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# Santander and the Vogue of Benthamism in Colombia and Nueva Granada

Theodora Louise McKennan  
*Loyola University Chicago*

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SANTANDER AND THE VOGUE OF BENTHAMISM  
IN COLOMBIA AND NUEVA GRANADA

by

Sister Theodora McKennan, O.P.

A Dissertation Submitted to the Faculty  
of the Graduate School of Loyola University  
in Partial Fulfillment of the Requirements  
for the Degree of Doctor of Philosophy

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## PREFACE

This research project was made possible by a Grant received from the United States Government for study in Colombia during 1966-67. I wish to express particular appreciation for assistance received during that year from the personnel of the Fulbright Commission in Bogotá and to the members and teaching faculty of the Academia Colombiana de Historia. My most sincere thanks are due to Señora Blanca de Armenta and Señorita Magdalena Cervantes García of the staff of the National Library, Bogotá, for their invaluable help, to Dr. Guillermo Hernández de Alba for permission to read the manuscript of his unpublished study, and to Sister Margaret McGill, O.P., for much assistance with research. The facilities provided by the Newberry Library, Chicago, are gratefully acknowledged, as is financial help furnished by Loyola University. Finally, I wish to express my gratitude for the guidance of Professor Paul S. Lietz, who suggested the topic of this study, and for the encouragement and support of the Adrian Dominican Congregation.



## VITA

The writer, Sister Theodora Louise McKennan, was born in Chicago, Illinois, on April 12, 1929. She attended public and parochial elementary schools in Chicago from 1935 to 1942, the Academy of Our Lady from 1942 to 1946, and Chicago Teachers College from 1946 to 1948. After studying at Marquette University, Milwaukee, during the year 1948-49, she entered the novitiate of the Sisters of St. Dominic at Adrian, Michigan, assuming, temporarily, the religious name Sister Ellen Louise, and received the Bachelor of Arts degree from Siena Heights College, Adrian, Michigan, in 1951. Sister Theodora taught in elementary schools conducted by the Adrian Dominican Congregation from 1951 to 1956, and in secondary schools from 1956 to 1962 and 1963 to 1965. She was an instructor at Siena Heights College during the year 1962-63 and at Barry College, Miami, Florida, in 1967-68.

In 1958 the writer received the Master of Arts degree in history from the University of Notre Dame. She started doctoral work at Loyola University, Chicago, during summer sessions beginning in 1961. During 1965-66 she attended Loyola as a full-time student, and in April, 1966, was awarded a United States Government Grant under the Fulbright-Hayes Act for research and study in Colombia.

Research for this dissertation was conducted during 1966-67 in Bogotá, where the writer also attended classes at the Academia Colombiana de Historia. The work was completed in 1968-69 during a final year of residence at Loyola financed by a Loyola University Scholarship.

## INTRODUCTION

During the last years of the wars of independence, and the period just following, the English reformer and legal philosopher Jeremy Bentham was a favorite author among Latin American liberals. Rivadavia in Argentina, Mora in Mexico, Del Valle in Guatemala, and Santander in Colombia are particularly remembered as his disciples, but interest in the English writer extended beyond this group of leaders. According to one of Bentham's editors, the Brazilian minister José Bonafácio Andrada had told the Englishman William Effingham Lawrence, before his banishment to France, that he intended to ask Jeremy Bentham for assistance "in the formation of codes [of law] for Brazil."<sup>1</sup> The collections of the Library of Congress include two examples of his works published in Brazil in 1823,<sup>2</sup> and a refutation of his treatment of morality

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<sup>1</sup>See Codification Proposal Addressed by Jeremy Bentham to All Nations Professing Liberal Opinions . . ., first printed in 1822, in The Works of Jeremy Bentham, ed. by John Bowring (11 vols.; New York: Russell & Russell, 1962), IV, 593-94, note of editor of the original edition. Hereinafter cited as Codification Proposal and Works of Bentham.

<sup>2</sup>Extracto da Tactica das assembleas legislativas por Mr. Bentham . . . (Rio de Janeiro: Typographia Nacional, 1823); Sofismas anarchicos: Exame critico das diversas declarações dos direitos do homem e do cidadão por Mr. Bentham, traduzido em linguagem e oferecido a Assembleia geral, constituinte e legislativa do Imperio do Brazil por R. P. B. (Rio de Janeiro: Typographia Nacional, 1823). The second translation is listed in G. Everett, "Bibliography," in The Growth of Philosophic Radicalism by Elie Halévy, trans. by Mary Morris (Boston: The Beacon Press, 1955), p. 536. Hereinafter cited as "Bibliography" and Philosophic Radicalism.

and legislation which was published in Mexico in 1834.<sup>1</sup> Rafael Heliodoro Valle, in an article written in 1947, mentioned the translation Sofismas anárquicos de Bentham by the Cuban Evaristo Zenea y Luz as appearing in America during this period.<sup>2</sup> The Peruvian lawyer and intellectual Vidaurre, writing in 1823, called Bentham one of the penates of his library,<sup>3</sup> and the memoirs of Pedro Bustamante, written in 1876, described an important Benthamite influence in nineteenth-century Uruguay, encouraged by the minister of state Lucas José Obes during the 1830's.<sup>4</sup> Bentham himself wrote in 1830: "I have from a bookseller's partnership in Paris (Bossange Frères), an account of 40,000 volumes of my works (namely, those edited by Dumont in French,) translated and sold by them for the Spanish American trade."<sup>5</sup> In his preface to the incomplete first edition of his Constitutional Code Bentham wrote:

The political communities whose benefit this foremost part of my all-Comprehensive Code . . . has had principally in view--these communities have been for the present those, more particularly, which have grown out of the wreck of the Spanish monarchy (not to

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<sup>1</sup>El principio de la utilidad en legislación y moral de Jeremías Bentham, Impugnado por el lic. ciudadano Bernardo M. del Callejo (Puebla, Mexico: Imprenta Nacional, 1834).

<sup>2</sup>"Jeremías Bentham en el pensamiento americano," La Prensa (Buenos Aires), May 25, 1947, sec. 2, p. 2. Hereinafter cited as "Bentham."

<sup>3</sup>Manuel Lorenzo Vidaurre, Cartas americanas, quoted in Victor Andrés Belaunde, Bolívar and the Political Thought of the Spanish American Revolution (Baltimore: Johns Hopkins Press, 1938), p. 24. Belaunde named Rousseau, Raynal, and Bentham as the political writers best known in South America during the period treated in his book. See p. 24.

<sup>4</sup>Pedro Bustamante, "Páginas desconocidas: La doctrina de Bentham: Su influencia en el Uruguay," Revista Nacional (Montevideo), November, 1953, pp. 303-15.

<sup>5</sup>Letter to Admiral Mordvinoff [July 9, 1830], Works of Bentham, XI, 33. Italics are in the published letter.

speak as yet of the Portuguese) in the American hemisphere. To time future . . . was all along referred the applicability of the work to the use of the British empire.<sup>1</sup>

This paper will study the early popularity of Bentham's writings in one Latin American nation, the present Colombia. This country was known as the New Kingdom of Granada during the colonial era, and the name New Granada was commonly used during the turbulent period from 1810 to 1819. In December, 1819, the Congress of Angostura decreed the formation of the Republic of Colombia from the elements of the former viceroyalty: Venezuela, Quito, and New Granada or Cundinamarca, as it was designated for a time. This union, named Gran Colombia by later historians, endured until separatist movements in Venezuela and Ecuador destroyed it in 1829 and 1830. In 1831 New Granada was declared an independent state. The vogue of Benthamism will be studied in relation to the career of its most prominent patron, General Francisco de Paula Santander, who was vice president charged with the government of Cundinamarca from 1819 to 1821, vice president of Colombia from 1821 to 1828--acting as chief executive in Bolivar's absence during most of this time, and New Granada's first president from 1832 to 1837.

The writer is aware that there is a fundamental methodological problem in trying to assess the impact of a man's ideas upon others, and will attempt to define the influences which moved Santander and other Colombian leaders only when substantiating evidence can be found. Possible sources of the Bentham enthusiasm originating in England and Spain will be examined closely, revealing an interesting exchange of ideas among these two countries and Latin America.

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<sup>1</sup>"Preface to the Original [1827] Edition of Book I," The Constitutional Code, *ibid.*, IX, 146. Italics are in the original.

Bentham wrote prolifically over many years, and on some topics his position changed as his thought developed. There are, besides, ambiguities and even contradictions in his writings which have created difficulties still unresolved by commentators and scholars. Some selectivity in the use of his works seems necessary in order to isolate the elements of Benthamism which may have been influential in the time and place under consideration. Attention will accordingly be limited to the works of Bentham which, in their Spanish, English, or French editions, were quoted by Santander, his associates and his rivals, were found in his library at the time of his death, or are known to have been available in New Granada during his lifetime. Bentham's theories will not be examined systematically, but only in relation to the favorable and unfavorable references to them found in matter which was written, read, or spoken and recorded in New Granada, and to the effects these theories may have had upon events there.

The chief sources for this study have been Santander's published letters and papers, and the newspapers, pamphlets, and broadsides of the epoch. Documents from the collection Instrucción pública of the Archivo Histórico Nacional at Bogotá have been utilized, as have the anti-Bentham petitions on file at the Archivo del Congreso. The actas of the Congress, as well as laws, decrees, and other public documents, have been used chiefly in published collections.

The correspondence between Bentham and influential figures in Colombia, New Granada, and Spain has been studied in the published works of Bentham and Bolívar, and from xerographic copies of Bentham's manuscript letters obtained from the University College, London. The writer was made aware of the existence of these letters by some helpful indications in K. Lipstein's article

"Foreign Law and Foreign Lawyers" in Jeremy Bentham and the Law: A Symposium, published in London in 1948, and in A. Taylor Milne's Catalogue of the Manuscripts of Jeremy Bentham in the Library of University College, London.

Santander's limited correspondence with Bentham has been read in the published letters of Bentham, and in microfilmed copies of manuscripts from the British Museum. The Archivo Histórico Nacional at Madrid has supplied xerographic copies of two of the Spanish "plans of study" which were influential in the history of this problem; in addition to these Spanish documents, the published decrees of the cortes of 1812-14 and 1820-23 have been used.

