

## **‘Primeiro e mais antigo Constitucional da Europa’: Bentham’s contact with Portuguese liberals 1820-23**

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Following the uprising of August 1820 in Portugal, Bentham looked for ways in which his ideas could be brought to the attention of the members of the new liberal Cortes in Lisbon of 1820-23, and in this paper I explore some of the ways in which Bentham tried to influence Portuguese liberals at this time. However more worthy of note perhaps is the important influence exerted by the Cortes on Bentham’s work, and I also look at this aspect of his relationship with Portugal.

Throughout much of his working life, Bentham wrote on the theory and practice of civil and penal law. He wished to replace the existing laws with a codified system of laws justified by his principle of utility - i.e. the principle which states that the right and proper end of government is to promote the greatest happiness of the greatest number. Bentham hoped that a legislature would commission him to write a complete code of laws, and in 1811 he sent to the President of the United States, James Madison, his first formal offer to codify.<sup>1</sup> Following unsuccessful offers to codify for Russia and Poland, in 1820, when Bentham was in his seventies, he approached the Spanish Cortes during the years of the Liberal triennium and offered to codify Spanish law.<sup>2</sup> Although the Spanish Cortes expressed an interest in such a scheme, Bentham never received an official acceptance of his offer.<sup>3</sup>

As the regime in Spain looked increasingly less liberal in intent, Bentham turned to the newly-formed liberal Cortes in Portugal, where he met with his greatest success. In a letter of November 1821 to João Baptista Felgueiras, Secretary of the Portuguese Cortes, Bentham formally offered to draw up penal, civil, and constitutional codes of

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<sup>1</sup> See ‘Legislator of the World’: *Writings on Codification, Law, and Education*, ed. P. Schofield and J. Harris (*The Collected Works of Jeremy Bentham*, hereafter *CW*), Oxford, 1998, Editorial Introduction, p. xiii, and for the text pp. 5-35. The letter is reproduced as Letter 2145, Bentham to Madison, 30 October 1811, *The Correspondence of Jeremy Bentham (CW)*, viii. pp. 182-215, ed. S. Conway, Oxford, 1989.

<sup>2</sup> See Letter 2678, Bentham to Samuel Bentham, 11 August 1820, *Correspondence (CW)*, x. pp. 38-41.

law for Portugal. The Portuguese Cortes responded positively to Bentham's offer to codify, and on receipt of their letter in April 1822 he immediately started work.<sup>4</sup> Bentham began to write, not a penal or civil code of laws which had occupied so much of his earlier working life, but a constitutional code, which he had recently come to believe was the key to reform in all other areas of law.

The lack of success in convincing any government to adopt his earlier proposed reforms had persuaded Bentham to embrace political radicalism.<sup>5</sup> In 1817 he published *Plan of Parliamentary Reform* which called for universal manhood suffrage, annual parliaments, equal electoral districts, payment of MPs, and a secret ballot.<sup>6</sup> In the subsequent constitutional code he put forward such ideas as the abolition of the monarchy and the House of Lords (or indeed the exclusion of any second chamber), and the abolition of titles of honour. His aim was the creation of a government that was open and accountable. Between April and August 1822 Bentham drafted four preparatory essays in which he outlined the principles upon which the constitutional code would be based.<sup>7</sup> The acceptance of his offer to codify by Portugal in 1822 therefore was of immense importance to Bentham because it gave him not only the impetus he needed, and had long sought, to write a code of laws, but also an opportunity to develop fully and for the first time, his theory of representative democracy. The drafting of a constitutional code, as well as related penal and civil codes, justified by the greatest happiness principle, became the central focus of Bentham's work for the remaining decade of his life. This work, which Bentham himself described as '[n]ot only the most important but the most difficult of all human

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<sup>3</sup> For a discussion of Bentham's influence on the Iberian Peninsula in the nineteenth century see: J.R. Dinwiddy, 'Bentham and the Early Nineteenth Century', *The Bentham Newsletter*, viii. (June 1984), pp. 15-33, reprinted in *Radicalism and Reform in Britain, 1780-1850*, London, 1992, pp. 291-313.

