

JEREMY BENTHAM'S CONSTITUTIONAL REFORM PROPOSALS TO THE GREEK PROVISIONAL GOVERNMENT, 1823-1825

Jeremy Bentham (1748-1832) was a great legal philosopher and reformer. From his early youth, he decided to pursue those speculations on politics and jurisprudence that made him one of the law's greatest enemies but also one of its most constructive critics. Law "as it should be"¹ became the guiding spirit for Bentham who set himself forever in opposition to the established tradition and smashed every idol he was expected to worship. Tradition did not influence his thinking, for he believed that intellectual vigor of his age was superior to that of any previous period.²

Bentham, as an intellectual descendant of eighteenth-century rationalism, was a systematic thinker of extraordinary power who saw that law reform could lead to more security of liberty and property.³ The dominant criterion behind his advocacy of reform, and indeed behind all his political thinking, is the principle of utility or the concept of "the greatest happiness of the greatest number."⁴ This concept is not of Bentham's creation but is part of the *Zeitgeist* of the eighteenth-century philosophy. It became the touchstone of his philosophy because "it served to denote...a supreme positive fact, namely, that in law and politics the final court of all appeal is the public good."⁵ The principle of utility was also for Bentham "a simple positive principle on which all men would be able to agree so as to reform society on a systematic plan."⁶ Not just the English society but any society was for Bentham the pro-

1. *The Works of Jeremy Bentham*, Ed. John Bowring (11 vols.; Edinburgh, 1838-43), I, 229. Hereafter cited as *Works*.

2. W.S. Holdsworth, *A History of English Law* (15 vols.; London 1952), X, 5-6.

3. "Anarchical Fallacies," *Works*, II, 503-4. See also J. Bentham, *Handbook of Political Fallacies*, ed. A.H. Larrabee (London, 1938).

4. "The Constitutional Code," *Ibid.*, IX, 5.

5. John Maccunn, *Six Radical Thinkers* (New York, 1964), p. 19.

6. Elie Halévy, *The Growth of Philosophic Radicalism*, tr. Morris (London, 1928), p.

34. See also W. L. Davidson, *The Utilitarians, Bentham to Mill* (Oxford, 1915).

per field where his legislation guided by the principle of utility could be fertile.⁷

Rapidly Bentham's works became the textbooks of liberalism, and his advice was sought by countries which had either passed from absolutism to liberalism or had recently gained their independence. The South American States,⁸ Russia,⁹ Portugal and Spain¹⁰ received his guidance on legislation.

Greece also came to admire and seek the guidance of Bentham in the period of her death-and-life struggle for independence. The contact of Bentham with the Greek Provisional Government, as evidenced by the published correspondence in the *Works* of Bentham, lasted between 1823 to 1825.

The essence of Bentham's first "Letter to the Greeks" centers around the concept of good government being responsible government. The English government is shown to be "the least bad" of all other European governments because the English constitution provides checks on bad government.¹¹ Tyranny and oppression in the political life of a nation destroy responsibility in government. Bentham explains that tyranny is possible only if claims to infallibility of rule are made and foolishly conceded.¹² Men of a civilized society should reject such claims of a ruler by holding the truth that all human judgment, "opinion," or "persuasion" is fallible. "Whether for the exclusion of obstinate error, or for the exclusion of arrogance, overbearingness, obstinacy and violence," this truth Bentham says, "ought never to be out of mind."¹³

The receipt of Bentham's letter by the Greek Provisional Government caused much joy, and the Greek Senate thanked him in the most profuse terms. "If splendid and happy England is proud of having you for a citizen," wrote the Greek Senate to Bentham, Philhellenist,... "unhappy Greece, the mother of Lycurgus and Solon, rejoices that she has had the good fortune to obtain in her regeneration a most able and humane law-giver.....Hail....friend of Greece! you possess a reward worthy of your virtue, in the pleasure which

7. "Codification Proposal Addressed by Jeremy Bentham to All Nations Professing Liberal Opinions," *Works*, IV, 535.