The writer is responsible for the translation of all material quoted from Spanish sources, unless another translator is named. Some liberty has been taken in arranging lengthy passages, especially from Bentham's manuscript letters, in shorter paragraphs; all italics shown are in the original versions, unless another indication is made.

The vogue of Benthamism in New Granada outlasted Santander's lifetime, but the study will not go beyond May, 1840, when he died, still active politically and an elected member of the nation's House of Representatives. It is hoped that this paper may have value as an analysis of this single episode in the history of Latin American thought.

## CHAPTER I

### THE ORIGINS OF THE BENTHAM VOGUE

TO 1819

Certain Latin American writers have explained Bentham's popularity in Colombia by showing how his ideas, once known, must have seemed timely and valuable to the men who were directing the new republic. They have also probed the narrower question of the means by which the works of this foreign author were introduced. The contributions of these historians and biographers will be reviewed briefly in the first section of this chapter; and a closer study of events in Spain, England, and Latin America which seem important to the problem and its solution will follow.

One can agree that Bentham's writings would have attracted Colombian leaders on several counts. Jaime Jaramillo Uribe has suggested that the revolutionary generation, which tended to trace all its ills to the political and juridical institutions of the colony, hoped to replace the old forms with a new structure by means of legislation based on simple rational principles.<sup>1</sup> Bentham, of course, devoted his life to creating a science of legislation, and

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<sup>1</sup>Jaime Jaramillo Uribe, "Bentham y los utilitaristas colombianos del siglo XIX," Ideas y Valores: Revista de la Facultad de Filosofía y Letras de la Universidad Nacional (Bogotá), IV, No. 13 (1962), 11. Hereinafter cited as "Bentham."

insisted that all ideas and institutions, however venerable, should be judged solely in terms of their demonstrable ability to satisfy current needs.<sup>1</sup> It is easy to imagine," wrote Ruggiero, "what a vast amount of dross could be purged away by the working of an implacable Benthamite mentality."<sup>2</sup>

Armando Rojas, a Venezuelan writer, believed that Bentham's politics and not precisely his materialism interested certain groups in Colombia. "In Bentham," he wrote, "some of our most prominent men saw the veteran defender of the new ideas which, at the beginning of the century, in Europe and especially in England, were creating a new order suited to the times--a liberal order."<sup>3</sup>

Bentham did not make philosophical problems the chief object of his study, and Rojas is probably correct in supposing that many Colombians read his works for their political content. But Bentham was really not a liberal of the classical school, since he continued to propose authoritarian solutions for the problems of society, even after he became a democrat,<sup>4</sup> rejected the idea of natural rights, and described an omniscient government. Yet he was a great champion of many of the reforms which Anglo-Saxon and continental liberals desired, and as the philosopher of the English Radical Party in 1818

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<sup>1</sup>Frederick Watkins, The Political Tradition of the West: A Study in the Development of Modern Liberalism (Cambridge: Harvard University Press, 1966), p. 131.

<sup>2</sup>Guido de Ruggiero, The History of European Liberalism, trans. by R. G. Collingwood (London: Oxford University Press, 1927), p. 102.

<sup>3</sup>Ideas educativas de Simón Bolívar (2d ed.; Caracas: Ediciones Edime, 1955), p. 114. Hereinafter cited as Bolívar.

<sup>4</sup>Halévy placed Bentham's conversion to democracy in the years following 1808. Bentham's most recent biographer believes that he became a democrat in 1790, during a period when his writings showed new attitudes which Halévy considered superficial and transitory. Cf. Halévy, Philosophic Radicalism, pp. 145-48, 153-54, 168-69, 172, 254-55, 263-64; Mary Peter Mack, Jeremy Bentham: An Odyssey of Ideas (v.-; London: Heineman, 1967), I, 132, 440. Hereinafter cited as Bentham.



argued for universal manhood suffrage and a representative regime, positions which later tended to be assimilated to liberal traditions.<sup>1</sup>

Dr. Jaramillo, who noted the illiberal elements in Bentham's utilitarianism, mentioned the reaction against scholasticism and enthusiasm for mathematics and natural science, already remarkable in New Granada during the late eighteenth century, as a force which created an intellectual climate open to new forms of thought.<sup>2</sup> Such a position seems justified by the history of the Enlightenment in the colony. Here, in 1762, the Spanish botanist and physician José Celestino Mutis, who enjoyed an international reputation among naturalists and was called "immortal" by Linnaeus,<sup>3</sup> inaugurated a course in mathematics at the Colegio Mayor de Nuestra Señora del Rosario of the capital. Modern ideas in philosophy and science had already been given some currency by the arrival of Feijoo's works at Santa Fe de Bogotá<sup>4</sup>--insufficient, however, to prevent Mutis's lectures on the Copernican theory from scandalizing the Aristotelians of the University of Santo Tomás. The ensuing controversy was ended by the intervention of the viceroy and the introduction of a reform of university studies in 1776. The new plan of studies, while it showed no influence of the French Encyclopedists, prescribed the use of modern authors and emphasized eclecticism in philosophy and experimentation in science.<sup>5</sup> The

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<sup>1</sup>Halévy, Philosophic Radicalism, p. 264.

<sup>2</sup>"Bentham," p. 11.

<sup>3</sup>Jean Sarrailh, La España ilustrada de la segunda mitad del siglo XVIII, trans. by Antonio Alatorre (Mexico: Fondo de Cultura Económico, 1957), p. 445. Hereinafter cited as España ilustrada.

<sup>4</sup>Rafael Gómez Hoyos, La revolución granadina de 1810: Ideario de una generación y de una época, 1781-1821 (2 vols.; Bogotá: Editorial Temis, 1962), I, 319. Hereinafter cited as Revolución granadina.

<sup>5</sup>Ibid., pp. 325-27.

duration of this reform was short, but another decidedly progressive plan was introduced during the 1780's by the Archbishop-Viceroy Caballero y Góngora.<sup>1</sup> In 1784 the first Economic Society in New Granada was founded at Mompós without government aid or inspiration.<sup>2</sup> Charles III entrusted to Mutis the direction of the important Botanical Expedition organized in New Granada in 1786, a research venture which served as an agency of enlightenment until the independence period.<sup>3</sup> The first periodical at Santa Fe began publication in 1791,<sup>4</sup> and in 1793 the granadino Precursor Antonio Nariño formed a select literary club which met in his home to read and discuss the best foreign gazettes "and other papers of this kind."<sup>5</sup> During the next year Nariño printed one hundred copies of his translation of the French Declaration of the Rights of Man and of the Citizen, which he had read in a book lent to him by a captain of the viceroy's guard;<sup>6</sup> for this offense he was condemned to imprisonment overseas. Humboldt and Bonpland's three-month visit in 1801 greatly impressed the santaferenos, and during the next year a group of citizens, including Mutis, established an Economic Society at the capital.<sup>7</sup> At the end of the colonial period the New Kingdom possessed an astronomical

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<sup>1</sup>Jesús María Henao and Gerardo Arrubla, History of Colombia, trans. by J. Fred Rippy (Chapel Hill: University of North Carolina Press, 1938), pp. 178-79. Hereinafter cited as Colombia.

<sup>2</sup>Robert Jones Shafer, The Economic Societies in the Spanish World, 1763-1821 (Syracuse, New York: Syracuse University Press, 1958), p. 154. Hereinafter cited as Economic Societies.

<sup>3</sup>Sarrailh, España ilustrada, p. 449.

<sup>4</sup>Shafer, Economic Societies, p. 236.

<sup>5</sup>Quoted in Gómez Hoyos, Revolución granadina, I, 213.

<sup>6</sup>Ibid., p. 221.

<sup>7</sup>Shafer, Economic Societies, p. 236.

observatory and botanical garden at Santa Fe, and an educated class which showed considerable interest in new currents of thought.<sup>1</sup>

It seems significant that the first citation of Bentham in Santander's correspondence is found in a letter from Francisco Antonio Zea,<sup>2</sup> who was an associate of the Botanical Expedition and one of Mutis's most distinguished disciples. His relations with Santander, however, followed a long period of close association with intellectual and political leaders outside New Granada--in Spain.

As the channel through which Bentham's writings were introduced and publicized in New Granada, one or more of the following situations have been cited by authors who have discussed the problem: the close ties between Colombia and Great Britain--and the creole's readiness to admire and accept all things English, Bentham's personal acquaintances among influential Colombians, and the bonds between Colombians and the liberals of Spain, who greatly admired Bentham. Each of these theses has been supported by rather convincing references to the history of the times.

More than one historian has mentioned the possibility that Bentham was read in Colombia because England was admired and English thought was respected.<sup>3</sup>

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<sup>1</sup>See Father Gómez Hoyos's Revolución granadina for a description of works by granadino writers, 1781 to 1821. This study shows, besides modern influences, the continuing importance of Thomas Aquinas, and of Suárez and other Spanish authors of the sixteenth century in the thought of the time.

<sup>2</sup>Letter to Santander, June 22, 1819, Archivo Santander, ed. by Ernesto Tirado, et al. (24 vols.; Bogotá: Aguila Negra Editorial, 1913-32), II, 166. Hereinafter cited as Archivo Santander.

<sup>3</sup>Angel Cuervo and Rufino J. Cuervo, Vida de Rufino Cuervo y noticias de su época (2 vols., 2d ed.; Bogotá: Ministerio de Educación, 1946), I, 16, hereinafter cited as Vida de Cuervo; Julio Hoenigsberg, Santander, el clero, y Bentham (Bogotá: Editorial A. B. C., 1940), pp. 123-27; hereinafter cited as Santander y Bentham; Jaramillo Uribe, "Bentham," p. 11 and El pensamiento colombiano en el siglo XIX (Bogotá: Editorial Temis, 1964), p. 150, hereinafter

The authors of two outstanding biographies written during the nineteenth century, while not doubting the reality of the Anglomania of the 1820's,<sup>1</sup> emphasized, nevertheless, that the prestige of Bentham's race simply added to this author's status, whereas he really became known in New Granada because he was so well known in Spain.<sup>2</sup> Gutiérrez Ponce wrote that it was strange that when only a small number of Colombians had so much as turned the leaves of More, Bacon, Harrington, Hobbes, Locke, Hume, and other works of universal renown, there were few who had not read Bentham.<sup>3</sup>

Timing seems to add another difficulty to this first thesis, as Bentham had not found much of a following in England before 1820, according to Frederick B. Artz.<sup>4</sup> Albert Venn Dicey designated the years 1825 to 1870 as the age of Benthamism in the temper of public opinion there, overlapping the period of Old Toryism, which continued to 1830.<sup>5</sup> Yet Bentham seems to have been well known in diverse parts of Latin America in the 1820's, and with surprising swiftness his Tratados de legislación civil y penal was made a required

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cited as Pensamiento colombiano. The first edition of the Vida de Rufino Cuervo was published at Paris in 1892.

