamite ideas 1820-1850", in G. Sutherland (Ed.), *Studies in the Growth of Nineteenth-Century Government* (Totowa: Rowman and Littlefield), pp. 11-32.
- Halévy, Elie (1955)[1928]. *The Growth of Philosophical Radicalism*. Translated by Mary Morris (Boston: The Beacon Press).
- Halperín Donghi, Tulio (1973). *The Aftermath of Revolutions in Latin America*. Translated by Josephine de Bunsen (New York: Harper & Row).

- Harris, Jonathan (1998). "Bernardino Rivadavia and Benthamite 'Discipleship'", *Latin American Research Review*, Vol. 333 (1), pp. 129-149.
- Harrison, Ross (1983). *Bentham* (London: Routledge & Kegan Paul).
- Hayek, F. A. (1960). *The Constitution of Liberty* (Chicago: The University of Press).
- Hazlitt, William (1969)[1825]. "Jeremy Bentham", in his *The Spirit of the Age: Or Contemporary Portraits*, Edited by E.D. Mackerness (London: Collins Publishers), pp. 19-35.
- Hume, L. J. (1981). *Bentham and Bureaucracy* (Cambridge: Cambridge University Press).
- Keefer, Philip and Stephen Knack (1997). "Why Don't Poor Countries Catch Up? A Cross-National Test of an Institutional Explanation", *Economic Inquiry*, Vol. 35 (3), pp. 590-602.
- Kenny, Courtney (1895). "A Spanish View of Bentham's Spanish Influence", *Law Quarterly Review*, pp. 48-63.
- Knack, Stephen and Philip Keefer (1995). "Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures", *Economics and Politics*, Vol. 7 (3), pp. 207-227.
- Levy, David M. (2002). "Robust Institutions", *The Review of Austrian Economics*, Vol. 15 (2-3), pp. 131-142.
- Levy, David M. (2001). *How the Dismal Science Got Its Name: Classical Economics & the Ur-Text of Racial Politics* (Ann Arbor: The University of Michigan Press).

- Levy, David M. (1992). *The Economic Ideas of Ordinary People: From preferences to trade* (London: Routledge).
- Levy, David M. (1988). "The Market for Fame and Fortune", *History of Political Economy*, Vol. 20 (4), pp. 615-625.
- Lovejoy, Arthur (1961). *Reflections on Human Nature* (Baltimore: The Johns Hopkins University Press).
- Loveman, Brian (1993). *The Constitution of Tyranny: Regimes of Exception in Spanish America* (Pittsburgh: University of Pittsburgh Press).
- McKenna, Theodora (1981). "Benthamism in Santander's Colombia", *The Bentham Newsletter*, Vol. 5, pp. 29-43.
- [Mill, James aided by F. de Miranda](1809). "Emancipation of Spanish America", *The Edinburgh Review*, Vol. 13, pp. 277-311.
- Mill, John Stuart (1989)[1873]. *Autobiography*. Edited with an Introduction by J. M. Robson (Harmondsworth: Penguin).
- Mill, John Stuart (1987)[1852]. "Whewell on Moral Philosophy", in *Utilitarianism and Other Essays*, Edited by A. Ryan (Harmondsworth: Penguin).
- Mill, John Stuart (1969). "Bentham (1838)", reprinted in his *Essays on Ethics, Religion and Society*, Edited by J.M. Robson as Volume 10 of the Collected Works of John Stuart Mill (Toronto: University of Toronto Press), pp. 75-115.
- Morse, Richard (1964). "The Heritage of Latin America", in L. Hartz (Ed.) *The Founding of New Societies: Studies in the History of the United States, Latin America, South*

- Africa, Canada, and Australia* (New York: Harcourt, Brace & World), pp. 123-177.
- North, Douglass C. (1990). *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press).
- Ordeshook, Peter (1992). "Constitutional Stability", *Constitutional Political Economy*, Vol. 3 (2), pp. 137-175.
- Peardon, T. P. (1993)[1951]. "Bentham's Ideal Republic", reprinted in B. Parekh (Ed.), *Jeremy Bentham: Critical Assessments* (London: Routledge), Vol. 3, pp. 621-644.
- Robbins, Lord (1961). "Hayek on Liberty", *Economica*, Vol. 28, pp. 66-81.
- Roberts, David (1993)[1959]. "Jeremy Bentham and the Victorian Administrative State", reprinted in B. Parekh (Ed.), *Jeremy Bentham: Critical Assessments* (London: Routledge), Vol. 3, pp. 879-894.
- Robson, John M. (1993)[1983]. "Which Bentham was Mill's Bentham?", reprinted in B. Parekh (Ed.), *Jeremy Bentham: Critical Assessments* (London: Routledge), Vol. 1, pp. 195-208.
- Rosen, Frederick (1992). *Bentham, Byron, and Greece: Constitutionalism, Nationalism and Early Liberal Political Thought* (Oxford: Clarendon Press).
- Rosen, Frederick (1983). *Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code* (Oxford: Clarendon Press).
- Safford, Frank (1985). "Politics, Ideology and Society in Post-Independence Spanish America", in L. Bethell (Ed.), *The Cambridge History of Latin America, Vol. III*,

- From Independence to c.1870*, (Cambridge: Cambridge University Press), pp. 347-421.
- Schofield, Philip (1991-92). "The Constitutional Code of Jeremy Bentham", *King's College Law Journal*, Vol. 2, pp. 40-62.
- Schwartz, Pedro (1978). "Work in Progress: Bentham's Influence in Spain, Portugal and Latin America", *The Bentham Newsletter*, Vol. 1, pp. 34-35.
- Semple, Janet (1993). *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford: Clarendon Press).
- Shackleton, R. (1993)[1972]. "The Greatest Happiness of the Greatest Number: The History of Bentham's Phrase", reprinted in B. Parekh (Ed.), *Jeremy Bentham: Critical Assessments* (London: Routledge), Vol. 2, pp. 353-367.
- Thomas, William (1979). *The Philosophic Radicals: Nine Studies in Theory and Practice 1817-1841* (Oxford: Clarendon Press).
- Valle, Rafael H. (1942). *Cartas de Bentham a José del Valle* (México D.F.: Editorial Cultura).
- Williford, Miriam (1980). *Jeremy Bentham on Spanish America: An account of his letters and proposals to the New World* (Baton Rouge: Louisiana State University Press).

3. Hiring a Foreign Expert: Chile in the 19th century

Introduction

The standard literature on the political economy of foreign economic advisors recognizes that this is a problem that has important political dimensions (Drake 1994; see, also, Schneider 1998). In this framework, however, advisors are ordinarily viewed as agents who only attempt to serve the public good, albeit within the context of the political constraints they face. But, surely, experts are also ordinary people just like the rest of us in that they have preferences over different dimensions of their work. After all, the axioms of rational choice postulate that all economic agents are self-interested and will act accordingly, given the constraints they confront⁸².

In this paper we will focus on the problem of hiring a foreign expert when advice-seekers have an imperfect knowledge about the field where they want to acquire expertise in. As can easily be imagined, in this situation making mistakes is not only easy but can also be very dangerous. As long as advice-seekers are unable to adequately determine and screen the most relevant attributes of a potential expert, their decision will involve non-trivial risks, unless an adequate arrangement may be implemented to avoid these dangers.

⁸² This is a point that has been addressed in some recent works on the economics of expertise; on this see, for example, Krishna and Morgan (2001), Morris (2001), and Ottaviani and Sørensen (2003), also see Levy (2001).

This was the predicament faced by advice-seekers in 19th century Chile who in particular were searching for an advisor in the field of economics. In 1855 Chilean officials hired the French economist Jean Gustave Courcelle-Seneuil as a professor of political economy and economic advisor to the government, and he was to be highly influential in the country during his tenure there as well as in the ensuing period (Fuentelba 1945, Villalobos and Sagredo 1987, Will 1960). Yet his legacy has, by and large, been considered strongly negative (Fuentelba 1945, Hirschman 1963, Pinto 1962, Urzúa 1884). As we shall explain more carefully below, these reactions are mainly based on a strong contempt for classical economics, which was the doctrine the French expert explicitly advocated. But does the way in which the foreign expert was selected also play a role in these arguments? May the fact that Courcelle-Seneuil was perceived as being selected as the result of an ideological connivance be one of the reasons for this reaction against him? Here, then, we will carefully re-examine Jean Gustave Courcelle-Seneuil's hiring by the Chilean government as a way to shed some light on this issue. And since this is a project that was long overdue in the study of the history of economic ideas in Chile, we believe this study also has a double significance.

By proceeding in this way, of course, here we will not be able judge the real worth of the evaluations of Jean Gustave Courcelle-Seneuil's work that we find in the Chilean economic history literature. But this is not our purpose here. What we propose to show, instead, is that hiring a foreign advisor under conditions of imperfect information on the part of the advice-seekers may be a serious problem that deserves careful examination. Note, then, that here we will only focus on the problem from the point of

view of an advice-seeker who, we assume, is seeking scientifically unbiased advice. Given our motivational assumptions set forth above, the problem for the expert is very easy; if and when he takes the job upon being offered it, he will simply optimize given his preferences and the constraints he faces.

Jean Gustave Courcelle-Seneuil in Chile

Jean Gustave Courcelle-Seneuil (1813-1892) was born in France, and was a prominent member of the French liberal school of economics. In this sense, Albert Hirschman termed him a “stalwart defender of free trade and laissez faire” (1987, 707) principles which, as is well known, are distinctive characteristics of the tenets of this school⁸³. But such assessments are not unique to Hirschman. In his posthumous eulogy of Courcelle-Seneuil, published in the *Journal des Economistes*, Gustave de Molinari also observed that “for sixty years ... Courcelle-Seneuil fought all false economic theories; the protectionist ideas now so popular, as well as socialism which is now less favored. He was one of those rare men of principles and one of those even rarer men who remain faithful to their principles” (1892, 80). And, similarly, Clément Juglar also referred to Courcelle-Seneuil as a resolute liberal economist⁸⁴. In any case, in his beginnings Jean

⁸³ On the 19th century French School of Political Economy see, for example, Gide and Rist (1915), and Alcouffe (1989).