8. *Works*, X, 458.

9. *Works*, IV, 514-516.

10. *Works*, VIII, 466.

11. "Extracts of a Letter from Bentham to the Greeks." November 24, 1823, *Works*, X, 539.

12. *Works*, VIII, 300.

13. *Ibid.*

you receive from the happiness of your friends."¹⁴ Bentham's proposal for educating three young Greek boys¹⁵ increased the sincere gratitude of the Greeks and showed his interest not only for the political existence but also for the "moral welfare" of the Greek nation.¹⁶ Bentham was so much esteemed by the educated Greeks that the representatives of the Greek Provisional Government sent to London, to negotiate a loan,¹⁷ J. Orlando and A. Louriotis, addressed him as "Père et Protecteur de la Grèce," "Ami et Père de notre Patrie," "Respectable Père et ami fidèle" or "Père et très respectable philhellène."¹⁸

One of the most profound thinkers of Greece during the revolutionary period was Theodore Negris. He served as a Minister of Justice of the Provisional Government and was shrewd enough to see the need for a code of laws for the emerging Greek nation. Once Bentham's fame reached Greece, Negris lost no chance to communicate with the English utilitarian philosopher.

"Intending to labour in the formulation of a civil code for my nation," Negris writes to Bentham,

"I feel the necessity of a guide in this undertaking. Your rare merit in this profound science, and your love for the cause of humanity, are so well known, that they compel me to seek a motive for addressing you."¹⁹

14 "Provisional Government of Greece, the Greek Senate to Mr. Jeremiah Bentham, Philhellénist" Napoli, August 11, 124, *Works*, IV, 583.

15. L. Stanhope, *Greece in 1823 and 1824 being a Series of Letters and other Documents on the Greek Revolution* (London, 1825), p. 288.

16. "Provisional Government in Greece, The Secretary-General to J. Bentham, Esq.," Napoli di Romania, the 12th of August, 1824, *Works*, IV, 583.

17. For a treatment of the Greek borrowing during the Greek Revolution of 1821 see J.A. Levandis, *The Greek Foreign Debt and the Great Powers, 1821-1898* (New York, 1944), pp. 1-28. The London Greek Committee was instrumental for the early success of Greek Loans. Yet the loan scandals signified the "death" of the London Greek Committee and its efforts to float a loan in 1827 were a failure. For a short treatment of the activities of the London Greek Committee and the influence of Bowring see G.F. Bartle, "Bowring and the Greek Loans of 1824 and 1825," *Balkan Studies*, 3, (1962), 61-74.

18. The Letters of Orlando and Louriotis addressed to Bentham show their activity to secure a loan. For the text see E. Dalleggio, "Les Philhellènes et la Guerre de l'Indépendance" *Collection de L'Institut Français d'Athènes*, XIX (Athènes, 1949), 157-175. Bentham in his turn called them "Chers enfants" and "Toujours votre affectionné père." Stanhope, *Greece in 1823 and 1824*, p. 318.

19. "Theodore Negris to Jeremy Bentham, desiring his assistance towards forming a Civil Code," *Works*, IV, 585. Negris came in contact with Bentham through the interme-

Negris proposed to work on the French Civil Code, and by making proper substitutions to form a body of laws which would be workable in the newly created Greek state. It was his firm belief that civil code influences indirectly "the moral conduct of man" and directly "the situation of society." How else could this impact be more constructive than this one emanating from a "rational" code? Hence, Negris set himself to build a "rational" system of laws and appealed to Bentham for assistance and direction in that spiritual and intellectual exercise.²⁰

"It must be truly an honour to Greece," Bentham wrote Negris in answering his appeal for help, "to possess a pen so appropriately qualified for a literary labour, whose importance leaves all others at an infinite distance."²¹ Unfortunately Negris died soon after he dispatched his letter to Bentham²² and the fruitful exchange of ideas between the two legal philosophers ended abruptly.