<sup>4</sup> See Letter 2816, Bentham to the Portuguese Cortes, 7 November 1821, and Letter 2829, Portuguese Cortes to Bentham, 3 December 1821, *Correspondence (CW)*, x. pp. 415-17, 448-49. The letter of acceptance never reached Bentham, but he knew the Cortes had accepted his offer, and wrote asking for confirmation and a copy of their letter: see Letter 2847, Bentham to Felgueiras, 30 January 1822, *Correspondence (CW)*, ed. C. Fuller, Oxford, 2000, xi. p. 25. Eventually on 22 April 1822 Bentham received a copy of the letter from Felgueiras: see Letter 2859, Felgueiras to Bentham, 22 March 1822, *Correspondence (CW)*, xi. pp. 50-51.

<sup>5</sup> For a discussion of when and why Bentham became a political radical see P. Schofield, 'Jeremy Bentham: Legal Philosopher and Political Radical', in *The Old Radical: Representations of Jeremy Bentham*, ed. C. Fuller, London, 1998, pp. 2-3.

<sup>6</sup> *Plan of Parliamentary Reform, in the form of a Catechism, with reasons for each article, with an Introduction, shewing the necessity of radical, and the inadequacy of moderate, reform*, London, 1817.

<sup>7</sup> See *First Principles preparatory to Constitutional Code (CW)*, ed. P. Schofield, Oxford, 1989.

However, nothing that Bentham wrote specifically in response to Portugal's acceptance of his offer to codify was published by Bentham or ever appeared in its original form in the nineteenth century.

works',<sup>8</sup> was begun in response to the encouragement that Bentham received from the liberal regime in Portugal.<sup>9</sup>

Why did the Cortes accept Bentham's offer? How had knowledge of Bentham's work reached Portugal? Bentham had earlier attempted to send copies of his work to Portugal. His first attempt occurred in September 1820 when he hoped that a duplicate set of his published works, which he had sent to the Spanish Minister of the Interior,<sup>10</sup> could be forwarded to Lisbon, but the books were never sent.<sup>11</sup> Bentham then turned to another means of transmission, a new acquaintance, merchant, and competent linguist, John Bowring, who opened up a number of channels of communication with Portugal. In October 1820 a set of Bentham's works was sent to a commercial contact of Bowring's in Lisbon,<sup>12</sup> but the consignment of books was lost. In March 1821 a third attempt was made when a second consignment of nineteen works was sent to Portugal,<sup>13</sup> and these works found their way into the hands of José da Silva Carvalho,

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<sup>8</sup> See Codification Proposal in *Legislator of the World (CW)*, p.260.

<sup>9</sup> The complete work, which Bentham called the *Pannomion*, was to consist of constitutional, procedure, penal, and civil codes of law, but was unfinished at his death in 1832. Bentham published only the first, of the proposed three volume constitutional code, as *Constitutional Code; for the use of All Nations and All Governments professing Liberal Opinions* at London in 1830. Other writings on constitutional code were published in volume nine of *The Works of Jeremy Bentham*, ed. J. Bowring, II vols., Edinburgh, 1843. For the development of Bentham's writings on constitutional code, and the other codes of law, see *Constitutional Code (CW)*, i. ed. F. Rosen and J.H. Burns, Oxford, 1983, Editorial Introduction, pp. xi-xlii.

<sup>10</sup> Agustín Argüelles (1776-1844), Spanish Minister of the Interior 1820-1.

<sup>11</sup> See Letter 2705, Bentham to Bowring, 1 November 1820, *Correspondence (CW)*, x. pp. 132-33.

<sup>12</sup> Perhaps José Isaq de Monteiro, a Lisbon merchant: see Letter 2707, Bentham to Mora, 3-4 November 1820, *Correspondence (CW)*, x. pp. 139-41.