⁸⁴ “Libéral en politique, Courcelle-Seneuil l’était plus encore en matière économique, combattant l’intervention de l’Etat sous tous les formes capables d’entraver la liberté sociale, politique ou industrielle” (Juglar 1895, 857). J.G. Courcelle-Seneuil’s membership of the Société d’Economie politique, and his numerous original collaborations in the *Journal des économistes* provide further support to our argument that he was an archetype member of this school. As Gide has argued that “He [Courcelle-Seneuil] was

Gustave Courcelle-Seneuil was more of an expository writer than what we would consider an academic economist. On the other hand, once his professional reputation was established it is fair to say that it was his work on banking theory, where he was a strong proponent of a free banking system, that had led to this recognition. Of course, we should note that during his lifetime Courcelle-Seneuil not only published on this subject (on this, see his *Le crédit et la banque*, 1840 and, *Traité théorique et pratique des opérations de banque*, 1853); he also wrote a treatise on political economy, *Traité théorique et pratique d'économie politique* (1858)⁸⁵, and several works in law, accounting, politics and philosophy⁸⁶. Thus, by the time of his death it can rightly be said of him that as a member of the French Académie des Sciences Morales et Politiques:

Member of the section of Political Economy, Courcelle-Seneuil would have been entitled to be a member of any section. Philosopher, moralist, legislator,

virtually the *pontifex maximus* of the classical school; the holy doctrines were entrusted to him and it was his vocation to denounce and exterminate the heretics. During many years he fulfilled this mission through book reviews in the *Journal des économistes* with priestly dignity. Argus-eyed, he knew how to detect the slightest deviations from the liberal school” (quoted by Hirschman 1987, 707). Moreover, in the most modern essay on Courcelle-Seneuil we have found, Marco (1991) has even referred to Courcelle-Seneuil as an “intransigent” orthodox economist.

I am responsible for translating the previous passages from the French. Unless otherwise noted, all the ensuing translations from works written in French, or Spanish, should also be understood as being mine.

⁸⁵ This work was well received in French circles when it was first published; see, for example, Passy (1859). At the same time, it also seems to have endured well throughout time (Gide and Rist 1915, 380).

⁸⁶ Further, he even translated H.S. Maine’s *Ancient Law*, and J.S. Mill’s *Principles of Political Economy* into French, this latter enterprise jointly with H. Dussart. In all, the on-line catalogue of the Bibliothèque nationale de France (www.bnf.fr) lists 78 works by J.G. Courcelle-Seneuil, although we should note that these holdings include several editions of some of his most famous books.

economist, historian, he would have been at home anywhere; his works and his research bear witness to this. (Juglar 1895, 850)⁸⁷

But why did Jean Gustave Courcelle-Seneuil come to Chile? Or to put it another way, why was he hired by Chilean officials? And what was expected of him in Chile? In his obituary of Courcelle-Seneuil originally published in the *Anales de la Universidad de Chile* in 1892, the historian Diego Barros Arana gives the following account in this respect:

Towards the end of 1854, the Chilean government had offered Mr. André Cochut, who had come to be well known in the country for his collaborations in *El Araucano*, the official newspaper of those years, the chair in political economy in the university. Mr. Cochut excused himself for family problems, and suggested Mr. Courcelle-Seneuil as the most suitable candidate for that position in France. The contract was settled by General Blanco Encalada, then Chilean Minister in Paris. (Barros Arana 1914, 197)

In his *Courcelle-Seneuil en Chile* (1945), the most comprehensive study on Jean Gustave Courcelle-Seneuil's tenure in Chile, Leonardo Fuentealba provides further information regarding this process. In this sense, he explains that it was the desire to improve the instruction in political economy in the country that motivated the search for a foreign economist in the first place. At the same time, Fuentealba also transcribes the agreement signed between Courcelle-Seneuil and the Chilean Consul in France, which gives us

⁸⁷ What is more, W.S. Jevons placed Courcelle-Seneuil as a member of a "succession of great French Economists" (1965, xlv), which had made important contributions to economic theory. I am grateful to Sandra Peart for calling my attention to Jevons' references to Courcelle-Seneuil.

some light as to the obligations the foreign advisor was taking upon himself and the remuneration he was to receive for his job. In this respect, the French economist's agreed-upon obligations were basically three: to teach political economy at the University of Chile, to work as an economic advisor at the Ministry of Finance, and to illustrate the public on relevant economic issues through the press. In exchange he was to receive a salary amounting to FF\$ 18.000 per annum plus FF\$ 5.000 for transportation and settlement expenses.

While seemingly informative, this expanded account is, however, still incomplete in several ways. In particular, note that the important question as to why Jean Gustave Courcelle-Seneuil, or as it turns out André Cochut, was initially selected remains unanswered. That is, we do not know how Chilean officials first proceeded in their search for an expert, such that they ended up hiring Courcelle-Seneuil. Moreover, we are not told what requirements, if any, were demanded from the candidate that would fill this new position. These are some of the questions we will attempt to answer in the following section, where we will reconstruct the narrative associated to the hiring of Jean Gustave Courcelle-Seneuil by the Chilean government.

Before we proceed to that problem, however, we must also ask ourselves why Jean Gustave Courcelle-Seneuil wanted to leave France, or at least why he was willing to accept the Chilean government's offer. The fact that the political situation in France was uncertain at the time seems to be a prime reason in this sense. In effect, Louis-Napoleon Bonaparte's coup of December 1851, and the regime that followed was a blow to Courcelle-Seneuil's republicanism. At the same time, the pay offered seemed to be

respectable, extending sufficient compensation for his opportunity cost and some considerations of equalizing differences in wages⁸⁸. In this sense, it is probable that the Chilean government's offer came at a very opportune time for him and, thus, he left France for what Luc Marco (1991, 142) calls a "voluntary exile" in Chile.

In any case, whatever his reasons, Courcelle-Seneuil did end up coming to Chile, where he lived between 1855 and 1863, and became the critical first-mover for the classical-liberal school and its period of dominance in terms of Chilean economic policy discussions during the second half of the 19th century. In effect, in Chile he was to become a teacher to a whole generation of economists and policymakers. At the same time, as advisor to the Ministry of Finance he participated directly in many policy discussions and was the intellectual architect of several legislative proposals⁸⁹. Thus, regarding the standing of economic thought in Chile during the second half of 19th century the following quotations are very illustrative:

The majority of our most distinguished public men, independently of their political affiliations ... were imbued by these types of ideas [i.e. liberal economic principles], which were the only ones that were considered truly scientific.

(Subercaseaux 1924, 113)

⁸⁸ FF18.000 is equivalent to approximately £720 (at market exchange rates; see Mitchell 1988), which seems an attractive, if not extravagant salary.

⁸⁹ Now may be the appropriate time to explain that we have translated J.G. Courcelle-Seneuil's job description, which in Spanish is "Primer Jefe Auxiliar del Ministerio de Hacienda", as economic advisor to the Ministry of Finance. As bilingual readers will be able to tell, the transliteration is not perfect, but we believe that this is, in modern parlance, the best way to characterize the work Courcelle-Seneuil was to undertake as an economist in the Chilean government.

[As opposed to the United States], we were dumbfounded by the doctrines of free trade. This doctrine of educated gentlemen: based on an opportunistic rhetoric, which had its own syllogisms and even its own logic. We were captured by the theories, the technicalities and the abstractions. We prostrated under the feet of the new idol, and preached its principles in our schools and universities. A school was born. Yet how could it not be so? Who would have dared to disobey Adam Smith, Say, Bastiat, or Courcelle-Seneuil? (Urzúa 1884, 11; paragraph break omitted)⁹⁰

As the remarks from the Chilean lawyer Pedro N. Urzúa clearly suggest, it was due to the influence of the French expert that liberalism created a school in the country. So let us briefly review how influential Courcelle-Seneuil was in Chile, focusing both on his impact as a teacher and as an economic advisor to the government.

Regarding his teaching, as a professor of political economy in the School of Law of the University, we know that Jean Gustave Courcelle-Seneuil was famous and respected; his classes were well known and his teachings highly valued. In this sense, Hirschman has even argued that “the principal influence exercised by Courcelle-Seneuil

⁹⁰ To be sure, we should stress that these remarks should not be interpreted as suggesting that liberal economic principles were unknown in Chile until the mid-19th century. Will (1964) provides evidence that classical economics was known since the early days of independence, yet was disregarded. Policy pragmatism predominated both because a doctrinaire approach to economic policy did not seem appropriate at a time when severe problems had to be addressed (i.e. after independence), and because the knowledge and level of instruction in classical political economy was very poor in the country.

resided in his forceful teaching” (1987, 707)⁹¹. Indeed, there seem to be good reasons for such an assessment;

As a professor of Political Economy in Chile, he [Courcelle-Seneuil] was a virtual prophet of this Science, not only because he was good at teaching it, but more importantly because he was able to transmit its importance, and awaken in his students an interest in the subject. (Rodríguez 1893, 199)⁹²

When in 1860 the *Consejo* of the Universidad de Chile approved a new syllabus for the course in political economy at the School of Law, this followed Courcelle-Seneuil’s *Traité* very closely (Courcelle-Seneuil, 1860). The Chilean government also financed a translation of this book into Spanish and, thus, it was not only available in this language as from 1859, but it also seems to have been widely circulated (Subercaseaux 1924, 114).

At the same time, Courcelle-Seneuil was seen as the physical embodiment of the now famous liberal ideas Guillermo Subercaseaux referred to in the previous quotation. And this, in turn, led to the fact that the field of political economy became a more respectable discipline in Chile. But more than that, Courcelle-Seneuil’s mentoring

⁹¹ For a similar evaluation, see the following quotation from Juglar (1895); “Ce pays [Chile] fut pour lui un champ d’études et d’expériences où il eut bientôt l’occasion d’appliquer ses théories... Avec le nouveau professeur, l’enseignement de l’économie politique changea de face... Ces cinq années d’enseignement exercèrent une grande influence sur la jeunesse du Chili qui, pénétrée des notions exactes de cette science, contribua à la propagation des principes de la liberté industrielle, source de l’extraordinaire développement de la richesse publique” (856).