<sup>1</sup>This phenomenon is described with interesting detail in a much-quoted section of Cuervo and Cuervo, Vida de Cuervo, I, 27-28, and mentioned in Ignacio Gutiérrez Ponce, Vida de Don Ignacio Gutiérrez Vergara y episodios históricos de su tiempo (2 vols.; London: Bradbury, Agnew, and Co., 1900), I, 147. Hereinafter cited as Gutiérrez Vergara.

<sup>2</sup>Cuervo and Cuervo, Vida de Cuervo, I, 16; Gutiérrez Ponce, Gutiérrez Vergara, I, 154.

<sup>3</sup>Gutiérrez Vergara, I, 459.

<sup>4</sup>Reaction and Revolution, 1814-1832, The Rise of Modern Europe Series, ed. by William L. Langer, Harper Torchbooks (New York: Harper and Row, 1963), p. 120. Hereinafter cited as Reaction and Revolution.

<sup>5</sup>Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century (London: Macmillan and Co., 1905), pp. 62-63.

text for collegiate studies in Colombia in 1825. This does not seem so remarkable, however, when one recalls that Bentham achieved his earliest popularity outside of England, and in Spain more than anywhere else.<sup>1</sup>

Jaramillo pointed out that Bentham was a friend and correspondent of Miranda, Bolívar, and Santander, and that his support of various reform movements won him the sympathy of a whole generation of Colombian liberals.<sup>2</sup>

Rojas asserted that it was very probable that Bentham knew Nariño as well,<sup>3</sup> but with or without the addition of the Precursor Bentham's friends in Colombia are a distinguished group. Further study of the period will show that the number of the reformer's personal contacts in the new republic continued to increase as Englishmen came to Colombia and Colombians traveled to Europe, and that Bentham was very interested in Colombia and most eager to assist in its development.

Cuervo's biographers wrote that contemporary events in Spain had results of incalculable importance in Colombia during the first years of her national life, including the popularization of Destutt de Tracy with his sensationalism and Bentham with his utilitarianism,<sup>4</sup> and Gutiérrez Ponce substantially agreed.<sup>5</sup> In the remaining sections of this chapter liberal Spain will be studied as a possible source of the Bentham vogue, and Bentham's personal relations with prominent figures in both hemispheres will be

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<sup>1</sup>Halévy, Philosophic Radicalism, p. 297. In this same place Halévy mentions Bentham's early popularity in Portugal.

<sup>2</sup>"Bentham," p. 12.

<sup>3</sup>Bolívar, p. 14.

<sup>4</sup>Cuervo and Cuervo, Vida de Cuervo, I, 12-15.

<sup>5</sup>Gutiérrez Vergara, I, 154.

examined. The writer believes that the results of research in these two areas, considered together, explain the origins of Benthamism in Colombia and New Granada.

## II

Hans Juretschke, who has written a number of studies related to the cortes of Cádiz, recently called attention to the need for an investigation of the presence of English thought in Spain at the end of the eighteenth century--to include an appraisal of the influence of Bentham.<sup>1</sup> Bentham and his friends seemed to believe that his works became important in Spain only after 1802, when the Traité de Legislation civile et pénale, the French work constructed by Etienne Dumont from Bentham's unorganized manuscripts, was published in Paris.<sup>2</sup> The first word on the subject comes from Bentham, discussing the sales of this new book:

What do you think of Spain taking off 300 copies? Thrice as many, I believe, as it was thought worthwhile to send to England. This was the number which, according to the calculation of the French booksellers, would find customers before the Inquisition would have time to fasten upon them.<sup>3</sup>

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<sup>1</sup>Los afrancesados en la guerra de la Independencia: Génesis desarrollo y consecuencias históricas (Madrid: Ediciones Rialp, 1962), pp. 23-24, n. 6. Hereinafter cited as Afrancesados.

<sup>2</sup>Some Spaniards must have received their earliest notice of Bentham from translations made from an English source, and perhaps at an earlier date. Richard Herr recorded that the Semanario de agricultura y artes dirigido a los párrocos, published in Spain from 1787 to 1808, contained translations from Arthur Young, Count Rumford, and Jeremy Bentham. See Richard Herr, The Eighteenth Century Revolution in Spain (Princeton, N. J.: Princeton University Press, 1958), p. 387. Hereinafter cited as Eighteenth Century Spain. Bentham's material would possibly have been his tracts on Poor Laws and Pauper Management published in Young's Annals of Agriculture in 1797 and 1798.

<sup>3</sup>Letter to Sir F. M. Eden, Sept. 4, 1802, Works of Bentham, X, 395.

The advertisement for one of Bentham's tracts in Spanish and Portuguese affairs later made the following claim:

At a time when the prospects which are now so happily realized [Spain's constitutional period, 1820-23] had not so much as opened, the name of Bentham had become familiar to whatever was liberal in the great southern peninsula of Europe. That exclusion which the system of corruption has hitherto put upon it in England, the united force of Censorships and Inquisitions has never been able to effect either in Spain or Portugal. Spite of both bars, scarcely had those works of his, which were edited in 1802 by M. Dumont, made their appearance in France, than they found their way into the two adjoining kingdoms.<sup>1</sup>

A letter from Dr. Toribio Nuñez, deputy from Salamanca to the cortes during the treino constitucional of 1820-23 and author of two books based on Bentham's works, refers to the same early period:

The appearance of your works, published in the French language at Paris, corresponds with this epoch; but as I had retired from Seville . . . and was living amidst relations and friends in the mountains of Castille--I had heard nothing of them until the passage of the French army through Salamanca to Portugal in 1807, when your principles of civil and penal legislation were brought among other books for sale. . . . In your works I saw the causes of the failure and of the evils of the French Revolution, which had excited our youthful attention.<sup>2</sup>

In 1820 Nuñez was a professor at the University of Salamanca, as was Dr. Ramón Salas, who published the Bentham translation and commentary which became an object of controversy in Colombia. Some of Bentham's admirers in the cortes of the 1820's were also closely associated with this same university, and it seems possible to assume that some time after 1802 Salamanca became a center of interest in Bentham's thought. The same can be said of Seville. This city and university produced Alberto Lista, the poet,

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<sup>1</sup>"Advertisement for Tract the First and Second," Three Tracts Relative to Spanish and Portuguese Affairs, first published in 1821, in Works of Bentham, VIII, 465. Hereinafter cited as Spanish and Portuguese Affairs.

<sup>2</sup>Letter to Bentham, Dec. 20, 1821, quoted in Bentham, Codification Proposal, p. 572.

journalist, and educator who propagated Benthamism in articles, editorials, and academic lectures; Félix José Reinoso, whose book, it has been said, made Bentham popular in Spain;<sup>1</sup> and José María Blanco, who became the editor of El Español. These three, all priests, had been intimate friends as university students in the 1790's and all were influenced by the young clergyman and professor Manuel María Arjona,<sup>2</sup> who was a member, with them, of an informal group devoted to literary studies.

By the end of the eighteenth century Seville and Salamanca were apparently open to all the currents of the European Enlightenment, in fact, if not officially. The works of Bacon, Newton, Locke, and Condillac were taught at Seville under the plan of studies adopted in 1769,<sup>3</sup> and Blanco wrote that when he was a student there certain professors encouraged the private reading of prohibited books;<sup>4</sup> he even remembered that a dignitary of the cathedral was accustomed to lend him such volumes as Le système de la nature by the anti-Christian Helvétius.<sup>5</sup> In 1788 Salamanca adopted a progressive plan in mathematics and philosophy which placed it at the head of the reform movement

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<sup>1</sup>Marcelino Menéndez y Pelayo, Historia de los heterodoxos españoles (4 vols.; Buenos Aires: Editorial Glem, 1945), IV, 180. Hereinafter cited as Heterodoxos.

<sup>2</sup>Joseph Blanco White, The Life of the Rev. Joseph Blanco White, Written by Himself, with Portions of His Correspondence, ed. by John Hamilton Thom (3 vols.; London: J. Chapman, 1845), I, 98. Hereinafter cited as Life.

<sup>3</sup>Antonio Gil y Zárate, De la instrucción pública de España (3 vols.; Madrid: Colegio de Sordo-Mudos, 1855), I, 55. Hereinafter cited as Instrucción pública.

<sup>4</sup>Quoted in Herr, Eighteenth Century Spain, p. 328.

<sup>5</sup>Quoted in Hans Juretschke, Vida, obra, y pensamientos de Alberto Lista (Madrid: Consejo Superior de Investigaciones Científicas, 1951), p. 42. Hereinafter cited as Lista.



in university studies. By the end of the century its faculties were said to be notable for their interest in the Encyclopedists.<sup>1</sup>

If contemporary French philosophers were known in these Spanish universities, the tradition which Bentham followed was not completely strange. Bentham never attempted to hide what he owed to his predecessors, his contemporaries, and his century,<sup>2</sup> although he undoubtedly took what he needed from others and went his own way.<sup>3</sup> Bacon, Hobbes, Locke, Hartley, Helvétius, Hume, Smith, Becarria, and Priestly are known to have influenced him. A particular circumstance, explained by Halévy, makes it understandable from one point of view that Bentham's works should have come to Spain through France:

From the time of Hartley [d. 1757] until the publication of James Mill's book [Analysis of the Phenomena of the Human Mind, 1829] the normal development of English thought seems to have passed, as it were, through a period of standstill . . . It is on the continent, in France, that the destinies of that philosophy of which Bacon, Hobbes, and Locke are universally held to be the founders, must be followed up. Bentham's first works were written and published in France, and it was in France and in the other Latin-speaking countries, that they first made his name popular. . . . It was in France that from Condillac up to Destutt de Tracy ideology continued the tradition of Locke and Hume. . . . Hartley's few English disciples, and the Benthamites in particular, were well aware of this close affinity by which they were connected with the French contemporary philosophers.<sup>4</sup>

A passage from Menéndez y Pelayo emphasizes the influence of this French philosophic thought in eighteenth century Spain:

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<sup>1</sup>Gil y Zárate, Instrucción pública, I, 71-72.