<sup>13</sup> Bentham sent the following works to Portugal: 'Draught of a New Plan for the organisation of the Judicial Establishment in France: proposed as a Succedaneum to the Draught presented, for the same purpose, by the Committee of Constitution, to the National Assembly, December 21st, 1789', printed 1790; *Scotch Reform; considered, with reference to the Plan, proposed in the late Parliament, for the Regulation of the Courts, and the Administration of Justice, in Scotland; with Illustrations from English Non-reform*, London, 1808; *Papers Relative to Codification and Public Instruction: including Correspondence with the Russian Emperor, and Divers Constituted Authorities in The American United States*, London, 1817; *Chrestomathia*, London, 1815-17; 'Introduction to the Rationale of Evidence', later published in *Rationale of Judicial Evidence, specially applied to English Practice*, 5 vols., London, 1827; *Plan of Parliamentary Reform; Bentham's Radical Reform Bill, with extracts from the reasons*, London, 1819; *Panopticon; or, the Inspection-House*, Dublin and London, 1791; *A Table of the Springs of Action*, London, 1817; 'Swear not at all: containing an exposure of all the needlessness and mischievousness, as well as anti-Christianity, of the ceremony of an oath', London, 1817; 'Essay on Political Tactics', printed in 1791, and a fuller French version was later produced by Dumont from Bentham's manuscripts and published as 'Tactique des assemblées politiques délibérantes' in *Tactique des assemblées législatives, suivi d'un traité des sophismes politiques*, 2 vols., Paris, 1816, i. pp. 1-266; 'Emancipate Your Colonies!', printed in 1793; 'Summary View of the Plan of a Judiciary, under the Name of the Court of Lord's Delegates', written in 1801; *Church-of-Englandism and its Catechism Explained*, London, 1818; *Defence of Economy against the Right Honourable Edmund Burke*, published in *The Pamphleteer*, vol. ix, no. xvii (1817), published separately in the same year; 'Chrestomathic Tables' printed in 1815; *Defence of Usury; shewing the Impolicy of the present Legal Restraints on the Terms of Pecuniary Bargains*, London, 1787; 'Outline of a Work entitled Pauper Management Improved', first published serially in *Annals of Agriculture, and other*

at that time a member of the Council of Regency, and soon to be Minister of Justice. Felgueiras, the Secretary to the Cortes, wrote to Bentham to inform him that his works had been presented to the Portuguese Cortes on 13 April 1821, and that the Cortes had ordered that the works should be translated into Portuguese.<sup>14</sup> Later Felgueiras sent Bentham copies of the *Diarios das Cortes* which recorded this decision. When Bentham received the letter from Felgueiras in early June 1821, he initiated a correspondence with both Felgueiras and Carvalho.

Before I examine Bentham's contact with Carvalho, and return to the offer to codify the laws of Portugal, I should like to mention two other Portuguese contacts whom Bentham met in London, again through the auspices of Bowring, both of whom helped to disseminate Bentham's name and works in Portugal.

The first, João Bernardo da Rocha Loureiro, was editor of the journal, *O Portuguez*, published in London between 1814 and 1835. Exactly when Bentham met Rocha is unclear, but in November 1820 Rocha printed a Portuguese translation in *O Portuguez* of 'Letter to the Portugueze Nation',<sup>15</sup> Bentham's first writing specifically for Portugal.<sup>16</sup> In the work Bentham recommended the Spanish Constitution of 1812,<sup>17</sup> with the exception of four articles, to the new Portuguese Cortes which was about to sit for the first time in January 1821. Bentham was keen that Portugal should adopt the Spanish Constitution for he thought that articles four and thirteen proclaimed the only legitimate and defensible end of government: the greatest happiness of the greatest number.<sup>18</sup>

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*useful Arts*, vols. xxx-xxxii, 1798; *Observations on the Restrictive and Prohibitory Commercial System; especially with a reference to the Decree of the Spanish Cortes of July 1820*, London, 1821.

<sup>14</sup> See Letter 2767, Felgueiras to Bentham, 24 April 1821, *Correspondence (CW)*, x. p. 322-23.

<sup>15</sup> See *O Portuguez*, vol.xi, no.lxvi, 5 November 1820, pp.431-51. The work later appeared as Tract No.III, 'Letter to the Portuguese Nation, on antiquated Constitutions; on the Spanish Constitution considered as a whole, and on certain defects observable in it; in particular, the immutability-enacting, or infallibility-assuming, the non-re-eligibility-enacting, the sleep-compelling, and the bienniality-enacting clauses', in *Three Tracts relative to Spanish and Portugueze Affairs; with a continual eye to English ones*, London, 1821.

<sup>16</sup> Bentham had sent a copy of the work to Lisbon on 31 October 1820 in the hope that it would be translated and published. Bentham claimed in July 1821 that a copy had been translated and published in Oporto, but no copy has been traced: see *Three Tracts relative to Portuguze Affairs*, p. 45.