⁹² Further, “El señor Courcelle Seneuil enseñaba la economía política como una ciencia exacta, positiva en sus principios fundamentales, positiva en la manifestación de los hechos i fenómenos económicos, i positiva en las consecuencias que de ellos se derivan. Sus esplicaciones, hechas sin aparato, en conferencias familiares, dispuestas de la manera mas aparente para hacerlas claras i comprensibles... estaban perfectamente calculadas para desarrollar en los jóvenes el espíritu de observación, i para desterrar el aprendizaje de memoria a que todavía se les condenaba en una gran parte de sus estudios” (Barros Arana 1914, 198).

implied the creation of a unique liberal tradition in the Chilean academy, and underscored a period of liberal dominance in public policy;

The fact that economic liberalism subsisted as the foundation of economic policy after 1863 must be credited to the small group of disciples that Courcelle-Seneuil left behind him, who continued imparting the teachings of classical economics as policy-makers and faculty at the Universidad de Chile. Moreover, the economic conditions in Chile after 1870 provided a favorable environment for the subsistence of the economic policy then in course. (Will 1960, 256-257)⁹³

Regarding his influence on Chilean economic policy, given the importance of the subjects for contemporary Chileans, Jean Gustave Courcelle-Seneuil's participation in trade and banking policy discussions were particularly prominent, and thus deserve to be examined more carefully. This is what we shall proceed to do next.

On the first topic, early in 1856 Courcelle-Seneuil prepared a comparative analysis of trade policy in Chile, France, Great Britain and the United States (Courcelle-Seneuil 1856). Here, to the surprise of many, the foreign advisor concluded that the Chilean legislation was superior to that of these other countries in terms both of the tariff structure and the greater freedom it gave to commerce. Yet even though the French

⁹³ In this sense, not only did Courcelle-Seneuil's disciples succeed him in the Universidad de Chile (for an account in this respect, see Rodríguez 1889), but they published their own treatises in political economy, which were strongly influenced by their French professor (Cruchaga 1870, Rodríguez 1894). Moreover, political economy issues were discussed more widely throughout the country. For one particularly remarkable such instance note that in 1859 the *Círculo de Amigos de las Letras*, established by José Victorino Lastarria in the mid-1850s (Lastarria 1885) held a meeting dealing with an analysis of Courcelle-Seneuil's *Tratado de Economía Política*, which even included a discussion on the subjective nature of utility; on this see, González (1859) and Miquel (1859). For more on these issues, see Fuentealba (1945), Villalobos and Sagredo (1987), and Will (1960).

expert implicitly supported the existing system, it seems that he was not able to convince government officials on the uncalled-for need of a new tariff regime, which he was called-upon to design. Thus, in 1859 he drafted a new tariff project which, however, was only presented to Congress in 1861 and approved in 1864, after suffering various modifications in Congress. In the Congressional debates on the enactment of this law controversy centered between groups that opposed a uniform tariff rate, and instead preferred a discriminatory system that protected the national industries, and those that preferred low overall tariffs. The end result was a compromise project, which favored the uniformity criteria thus forfeiting, at least to some extent, the protection of national industries⁹⁴.

Regarding Chile's banking policy, the establishment of a formal banking system had long been a subject of contention in the country, yet for many years nothing had come out of these discussions. By the time Courcelle-Seneuil was in Chile, however, he not only took part in this debate (see, for example, Courcelle-Seneuil 1857a), but it seems that the time was ripe for policy actions, and he directly influenced the final legislative outcome. As it is, a project inspired by Courcelle-Seneuil was presented to Congress in 1859 and enacted in 1860 after suffering some changes during its discussions (Fuentelba 1945, Subercaseaux 1922). In essence, the final legislation considered the establishment of a regime of free banking, although with some limits on the issue of negotiable bills in relation to the bank's capital. At the same time, the regulatory role of government also

⁹⁴ This statute is reprinted in Anguita (1912-16). For a narrative on the legislative discussions on this ordinance, see Fuentelba (1945) and Zilci (1990).

included other provisions regarding the inspection of the banks' accounts and the determination of the value of the lowest denomination of notes to be issued by the private banks.

While our examination of these topics has been very brief, it is important to explain that these episodes constitute some of the main foundations on which the negative assessments of Courcelle-Seneuil's work in Chile are based⁹⁵. Note, in particular, Hirschman's evaluation of his legacy;

Poor Courcelle-Seneuil! His one-man technical assistance mission could hardly have been more successful, according to ordinary standards of performance. His advice was punctiliously followed, the laws he drafted were passed, his bust stands in the University of Chile and his influence as a teacher and publicist came to be widely felt. But just because of that, virtually every serious ill subsequently experienced by the Chilean economy, from inflation to monoexportation, has been traced to him. (Hirschman 1963, 166)

The banking and tariff laws inspired by Courcelle-Seneuil that we have just reviewed have been alleged to represent, at least to some extent, the causes of the monetary instability and dependence on the exports of natural resources referred to by Hirschman.

⁹⁵ Another instance worth referring to is related to the management of the economic cycle in Chile. In particular, in the late-1850s, following an export boom to Australia and California, where the gold rushes had created a strong demand for agricultural products, Chileans were forced to face the consequences of their most recent inter-temporal consumption decisions. In this sense, Chileans sadly found out that while they had based their consumption decisions on an increase in income that they expected to be permanent, such wealth effects turned out to be transitory. Confronted with this issue as an economic advisor of the government, J.G. Courcelle-Seneuil publicly argued that the problem was not monetary, but real, and clearly was not the government's fault (see, for example, Courcelle-Seneuil 1857b). Thus, he advocated a hands-off approach to economic policy, such that the automatic adjustment mechanism should be let to work its way and private economic agents accept the costs of their mis-judgements. And, naturally, such a position led to heated debates in the country, as Fuentealba (1945) explains.

Jean Gustave Courcelle-Seneuil's work in Chile has, thus, received a disparaging assessment. Such opinions were generally based on the fact that he represented the period of dominance of liberal ideas in Chilean economic policy decisions. For one such example in this sense, see the following from Aníbal Pinto;

The main representative of this [liberal] orientation was the French economist Courcelle-Seneuil, who worked in Chile between 1855 and 1863, advising the government, and propagating his ideas at the university. Under his guide the first generation of national economists, who exercised an almost overwhelming influence on public policy, were born.... This economic philosophy, generated in a completely different environment, and in the last sense derived from the rebellion of the European progressive bourgeoisie against the old State and against the privileges of indolent social classes connected to the political order, was applied in Chile as a revealed truth, with the most nefarious consequences for our economic development. (Pinto 1962, 34-35)⁹⁶

As is apparent, these evaluations contain a great deal of negative ideological regard for liberal economics. And this, we strongly believe, has tainted the pure economic assessments of Courcelle-Seneuil's legacy. But we will not discuss these issues here.

Instead, we would like to note that these arguments also suggest that the foreign advisor

⁹⁶ See, also, the following from Fuentealba (1945); "Por eso la influencia del economista francés, considerada dentro del desarrollo general de la economía, fue perniciosa para el país. Con su admirable erudición asentó el predominio de las doctrinas liberales y libre-cambistas en circunstancias que los grandes imperialismos pugnaban por establecer su hegemonía universal. Y escudada bajo el manto de tan sabias teorías, la oligarquía chilena pudo ceder tranquilamente al capitalismo extranjero –a cambio del disfrute del poder- las principales fuentes de nuestra riqueza nacional" (108).

that came to Chile advocated liberal policies out of the blue, so to speak, since no discussion as to the nature of the advice he was to give was ever brought about ex-ante. And indeed, this seems a fair allegation, as we shall see below. In any case, we should emphasize that the broader issue as to how the foreign expert was selected in the first place is also very important to keep in mind in this respect. Because, as it should be obvious, there exists a very close relation between the determination of the requirements for an expert's job, and the process by which such an expert is selected.

Revisiting Courcelle-Seneuil's hiring by the Chilean government

As we have previously argued, the information available on the hiring of Jean Gustave Courcelle-Seneuil by the Chilean government is sorely incomplete. Here, then, we will attempt to revisit this history by examining the correspondence of the people who, we are told, participated in this selection process; in particular the correspondence between the Chilean Minister in France, and his superiors in the Ministries of Foreign Affairs, and Education in Santiago. This is an undertaking that has long been overdue in the study of the history of economic ideas in Chile, and which we have been able to conduct in Santiago, Chile. We should mention, however, that as it will soon become evident, our narrative of the process by which Courcelle-Seneuil was selected as a foreign expert by the Chilean government still suffers from some important gaps. This follows from the unfortunate fact that not all of the communications relevant to the process we are examining seem to have been preserved. In any case, we still believe that our account

provides a clear picture of the process by which Jean Gustave Courcelle Seneuil was eventually hired by the Chilean government. And this account, in turn, can clear up some of the cynicism and confusion surrounding his hiring.

As a starting point, it is interesting to make some brief remarks on the desire to improve the knowledge in political economy in Chile which, as we have seen, was brought up as the catalyst for the hiring of a foreign professor. In his *Memoria del Rector de la Universidad de Chile correspondiente al año 1852*, Andrés Bello addressed the issue of the teaching of this subject at the university, in particular the importance of improving the studies of political economy in the country⁹⁷;

[T]he professor of Political Economy, who only imparts his classes every other year, and thus only receives a remuneration every other year, cannot but consider teaching as an accessory and inferior activity compared to more lucrative and permanent activities. Further, in these conditions it cannot be expected that he dedicates as much time and effort as necessary to teach a discipline that is not at all trivial, and should be encouraged and extended. (Bello 1853[1982], 85)

I believe that it is not only necessary to keep [the studies of] Political Economy in the place they at present occupy, but that three lectures a week, for a course of only one year are insufficient.... [Thus], daily lessons for a full academic year is the least we can assign to the instruction of a subject that is so important for the country. (id, 86-87)

⁹⁷ This is the result of debates within the *Consejo* of the university regarding this subject; on this see the *Anales de la Universidad de Chile* for the year 1853.