<sup>2</sup>Halévy, Philosophic Radicalism, p. 21.

<sup>3</sup>Mack, Bentham, I, 10.

<sup>4</sup>Philosophic Radicalism, pp. 434-35. There are certainly many reasons of a more practical nature which also explain why the Spaniards received the works of this author from France: language, geographical proximity, the availability of Dumont's work and interest in the material it contained, long-standing relations with the literary life of France, etc.

The ascendancy of Gassendi and Descartes lasted but a short time; Bacon and Newton were dominant longer, because admiration for them was imposed upon us from France; then arrived in regular order Locke and Condillac, and, at last, as the culmination of all, sensation- alism converted to materialism; at the beginning of the nineteenth century Condorcet, Destutt-Tracy, and Cabanis reigned alone. Stragglng behind by some ten or twelve years, we followed all the steps and turns of France.<sup>1</sup>

The Bentham vogue, in Spain as well as in Colombia, was closely associated with the popularity of the so-called Idéologues of France, a group of theorists who "applied the analytical methods of Condillac's sensationalist psychology to the social sciences with the aim of accelerating progress and bringing about a rational organization of society." They had been very influential during the period of the Directory, and "more or less embodied the ideological base" of that French government. The leaders of the group included Daunou, Cabanis, and Destutt de Tracy, and the salon of Helvétius's widow was its social center. Benjamin Constant stood close to these thinkers, and some of the Idéologues were interested in the theories of Bentham.<sup>2</sup>

By 1802 Spanish intellectuals were concerned about many of the areas of reform in which Bentham was writing. There had been deep feeling since the 1760's, for example, that Spain's criminal law and procedure must be modern- ized and humanized, an interest which was intensified by the translation of Beccaria's Dei delitti e delle pene in 1774.<sup>3</sup> And students had read some of the contemporary European writers on law and politics in the new courses in "public law, the law of nature and of nations," taught in Spain between 1771 and 1794. Polt believed that a select minority came by this means to share

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<sup>1</sup>Heterodoxos, III, 553.

<sup>2</sup>William W. Holdheim, Benjamin Constant (New York: Hillary House Publishers, Ltd., 1961), pp. 75-76, 94.

<sup>3</sup>Sarrailh, España ilustrada, pp. 538-39.

the eighteenth-century hope that a perfect legal system could be rationally constructed--that law and politics could become a science.<sup>1</sup>

Spain's enlightened but orthodox reformers of the eighteenth century would very likely have rejected Bentham's theory of law and ethics because of its radical inconsistency with what had traditionally constituted the moral order,<sup>2</sup> but new reform styles were being fashioned in Spain between 1789 and 1813. Herr has pointed out that Spanish liberalism of the early nineteenth century was a blend of foreign and native elements, comprehending an alliance between partisans of the Enlightenment and the churchmen who had been called "Jansenists," and yet was a new political tradition.<sup>3</sup> It could tolerate the irreligious elements in Bentham's thought.

Among the Englishman's early admirers, Blanco, Lista, and Reinoso were representative of a nucleus of Andalusian clerics which has, perhaps unjustifiably,<sup>4</sup> been termed dissident, Jansenist, or atheist. Blanco's increasing

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<sup>1</sup>John Herman Polt, Jovellanos and His English Sources; Economic, Philosophic, and Political Writings, Transactions of the American Philosophical Society, N.S., LIV, Part 7 (1964), 52. Hereinafter cited as Jovellanos. The introduction of this study followed a European trend, and, according to Luis Sánchez Agesta, the natural law was treated in a manner which departed significantly from the tradition of Suárez and the classical Spanish authors. Disdain for authority, and reliance upon rationalism and the test of individual utility were among the assumptions of this new branch of jurisprudence. See his El pensamiento político del despotismo ilustrado (Madrid: Instituto de Estudios Políticos, 1953), pp. 266, 268. Derecho natural y de gentes was also taught in New Granada during the late eighteenth century. See Guillermo Hernández de Alba, Crónica del muy ilustre Colegio Mayor de Nuestra Señora del Rosario en Santa Fe de Bogotá (2 vols.; Bogotá: Editorial Centro, 1938-40), II, 296.

<sup>2</sup>Bentham's thought has been described in this way in Thomas P. Neill, The Rise and Decline of Liberalism (Milwaukee: Bruce Publishing Company, 1953), p. 56.

<sup>3</sup>Eighteenth Century Spain, pp. 440-41.

<sup>4</sup>Hans Juretschke, "Los supuestos históricos e ideológicos de las cortes de Cádiz," Nuestro Tiempo (Mexico), II, No. 18 (1955), 34.

repugnance for Catholicism ended in his separation from the Church in 1810. The Inquisition had considered the orthodoxy of Ramón Salas of Salamanca questionable enough in 1796 to condemn him to abjure de levi (as one lightly suspected of heresy), in a celebrated case which seems to have been largely political<sup>1</sup> but probably involved some religious issues as well.

In 1808 Napoleon forced the abdications of Charles IV and his son Ferdinand, and made his brother Joseph king of Spain. During the occupation of the Peninsula certain Spaniards cooperated with the Bonapartes; some were willing to do so because they agreed that internal reform and modernization of the kind which had been effected in France were badly needed in Spain.<sup>2</sup> The collaborators, known as afrancesados, made up a political faction or party after the restoration of independence, and a good deal of admiration for Bentham within this group became evident in time.

With the first Spaniards who showed themselves willing to work with the French during the summer of 1808 there was a native of New Granada, the cultivated Dr. Francisco Antonio Zea. A friend of Nariño who shared his taste for enlightened reading and serious discussion, he had been implicated in the Precursor's trial at Santa Fe in the 1790's and sent to Spain as a prisoner. There he was freed but denied permission to return to America. Eventually he married, settled in Madrid, and became a director of the botanical garden there, while moving in circles where France was admired. When Napoleon prepared to make his brother king, Zea accepted nomination to the assembly at Bayona which drafted a constitution for Spain along lines dictated by the Emperor. He held various official posts under the French regime, including a

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<sup>1</sup>Herr, Eighteenth Century Spain, pp. 329-336, 409.

<sup>2</sup>Juretschke, Afrancesados, p. 134.

directorship in the Ministry of Interior and the prefecture of the city of Málaga.<sup>1</sup>

Meanwhile resistance to the French was being organized in the towns and provinces. The patriots did not delay in seeking help outside Spain--in England, the only source from which it could come. As early as June, 1808, two members of the Asturian junta had arrived in London, the first of a number of provincial deputations sent to request the assistance of Spain's late adversary in the Napoleonic struggle.

The Hispanophile Whig peer Lord Holland<sup>2</sup> was known as a special protector of the Spanish deputies in London,<sup>3</sup> and soon Jeremy Bentham, whose intimate friends Romilly and Dumont were welcome guests at Holland House, was most willingly drawn into the projects of well disposed foreigners who wished to offer guidance to the Spanish revolution. Bowring's Memoirs of Bentham contains this entry:

Lord Holland and Dumont took no small trouble, in 1808, to give the Spanish Cortes the benefit of Bentham's counsels for the direction of their debates. . . . Lord Henry Petty<sup>4</sup> suggested the republication of Bentham's Tactique in Cádiz, but Dumont was unwilling to risk the innumerable errata to which it would be exposed there. But the fair

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<sup>1</sup>R. Sotero Saldarriaga, Francisco Antonio Zea (Bogotá: Editorial del Consejo, 1945), pp. 52-94, passim.

<sup>2</sup>Henry Richard Vassall Fox, Third Baron Holland.

<sup>3</sup>W. R. de Villa Urrutia, Relaciones entre España e Inglaterra durante la guerra de la independencia (3 vols.; Madrid: Librería de F. Beltrán, 1911), I, 132.

<sup>4</sup>Sir Henry Petty Fitzmaurice, Bentham's friend and patron, who, as Earl of Shelburne, had been Prime Minister, 1782-83; became Third Marquis of Lansdowne in 1809.

prospect of Spain, and the hopes of contributing to the establishment of freedom and good government in that country, had almost decided Bentham to depart without delay for the seat of the Spanish government.<sup>1</sup>

This is rather puzzling, because in 1808 no decision had been made regarding the convocation of cortes, and they did not meet until 1810; yet the assembling of the national cortes had been spoken of since before Ferdinand's abdication, and Spain's English friends favored the plan. Unless Bowring has misdated all the letters which follow, the activities they describe, including negotiations to interest "prominent deputies" in the Tactique des Assemblées législatives, must have been conducted in London, with representatives of the juntas of free Spain.

The treatise which Bentham's friends hoped to make available to the future cortes had been written in 1789, when Bentham had hoped to offer it to the French Estates General. A fragment had been printed in 1791, and Dumont had prepared a complete French edition in 1800, but it had not yet been published. The work appeared at last in 1816 in the form Dumont had given it, and is remarkable among Bentham's writings for its laudatory treatment of long-established British customs--in the single area of parliamentary procedure. It is understandable that Lord Holland, who was, in general, well satisfied with English institutions, should have approved of the work.

The project, as Bowring noted, ultimately failed. One of Dumont's letters, written at the time, contains an interesting commentary on this kind of effort:

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<sup>1</sup>Memoirs of Bentham, Including Autobiographical Conversations and Correspondence, Vols. X-XI, Works of Bentham, X, 433. Hereinafter cited as Memoirs.