<sup>17</sup> The Spanish Constitution first promulgated by the Cortes at Cadiz in 1812, but abolished by Ferdinand VII (1784-1833), King of Spain from 1808, on his return from his enforced abdication to Spain in 1814, had, following the revolt in January 1820, been reinstated by the King in March 1820.

<sup>18</sup> See Letter 2773, Bentham to Felgueiras, 5 June 1821, *Correspondence (CW)*, x. pp. 342-45. Article 4 stated: 'The Nation is obliged to protect, by wise and just laws, the civil liberty and property, besides all other legitimate rights, of all individuals belonging to it'. Article 13 stated: 'The object of the Government is the happiness of the nation; since the end of all political society is nothing but the welfare of all individuals of which it is composed'.

Carvalho and Rocha had been friends since university days, and had corresponded since Rocha lived in London. It seems very likely therefore that Rocha had suggested that Bentham should send the second consignment of books to Carvalho. Rocha subsequently became a subject of correspondence between Carvalho and Bentham. The two men discussed the proposed translation of Bentham's works into Portuguese, and Rocha's name was suggested as a translator, but Bentham had doubts. He thought Rocha was lazy: his journal, though monthly, scarcely ever appeared on time, and Bentham had heard that Rocha had refused to keep a business appointment because to do so would have entailed climbing three or four pairs of stairs. In his first letter to Bentham, Carvalho confirmed that Rocha rarely got up before noon,<sup>19</sup> but Carvalho had already written to Rocha and suggested the task of translating Bentham's works would be too time-consuming and unprofitable, and had proposed instead that Rocha should be the reviser of the translations.<sup>20</sup> Despite his shortcomings, it is clear that Rocha played a significant part in Bentham's contact with Portugal: he put Bentham in touch with Carvalho, and also, unless a translation allegedly published in Oporto can be found, published in Portuguese the first work Bentham wrote specifically for Portugal.<sup>21</sup>

Bentham's second contact in London was José Fernandes Tomás, Secretary to the Portuguese Legation in London, to whom he first wrote in April 1822.<sup>22</sup> Tomás's brother was Manuel Fernandes Tomás, one of the leading liberals in the Portuguese Cortes. Bentham had heard that Manuel Fernandes Tomás had expressed the view that if Brazil wished to separate from Portugal then he would be unwilling to employ any coercive measures to prevent the separation.<sup>23</sup> Bentham, therefore, sent to José Fernandes Tomás for his brother copies of essays which were to form part of a work

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<sup>19</sup> See Letter 2798, Carvalho to Bentham, 24 August 1821, *Correspondence (CW)*, x. p. 386.

<sup>20</sup> See Letter 2779, Bentham to Bowring, 14 July 1821, *Correspondence (CW)*, x. p. 357. As Rocha had been appointed official historian of the Portuguese revolution in July 1821, and would soon return to Lisbon where the translations were to be produced, this seemed a suitable conclusion to the problem.

<sup>21</sup> In the first of the three tracts in *Three Tracts relative to Spanish and Portuguese Affairs*, entitled 'Letter to the Spanish Nation on a then proposed House of Lords', Bentham argued against the proposal to institute a second hereditary chamber in the Spanish Cortes. This tract had previously appeared in a Spanish translation at Madrid in 1820, and it is possible that the tract may have informed the debate in the Portuguese Cortes on the same topic in February 1821, which ended in a victory for the radicals, as a single parliamentary chamber was nominated in the constitution: see *Consejos que dirige á las Córtes y al pueblo Español Jeremías Bentham: traducidos del inglés por José Joaquin de Mora*, Madrid, 1820.

<sup>22</sup> See Letter 2865, Bentham to Tomás, 23 April 1822, *Correspondence (CW)*, xi. pp. 58-61

<sup>23</sup> See M. Cheke, *Carlota Joaquina Queen of Portugal*, London, 1947, p.98.

entitled 'Rid Yourselves of Ultramaría'.<sup>24</sup> Ultramaría was a word Bentham coined from the Spanish *ultramar* to refer to the overseas possessions, or colonies, of Spain. In the work Bentham put forward arguments against Spain's dominion over its colonies, and discussed the constitutional implications of Spain's continued dominion.<sup>25</sup> A further indication of Bentham's attitude to his subject matter can be seen in some of the essays sent to Tomás: in April 1822 Bentham sent essays entitled 'Relinquishment profitable', 'Relinquishment honorable', and 'The Relinquishment must be entire';<sup>26</sup> and among those sent in May 1822 was one written to

help satisfy the mother country of the impossibility of keeping the daughter country under subjection at such a distance under a constitution which has any the least spark of freedom in it.<sup>27</sup>