To be sure, the problems with the poor state of teaching in political economy in Chile seem to have been known for many years before this. In this sense, as early as 1850, the Chilean lawyer Cristóbal Valdés observed that;

The teaching of political economy at the *Instituto Nacional* is not only insufficient... but is also so boring that it provokes students lose their interest in the subject. (Valdés 1850[1993], 229)

At the same time, in his well known remarks in his Translator's Preface to Courcelle-Seneuil (1859), Joaquín Bello likewise noted that,

Till very recently, the formal instruction of Political Economy in Chile was in the most deplorable state.... The studies in this subject were reduced to [the recitation of] a few chapters of Say's work, the least instructive, and which the teacher explained badly and his students learnt worse. (Courcelle-Seneuil 1859, v)

From the prestige of his position, Andrés Bello's explicit arguments in favor of promoting the development of studies in political economy in the country represented a very important statement. And yet, at least given the information available, it seems that the government's interest in the hiring of a foreign professor of political economy antedates these official remarks by the President of the University⁹⁸. In effect, in May of 1853 the Chilean Consul in France, José Marcó del Pont, acknowledged a letter from the Minister of Education, dated January 14, where an advanced state of affairs with respect to the hiring of a foreign professor is clearly implied. In particular, in his letter Marcó del

⁹⁸ Before we continue it is important to explain that the relationship between the government and the university in Chile during these years is very straightforward. The Universidad de Chile was a public university, with all that that means; on this see, for example, Jaksic and Serrano (1990).

Pont states that he is now informed “that the President has requested that a Professor of Political Economy for the Instituto Nacional be hired in Europe, and that Mr. Félix Frías is in charge of this matter and has recommended Mr. A. Cauchut for this position” (Marcó del Pont to Ochagavía, May 14 1853; Archivo Nacional (AN), *Fondo MINEDUC*, Vol. 29: #70)⁹⁹. Note, then, two important points from this letter; the communicating parties are referring to the hiring of an expert for a professorship in Political Economy, with the requirement that the candidate for such a position be engaged in Europe. At the same time, notice that the request was first put forth to Félix Frías, who seems to have made good contacts while he lived in Chile yet, incidentally, was no expert in economic issues, at least as far as we can tell. Although here we cannot provide any solid evidence as to why the President’s request was approached in this way, i.e. through Frías, it seems likely that the lack of information on the part of Chilean policymakers, referred to above, may be have been an overriding factor in this sense. In any case, this is an issue we will return to below.

Next our account intersects with another story; that of finding a collaborator for the official newspaper, *El Araucano*. The Chilean Minister in Paris, Manuel Blanco Encalada had been asked by the Minister of the Interior to find a person for such a

⁹⁹ Félix Frías (1816-1881) was an Argentinean publicist and diplomat. After the internal civil wars of 1839-1841, and the victory of J.M. Rosas, he left his country and lived as an exile in Bolivia (1841-43), and Chile (1843-48). In 1848 he left for France to work as a correspondent for the Chilean newspaper *El Mercurio*. And there he came into contact with such figures as Guizot and Montalembert. He finally returned to Argentina in 1855, where he worked as a publicist, was elected congressman, and, several years later, was named Argentinean Minister in Chile. On this, see Cortés (1875), and Romero and Quezada (1995).

I am responsible for the translation of this communication from the Spanish; unless otherwise noted, the same holds true for all the following communications that appear in the main text.

position, and so he did¹⁰⁰. In April of 1854, however, Blanco Encalada wrote to Minister Varas that, “I now find out that Minister Ochagavía [the Minister of Education], bypassing me, contacted a M. Acné, manufacturer of *necessaires* who, without even informing me, has already hired M. Cochut”. Thus, he claims that “[t]his is what motivated M. Cochut to not leave for Chile” (Blanco Encalada to Varas, April 30 1854; Varas 1919: #31). So from this dispatch we gather that the “Cochut” referred to in the previous communication was André Cochut. And he declined the offer to go to Chile because he was named collaborator of *El Araucano* instead. Indeed, he was duly hired for a monthly salary of FF\$ 350 in exchange for his writing two collaborations a month for this newspaper (Varas to Blanco Encalada, May 30 1854; AH MINREL, *Fondo Histórico*, Vol. 11c: #53)¹⁰¹.

But who was this André Cochut, whose name also came up in Barros Arana’s narrative examined above? Charles Coquelin’s *Dictionnaire de L’Economie Politique* (1864) indicates that Cochut (1812-1890) was a collaborator of the *Revue des Deux Mondes* and a journalist at the *National* in France, who also had a great interest in

¹⁰⁰ As Luis Valencia Avaria (1986) has shown in his chronology of the Chilean Executive, between 1850 and 1856 the Ministry’s of the Interior and of Foreign Affairs were held by the same person, Antonio Varas. On the other hand, the correspondence of the Chilean Minister in France during the 1850s shows the very wide range of requests he received from Chile; these included from buying paintings for public offices, to buying books and journals, and uniforms for the military, to obtaining the services of French nuns to come over to Chile! (on this see, for example, AN, *Fondo Legación Chile - Francia y Gran Bretaña*, vols. 24, 26, 27, 30).

¹⁰¹ It is interesting to note, incidentally, that the story for the hiring of a collaborator for *El Araucano* also involves Félix Frias. It seems he was the first name that Chilean officials thought of as a possible collaborator for the newspaper. However, he declined the offer. On this, see Varas to Blanco Encalada, August 14 1853; Varas 1919: #3, and Blanco Encalada to Varas, October 14 1853; id: #8. On the other hand, it seems that the “M. Acné” referred to by Blanco Encalada was most probably the French litterateur Théodore Anné (1797-1869) (on this, see *Le grande encyclopédie*, Vol. 3).

international affairs. In this sense, it would seem that his background was one of publicist of economic ideas, more than economic theorist. Whatever the case may be, the fact that he worked at an influential French journal and seems to have been a learned man, may explain why he was first approached for a job in Chile¹⁰². In this sense, in a country where the knowledge about economic issues was very poor, anybody that even appeared to be versed on the subject would seem fit to teach in this field. A cursory examination of the *El Araucano* for the second half of the 1850s, where we do indeed find contributions by Cochut, confirms that he was more of a news-commentator or publicist, than an economic theorist or philosopher. Thus, he wrote regularly for the international section of the newspaper, reporting on recent social, political and economic events in Europe. At the same time, and at longer intervals, he also contributed some more substantive economic articles that had been originally published in the *Revue des deux mondes*¹⁰³.

At any rate, and returning to our narrative, nothing seems to have happened regarding the professor of political economy for some time. Then, in January of 1855, Minister Varas writes to Blanco Encalada;

For some time now the Chilean government has been looking for a professor of Political Economy in Europe. As you know, this work, which is being headed by Mr. Irarrázaval, led to a letter from Mr. Ochagavía to Mr. Cochut. He has replied

¹⁰² Note, for example, that he contributed an essay to Coquelin's *Dictionnaire* (on the topic of "Morale"), and wrote a review of Courcelle-Seneuil's *Traité* in the *Revue des deux mondes* in 1859. We also know, by the way, that by the time of his death he was an honorary Vice-President of the Société d'Economie Politique (Letort 1890).

¹⁰³ Of course, one could also argue that it was these types of contributions that were required of him by the editors of the Chilean newspaper. And for a salary of FF\$ 350 for two articles a month, he would probably write about whatever he was asked to!

indicating two names, Mr. Molinari and Mr. Courcelle Seneuil. Either of them seems satisfactory, given the recommendations they present. It is probable that Mr. Cochut has already contacted you, and I recommend that you follow this matter very seriously. (Varas to Blanco Encalada, January 14 1855; Varas 1919: #46)

This is also the first communication where we find that the job requirements for the foreign expert are fully spelled out; “The person who is hired should: 1st. Teach Political Economy at the university; 2nd. Assist the Ministry of Finance in the capacity of advisor; 3rd. Inform and illustrate the public on economic issues according to the requirements of the government’s agenda” (id; Varas 1919: #46). Whether working at the Ministry of Finance had been a requirement for the job all along, or whether it was added as an enticement to attract candidates for the available position in Chile, we do not know¹⁰⁴. In any case, it is interesting to note that although he had presumably been working in *El Araucano* for only some months it was André Cochut who was asked to give some advice regarding an economist who would come to Chile. In this sense, it seems that he was quick to earn a good name in Chile¹⁰⁵. On the other hand, the mention of Gustave de

¹⁰⁴ Likewise, we have found no information regarding the involvement that Ramón Luis Irarrázaval, who by this time had only recently returned to Chile after a diplomatic mission in Rome (and was to leave for Peru soon after), had in this process. On Irarrázaval, see Figueroa (1974). I am grateful to Ricardo Couyoumdjian for his help in identifying this “Mr. Irarrázaval”.

¹⁰⁵ Here it is interesting to note that although he was hired in mid-1854, the first contribution we find by Cochut in *El Araucano* is in December of that year. This was an article translated into Spanish as “Del Crédito Territorial”, which is prefaced in an intriguing way; “El nombre sólo de su autor, Mr. André Cochut, tan ventajosamente conocido en Chile por sus sabias contribuciones bastaría para recomendarla [referring to the contribution that follows]”. We then find his more regular contributions on current events in Europe as from April 1855. This may be due to the fact that the work of the collaborator for *El Araucano* was viewed as one of not only collaborating in Chilean periodicals, but also of writing about Chile in

Molinari comes as a surprise to us. We should explain, however, that we do not know whether Cochut or Blanco Encalada (or Marcó del Pont) really contacted him. What we do know is that at this time he was on the market, so to speak, since like many other liberal thinkers he was not feeling comfortable with the current political situation in France¹⁰⁶.