I have observed--it is an old observation of mine--that no political assembly adopts a printed project,--or adopts ideas to which publicity is given,--I mean textually and in mass. They nominate a committee--Will that committee adopt a work already written,--a foreign work?--Will they commit a suicide?--a suicide of reputation?  
. . . Assemblies are proud beggars, on whom our alms must be forced.  
. . . The hands that aid them must be hidden.<sup>1</sup>

On September 25, 1808, military events in Spain permitted the installation, at the royal palace near Madrid, of a central governing body to direct the war of resistance against the French. Composed of representatives of the regional juntas, this group is often referred to as the Junta Central; the Spanish statesman and writer Jovellanos was doubtless its most distinguished member. In December, however, French troops commanded by the Emperor himself retook the capital, and the Junta was forced to withdraw to Seville in the South. There the sevillanos José María Blanco and Alberto Lista worked with Isidoro Antillón in publishing the Semanario Patriótico, noted for its advanced liberalism. Manuel José Quintana, a prominent member of the Junta, was an unofficial collaborator. When they were warned by the government that they must moderate the paper's sharp tone, the editors suspended publication in September, 1809, and Blanco never forgave the Junta.<sup>2</sup>

During the early days of the government's location in Seville Jovellanos received a communication from Jeremy Bentham through Lord Holland, who was among the numerous Englishmen who visited the city in 1809. Bentham had conceived the strange plan of taking up residence in Mexico, where he proposed to live quietly and to continue his writing. John Bowring, who was Bentham's literary executor and editor, believed that the philosopher's

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<sup>1</sup>Letter to Bentham, n.d., Works of Bentham, X, 438-39.

<sup>2</sup>Gabriel H. Lovett, Napoleon and the Birth of Modern Spain (2 vols.; New York: New York University Press, 1965), I, 347, hereinafter cited as Napoleon and Spain; Menéndez y Pelayo, Heterodoxos, IV, 117.

acquaintance with the would-be revolutionary Aaron Burr had aroused his interest in that country. "He meant really to make himself Emperor of Mexico," Bentham had said of Burr. "He told me I should be the legislator."<sup>1</sup> At any rate Bentham wrote to Lord Holland in October, 1808, to ask that he request licenses and letters of recommendation from Jovellanos, his esteemed friend.

Bentham thought that he and Jovellanos might already be acquainted with each other through their respective publications. He told Lord Holland that his brother, on his return from Russia, had brought him "a copy of a French translation, that had been made at Petersburg, of the far-famed work of Don G. M. Jovellanos . . . Identité de l'interêt general avec l'interêt individuel, etc.--anno 1806." He explained that the book had been sent with his brother by a Russian admirer who felt that Bentham, who had applied the principle of laissez nous faire to the case of contracts concerning money in his Defence of Usury "would not be displeased to see the same principle applied, and so well applied, and by such high and influential authority, to the case of contracts concerning land."<sup>2</sup> On the other side:

Considering that a year or two ago (if Dumont's intelligence is to be believed), about 750 copies of his book had already found their way into Spain and Portugal, it occurred to me that, of one or other of the two translations published in Paris of the "Defence of Usury,"<sup>3</sup> a copy might have found its way into the hands of Señor Jovellanos; possibly also a copy of Dumont's book, immediately or intermediately, under favour of the protection given to it by Lady Holland, if what her ladyship was pleased to say to me on that head was anything more than persiflage.<sup>4</sup>

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<sup>1</sup>Quoted in Bowring, Memoirs, X, 432.

<sup>2</sup>Letter of Oct. 31, 1808, Works of Bentham, X, 440.

<sup>3</sup>Both French translations were published in 1790.

<sup>4</sup>Letter, Bentham to Lord Holland, Oct. 31, 1808, p. 440.



Bentham then made his request and continued: "To Señor Jovellanos I consider myself as giving a suitable and sufficient bribe, in promising to persevere in support of the principle of laissez nous faire, so long as I have the stump of a pen left."<sup>1</sup>

Lord Holland answered from Seville, assuring Bentham that Jovellanos was not unacquainted with his character, acquirements, and merits.<sup>2</sup> But the Spaniard's own reply does not give the impression that he had had much previous knowledge of Bentham: "The high opinion [Lord Holland] has given me of your application, talents, and ardent zeal for the good of humanity could not fail to inspire me with sincere gratitude and the highest esteem for your person and character." With gentle understatement he wrote of Bentham's plan of removing to Mexico: "I cannot avoid saying that time and circumstances do not appear to me to promise you that tranquil security which you seek." Yet he agreed to give Bentham whatever help he could with his project.<sup>3</sup>

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<sup>1</sup>Ibid., p. 441. An example of the ambiguity and contradiction in Bentham, apparently. Much recent scholarship has show that this author, far from opposing government interference in many areas of national life, might well be considered a prophet of the welfare state. It would be impossible to deny Mary Peter Mack's statement of Bentham's position: "There was nothing government might not do if it could show that public interest demanded it." (Mack, Bentham, I, 11.) T. W. Hutcheson's article on Bentham as an economist states that he devoted the years ca. 1789 to 1804 to political economy, then never returned to the subject in any important way or showed much interest in the great new developments of the Ricardo era. Hutcheson cautioned readers that Bentham's views sometimes followed a consistent development, but sometimes simply fluctuated. (T. W. Hutcheson, "Bentham as an Economist," The Economic Journal, LXVI [June, 1956], 289.) The article concludes that "whatever laissez-faire maxims Bentham may have emitted . . . as the years went on he is . . . suggesting more and more economic functions for the state." (Ibid., p. 300.) See also J. Brebner, "Laissez-Faire and State Intervention in Nineteenth-Century Britain," The Tasks of Economic History, supplement of The Journal of Economic History, VIII (1948), 59-70.

<sup>2</sup>Letter to Bentham, Feb. 18, 1809, Works of Bentham, X, 447.

<sup>3</sup>Letter, Don Gaspar M. de Jovellanos to Bentham, June 27, 1809, ibid., p. 448.

There was indeed little hope for tranquility within the Spanish Empire in 1809, where the events of the Napoleonic drama were producing effects of the most serious nature. Refusing to recognize Joseph Bonaparte, the American territories had declared their loyalty to Ferdinand VII: the Junta Central even received considerable financial support from America.<sup>1</sup> Yet during this unquiet period creole leaders were developing new attitudes and assuming unaccustomed roles, as in many places they demanded to share the authority of the Spanish officials--for now free Spain's only general government was a de facto junta with no legal jurisdiction over the American kingdoms, and a future which no one could foretell. An outbreak in Quito in 1808 actually drove the president and other functionaries from office, but the movement was premature and was suppressed.

Then in 1810 Spanish America was shaken by the news that the French had overrun the southern part of the Peninsula and the Junta Central had withdrawn to the island of León, where Cádiz is located, set up a regency, and dissolved itself. Spain's independence, it appeared, was lost, and in one capital after another American creoles took into their hands the task of governing themselves--in the name of the king, for a time. But events moved toward independence.

An extraordinary cabildo in Caracas deposed the captain general and created a new government in April; a similar movement at Santa Fe inaugurated the Supreme Junta of the New Kingdom of Granada, which soon expelled the viceroy. Francisco de Paula Santander was among the first contingent of young men

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<sup>1</sup>Lovett, Napoleon and Spain, I, 325.

to enlist in the national militia created during these historic days. He left his studies to do so, for he was only eighteen years old at the time and a student at the capital, following the career of law.

Other lives, too, took a decisive turn when the French troops were victorious in southern Spain in 1810. As members of the government left Seville before the approaching French, José María Blanco joined the exodus. Other prominent sevillanos stayed behind, and many were to employ their talents in the service of the intrusive king. After a few months in Cádiz Blanco took ship for Falmouth, England, and before the end of the year would be publishing in London the Spanish-language journal which has made him so well known to history. He had not been in London many days when he called upon Lord Holland, whom he had met in Spain. This influential man and his knowledgeable secretary and associate, Dr. John Allen, helped the newcomer to found El Español.<sup>1</sup>

The journal began publication in April, 1810, and its editor soon showed himself to be extremely critical of the former Spanish Junta, the regency which replaced it, and the general and extraordinary cortes which opened sessions in September. England's policies, on the other hand, were praised, and in the third number Blanco began to defend the cause of the American insurrectionists.<sup>2</sup>

Material by Jeremy Bentham was occasionally published in El Español, starting in the fall of 1810, when Bentham and the editor began to correspond. Blanco seemed to find certain of Bentham's compositions valuable as expositions of reform measures which he also favored, and his journal must have done a

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<sup>1</sup>Blanco White, Life, I, 207.

<sup>2</sup>Menéndez y Pelayo, Heterodoxos, IV, 219.

great deal to make the Englishman known in Spanish America, where it had its great circulation. No doubt Blanco had become somewhat familiar with Bentham's writings, or at least with his reputation, in Seville or in Madrid, for he has testified that when he left Spain Bentham was known "among the studious"<sup>1</sup> and by "as many as dedicated themselves to the study of legislation."<sup>2</sup> He told Bentham in a personal, and very complimentary, letter in 1810:

Though thwarted in their circulation by prejudice and ignorance, your writings were looked for and read with avidity, and they were mentioned as a leading rule for the amendment of our laws, when a committee was appointed to that purpose, during the Junta Central, and I venture to foretell, they will have a material influence in the future Code of Spanish laws, if we ever come to possess such a blessing.<sup>3</sup>

Nevertheless, Blanco's views were often far from Bentham's--the views, at least, which Blanco was expressing by late 1810. Bentham, for example, was decidedly opposed to a two-house legislature, of which Blanco approved, and in 1820 was to write many pages "to the Spanish people" about this matter. He had always, it seems, opposed a second house; a letter from Dumont in 1808 discussed Bentham's opinion on the subject in relation to the work which they were hoping to make available to the Spanish cortes.<sup>4</sup> Blanco admired and praised the political institutions of Great Britain, whereas Bentham pitilessly exposed the flaws in her "matchless constitution," in the interest of reform.

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<sup>1</sup>El Español, Jan.-Feb., 1814, p. 34.

<sup>2</sup>Ibid., Sept. 30, 1810, p. 430.

<sup>3</sup>Letter of Oct. 24, 1810, Works of Bentham, X, 456.