Under the impetus given by the connection with Manuel Fernandes Tomás, Bentham made a final draft of material in April 1822. He sent a number of essays to Portugal and believed, in June 1822, that the work was in the hands of a translator in Lisbon.<sup>28</sup> However, at the death of Manuel Fernandes Tomás in November 1822, Bentham rightly assumed that all hope of getting this work published in Portugal had gone, and in fact the work was never published in his lifetime.

In a letter to Simón Bolívar of June 1823, Bentham wrote of Portugal's 'endemic madness in cleaving to Brazil'.<sup>29</sup> Bentham had evidence that the liberal regime in Portugal was keen to retain Brazil in the letters he received from Carvalho. In his first letter to Bentham, in August 1821, Carvalho wrote:

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<sup>24</sup> For this essay and the two earlier essays 'Emancipation Spanish', and 'Summary of a Work intituled Emancipate Your Colonies', see *Colonies, Commerce, and Constitutional Law (CW)*, pp. 1-344.

<sup>25</sup> Bentham's work on this subject had started with his anti-colonial tract, 'Jeremy Bentham to the National Convention of France', at the time of the French Revolution, and later published as *Emancipate Your Colonies! Addressed to the National Convention of France, Ao 1793, shewing the uselessness and mischievousness of Distant Dependencies to an European State*, London, 1830. He had subsequently renewed his interest in the subject when he read Ferdinand VII's Proclamation to his South American subjects which was published in translation in the *Morning Chronicle* of 27 April 1820. Even as Bentham was writing in 1822, his essays on the subject for Spain were gradually superseded by events as states and provinces in Latin America proclaimed their independence from Spain, but when he first contacted José Fernandes Tomás in April 1822 he was still hopeful that some of his anti-colonial essays would be relevant to Spain, and to Portugal.

<sup>26</sup> See Letter 2865, Bentham to Tomás, 23 April 1822, *Correspondence (CW)*, xi. pp. 58-61.

<sup>27</sup> See Letter 2876, Bentham to Tomás, 28 May 1822, *Correspondence (CW)*, xi. pp. 69-70.

<sup>28</sup> See Letter 2891, Bentham to San Martín, 5 June 1822, *Correspondence (CW)*, xi. pp. 93-107.

<sup>29</sup> See Bentham to Bolívar, Letter 2975, 4 June 1823, *Correspondence (CW)*, xi. pp. 238-65. In the same letter Bentham noted a 'coolness' by the Portuguese towards him which he attributed to his statements against the possession of colonies.

Nous songeons maintenant au Brésil, il faut une bonne et fine Politique pour se l'assurer: ... je voudrais, et je tâcherais d'y parvenir à faire rappeler les troupes Portugaises à l'exception des celles qui voudront y rester à fin qu'amalgamées avec celles de ce pays-là elle puissent faire le service, et la Police: Point de gouverneurs absolûs, pour le militaire des chefs de troupes, et pour le civil des "Juntas administratives" qui prennent soin du Pays, et qui renvoient les comptes en Portugal comme le centre d'ou doivent emmaner toutes les opérations goubernatives.<sup>30</sup>

He added:

je souhaite que vous me communiquez vos idées sur ce sujet, qui me seront d'une grande utilité.

Bentham responded:

Tres volontiers, mon cher ami, et pour cela je n'aurais que de vous envoyer ce que j'écris maintenant aux Espagnols au sujet de leur Ultramar: vous en prendrez ce qui pourroit vous convenir.<sup>31</sup>

It is difficult to see quite what use Carvalho, who did not wish to relinquish Brazil, could have made of Bentham's anti-colonial writings. A year later Carvalho wrote again about Brazil,<sup>32</sup> and the decisions just taken in the Cortes to reject all proposals to grant any degree of self-government to Brazil. Although he indicated some unhappiness with the decisions of the Cortes, Carvalho perhaps could not have predicted that the arrival of these decrees in Brazil in September 1822 would move Dom Pedro to declare 'Independência ou Morte'. But Bentham had long known that the discontent of distant colonies could 'ripen into revolt',<sup>33</sup> and would not have been surprised by events.