In all, a decision was soon made. In mid-February of 1855, Minister Varas informed Marcó del Pont of the selection of “Mr. Courcelles Seneuil” (sic), and ordered him that “in accordance with the ideas stated in the enclosed memorandum, you will complete this contract in representation of the Chilean Government...” (Varas to Marcó del Pont, February 14 1855; AH MINREL, *Fondo Histórico*, 11c: #70)¹⁰⁷. In this respect, it is interesting to note that the contract signed out between Marcó del Pont and Courcelle-Seneuil was identical to the memorandum sent forth by Varas¹⁰⁸. As noted

European journals (Varas to Blanco Encalada, October 31 1853; Varas 1919: # 9, and Blanco Encalada to Varas, December 30 1853; id: # 14). In any case, the fact that the *Revue des deux mondes* also seems to have been read in Chile may provide the missing link as to how Cochut was known in the country.

¹⁰⁶ Although Gustave de Molinari (1819-1912) was Belgian by birth, he lived in France most of his life and was a (radical) member of the French School of Political Economy (note, in particular, his 1849 article “De la Production de la Sécurité”). After Louis-Napoleon Bonaparte’s *coup* of December 1851 and the settlement of the Second Empire, he left for Belgium where he was named professor of Political Economy at the Royal Belgium Museum of Belgian Industry, and later, at the Institut Supérieur du Commerce, at Antwerp. In any case, he returned to Paris in 1860. On this, see Guyot (1912).

¹⁰⁷ It seems that we should not read anything into the fact that Varas addressed the Chilean Consul instead of Blanco Encalada, the Minister. As he explains in a letter addressed to Blanco Encalada we have found elsewhere; “Presupposing that you would not in Paris by the time the steam ship with mail arrived, I have addressed Marcó del Pont so that he makes the arrangements with Courcelle Seneuil. In case you are in Paris, I reiterate my previous recommendation” (February 14 1855: Varas to Blanco Encalada; in Varas 1919: #48).

¹⁰⁸ We should note, incidentally, that it seems that not everything went as smoothly as planned with this deal; on June 1855, Varas wrote the Blanco Encalada that, “I am glad that you have solved the problems that had detained Marco in his agreement with Courcelle” (Varas to Blanco Encalada, June 14 1855; Varas 1919: #55). Unfortunately, we do not know what precise problems this may have referred to.

above, Fuentealba (1945) transcribed this document, although he failed to quote in which of the numerous collections (and corresponding volumes) of the Archivo Nacional he found this document¹⁰⁹. Since we have already referred to the main terms of this contract above, we will not spend more time on this here (for a transcription of this contract, see the Appendix). However, we should note that an interesting point regarding this document refers to Art. 2, §3, which seems very accommodating to the foreign professor, in terms of establishing compensation clauses in case of the termination of the contract. In this respect, we can presume that the fact that by this time the Chilean government had hired foreign experts in other areas may have given government officials some experience in this sense¹¹⁰.

At this point it is interesting to note that our account suggests that while the original instructions for the hiring of a professor/advisor referred to finding someone in Europe, as far as we can tell the search process ended up taking place exclusively in France. For instance, neither the United States nor Spain nor England, which one would also imagine to be some natural reference points for Chile, seem to have even been

¹⁰⁹ So as to correct this failure, we will explicitly state that we found this document at the Archivo Nacional, *Fondo MINEDUC*, Vol. 50, #24. The document we consulted was a translation of the contract, in Spanish, accompanying a letter from Minister Antonio Varas to Minister Silvestre Ochagavía, dated September 5 1855, informing him of the hiring of J.G. Courcelle-Seneuil (a similar letter was sent to Minister José María Berganza, of Finance, but the enclosed copy of the contract is missing; Varas to Berganza, September 5 1855; AN, *Fondo MINHA*, vol. 239: n.f.). In decrees emitted in the following days, President Manuel Montt approved of the terms of the contract and officially named Courcelle-Seneuil a Professor of Political Economy and Advisor to the Minister of Finance (September 13 1855, AN, *Fondo MINEDUC*, Vol. 50: #25, and September 24 1855, AN, *Fondo MINHA*, Vol. 239: n.f., respectively). In these documents, we also find that Courcelle-Seneuil's salary is determined in terms of Chilean pesos. Thus, the FF\$ 18.000 were translated into Ch\$ 3.600.

¹¹⁰ For one such instance, see Roberto Hernández's (1990-91) review of the hiring of the French doctor Laurent Sazie as a professor for a school of Medicine in Chile in 1833.

considered as places where to search for a foreign expert. Moreover, note that the expert finally selected did not even speak Spanish¹¹¹. Yet this did not seem to have been a problem. The really important point to keep in mind here is that in the post-independence era the main foreign influences in Chile were British and French. In terms of trade and commerce, Britain was the leader in almost all of Spanish America. But,

[T]he new influences playing on Chilean (especially upper-class) life were neither exclusively British nor exclusively commercial. [Soon after Independence] France was beginning to exert her commercial sway, not least through imported reading matter. (Collier and Sater 1996, 45)

At the same time, it has been argued by Jean-Pierre Blancpain that “[gathering] from its programs, its teachers and its ideology, till 1880 the Chilean educational system was a copy of the French model” (1987, 92). Further, Blancpain has added that the French community in Chile was especially influential in liberal professions and in the development of medicine in the country (on this see also footnote 110), as opposed to simply working as artisans or in trade (id, 98). On the other hand, we also know that during the 1840s and 1850s, France was also the source of instructors, as well as weapons, of the Chilean army (Arancibia 2002). All of this, then, would explain why

¹¹¹ On this, see Barros Arana, who adds that Courcelle-Seneuil studied Spanish subject and by the time he arrived to Chile, “hablaba con rara facilidad, comprendiendo el alcance de todos sus giros i locuciones” (1914, 197).

France was considered as the natural place to undertake a search of an expert in a field such as economics¹¹².

Another point worth noting here is the fact that nowhere in the correspondence we are examining do we find any ideological type of requirement for the hiring of a foreign expert. In this sense, it seems that indeed there was no ex-ante discussion about the nature of the advice the expert was to give in Chile. To be sure, it is possible that there may have been a tacit understanding between Manuel Blanco Encalada on the one hand, and Minister Varas or Minister Ochagavía on the other, in terms of focusing the search on a liberal economist. Or, even plainer, maybe the communication with the more explicit requirements for the job is among the correspondence that is missing at the Archivo Nacional in Santiago. While both these points may well be true, they cannot however lead us to change our preliminary judgement made above. Of course, we know that Jean Gustave Courcelle-Seneuil was influential in advancing a liberal economic agenda, so these notions must have had some type of political support. However, this only happened ex-post, when given his prestige, Courcelle-Seneuil was able to impose his preferences, so to speak. Thus, and as a more general conclusion, it is important to be cautious with the straightforward use of revealed-preference type of arguments in analyzing historical narratives. As we have seen in the case under examination, just because a liberal foreign advisor was hired does not mean that being liberal was a requirement for the job.

¹¹² This point is also underscored by the fact that M. Blanco Encalada was the Chilean Minister in France and Great Britain while in most of the other European countries relations were carried through consular offices only.

The problem of selecting an economic advisor

The framework we have adopted in this paper treats the problem of selecting a foreign expert as a two-sided problem. Both experts and those who demand their services have preferences over the work to be delivered. From our previous discussion, however, we have not found any evidence that Chilean officials may have imposed ideological requirements on the person to be hired as a foreign economic advisor / professor of political economy. But this still leaves us with the problem of considering the preferences an expert may have. Indeed, experts may differ in terms of a series of characteristics and attributes unknown to advice-seekers, which makes the problem of hiring an expert even harder. At any rate, note that here we are assuming that the country selecting an economic advisor recognizes that advisors have preferences over policies, even though they may not recognize what such policy issues are. And in this case advice-seekers will face a problem that may be both serious and urgent. The seriousness of this problem should be apparent; hiring a biased expert who, moreover, may be able to indulge these biases may lead to serious externalities¹¹³. Regarding its urgency, note that this is a problem that should be tackled ex-ante, i.e. before the advisor is hired, because when advice-seekers discover the expert's beliefs it may be too late to prevent serious evils. Of course, we should stress that these problems may occur even though the expert is intellectually honest. Because when we refer to bias we are really referring to the fact that

¹¹³ A way out of this problem would be to design an incentive compatible mechanism to constrain the behavior of the foreign advisor. In the case we are examining, however, there is no evidence that any specific mechanism of this type was designed, although such concepts may only have been discarded because they were considered unnecessary, as we discuss below.

the advisor is advocating one position in a contested issue. Thus, it is in this sense that one would like to assure that the hiring process of a foreign advisor is as unbiased as possible. The relevance of these points for the problem of the hiring of an expert should by now be clear; it is precisely when advice-seekers are searching for an unbiased expert, and when they have an imperfect knowledge about the field where they want to acquire expertise in, that the dangers referred to above are most serious¹¹⁴. And it is in this respect that one would like to consider the implementation of a selection process that would minimize these risks.

Before we discuss some alternative processes that may achieve such a goal, it is interesting to note that nowadays such a type of choice as Chilean officials faced in the mid-19th century is almost non-existent in practice. The selection of a foreign expert is mostly tied to the concession of foreign assistance by multilateral agencies (such as the I.M.F.), or of foreign aid by individual countries (the U.S. Alliance for Progress initiative of the 1960s is a particularly clear example in this respect). In this context, the problems facing advice-seeking countries we are discussing in this paper are essentially neglected (see, however, Drake 1989). Therein, then, an additional interest for the problem we are examining here.

Given the development of our narrative so far, it should come as no surprise that the case of Chile in the 19th century will be our working example for an analysis of alternative processes for the hiring of a foreign advisor. And it should also come as no

¹¹⁴ To be sure, if we assume that experts are homogeneous in the sense that their “preferences” are alike, the problem we are examining here would be virtually non-existent. But, then, it is the consequences of deviations from these instances of best-case thinking that are the situations we most want to avoid.

surprise if our starting point is a competitive process. A-priori it is easy to imagine that a process of this type would be a good way to discern between “good” and “bad” potential experts and, thus, assist in the selection of an expert in a field such as economics.