The next member of the Greek Provisional Government with whom Bentham carried on a correspondence was the Phanariot Alexander Mavrocordatos, President of Greece under the Constitution of Epidavros of January 13, 1822.²³

"I venture to address you in this manner, my son," wrote Bentham to Mavrocordatos, "for the purpose of suggesting to you a few considerations which present themselves to my view, as being applicable to the position you are in."²⁴ Bentham saw Mavrocordatos as the destined leader of the Greek

diary of Colonel Stanhope, a representative of the Greek Committee of London in Greece and a student of Utilitarian philosophy. In a letter dated Salona, 4th May, 1824 Stanhope writes to Bentham: "Monsieur Negris, who is the ablest man in Greece, and professes wise principles of government, is laboring at a code of laws... desired me to put him in correspondence with yourself." Stanhope, *Greece in 1823 and 1824*, p. 197.

20. *Works*, IV, 585-6.

21. *Ibid.*, IV, 586.

22. *Ibid.*, IV, 585.

23. For the text of the Constitution of Epidavros see Great Britain, Foreign Office, *British and Foreign State Papers*, 1821-1822, IX (London, 1822), 620-629. For Mavrocordatos' activity and importance during the Greek Revolution see E.G. Protopsaltes, ed. "Historikon Archeion Alexandrou Mavrokordatou" ["Historical Archive of Alexander Mavrocordatos"], *Mnemeia tes Hellenikes Historias [Monuments of Greek History]*, V (Athens, 1963-5). Apostolos V. Daskalakes in his article "He prote Ethnosynelevisis Kai to Politevma tes Epidavrou" ["The First National Assembly and the Constitution of Epidavros"], *Epistemonike Epeteris tes Philosophikes Scholes tou Panepistemiou Athenon [Scientific Annual of the School of Philosophy of the University of Athens]*, XVI (1965-6), 43-140, claims (p. 129, note 1) that Bentham's letter to Mavrocordatos (March 7, 1824) was published in the *Archeion Mavrokordatou*. I was not able to locate that letter.

24. "Jeremy Bentham to Alexander Mavrokordato," IV, 590.

Republic. As such his title would be Prime Minister or the "chief singleseated functionary" of the republic. The office of the Prime Minister is subordinated to that of the legislative body in the same way the legislative body is under the control of the people in their quality of constitutive body.²⁵

A hierarchy of powers is what Bentham suggests to Mavrocordatos rather than the separation of equal powers proposed by the Constituent Assembly of France. But the French Constitution of 1792 became the inspiration and source for Bentham's adoption of the principle, that the authorities of the state—*les autorités constituées*—including the legislative, ought to be subordinated to the constituent authority.²⁶

Bentham's rejection of the doctrine of the separation of powers goes back to 1776, where he attacked Blackstone's constitutional theory, which held that mixed government must be weak, foolish and knavish.²⁷ He criticized Blackstone for vague and free use of the term legislative power and executive power,²⁸ and attacked the accepted division of government functions as "in a state of confusion and disorder."²⁹ That confusion and possible anarchy, resulting from the separate and independent state of governmental powers, could be avoided by the existence of a superior authority which according to Bentham "receives no law, but gives it, and which remains master even of the rules themselves which it imposes upon its manner of acting."³⁰

Unqualified legislature supremacy, however, could lead to tyranny. To prevent that possibility Bentham hastens to introduce the checks to any exercise of power by the government.³¹ It was within this framework that Mavrocordatos was to fit. To make his suggestions to the Greek leader more acceptable Bentham recognizes the need to add that the Prime Minister's "two-graded subordination" should not be "an object of disdain" even to "a person who otherwise would be a chief, and even the sole chief." Because, Bentham continues, the Prime Minister controls the ministerial body and can "locate"

25. *Ibid.*

26. "Constitutional Code," *Works*, IX, 96.

27. "A Fragment on Government," *Works*, I, 282. See also J. Bentham, *A Fragment on Government* Ed. F.C. Montague (London, 1931).

28. *Ibid.*, I, 278-9.