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<sup>30</sup> Letter 2798, Bentham to Carvalho, 24 August 1821, *Correspondence (CW)*, x. pp. 386-87.

<sup>31</sup> See Letter 2817, Bentham to Carvalho, 7 November 1821, *Correspondence (CW)*, x. pp. 417-26.

<sup>32</sup> Letter 2901, Carvalho to Bentham, 5 July 1822, *Correspondence (CW)*, xi. pp. 120-22.

<sup>33</sup> See *Colonies, Commerce, and Constitutional Law (CW)*, p. 156.

In the same letter of July 1822, and his last to Bentham, Carvalho outlined other causes of concern: the arrest of four printers preparing seditious literature in Lisbon; the decision, not followed through, to send troops to Salvador in Brazil; and the congregation of Spanish royalist troops in the Pyrenees. All these signs of unrest intimated the end of the liberal regimes in Spain, as well as Portugal, in the following year.

Why was Carvalho willing to present Bentham's works to the Cortes? How was Bentham known in Portugal before the arrival of his own consignment of books? If Bentham owed a debt to Bowring for making contacts on his behalf in Europe, and in the wider world, Bentham's debt to Étienne Dumont was even greater.<sup>34</sup> It was through Dumont's French recensions of Bentham's work that Bentham was known in most of Europe, and South and North America. The recensions were not exact translations but reworkings in French of Bentham's printed material and unpublished writings. Dumont's first recension *Traité de législation civile et pénale* which appeared at Paris in 1802, was based on Bentham's early writings on the principle of utility, the fundamental principles of legislation, codification, and penal and civil law. The work soon became a European bestseller. By 1822 Dumont had also published *Théorie des peines et des récompenses*<sup>35</sup> and *Tactique des assemblées législatives*.<sup>36</sup> Bentham knew from Rocha that Carvalho had read Dumont's recensions of his work, and admired most *Tactique des assemblées législatives*,<sup>37</sup> which contained Bentham's analysis of parliamentary procedure.

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<sup>34</sup> Pierre Étienne Louis Dumont, a Genevan, published five major works based on Bentham's writings, which were subsequently translated into Russian, German, Spanish, Swedish, Italian, Portuguese, and English.

<sup>35</sup> *Théorie des peines et des récompenses*, ed. Étienne Dumont, 2 vols., London, 1811, later translated by Richard Smith in English as *The Rationale of Reward*, London, 1825, and *The Rationale of Punishment*, London, 1830.

<sup>36</sup> 'Tactique des assemblées politiques délibérantes' in *Tactique des assemblées législatives* was used by Bernardino Rivadavia to draw up the regulations to govern the working of the legislative assembly in the newly independent province of Buenos Aires: see Letter 2916, Rivadavia to Bentham, 26 August 1822, *Correspondence (CW)*, xi. pp. 144-46 and Rivadavia's document *Reglamento que establece el orden de las operaciones, y la Policia de la Sala de Representantes de la Provincia de Buenos Aires. Sancionado por la Honorable Junta en 26 de Julio de 1822*.

<sup>37</sup> See Letter 2779, Bentham to Bowring, 14 July 1821, *Correspondence (CW)*, x. pp. 357-58.

Bentham's letters to Carvalho frequently reflected his keenness that Carvalho should know his recent thinking on legislative matters. Bentham suggested that Carvalho should write to Dumont to try and persuade him to complete his work based on Bentham's writings on evidence, which eventually appeared in 1823 at Paris as *Traité des preuves judiciaires*: see Letter 2775, Bentham to Carvalho, 11-13 June 1821, *Correspondence (CW)*, x. pp. 347-53. He was concerned that the Portuguese translation of 'Draught of a New Plan for the organisation of the Judicial Establishment in France' should reflect his latest ideas on the appointment of judges, and, inspired by the news from Rocha that six judges had been accused of corruption in Portugal, Bentham discussed four ways in which Carvalho could secure

Bentham was aware that Dumont's recensions were read in Portugal. In a letter to a Spanish correspondent, in May 1821, Bentham wrote: 'In the University of Coimbra was Dumont's edition of my works almost as soon as edited, an object of attention to the Carvalhos, the Borges, Ferreira, and the Rochas!'<sup>38</sup> Liberal graduates of the University of Coimbra predominated in the new Cortes at Lisbon in 1821.<sup>39</sup> Carvalho wrote to Bentham:

Tout le congrès vous aime et les liberaux se réclamant de votre autorité pour appuyer leurs opinions, tandis que les anti-constitutionnels n'osent point la combattre et encore moins la reconnaître.<sup>40</sup>

It seems clear that knowledge of Bentham through Dumont, gained during their years at the University of Coimbra, encouraged the deputies to accept his offer to codify their laws.