<sup>4</sup>Letter to Bentham, Aug. 29, 1808, ibid., p. 434. This letter explains that Dumont added a chapter in favor of a bicameral legislature to the Tactique des Assemblées législatives, while Bentham's manuscripts had favored a single house.

During the first months of Blanco's new life in England, other travelers were arriving from the Spanish world. Three of these were commissioners of the Junta of Caracas, who had come to negotiate with the British government. Still styling themselves Spanish citizens, the Venezuelans had sent young Simón Bolívar, Luis López Méndez, and Andrés Bello to represent their sentiments of friendship and common purpose with Great Britain in their rebellion against the "oppressor of Europe."

In London Bolívar and López Méndez met Francisco de Miranda, the Venezuelan Precursor, who undertook to introduce them to his English and Spanish-American friends. Bentham and the educator Joseph Lancaster were certainly among the persons Bolívar met, as a letter from Bentham to the Liberator some years later referred to "that garden of mine which Your Excellency saw,"<sup>1</sup> and Lancaster wrote to Bolívar in 1821: "When I remember you I think of the time I had the pleasure of giving a discourse, using explanatory sketches, to the deputies of Caracas, of which body you formed a part, in the habitation of General Miranda in Grafton Street, Piccadilly, London, about the 26th or 27th of September in 1810."<sup>2</sup>

What the young Americans discussed with the aging Precursor and his British friends is not really known, but Picón-Salas has tried to reconstruct their thoughts and aspirations from the available evidence. He wrote that they were trying "in sane and prudent England, to assimilate in bloodless form

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<sup>1</sup>Letter of Aug. 13, 1825, in Daniel F. O'Leary (comp.), Correspondencia de extranjeros notables con el Libertador (2 vols.; Madrid: Editorial América, 1929), II, 49. Hereinafter cited as Correspondencia de extranjeros.

<sup>2</sup>Letter of July 9, 1821, in Manuel Pérez Vila (comp.), Bolívar y su época: Cartas y testimonios de extranjeros notables (2 vols.; Caracas: Secretaría General de Décima Conferencia Interamericana, 1953), I, 146.

the new liberal thought which the French torment would yield up."<sup>1</sup> Bentham, he believed, was among the reformers with whom they shared their plans and hopes for the dreamed-of and yet-unborn Colombia.<sup>2</sup>

A number of unpublished manuscripts among the Bentham papers at University College, London, prove how genuine the Englishman's interest really was. The collection contains about eighty large sheets, in rough copy, of material intended for use in Venezuela; all are dated August or September, 1810, and some are designated specifically "for General Miranda's Expedition." Included are a proposed law for securing liberty of the press,<sup>3</sup> matter indexed as "Caracas--Constitutional legislation of the evils of change,"<sup>4</sup> a document which appears to be a proposal from Bentham to draft law codes for Venezuela,<sup>5</sup> and a paper headed, "Carraccas: Necessity of an all-comprehensive Code."<sup>6</sup>

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<sup>1</sup>Mariano Picón Salas, Miranda (Caracas: Aguilar, S. A. Ediciones [1955]), p. 173.

<sup>2</sup>Ibid., p. 104.

<sup>3</sup>University College, London, Bentham MSS, box xxi, sheets 7-56. Papers from this collection will hereinafter be cited as Bentham MSS. A document which appears to be a finer copy of the same or a similar draft of a proposed law for establishing freedom of the press in Venezuela exists in the collection, but it is indexed as dating from the year 1808. Cf. Bentham MSS, xxvi, 2-11; A. Taylor Milne (comp.), Catalogue of the Manuscripts of Jeremy Bentham in the Library of University College, London (2d ed.; London: The Athlone Press, 1962), p. 10. Hereinafter cited as Catalogue.

<sup>4</sup>Bentham MSS, xxi, 57-76; Milne, Catalogue, p. 8.

<sup>5</sup>Bentham MSS, xxi, 1-6.

<sup>6</sup>Ibid., xxii, 1-4. Parts of this document are quoted in K. Lipstein, "Bentham: Foreign Law and Foreign Lawyers," in Jeremy Bentham and the Law: A Symposium, ed. by George W. Keeton and Georg Schwarzenberger (London: Stevens & Sons, 1948), pp. 202-221.

Upon superficial examination, the three documents related to the drawing up of codes appear to resemble material used in Bentham's general Codification Proposal drawn up in 1822, and in the letters and documents of a similar nature sent to rulers, presidents, and governing bodies during his long legislative quest.<sup>1</sup> The paper cited last criticizes the oppressive Spanish legislation and calls the necessity of adopting an entire new body of laws a matter too evident to need dwelling upon.

A page of postscript develops the possibility that this code might be adopted by other nations "formed out of the Spanish settlements in America. In the prospect of a common body of laws all these sister states would find a bond of union, and a common convenience, which to Venezuela alone would belong the glory of the example." Though a nation might ordinarily be reluctant to adopt the laws of another state, this feeling "would have no place in the case of a body of laws drawn up by a hand foreign alike to Venezuela. Among the advantages that would result from such an intercommunity of laws would be . . . that the several states might resort to each other for judges."

Bolívar left for Venezuela, probably in late September,<sup>2</sup> and at his urging Miranda also returned to Caracas, hoping to see the realization of his'

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<sup>1</sup>Elmer Louis Kayser's study summarized these endeavors of Bentham: "He offered to draw up a code for Scotland, and a penal code for Great Britain. . . . To the United States, several of the individual states, to Spain, to Portugal, to Greece, to more than one French government, to Russia, to Bavaria, to Poland, to several Latin American states, went offers to formulate codes or to improve existing or proposed systems. Among the papers of Bentham was his 'Securities against Misrule, adapted to a Mohammedan State and prepared with particular reference to Tripoli in Barbary.'" See Elmer Louis Kayser, The Grand Social Enterprise: A Study of Jeremy Bentham in His Relation to Liberal Nationalism (New York: Columbia University Press, 1932), p. 28.

<sup>2</sup>William Spence Robertson, The Life of Miranda (2 vols.; Chapel Hill: University of North Carolina Press, 1919), II, 90. Hereinafter cited as Miranda.

dreams. In November Bentham was writing to his cousin that he had given up all thoughts of Mexico, but was thinking seriously of going to Venezuela, "a country still more charming . . . If I go thither it will be to do a little business in the way of my trade, to draw up a body of laws for the people there." General Miranda, he explained, had left the country about a fortnight earlier, to put himself at their head.

Bentham told his cousin that one of the province's agents had been brought to England not long before in a king's ship. "I am flattered," he wrote, "with the hopes of a similar conveyance to be granted at their solicitation." He mentioned that a number of "our considerable political characters," including Wilberforce, had spoken, half seriously, of going out to Venezuela. Bentham himself seemed to be very serious:

The good which I could do for mankind if I were in the House of Commons or even if I were minister, is inconsiderable in comparison with 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 . . . that now at length, when I am just ready to drop into the grave, my fame has spread throughout the 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. . . . In the Russian language, two translations of it were made by authority. In Spain, it was received with enthusiasm, and was about to be made use of, had things turned out well there, by the constituted authorities. In my own country, of course, less said of me than in any other; but still my fame is spreading . . .<sup>1</sup>

For all of Bentham's naïve good will, the king's ship never came, nor was his press law adopted. The regulation ordering freedom of the press, published at Caracas in 1811, is clearly patterned on the decree issued by the

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<sup>1</sup>Letter to Mr. Mulford, Nov. 1, 1810, Works of Bentham, X, 458.



Spanish cortes on November 10, 1810; several articles are word-for-word duplications.<sup>1</sup>

In the autumn numbers of El Español for 1810, and in the correspondence of Bentham and of Blanco White, the origin of their acquaintance can be traced. The sixth number of the journal carried a "Notice of an Unpublished Work Entitled Tactique des Assemblées Politiques" by Jeremy Bentham. Blanco introduced his review by telling of his meeting, by "a happy coincidence," the Genevan Etienne Dumont, Bentham's editor, a man whom he had "admired from afar in his writings." Blanco wrote that he told Dumont of his plan to translate and publish an article on the procedures of the House of Commons for the benefit of the cortes, and that Dumont then described to him the unpublished manuscript of Bentham's work on the subject. Later Dumont not only allowed him to examine the manuscript, but sent him a copy of his own prologue to the work, several pages of which Blanco reproduced in his article.<sup>2</sup>

Blanco's comments expressed regret that the work had not yet reached the public. How much light it could bring to the cortes! Mr. Dumont had thought of publishing it when the revolution had begun in Spain, and still would be ready to do so if he were to understand that it would be useful there.<sup>3</sup>

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<sup>1</sup>Cf. Decree of Nov. 10, 1810, Colección de los decretos y órdenes que han expedido las cortes generales y extraordinarias (10 vols.; Madrid: Imprenta Nacional and Imprenta de Don Tomas Alban y Cía., 1820-23), I, 14-17, hereinafter cited as Decretos de las cortes, and "Reglamento de la libertad de la Imprenta en Venezuela," El Español, Nov. 30, 1811, pp. 88-92, quoting Publicista de Venezuela, July 25, 1811.

<sup>2</sup>"Noticia de una obra inédita, intitulada, Tactique de Assemblées Politiques," El Español, Sept. 30, 1810, pp. 430-37.

<sup>3</sup>Ibid., p. 436. See above, p. 20.

About a month after he had published Dumont's material on legislative assemblies Blanco wrote to Lord Holland: "Mr. Bentham has written me a very polite letter, and made me a present of part of his work upon Tactics of Popular Assemblies, which was printed as a specimen of the rest. I shall endeavor to find room for a short extract."<sup>1</sup>

A correspondence was established when Blanco sent his thanks for Bentham's gift. "I am confident," he wrote, "that you will favor the cause of my country with the further communication of such of your observations as you may consider most beneficial to it."<sup>2</sup>

Bentham's answer was written the following day, and he explained that he was taking the earliest opportunity of stating something which might not be too late "for a brief mention in the last sheet of your next El Español." He had read an account of the proceedings of the cortes which mentioned the appointment of a committee to draw up a law relative to liberty of the press, and told Blanco that he himself had been occupied in drawing up such a law at the request of a common friend. With a slight alteration he believed that his proposal might be made suitable for the consideration of the Spaniards. Bentham expressed his hope that Miranda would not regret seeing so early a mention of a work which he must in some sense consider his own, but added: "If things go well where he is gone, he would have given it its chance there before your next Español can probably have reached his hands."<sup>3</sup>

Blanco's response has apparently not been included in his correspondence, as the next letter, dated November 7, scarcely seems to be an answer to

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<sup>1</sup>Letter of Oct. 30, [1810], in Blanco White, Life, III, 334.