29. "General View of a Complete Code of Laws," *Works*, III, 198.

30. *Works*, I, 570-1.

31. "To the welfare of the governed.... It is highly conducive at least, if not...altogether necessary, that in whatsoever hands power be lodged, checks to it, in some shape or other, should, throughout the whole field of its exercise, be applying themselves." "The Elements of the Act of Packing," *Works*, V, 69.

or "dislocate" each of the ministers at will.³² Furthermore, when "viewed in its true light" the double subordination of the chief executive had nothing in its framework that could make it troublesome either to the community or to the Prime Minister.³³

Provided that Mavrocordatos accepted his position as the Prime Minister in the hierarchical system of powers suggested by Bentham, then any sacrifice made by him would be "in appearance only." Because, Bentham explains, whatever is lost in "nominal and ostensible power" by Mavrocordatos, will be gained "more than the equivalent in effective influence." It follows that any possible diminution of the power of the chief executive would not affect Mavrocordatos but his successors. With this excessive power at his disposal Mavrocordatos could lead the executive for life except when the legislative body decided to dismiss him. But to displace Mavrocordatos the legislative body would expose itself to the displeasure of the people who esteemed their Prime Minister. The people as the constitutive body controlled the legislature and therefore would keep Mavrocordatos as their chief executive.³⁴ But what happened if the people themselves decided to "dislocate" Mavrocordatos? Even for this possibility Bentham provided the safeguard of the legislature which was the sole responsible body of nominating the new chief executive and not the people who "dislocated" him.³⁵ The check of the legislature, therefore, would ensure that the Prime Minister remained in office only if the majority of the people supported him.

Bentham's suggestions to the Greek Provisional Government imply that the utilitarian philosopher favored a simple republic in which the sovereign power was vested in the people. Through the employment of "location and dislocation," each of the hierarchical powers checked one another thus preserving an equilibrium. "A pure representative democracy"³⁶ was thus insti-

32 "Jeremy Bentham to Alexander Mavrokordato," *Works*, IV, 590-1.

33. "It seems to me, that if you have the felicity of possessing that degree of popularity which you are said to possess" Bentham explains to Mavrocordatos, "the yoke...is one from which you will not feel any real inconvenience; for it seems not to me in what way it is possible for a man who, under a popular form of government, is in effect as well as in name the chief of the state, in any other way more effectually to recommend himself to the favour of the whole body of the people, than by putting and keeping that same body in effect over the head of the people, than by putting and keeping that same body in effect over the head of the legislative authority—that same authority which, but for this subordination, would be in possession of absolute power..." *Ibid.*, IV, 591.

34. *Ibid.*

35. *Ibid.*

36. For a discussion of Bentham's theory of democracy see R.C. Pratt, "The Bentham mit

tuted and it was only this form of government according to Bentham that could have "the greatest happiness of the greatest number for its effect."³⁷

The Constitution of Troezen of May, 1827³⁸ was the first one to be drafted in Greece after the end of the correspondence between Bentham and the Greek Provisional Government. According to this document, the legislature was made completely independent of the executive. It was elected for a term of three years and was subject to dissolution by the head of executive or the President.³⁹ The President was elected for a term of seven years and was "inviolable," namely, his political responsibility was carried by his ministers who could be impeached by the legislature.⁴⁰ This separation of powers certainly does not reflect Bentham's principle of the hierarchy of powers but rather the exact opposite. While the Prime Minister, according to Bentham, can be "dislocated" by the legislature,⁴¹ the President of the Troezenian Constitution can dissolve it. The legislature for Bentham is "omnicompetent" and any limitation of its competence contradicts the greatest happiness principle.⁴² The constitution of 1827 provided a Bill of Rights guaranteeing the citizen's equality before the law,⁴³ equal opportunity for public office, security of life, liberty, honor and property and guaranteed freedom of the press and speech.⁴⁴ This Bill of Rights would be opposed by Bentham for he believed that there should be no written declaration of principles that could not be criticized and therefore unable to reform. It would also be considered as a "restrictive arrangement" characterizing a des-

Theory of Democracy," *The Canadian Journal of Economics and Political Science*, XXI (February, 1955), 20-9. See also A.L.H. Hart, *J. Bentham*. Henriette Hertz Trust: Annual Master Mind Lectures, 1962.