A first type of competitive process for the hiring of a foreign expert one could imagine could be the option of inserting an invitation to apply for a position in Chile in an international journal in Europe. Some possible journals for this purpose could be the *Revue des deux mondes*, or the *Edinburgh Review*, or maybe *The Economist*, all of which were influential journals during the 19th century. Now, it is fortunate for us that the Library of Congress in Washington D.C. holds collections for all of these journals for the mid-19th century. Yet browsing over some of these journals we do not find that they carry these types of advertisements. This, then, would suggest that while the alternative under consideration is appropriate for present times, it seems to have been unsuited for the mid-19th century. But more seriously, even if such a system could have been a viable alternative such that any of these journals did offer a venue for the publication of these types of announcements, how would Chilean officials have judged who is the best specialist from all of the submissions they received? Because given the imperfect knowledge Chileans had regarding political economy, they would not be able to judge the qualities of a good expert, and so would have to find someone to discern among the potential candidates for them. But then, a different process would have to take place for the selection of the judges, and we would have the same problem at a different level.

Upon careful examination it should be apparent that this is a problem that will also be common to all types of competitive processes. Thus, this would also leave out the interesting proposals advanced in this sense by Jeremy Bentham in the 1820s and 1830s. In his *Constitutional Code* (1983) Bentham proposed competitive processes in the comprehensive examination for entry into the civil service (id, IX: §.16), and in the pecuniary competition system for obtaining public jobs (id, IX: §.17). A-priori this seems a promising alternative for addressing the problem at hand. Yet, even if we assume that Bentham's works were well known in Chile in the mid-19th century¹¹⁵, this system clearly gives rise to the same types of problems mentioned above. How to judge the results of the comprehensive examination process would also be an obstacle here. In any case, the somewhat different point we wish to stress here is that in the mid-19th century there did exist ideas as to how to conduct a competitive process for the selection of important jobs. In this sense, the argument that this is not the way things were done during this period is a half-truth. The obstacles such processes faced would be of a different type altogether.

An additional problem with the alternatives we have examined so far, as well as with other more complicated alternatives (for example, a lottery a-la Tullock 1980, or some other incentive-compatible mechanism one could possibly devise) is one of transaction costs, intensified by the lack of information. Even if one assumed that the information that was lacking could be obtained, such that an advice-seeker could perfectly differentiate among potential experts, such a process would take time (and

¹¹⁵ It seems, however, that his work on penal law was better known than his work on constitutionalism; see de Avila (1979).

money). Note, of course, the similarity of this argument with the case for representative democracy. The idea of representative democracy is that a democratically elected government (or parliament) saves on transaction costs of governance vis-à-vis direct democracy (Mueller 1996). In this sense, then, it would seem reasonable to argue in favor of much simpler and straightforward alternatives for the problem under consideration.

One such simpler alternative available to an advice-seeker could be to ask the Professor of Political Economy at the Collège de France, or at Oxford, or at any other well-known center of higher education, for guidance in this matter. And yet, note the similarity of this process with the steps that were followed in Chile. Because in essence, the steps followed by Chilean officials involved some kind of trust in the judgement of, first, Félix Frías, and then, André Cochut. But this process acquired a personal dimension. It was people who were known who were asked for advice, as opposed to relying on the judgement of a famous, but unknown, foreign professor. In a more fundamental sense, note that the system utilized for the hiring of a foreign expert in Chile contained important random elements. The decision to ask for Felix Frías' advice, at least when viewed from our present standpoint, seems random, although we should also explain that it was in some sense constrained by and limited to the number of people known by Chilean officials who were in Europe at the time. In any case, it is very likely that had someone else been first asked to give a recommendation instead of Frías, Chileans would never have heard of André Cochut, or Jean Gustave Courcelle-Seneuil. Of course, note that once you follow such a process you could end up hiring a non-economist for an economist's job (as would have been the case with Cochut). Thus the

importance of constraining, or regulating, this random process such that it looks more like a sequential decision. This is of vital importance if we wish to avoid worst-case prospects and, indeed, this has been the motivating force of all our discussion in this section; devising mechanisms to find an unbiased advisor and thus avoid potentially disastrous consequences. In any case, and by mere chance, this is what happened in Chile, where first Frías, and then Cochut were consulted successively. And this does seem to be an improvement over the alternative of consulting a famous professor who, one would imagine, would not have liked to be cross-checked and, further, is not (in general) personally known by the advice-seekers.

Of course, it seems pretty risky to rely on a random process for the selection of a foreign advisor, especially if the stakes seem as high as we have suggested. As Levy (1992) has reminded us, even in Athens, which probably represents the best known instance of the use of random elections, the lot was only used for minor issues; for important issues direct democracy was resorted to. In any case, and as we have just noted, the characteristics of the process followed in Chile were not purely random. More importantly, then, and as a discussant of this paper has pointed out to us, we should ask ourselves whether Chilean officials visualized the hiring of a foreign expert as a really important matter where the stakes were actually that high. As we saw, Manuel Blanco Encalada was encouraged to “follow this matter very seriously”. But we also have evidence that hiring foreign experts was not really an extraordinary event for Chilean officials (on this see, for example, footnote 110). Moreover, one can easily imagine that as Minister of the Interior and Foreign Affairs, Antonio Varas had many more important

things to worry about than the hiring of a professor of political economy. And the same can be said of Silvestre Ochagavía, whose full title (and attendant responsibilities) was of Minister of Justice, Church Affairs and Education¹¹⁶. What about Blanco Encalada? He surely had many things on his mind, as the correspondence in the *Fondo Legación Chile - Francia y Gran Bretaña* at the Archivo Nacional can attest, and probably saw this as one more job to do; nothing more and nothing less. In any case, recall that the contacts with, first Frías, and then Cochut came through Minister Ochagavía and not from Blanco Encalada who, in the main, turned out to be the executor of orders he received from Santiago. Probably, then, it was thought that regarding the teaching of political economy, any candidate with good “recommendations” would be preferable to the status-quo situation. In this sense, it would seem safe to assume that the influence of the expert as an advisor to the government may have been visualized as easy to constrain by the political nature of the job, which was above the realm of the advisor.

As we have seen, during the mid-19th century France was the main reference point for Chilean cultural and intellectual life. Does this then suggest that given that Chileans were searching for an economist/expert there, they would only find a liberal economist? In other words, is it possible to argue that since the selection of the foreign expert was bound to take place in France, the selection of a liberal economist was almost predetermined? Several comments are in order here. On the one hand, it is not completely true that you would only find liberal economists in France during this time (on this see,

¹¹⁶ All these responsibilities were allotted to one Minister; thus in the 1850s the President’s cabinet was composed of only five Ministry’s; Interior, Foreign Affairs, Finance, War and Navy, and Justice, Church Affairs and Education. On this, see Valencia Avaria (1986).

for example, Gide and Rist 1915). But even if this were the case there are some important points we should like to make. In the first place, considering the individual attributes of an economist would still be an important problem. Secondly, it is important to stress that there was no covenant, so to speak, that forced Chileans to search for an economist in France; had Chilean officials had some definite preferences they well could have looked elsewhere, for example in the U.S. if they were looking for a protectionist-type economist. Lastly, and more generally, an instance where we see a reliance on only one source of new ideas evinces the danger of intellectual cascades. Because in this case it may well happen that whatever ideas or fashions are in vogue in the metropolis will be introduced by a country looking for inspiration, almost independently of their objective content. And, as should be clear, this is a problem very similar to the dangers we have been referring to in this paper.

At any rate, the type of random process we have examined (with important ad-hoc elements, to be sure) must be viewed as opposing a competitive selection process for the hiring of a foreign expert. Because even if we grant that Chileans did not seem to view this as such an important problem, and we recognize that the implementation of a competitive procedure faces important practical difficulties, it still seems fair to ask ourselves why Chileans would disregard considerations about accountability, as they seem to have done. The relevant question then seems to be, was accountability as big an issue in mid-19th century Chile as it is now both in Chile and elsewhere? For the likes of Jeremy Bentham, accountability and transparency were very important points; but what about in Chile? Or to put it another way, is it possible that Bentham's stance on

accountability was one of the many reasons why some of his ideas were deemed almost exotic in many countries, including his own? To put matters differently, once again, when do we start seeing a greater demand for transparency in the types of matters we have examined in this paper? We venture to suggest that it was when foreign loans were involved; foreign creditors have been an important source of demand for more accountability in terms of public sector management, in particular when the creditors are multilateral agencies¹¹⁷.

To sum up, here we have provided a rationale of sorts for the selection process for the hiring of a foreign expert as undertaken in 19th century Chile, which culminated with the employment of Jean Gustave Courcelle-Seneuil as a foreign economic advisor and professor of political economy. In particular, we have described the tradeoff Chilean officials faced in terms of the transactions costs involved in finding more about the economist to be hired, and the potential bias the expert could have and the ex-post criticisms of his work precisely because he was viewed as biased. And Chilean officials decided to take a risk in terms of not gathering all the possible background information on the advisor they were to hire. This, however, can be interpreted as a rational calculus given their preferences and the constraints they faced.

¹¹⁷ For the issuance of sovereign bonds, on the other hand, their prices, which provide a signal of country-risk and quasi-symbolizes the possibility of further such emissions, would fluctuate with the extent of the problems the countries face, thus providing a built-in incentive for these nations to be “responsible”.

Conclusion and Implications

In this paper we have discussed the problem of selecting an economic advisor that a country which is involved in such a task faces. Our work is grounded on the conviction that one should not only consider the political constraints within which economic advisors act, but also recognize that they are agents who have preferences. Thus, here we have a principal-agent problem of sorts which may be very important for an advice-seeker who does not know what type of agent he is hiring. When the country looking for an expert discovers the expert's beliefs, after he has been hired, it may be too late to prevent serious evils. And even if no disastrous consequences come about from the work of the expert, historiography will not be kind to the biased advisor. Because while an advice-seeker may not have the necessary knowledge to discriminate and, to put it plainly, to indulge his preferences ex-ante (since they could be assumed non-existent), ex-post we have a different story. Once we start learning about a subject, we come to realize that there are two sides to everything. Clearly this is what happened in Chile. Because while Jean Gustave Courcelle-Seneuil taught classical economics, through his lessons Chileans also became aware that this was not the only economic doctrine that existed¹¹⁸. All of these problems may happen, we are ready to argue, even though the advisor may be intellectually honest all along (see our discussion above on the relevance

¹¹⁸ On this, see the following comments by P.N. Urzúa, from whom we have already quoted above; "Oigamos a List, que si no lleva como el escocés Adam Smith el nombre por demás halagador de el *Newton de la Economía Política*, lleva el no menos glorioso de "el fundador del proteccionismo alemán" (1884, 14; italics in the original). See also, Courcelle-Seneuil's *Traité* or, to be more precise, his *Tratado* (1859).

of this comment to Jean Gustave Courcelle-Seneuil). Because when we talk about bias here we are really referring to the fact that the advisor is seen as advocating one position in a contested issue. And such was, indeed, the case with Jean Gustave Courcelle-Seneuil in Chile.