<sup>2</sup>Letter to Bentham, Oct. 24, 1810, Works of Bentham, X, 456.

<sup>3</sup>Letter of Oct. 25, 1810, ibid.

Bentham's letter cited above. In the meantime Blanco had learned something of the contents of the proyecto de ley which the Spanish commission had presented, and wished to publish a commentary or critique. He asked Bentham to send him a copy in the original Spanish, if he could obtain one.<sup>1</sup>

El Español of November 30 carried a summary, taken from the notes of "several English gentlemen who were present," of the debate of the cortes on October 15 on the first article of the proposed law.<sup>2</sup> No contribution from Bentham on liberty of the press was published until the issue of January 30, 1811, and at that date the editor's comments indicated that Blanco was still unaware that the cortes had approved the commission's reglamento on November 10. The original plan of publishing the law Bentham had written for Venezuela must have been dropped, as the 1811 article, concerned with theory and principles, does not resemble the detailed prescriptions and question-and-answer commentary of the draft of his law.<sup>3</sup> The material which was printed in El Español does not seem to appear elsewhere in Bentham's works. Because it was quoted more than once in Colombia it may be well to take notice of its leading ideas:

In Sections I and II of the article, the advantages and disadvantages likely to result from a free press are enumerated, so that the legislator might avoid constructing a system which would result in a greater sum of evil than that produced by the earlier legislation. In Section III Bentham showed

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<sup>1</sup>Letter of Nov. 7, 1810, in Blanco White, Life, III, 336.

<sup>2</sup>"Bosquexo de los debates de las cortes sobre el primer artículo del informe de la comisión sobre la libertad de la imprenta," El Español, Nov. 30, 1810, pp. 149-63.

<sup>3</sup>See Bentham's remarks to Dumont concerning this law in a letter of Nov. 3, 1817, Bentham MSS, x, 42.

that a perfect criminal code would contain no special laws regarding the press, which is only a means and can be used for both good and evil purposes.

Ideally, the laws defining assassinations, robberies, treason, rebellion, despotism, etc., would include exact descriptions of all manners and grades of cooperation in these crimes, by the use of the press or other instruments, and fix the penalty for each. Nothing else would be required.

Section IV contains thirteen principles designed to guide the legislator who must work within an imperfect code of laws. Considering supposed abuses of the press by which the institutions of government or the reputation of public officials are attacked, Bentham demonstrated that greater good than evil would result from criticism of this kind; and that it should, therefore, be allowed free expression as a general rule. Particular exceptions in the case of political institutions, if such exceptions are ever really necessary, were left for discussion at another time. Complete freedom to criticize men in public office should always be permitted, because the risks of such a course are very small, and the advantages very great. But as no public benefit can be anticipated from exposing the irregular conduct of a private citizen, those who do so should be obliged to compensate the injured party.<sup>1</sup>

A traditional-minded Spanish<sup>2</sup> or Venezuelan reader must have wondered at the article's silence on the matter of irreligious and licentious writings, but the look-alike regulations adopted at Cádiz and Caracas did treat these problems. And, far from allowing unlimited criticism of political

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<sup>1</sup>"Libertad de la imprenta: Artículo comunicado, en Inglés," El Español, Jan. 30, 1811, pp. 329-334.

<sup>2</sup>The introduction of copies of El Español into Spanish territory was forbidden under severe penalties by the Regency's decree of November 15, 1810, and Blanco was declared guilty of treason against the nation. See Menéndez y Pelayo, Heterodoxos, IV, 219.

institutions, the Venezuelan law prohibited subversive writings directed against the new government under pain of death.<sup>1</sup>

Blanco's translation of the Bentham article was reprinted at the end of the year in La Bagatela, a paper which Antonio Nariño was publishing at Santa Fe;<sup>2</sup> this is the earliest known public citation of Bentham in New Granada, as Angel and Rufino J. Cuervo noted years ago.<sup>3</sup> It does not seem necessary to suppose that Nariño had met Bentham in order to explain the citation, as some writers have suggested.<sup>4</sup> Blanco's journal had been quoted in Santa Fe a year earlier in Fray Diego Padilla's Aviso al Público, December 29, 1810, and the same Bentham article was copied from El Español by the Gazeta de Caracas five months after Nariño had printed it.<sup>5</sup>

In 1812 the Spanish cortes produced a constitution which became a standard of liberalism in Spain and elsewhere. Establishing a limited monarchy with democratic elements considered advanced in that age, it was three times in force in Spain, was proclaimed in Naples in 1820 and in Piedmont in 1821, was the model for the Portuguese document of 1820, and is said to have influenced the constitutions produced in Spanish America during the decade.<sup>6</sup>

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<sup>1</sup>"Reglamento de libertad de la imprenta en Venezuela," article 8, article 19, in El Español, Nov. 30, 1811, pp. 88-92.

<sup>2</sup>"Artículo extractado de los manuscritos ingleses de Bentham y publicado por el Sr. Blanco en su 'Español,'" La Bagatela, Dec. 1, 1811.

<sup>3</sup>Vida de Cuervo, I, 16.

<sup>4</sup>Gutiérrez Ponce, Gutiérrez Vergara, I, 459-60; Armando Rojas, "La batalla de Bentham en Colombia," Revista de Historia de América (Mexico), No. 29 (June, 1950), p. 38. Hereinafter cited as "Bentham."

<sup>5</sup>Issue of April 26, 1812.

<sup>6</sup>Carlton J. H. Hayes, The Historical Evolution of Modern Nationalism (New York: Richard R. Smith, Inc., 1931), p. 134. Hereinafter cited as Nationalism.

The sources of this constitution have become a topic in nineteenth-century Spanish history. At the time of its introduction at Cádiz, those who were opposed to its adoption denounced the work as a servile copying of the French Constitution of 1791. The Preliminary Discourse presented at that time tried to show, on the other hand, that its essence could be found in the old laws and freedoms of Spain. Later commentators have explored these opposing theses, or taken new positions, and a few have declared that the document carries the stamp of Jeremy Bentham. Carlton Hayes wrote: "The revolutionary Spanish Constitution of 1812 betrayed some Jacobin influence, but a large amount of Benthamite liberal influence."<sup>1</sup> Diego Sevilla Andrés found the Preamble "faithful to the doctrines of Bentham . . . which is not strange, considering the influence of this author in our nation."<sup>2</sup> The passage which he cited from the Preamble states that the cortes are convinced that the ancient fundamental laws of the monarchy, accompanied by opportune measures, will be able to fulfill the great object of promoting "the glory, the prosperity, and the good of all the nation."<sup>3</sup>

It is difficult to understand why this statement must be considered so distinctively Benthamite, although it is not far from some of Bentham's expressions. In the work by which he was known in Spain at the time Bentham had defined the great object of the legislator as "the happiness of the

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<sup>1</sup>Ibid.

<sup>2</sup>"La constitución española de 1812 y la francesa del 91," Saitabi (Valencia), VII (1949), 233.

<sup>3</sup>Constitución política de la monarquía española, in Decretos de las cortes, II, 98. Hereinafter cited as Constitución española.

political society."<sup>1</sup> "But this community, I say, is it anything else than the collection of the individuals who compose it?"<sup>2</sup>

Bentham did approve of the Spanish constitution, and particularly of two articles which with greater justification could be said to reflect his principles. These he called "the two leading articles, 4 and 13, into which by far the greatest part of [the Constitution's] merit and beneficial influence is condensed; namely, the so often mentioned principle, by which the greatest happiness of the greatest number is laid down in form in the character of the proper end of government, and as the object to the attainment of which the several arrangements of detail included in that same Code, were meant to be understood as having accordingly been directed."<sup>3</sup>

The two articles cited by Bentham read:

Art. 4 La Nación está obligada a conservar y proteger por leyes sabias y justas la libertad civil, la propiedad, y los demás derechos legítimos de todos los individuos que la componen. (The Nation is obliged to conserve and protect by wise and just laws the civil liberty, the property, and the other legitimate rights of all the individuals who compose it.)

Art. 13 El objeto del Gobierno es la felicidad de la Nación, puesto que el fin de toda sociedad política no es otro que el bien estar de los individuos que la componen. (The object of the Government is the happiness of the Nation, inasmuch as the end of every political society, is nothing else than the well being of the individuals who compose it.)<sup>4</sup>

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<sup>1</sup>Jeremy Bentham, Tratados de legislación civil y penal, Obra extractada de los manuscritos del Señor Jeremías Bentham, Jurisconsulto inglés, por Esteban Dumont, ... y Traducida al Castellano, con Comentarios, Por Ramón Salas, ... Con arreglo a la segunda edición ... (5 vols.; Madrid: Imprenta de Fermín Villalpando, 1821-22), I, 220. Hereinafter cited as Tratados de legislación.

<sup>2</sup>Ibid., I, 25.

<sup>3</sup>Jeremy Bentham, Letters to Count Toreno on the Proposed Penal Code, Delivered by the Legislation Committee of the Spanish Cortes, April 25, 1821: Written at the Count's Request, first published in 1822, in Works of Bentham, VIII, 516. Hereinafter cited as Letters to Toreno.

<sup>4</sup>Constitución española, pp. 98-99, 101.