37. "Constitutional Code," *Works* IX, 98.

38. The text of the Constitution of Troezen is published in the *British and Foreign State Papers*, XV, 1069-1083.

39. *Ibid.*, XV, 1073, article LVII: Les Représentants sont élus pour 3 Ans; 1076, article XCVII: le Président doit en avertir immédiatement le sénat.

40. *Ibid.*, XV, 1077, articles CV, CVI; 1078, article CXXXIII,

41. "Jeremy Bentham to Alexander Mavrocordato," *Works*, IV, 590.

42. Constitutional Code, " *Works*, IX, 119.

43. *British and Foreign State Papers*, XV, 1070, article VII; Tous les Hellènes sont égaux devant les Lois.

44. *Ibid.*, XV, 1070, articles VIII, X . XI: La loi garantit la liberté personnelle de chacun, XII: La vie, l'honneur et les biens... sont sous la protection des Lois; 1071, article XXVI: Les Hellènes ont le droit d'écrire et de publier librement par la Presse, ou autrement, leurs pensées et opinions, sans être soumis à aucune censure..... See also N. Kaltchas, *Introduction to the Constitutional History of Modern Greece* (New York, 1940), p. 52.

potic government.⁴⁵ The idea of popular sovereignty, however, constitutes the basis of both Bentham's theory of government and of the Constitution of Troezen. "La Puissance Souveraine réside dans la Nation; tout pouvoir émane d'elle et il n'existe que pour elle."⁴⁶ To this declaration of the Greek legislators Bentham would have consented, for he himself believed that only by placing the state power in the hands of the people could his principle of the greatest happiness of the greatest number be realized.⁴⁷

Apparently, Bentham exerted no influence on the legislators of the Troezenian Constitution of 1827, and as that Constitution became a landmark for later-constitutional developments,⁴⁸ Bentham's ideas were never fruitful in Greece. With the exception of the two provisions which made Eastern Orthodoxy the religion of the Greek State and the adherence to Christianity prerequisite to citizenship,⁴⁹ the Constitution of Troezen drew freely from the declarations of the French Revolution.⁵⁰ Also, the President of the Troezenian Assembly declared that the French Laws would be adopted to the needs of the Greek nation.⁵¹ The principle of popular sovereignty, therefore, is of French revolutionary origin and is very unlikely that it was influenced by Bentham's fame in Greece.

This fame was due to the emergence of the Greek revolutionary state and its desire to establish a legal system. Bentham's legal advice to the Greek Provisional Government failed to be materialized because it had not been designed to respect the legal inheritance of the just-emerging Greek nation. That inheritance was Byzantine and Bentham had been informed about the desire of the Greeks to have their legal system after the Justinian Code. "Monsieur Negris, who is the ablest man in Greece, writes Stanhope to Bentham, "...says,

45. "Constitutional Code," *Works*, IX, 122.

46. *British and Foreign State Papers*, XV, 1070, article V.

47. "Constitutional Code," *Works*, IX, 98.

48. Kaltchas, *Introduction to the Constitutional History of Modern Greece*, p. 53.

49. *British and Foreign State Papers*, XV, 1069-70, article I: La Religion Orthodoxe de l'Eglise Grecque est la Religion de l'Etat; 1070, article VI: Sont Hellènes: I. Tous les indigènes qui croient en Jésus-Christ; *Ibid.*, p. 52.

50. *British and Foreign State Papers*, XV, 1070, article V; 1071, article XXVIII.