This framework, it seems to us, can also be used to examine other experiences of the transfer of expertise. In particular, we believe that it seems to explain the experience of the “Chicago Boys” in Chile, and the evaluation of their legacy¹¹⁹. While some differences are evident, the general correspondence between this episode and the hiring of Jean Gustave Courcelle-Seneuil we have examined here is straightforward, since both represented, in essence, a process of transfer of economic ideas and expertise.

As an opening for our discussion in this sense, the following comments by Luis Escobar Cerda, when recollecting his experience as Dean of the School of Economics of the Universidad de Chile in the mid 1950s, are highly illuminating;

One day an official from the U.S. Embassy in Chile came to my office to present me with a ‘present’. It concerned the possibility of sending students, on a scholarship program, to study in the U.S., together with the possibility of receiving American teachers in whatever fields we required. The Department of State, which managed the U.S. foreign aid programs had selected the University

¹¹⁹ The case of the Kemmerer mission to Chile in 1925, on the other hand, is different in the sense that here the advice-seekers (i.e. the Chilean government) had some very distinct ideas about what could be done regarding the economic problems of the country (Drake 1989, Hirschman 1963). Thus, as Hirschman has argued, in this case “the mission served principally as an umpire, or perhaps even as a random device: in other words, it was the means for choosing one out of a number of competing proposals” (1963, 177); in particular, these proposals referred to the precise institutional and economic environment for the establishment of a central bank.

of Chicago to administer the program. I liked the idea, contingent on the fact that I were granted the liberty to send my students to study in the American university that we chose.... I remember that I once asked John K. Galbraith, one of my professors at Harvard, what he thought about Chicago, and he answered: 'It is a luxury that the U.S. can afford' ... Thus, I explained [to the U.S. official] that I could not send all my students to Chicago, that represents a very definite 'school of thought'. It would be like sending them all to Patrice Lumumba University in Moscow. What would happen in Chile in the next twenty years or so...? (Escobar 1991, 33-34).

This exchange process Escobar felt uneasy about did, however, end up taking place as had been proposed, although through the Universidad Católica de Chile¹²⁰. And the Chilean economists educated at Chicago ended up being highly influential during the government of President Augusto Pinochet. Here, however, we will leave the questions regarding the authoritarian nature of the Pinochet government, as well as the issue as to whether or not there really were ideological considerations in this transfer of ideas, aside (this latter factor, incidentally, is a controversial issue, see Valdés 1995, and Vial 1999). The point we wish to stress, instead, is that one of the main differences that economists

¹²⁰ The exchange programs between the University of Chicago and the Universidad Católica de Chile were signed in 1956 within the context of the Point Four Agreement (re-technical cooperation) of the U.S. International Cooperation Administration. Their purpose was to modernize the (university-level) studies of economics in Chile. This implied the establishment of a *Centro de Investigaciones Económicas* at the Universidad Católica and the institution of a scholarship program for Chilean graduates to study economics at Chicago and return to work at the university. The project, which was originally planned to last three years yet ended up lasting till 1964, indeed seems to have come as a "present" from the U.S. agency for international development, as Escobar argues. For more on these issues, see Valdés (1995), and Vial (1999).

opposed to the Pinochet regime, such as Alejandro Foxley (1983)¹²¹, had with the Chicago Boys during the 1980s were regarding their models.

For instance, in his discussion regarding the (anti-inflationary) stabilization policies implemented in Chile during the 1970s and early 1980s, Foxley writes that,

Most current views would agree that contemporary inflation is a complex process of interaction among demand, cost, and expectation factors. An approach that ignores some of these factors is likely to result in an unnecessarily long transition period and one that will generate deeper recession and more unemployment than necessary. (1983, 201)

As should probably be unnecessary to explain, here Foxley is contesting the basic monetarist view of inflation (and its open-economy version of the monetary approach to the balance of payments), which served as the theoretical foundation for the (“orthodox”) stabilization policies implemented by the Chicago Boys. In this sense, it can be said that within the Chilean policy-watchers community the Chicago Boys were considered biased in a scientific sense because they advocated the undiluted implementation of policies that followed from models that were considered contested in a theoretical sense. According to Foxley, the fact that the policies implemented produced a severe economic contraction in Chile in the period under consideration would give further credence to his argument. In all, therein lies an important rationale for quarreling with the Chicago Boys, especially when one also recalls how the relationship between the Chilean economists and the

¹²¹ Alejandro Foxley was to be the Minister of Finance of the first democratically elected government following the Pinochet regime. The fact that he was the leader of the opposition economists to Pinochet while director of CIEPLAN, an academic/public policy think-tank in Santiago was the main basis for his appointment.

University of Chicago was established (on this, see footnote 120). Doubtless, this is an incomplete account as to the evaluation of the Chicago Boys in Chile, but we believe the point raised is valid nevertheless and, more importantly, the argument itself seems very similar to that of the hiring of a foreign advisor in the 1850s.

Appendix

The Contract Between J.G. Courcelle-Seneuil and the Chilean Government (Source: Archivo Nacional, *Fondo Ministerio de Educación*, Vol. 50, #24, my translation)

“The contracting parties: Mr. José Marcó del Pont, Consul General of Chile in France, acting on behalf of the Chilean Minister of Foreign Affairs and the Government of Chile; and Mr. Courcelle-Seneuil, Professor of Political Economy, have agreed upon and subscribed the following contract:

Art. 1. Mr. Courcelle-Seneuil undertakes to leave for Chile to carry out, during the next five years, the following tasks:

1. To teach the course in Political Economy at the Instituto Nacional in conformity with the academic program adopted by its governing body.
2. To perform the duties of a senior advisor at the Ministry of Finance, undertaking all the necessary tasks associated with this position.
3. To inform and illustrate the public on economic issues when requested.

Art. 2. For its part, the Government of Chile represented by its Consul General Mr. Marcó del Pont pledges to:

1. Pay Mr. Courcelle Seneuil the sum of eighteen thousand francs per year.
2. Advance him the sum of five thousand francs so as to cover his travel expenses from France to Chile.

3. Compensate him with a sum equivalent to a full year's salary were the Chilean government to unilaterally terminate this contract before its due expiry date, and to pay the same amount to his legatees or representatives in France in case of his death during the journey from France to Valparaíso, or before the conclusion of this contract.

Four copies signed in Paris on May the First of the year Eighteen Fifty Five”.

Bibliography

- Alcouffe, Alain (1989). "The institutionalization of political economy in French universities: 1819-1896", *History of Political Economy*, Vol. 21 (2), pp. 313-344.
- Anguita, Ricardo (1912-1916). *Leyes Promulgadas en Chile desde 1810 hasta el 1o. de Junio de 1912*, 4 Vols. + Supplement (Santiago: Imprenta, Litografía i Encuadernación Barcelona).
- Arancibia Clavel, Roberto (2002). *La Influencia del Ejército Chileno en América Latina, 1900-1950* (Santiago: Centro de Estudios e Investigaciones Militares).
- Barros Arana, Diego (1914)[1892]. "Don Juan Gustavo Courcelle Seneuil (1813-1892)" reprinted in his *Obras Completas*, Vol. 13 (Santiago: Imprenta, Litografía i Encuadernación Barcelona), pp. 193-214.
- Bello, Andrés (1982)[1853]. "Memoria correspondiente al curso de los estudios universitarios en 1852", reprinted in his *Obras Completas*, Vol. 18 (Caracas: Fundación La Casa de Bello), pp. 81-100.
- Bentham, Jeremy (1983)[1830]. *Constitutional Code, Volume I*. Edited by F. Rosen and J.H. Burns as a volume of *The Collected Works of Jeremy Bentham* (Oxford: Clarendon Press).
- Blancpain, Jean-Pierre (1987). *Francia y los Franceses en Chile (1700-1980)*. Traducido por L.E. Jara (Santiago: Ediciones Pedagógicas Chilenas).
- Chile, Archivo General Histórico del Ministerio de Relaciones Exteriores (AH, MINREL). *Fondo Histórico*, several volumes.

Chile, Archivo Nacional (AN). *Fondo Ministerio de Justicia, Culto e Instrucción Pública* (Fondo MINEDUC), several volumes.

Chile, Archivo Nacional (AN). *Fondo Ministerio de Hacienda* (Fondo MINHA), several volumes.

Chile, Archivo Nacional (AN), *Fondo Legación Chile – Francia y Gran Bretaña*, several volumes.

Collier, Simon and William F. Sater (1996). *A History of Chile, 1808-1994*. (Cambridge: Cambridge University Press).

Coquelin, Charles and C. Guillaumin (1864). *Dictionnaire de L'Economie Politique*. Third Edition, 2 volumes (Paris: Librairie de Guillaumin et Cie.).

Cortés, José Domingo (1875). *Diccionario Biográfico Americano*. (París: Tipografía Lahure).

Courcelle-Seneuil, Jean Gustave (1860). “Economía Política: Programa formado por el profesor del ramo en la Sección Universitaria don Juan Gustavo Courcelle Seneuil, i que ha obtenido la aprobación del Consejo de la Universidad para los exámenes que sobre esta materia se rindan”, *Anales de la Universidad de Chile*, Vol. 18, pp. 327-332.

Courcelle-Seneuil, Jean Gustave (1859). *Tratado Teórico i Práctico de Economía Política*, 2 volumes (Paris: Librería de Guillaumin y Cia).