It was another graduate of the University of Coimbra and one of the drafters of the constitution, José Joaquim Ferreira de Moura,<sup>41</sup> who had proposed to the Cortes that Bentham's books be translated into Portuguese,<sup>42</sup> but in the event only one work was published by the Cortes. The work was a translation of Dumont's *Théorie des peines et des récompenses*, which treated of Bentham's presentation of 'punishment' and 'reward' as the two instruments possessed by every legislator whose object is the greatest happiness of the greatest number. The Portuguese translation appeared in

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the Portuguese judiciary completely free from the scourge of corruption: see Letter 2817, Bentham to Carvalho, 7 November 1821 *Correspondence (CW)*, x. pp. 417-26.

<sup>38</sup> Letter 2770, Bentham to Nuñez, 9? May 1821, *Correspondence (CW)*, x. pp. 329-37. Toribio Nuñez had produced two works based on Bentham's writings: *Espiritu de Bentham: Sistema de la ciencia social. Ideado por el Jurisconsulto Jeremías Bentham: y puesto en ejecucion conforme à los principios de Autor original*, Salamanca, 1820, and *Principios de la ciencia social ó de las ciencias Morales y Políticas Por el Jurisconsulto Inglés Jeremías Bentham, ordenados conforme al sistema del autor original y aplicados á la Constitucion española*, Salamanca, 1821.

<sup>39</sup> See D. Birmingham, *A Concise History of Portugal*, Cambridge, 1993, p.109.

<sup>40</sup> See Letter 2855, Carvalho to Bentham, 1 March 1822, *Correspondence (CW)*, xi. pp. 40-41.

<sup>41</sup> José Joaquim Ferreira de Moura (1776-1829), acknowledged his debt to Bentham in the last letter Bentham received from Portugal before the fall of the liberal regime. Moura also enclosed with his letter a copy of *Constituição politica da monarchia portugueza*, promulgated on 4 October 1822, with the inscription: 'Ao Illustre Bentham \ Hum dos Collaboradores do Projecto \ Hoje Deputado de Cortes J.J.F. de Moura'. See Letter 2954, Moura to Bentham, 26 February 1823, *Correspondence (CW)*, xi. pp. 214-15.

<sup>42</sup> See *Astro da Lusitania*, 14 April 1821. Bentham had indicated to Carvalho the importance of the selection and distribution of the works he had sent, and had drawn up a plan addressed, to the Council of Regency in Portugal, for the translation and publication of his works. The plan involved nine selections from his work, and nine translators. See Letter 2798, Bentham to Carvalho, 24 August 1821,

1822 in two volumes.<sup>43</sup> Bentham had proposed that *Traité de législation civile et pénale* be translated first, but perhaps the Cortes believed this work was already well known in Portugal, and that *Théorie des peines et des récompenses* (a copy of which Bentham had NOT sent to them) would assist the Commission of the Cortes which was drafting a penal code at that time.<sup>44</sup>

Finally, I return to the importance of Portugal to Bentham's work. Receipt of the acceptance by the Cortes of his offer to codify laws for Portugal did, as I have said, stimulate Bentham to begin what was arguably the most ambitious work of his life, and, once started, the fall of the liberal regime did nothing to diminish Bentham's enthusiasm for the task.