51. "Proclamation adressée aux Grecs par le Président de la troisième Assemblée Nationale, en terminant ses travaux," Trézène (Dapala), le 17 Mai, 1827, *Ibid.*, XV, 1068: Président Sissini said to the Greeks: Vos Sénateurs, déjà chargés de vos pouvoirs, forment le nouveau Sénat, et doivent approprier aux besoins de la Nation les Lois Françaises, autant qu'elles pourront s'appliquer aux circonstances où nous nous trouvons.

that in order to make it (Bentham's Code⁵²) palatable to the people, he must make them believe that it was framed after the model of the Byzantine Code. I condemned this quackery, and told him to read Dumont."⁵³ Stanhope's contempt for the Byzantine legal tradition was shared by Bentham who suggested that the Greeks should learn English "the only language from which tolerably adequate views of justice can...be imbibed."⁵⁴ Obviously, this vast gulf between Bentham's insistence that the Greeks should study English Law, as well as adopt his abstract theories, and the actual fact of Greek life, expressed by Negriz, that Bentham's Code should be framed after the rich Byzantine heritage, caused the utilitarian philosopher's suggestions to be completely ignored in Greece.

To conclude, Bentham was a great critical thinker of his age,⁵⁵ and one of the most original minds in the history of thought.⁵⁶ The fundamental dogma of his philosophy of law reform was the concept of utility or that the aim of existence was the attainment of happiness. His championship of this idea, which was part of the *Zeitgeist* of the eighteenth century philosophy, brought fame to his name and a desire to legislate for any people or nation.

Greece was one of the nations that received Bentham's suggestions for constitutional reform. The fact that the emerging Greek nation was passing from an era of subjection to an independent existence facilitated the growth of Bentham's fame and welcomed his advice. But there was no practical result out of what seemed to be a fruitful cooperation between Bentham and the Greek Provisional Government, because Bentham's suggestions were disregarded by the Greek legislators.

Bentham's character and mode of thought were responsible for this disregard. The English utilitarian philosopher was an autocratic adviser brushing

52. Bentham sent a Code to the Greek Provisional Government and he defined it as "a concisely expressed... all-comprehensive plan, for the education, location, and remuneration of the functionaries of any republican government, in all their several official situations." "To the Provisional Government of Greece: With Part of a Constitutional Code," *Works*, IV, 587. Unfortunately I was not able to find this Code but from its definition by Bentham it must have been general in scope and not exclusively designed for the peculiar Greek situation.

53. Stanhope, *Greece in 1823 and 1824*, p. 197.

54. Quoted in G.W. Keeton and G. Schwarzenberger, eds. *Jeremy Bentham and the Law* (London, 1948), p. 213. See also K.C. Ogden, *The Theory of Legislation by Jeremy Bentham* (London, 1940).

55. John Stuart Mill, *Dissertations and Discussions* (4 vols: Boston, 1868), 1, 359.

56. Keeton and Schwarzenberger, eds. *Jeremy Bentham and the Law*, p. 1.

aside suggestions for adopting his propositions to local conditions. Thus, Negris' comment that Bentham's Code should be framed after the Byzantine Laws had no influence on Bentham. After such intransigence it was not surprising that the Greek legislators rejected his proposals.⁵⁷

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57. A Greek translation of some of the legislative Essays of Bentham was published in Athens (1 volume: 1834, 2 volume 1841) under the title *Peri Nomothesias idiotikes kai poenikes. Syggramma syntachten ek ton cheirographon tou Ieremiou Venthamou para tou Stephanou Dumondou, metaphrasthen de ypo Georgiou Athanasiou* [A book composed from the Manuscripts of Jeremy Bentham by Stephen Dumont and translated by Georgios Athanasiou]. For a Greek view on Bentham's suggestions, see f.i. Dem. Petrakakos, *Koinovouleftike Istoria tes Ellados* [Parliamentary History of Greece] Vol. 1 (Athens, 1935) pp. 359-371, and P. Zepos, *Greek Law* (Athens, 1949) 53 and 79 ff. A brilliant evaluation of Bentham's relations to the Greeks in C. M. Woodhouse, *The Philhellenes* (London, 1969), pp. 81-82, 105-108 and 112-113.