Courcelle-Seneuil, Jean Gustave (1857a). “Bancos de Circulación”, *Revista de Ciencias y Letras* (Santiago), pp. 37-50.

- Courcelle-Seneuil, Jean Gustave (1857b). "Estudios sobre la Crisis Económica", *Revista de Ciencias y Letras* (Santiago), pp. 507-525.
- Courcelle-Seneuil, Jean Gustave (1856). *Examen Comparativo de la Tarifa i Lejislación Aduanera de Chile con las de Francia, Gran Bretaña i Estados Unidos* (Santiago: Imprenta Nacional).
- Cruchaga, Miguel (1870). *Tratado Elemental de Economía Política*. Segunda Edición Corregida (Santiago: Imprenta de El Independiente).
- de Avila, Alamiro (1979). "The Influence of Bentham in the Teaching of Penal Law in Chile", *The Bentham Newsletter*, Vol. 5, pp. 13-28.
- Drake, Paul W. (1989). *The Money Doctor in the Andes: The Kemmerer Missions, 1923-1933* (Durham: Duke University Press).
- Drake, Paul W. (Ed.)(1994). *Money Doctors, Foreign Debts and Economic Reforms in Latin America from the 1890s to the Present* (Wilmington: Scholarly Resources Inc.).
- Escobar Cerda, Luis (1991). *Mi Testimonio* (Santiago: Editorial Ver).
- Figuroa, Virgilio (1974)[1925-1931]. *Diccionario Histórico y Biográfico de Chile*. 5 Vols. (Nendeln: Kraus Reprint).
- Foxley, Alejandro (1983). *Latin American Experiments in Neoconservative Economics* (Berkeley: University of California Press).
- Fuentealba Hernández, Leonardo (1945). *Courcelle-Seneuil en Chile: Errores del Liberalismo Económico* (Santiago: Prensas de la Universidad de Chile).

- Gide, Charles and Charles Rist (1915). *A History of Economic Doctrines from the time of the Physiocrats to the present day*. Translation of the Second Revised Edition of 1913, (Boston: D.C. Heath and Co.).
- González, Marcial (1859). “Un nuevo testo de Economía Política: Análisis Crítico leído en el Círculo de Amigos de las Letras”, *La Semana* (Santiago), September 10, 17 and 24.
- Guyot, Yves (1912), “Obituary: Gustave de Molinari”, *Economic Journal*, Vol. 85 (1), pp. 152-156.
- Hernández, Roberto (1990-91). “José Miguel de la Barra contrata en París al médico Lorenzo Sazie”, *Diplomacia* (Academia Diplomática de Chile), Vols. 54-55, pp. 22-23.
- Hirschman, Albert O. (1987). “Jean Gustave Courcelle-Seneuil”, in J. Eatwell, M. Milgate and P. Newman (Eds.), *The New Palgrave: A Dictionary of Economics* (London: Macmillan), Vol. 1, pp. 706-708.
- Hirschman, Albert O. (1963). *Journeys Toward Progress: Studies of Economic Policy-Making in Latin America* (New York: The Twentieth Century Fund).
- Jaksic, Iván and Sol Serrano (1990). “In the Service of the Nation: The Establishment and Consolidation of the Universidad de Chile, 1842-79”, *Hispanic American Historical Review*, Vol. 70 (1), pp. 139-171.
- Jevons, W. Stanley (1965). *The Theory of Political Economy, with preface and noted and an extension of the bibliography of mathematical economic writings by H. S. Jevons* (New York: Augustus N. Kelley).

- Journal des Economistes (1892). "Nécrologie: J.-G. Courcelle-Seneuil", 5S. (11), pp. 70-81.
- Juglar, Clément (1895). "Notice sur la vie et les travaux de M. J.-G. Courcelle-Seneuil", *Séances et Travaux de L'Académie des Sciences Morales et Politiques* (Institut de France), Vol. 144, pp. 850-882.
- Krishna, Vijay and John Morgan (2001). "A Model of Expertise", *Quarterly Journal of Economics*, Vol. 116 (2), pp. 747-775.
- Lastarria, José Victorino (1885). *Recuerdos Literarios: Datos para la Historia Literaria de la América Española i del Progreso Intelectual en Chile*. Segunda Edición (Santiago: Librería de M. Servat).
- Le grande encyclopédie, inventaire raisonné des sciences, des lettres et des arts, par une société de savants et de gens de lettres* (1886?-1902?). 31 Vols. (Paris: Larousse).
- Letort, Charles (1890). "Compte Rendu: Société d'Economie Politique, Réunion du 5 Février 1890", *Journal des Economistes*, 5S., pp. 260-262.
- Levy, David M. (2001). *How the Dismal Science Got Its Name: Classical Economics & the Ur-Text of Racial Politics* (Ann Arbor: The University of Michigan Press).
- Levy, David M. (1992). *The economic ideas of ordinary people: From preferences to trade* (London: Routledge).
- Marco, Luc (1991). "Jean-Gustave Courcelle-Seneuil 1813-1892: L'orthodoxe intrasigent", in Y. Breton and M. Lutfalla (under the direction of), *L'Economie Politique en France au XIXe siècle* (Paris: Economica), pp. 141-161.

- Miquel, Manuel (1859). "La utilidad en su carácter subjetivo: Contestación al juicio crítico de D. Marcial González sobre el Tratado de Economía Política de M. Courcelle Seneuil, leída en el Círculo de Amigos de las Letras", *La Semana* (Santiago), September 17.
- Mitchell, Brian R. (1988). *British Historical Statistics* (Cambridge: Cambridge University Press).
- Morris, Stephen (2001). "Political Correctness", *Journal of Political Economy*, Vol. 109 (2), pp. 231-265.
- Mueller, Dennis (1996). *Constitutional Democracy* (Oxford: Oxford University Press).
- Ottaviani, Marco and Peter N. Sørensen (2003). "Professional Advice: The Theory of Reputational Cheap Talk", LBS Discussion Paper, at <http://www.london.edu/faculty/mottaviani/PA.pdf>
- Passy, Hippolyte(?) (1859). "Rapport de M. Passy a l'Academie des Sciences Morales et Politiques sur l'ouvrage de M. Courcelle Seneuil, intitulé *Traité Théorique et Pratique d'Economie Politique*", *Journal des Economistes*, 2S. (23), pp. 64-67.
- Pinto, Aníbal (1962). *Chile: Un caso de desarrollo frustrado*. Segunda Edición (Santiago: Editorial Universitaria).
- Rodríguez, Zorobabel (1894). *Tratado de Economía Política* (Valparaíso: Imprenta del Comercio).
- Rodríguez, Zorobabel (1893). *Estudios Económicos* (Valparaíso: Imprenta del Comercio).

- Rodríguez, Zorobabel (1889). “Un capítulo sobre la enseñanza de la economía política en la Universidad de Chile, sacado del libro *Páginas Sueltas* de don Domingo Amunátegui Solar”, *Revista Económica* (Valparaíso), Vol. 6 (No. 31), pp. 75-80.
- Romero, Ambrosio and Juan I. Quesada (1995). *Vida y Testimonio de Félix Frias* (Buenos Aires: Boletín de la Academia Nacional de Derecho y Ciencias Sociales de Buenos Aires).
- Schneider, Ben Ross (1998). “The Material Bases of Technocracy: Investor Confidence and Neoliberalism in Latin America” in M.A. Centeno and P. Silva (Eds.), *The Politics of Expertise in Latin America* (London: Macmillan Press), pp. 77-95.
- Subercaseaux, Guillermo (1924). *Historia de las Doctrinas Económicas en América Latina y en Especial en Chile* (Santiago: Soc. Imp. y Lit. Universo).
- Subercaseaux, Guillermo (1922). *Monetary and Banking Policy of Chile* (Oxford: Clarendon Press).
- Tullock, Gordon (1980). “Efficient Rent Seeking”, in J.M. Buchanan, R.D. Tollison and G. Tullock (Eds.), *Toward a Theory of the Rent Seeking Society* (College Station: Texas A&M University Press), pp. 97-112.
- Universidad de Chile. *Anales de la Universidad de Chile*, 1853-1855.
- Urzúa, Pedro N. (1884). *Zorobabel Rodríguez o las exajeraciones del libre cambio* (Santiago: Imprenta Cervantes).
- Valdés, Cristóbal (1993)[1850]. “Observaciones sobre la enseñanza de la economía política en el Instituto Nacional”, in S. Villalobos and R. Sagredo (Compilers),

- Ensayistas Proteccionistas del Siglo XIX* (Santiago: Dirección de Bibliotecas Archivos y Museos), pp. 225-231.
- Valdés, J. Gabriel (1995). *Pinochet's Economists: The Chicago School in Chile* (Cambridge: Cambridge University Press).
- Valencia Avaria, Luis (1986). *Anales de la República*. Segunda Edición (Santiago: Editorial Andrés Bello).
- Varas, Antonio (1919). *Correspondencia de don Antonio Varas con el Almirante Manuel Blanco Encalada sobre su misión en Europa: 1853-1857* (Santiago: Imprenta Universitaria).
- Vial, Gonzalo, with Angel C. Morales and Federico G. Hugo (1999). *Una Trascendental Experiencia Académica: Una Historia de la Facultad de Ciencias Económicas y Administrativas de la Pontificia Universidad Católica de Chile y la Nueva Visión Económica* (Santiago: Fundación Facultad de Ciencias Económicas y Administrativas de la Pontificia Universidad Católica de Chile).
- Villalobos, Sergio and Rafael Sagredo (1987). *El Proteccionismo Económico en Chile: Siglo XIX* (Santiago: Instituto Blas Cañas).
- Will, Robert M. (1964). "The Introduction of Classical Economics into Chile", *Hispanic American Historical Review*, Vol. 44 (1), pp. 1-21.
- Will, Robert M. (1960). "La Política Económica de Chile, 1810-64", *El Trimestre Económico* (Mexico), Vol. 27 (2), pp. 238-257.

Zilci, Sonia (1990). "La Ordenanza de Aduanas de 1864", *Cuadernos de Historia*

(Departamento de Ciencias Históricas de la Universidad de Chile), Vol. 10, pp.

109-125.

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