If we wanted confirmation of the immense importance to Bentham of this association with Portugal, we have only to look at a portrait of Bentham painted by Henry William Pickersgill in 1829 when Bentham was 81 years old, and eight years after the Cortes had accepted his offer.<sup>45</sup>

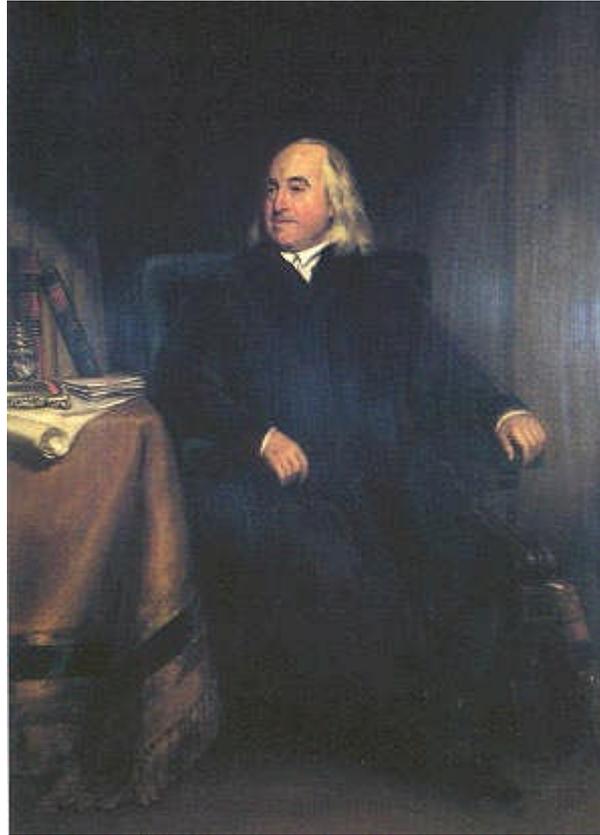
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*Correspondence* (CW), x. pp. 386-87, and for the plan Bentham Papers, University College London Library, Box 22. fos.18-20, 12 June 1821 (hereafter UC).

<sup>43</sup> Entitled 'Theoria das Penas Legaes' and 'Theoria dos Premios Legaes', the volumes appeared under the general title of *Tradução das obras políticas do sabio jurisconsulto Jeremias Bentham, vertidas do inglez na lingua portugueza por mandado do soberano congresso das Cortes, Geraes, Extraordinarias, e constituintes da mesma nação*.

<sup>44</sup> See Letter 2855, Carvalho to Bentham, 1 March 1822, *Correspondence* (CW), xi. pp. 40-41.

<sup>45</sup> Jeremy Bentham c.1829, by Henry William Pickersgill. The portrait, oil on canvas, is now owned by the National Portrait Gallery. Illustrated here is an earlier version of the portrait, part of the College Art Collections at UCL.



The three books on the table beside Bentham are clearly marked, and these books give us an insight into the works with which Bentham most wanted to be identified.

The book nearest Bentham has the word Locke painted on its spine, and must represent John Locke's *An Essay Concerning Human Understanding* published in 1689: Locke's *Essay* was fundamental to Bentham's intellectual position. Locke rejected the theory that knowledge, including moral ideas about the nature of right and wrong, was innate. For Locke knowledge of the world came from our senses. Bentham built on Locke's ideas. He sought to derive a secular morality, not by reference to alleged authoritative statements by God, but by reference to the scientific laws of the human mind; a morality which, he thought, would allow the reconstruction of society on more rational, and less superstitious lines.

The book farthest from Bentham is his own: *An Introduction to the Principles of Morals and Legislation*<sup>46</sup> which was first published in 1789 and dealt with such themes as the principle of utility, pleasure and pain, action and motive, and formed the foundations of his philosophical system.

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<sup>46</sup> See *An Introduction to the Principles of Morals and Legislation*, London, 1789.

In the middle of these two seminal works is a copy of the *Diarios das Cortes*, which contained the journals of the proceedings of the Portuguese Cortes of 1821-3, and specifically the resolution of the Cortes of 26 November 1821 to accept Bentham's offer to draw up penal, civil, and constitutional codes of law. The *Diarios das Cortes* had been sent to Bentham by Felgueiras in 1822, and there can be little doubt that the presence of the *Diarios* in this portrait of 1829 indicates just how important such an offer was to Bentham.

\*This paper was given at a conference on 'British Intervention in Portugal in the Nineteenth Century', held in London at the Institute of Romance Studies on Friday 28 January 2000. The title is taken from a description of Bentham in a resolution of the Portuguese Cortes: 'the principal and earliest constitutionalist of Europe'. See *Diario das Cortes geraes, extraordinarias, e constituintes da Nação Portuguesa*, 7 vols., Lisbon, 1821-2, Sessão do dia 13 de Abril 1821, i. 573.



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