If these elements in the Constitution of 1821 are not Benthamite, they are surely utilitarian. Yet Bentham did not claim to have inspired them. Even though he saw in these articles another statement of the greatest-happiness principle, he had never pretended that this principle was his own. In one of "hundreds of grateful references to his predecessors,"<sup>1</sup> he once wrote: "Priestly was the first (unless it was Beccaria) who taught my lips to pronounce this sacred truth--that the greatest happiness of the greatest number is the foundation of morals and legislation."<sup>2</sup> And at another time: "A digest of the laws could not have been executed with advantage before Locke and Helvétius had written . . . A sort of action is a right one, when the tendency of it is to augment the mass of happiness in the community. This is what we are indebted for to Helvétius."<sup>3</sup> Halévy, discussing the sources of Bentham's principle of utility, wrote that it was natural that an idea current on all sides should tend to find expression in the same formula.<sup>4</sup> He believed that the utilitarian doctrine, as regards judicial matters, had been established in every particular by the beginning of 1789.<sup>5</sup>

Unquestionably, many of Bentham's eighteenth-century predecessors (and contemporaries) were known in Spain. Although Helvétius was usually cited in order to be refuted, it seems likely that by 1812 a considerable number of

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<sup>1</sup>Mack, Bentham, I, 10.

<sup>2</sup>"From Bentham's Commonplace Book, 1781-85," quoted in Bowering, Memoirs, X, 142.

<sup>3</sup>"Sundry Memoranda of Bentham, Made in 1773-74," ibid., p. 70.

<sup>4</sup>Philosophic Radicalism, p. 22.

<sup>5</sup>Ibid., p. 4.



educated Spaniards understood his thought.<sup>1</sup> Halévy wrote of his chief work, De l'Esprit: "However much this book may be forgotten today, it is impossible to exaggerate the extent of its influence throughout Europe at the time of its appearance."<sup>2</sup> And Ramón Salas declared that everybody had read Beccaria's superb little book.<sup>3</sup> Beccaria, with the other Italian writer Filangieri, is said to have dominated the field of legal and political theory in Spain after 1774.<sup>4</sup>

Of course, it is possible that Bentham's Traité de Législation had had an impact among the doceañistas, and even conceivable that members of the constitutional commission read and utilized it. Menéndez y Pelayo wrote that the first revolutionary generation of Spain was nourished on "flimsy treatises of ideology and public law, copies of Destutt-Tracy or plagiarisms of Bentham, without learning another thing in more than forty years."<sup>5</sup> Nevertheless, it is by no means certain that this work was so widely known in 1812 that the deputies would likely have used it as a major resource, or adopted a constitution that was specifically Benthamite. Toribio Nuñez's letter of 1821, already quoted, may be pertinent here, although Nuñez was probably not familiar with the most highly placed and influential groups in the government:

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<sup>1</sup>See above, p. 15, and Herr, Eighteenth Century Spain, pp. 77, 83, 171; Menéndez y Pelayo, Heterodoxos, III, 558; Polt, Jovellanos, pp. 50-51; Sarrailh, España ilustrada, p. 276. Simón Bolívar once mentioned that he had studied Helvétius in Madrid as a young man before the Revolution. See his letter to Santander, May 20, 1825, in Roberto Cortazar (ed.), Correspondencia dirigida al General Francisco de Paula Santander (v.-; Bogotá: Librería Voluntad, 1964-), II, 514. Hereinafter cited as Correspondencia.

<sup>2</sup>Philosophic Radicalism, p. 18.

<sup>3</sup>"Comentario," Tratados de legislación, I, 207.

<sup>4</sup>Herr, Eighteenth Century Spain, p. 60.

<sup>5</sup>Heterodoxos, IV, 8.

I found [in 1807] all made easy by the operation of your principles, but unfortunately they were unknown in Spain. Even now an acquaintance with them is by no means general. Yet notwithstanding our inveterate prejudices on the one side, and our notions a la Française on the other, a knowledge of them is extending itself; and among the deputies elected for the next Cortes [of 1822] I am convinced there are many initiated in your precious mysteries.<sup>1</sup>

Bentham recommended the Spanish Constitution of 1812 very strongly in his "Letter to the Portuguese Nation" of 1820:

First, as to Constitution. Take example by your friends in Naples. Do as they did. Adopt it as a mass: time permits not of picking and choosing. Exceptions, few in number, mighty in import, I will point out presently. In the scheme of representation you see the basis. Take it for all in all, nothing as yet practicable can be so good for you. For them it is good: for you it will be still better: this you shall see. To find ready made a work already so suitable is a blessing too great for expectation: an advantage beyond all price. Somewhat which I should otherwise have said, I am stopped saying by an odd accident. With the exception of some details, which necessity excludes from Spain, it is exactly the same with the scheme which, without concert, I was planning at exactly the same time.<sup>2</sup>

The lines which follow make it clear that scheme in the last sentence quoted refers to the constitutional articles regarding elections.

Bentham then specified the exceptions he found to the Constitution's suitability: the articles which ordered indirect elections, forbade constitutional amendments over a period of eight years, disqualified members of the cortes for immediate re-election, limited the session of the cortes to three or four months of each year, and provided for biennial elections.<sup>3</sup> But by March, 1822, the defects in the Spanish charter seemed even more important to Bentham. He wrote, in an unpublished letter to Nuñez, that although the Constitution followed the greatest-happiness principle in words, and perhaps

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<sup>1</sup>Letter to Bentham, Dec. 20, 1821, quoted in Bentham, Codification Proposal, p. 572.

<sup>2</sup>Spanish and Portuguese Affairs, p. 482.

<sup>3</sup>Ibid., pp. 482-85.

in design, its details rendered it a "tissue of inconsistencies."<sup>1</sup>

During 1813 Blanco's articles continued to appear in American journals and papers, including the Gazeta Ministerial de Cundinamarca--the official organ of the Nariño government. José Manuel Groot, New Granada's historian and Catholic apologist, later charged that the apostate priest was trying to revolutionize Spanish America against the Pope,<sup>2</sup> but his articles took a position which was really not exceptional among anticlericals and Jansenists both in France and patriot Spain. In March of 1813 the editor exposed his thoughts on the reform of religious orders in Spain, declaring that the outright abolition of the orders was clearly to be desired, but that public opinion would not as yet allow such a step.<sup>3</sup> Groot noted with distaste that this article had been reproduced in Cartagena before the year was out.<sup>4</sup>

The first issue of the year 1814 contained a laudatory review of Dumont's 1811 publication Théorie des Peines et des Récompenses, from the manuscripts of Jeremy Bentham. A footnote referring to the earlier French work Traité de Législation civile et pénale contains the following passage:

An intimate and excellent friend of mine, whom the good fortune of a people of Spanish America which still remains tranquil has brought to exercise the magistracy among them, had begun, before the epoch of the French invasion, a translation of this work, but the hindrances which then existed discouraged him. Oh, that the cares of his office have permitted him to continue that work to the benefit of his nation! No one could do it better, either as regards the depth of judgment required, or the skill and tact with which the

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<sup>1</sup>Bentham MSS, xiii, 290.

<sup>2</sup>Historia eclesiástica y civil de la Nueva Granada (5 vols., 2d ed; Bogotá: M. Rivas & Cía., 1889-93), III, 141. Hereinafter cited as Historia.

<sup>3</sup>"Reforma de los regulares de España," El Español, May, 1813.

<sup>4</sup>Historia, III, 319.

Spanish language must be molded to express ideas to which it is so little accustomed.<sup>1</sup>

Gutiérrez Ponce quoted these lines and declared that they evidently referred to Nariño, who was President of Cundinamarca in 1813. He believed that Nariño had met Bentham when he was in England in 1796, "and also established relations with the sevillano Don José María Blanco, afterwards known as Blanco-White . . . a great admirer of the English jurist, of whose works, consequently we begin to have notice at least from 1797, when Nariño returned to Santa Fe."<sup>2</sup>

This seems to be the foundation of the belief that Nariño, Blanco, and Bentham were friends. Nariño had met Miranda in France in 1796 before he went to England, but since the Venezuelan apparently did not become well acquainted with Bentham until 1809<sup>3</sup> it seems unlikely that he could have arranged a meeting for Nariño. It is doubtful that Blanco was an admirer of Bentham in the 1790's, and, of course, he did not go to England until 1810, but perhaps Nariño could have met him in Spain. Tranquil does seem a strange term to apply to New Granada in January, 1814, in view of the civil war of 1812 and the royalist expeditions under Montalvo and Sámano in 1813. At the time the article was published Nariño was leading troops against the royalists in the South, an endeavor which ended in defeat and cost the General several more years of captivity, in Spain. Nevertheless, the large-scale invasion of New Granada by the famous pacifying expedition under Pablo Morillo was still some eighteen months away in January, 1814.

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<sup>1</sup>"Miscelanea," El Español, Jan.-Feb. [1814], p. 34. Gutiérrez Ponce, copying an error printed in the original, incorrectly dated this article 1813.

<sup>2</sup>Gutiérrez Vergara, I, 459-60.

<sup>3</sup>Robertson, Miranda, II, 62-63.

In the March-April issue Blanco ran a translation of the section of Théorie des Peines et des Récompenses which must have been of greatest interest to his American subscribers, "Political and Economic Principles Concerning Colonies."<sup>1</sup> In this interesting chapter Bentham argued that while the possession of colonies might be useful to a country troubled by overpopulation, it will never enrich the metropolis. It is true that human happiness can be increased by the formation of civilized nations in formerly desert areas, provided that the colonizing nation itself is healthy and industrious and possesses a sound political constitution. In this case it would be well for the colonies to remain a long time under the jurisdiction of the mother country, but they will be a financial charge, not an advantage.<sup>2</sup>

Commerce with colonial regions can be profitable, but it is not necessary to own a country in order to trade with it, as Great Britain's experience with the United States had proved. And even if trade with a formerly subject area were entirely cut off, capital which had been employed there could be invested in other enterprises with equal profit. The sum of commerce in any nation is always in proportion to the available capital, not to the extension of the market.<sup>3</sup>

Taxes levied on colonial commerce can be charged as profitably against foreign trade. A nation can, it is true, force its colonies to trade at a disadvantage, but the cost of combating smugglers and suppressing malcontents

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<sup>1</sup>El Español, March-April, 1814, pp. 106-23. This section corresponds, except for slight differences in the translation, to pp. 147-72 of Teoría de las penas y de las recompensas: Obra sacada de los manuscritos de Jeremias Bentham, jurisconsulto inglés, por Es. Dumont, trans. by D. L. B. (4 vols.; Paris: Masson e Hijo, 1826), IV.

<sup>2</sup>Ibid., pp. 109, 112.

<sup>3</sup>Ibid., pp. 115, 116.

will far outweigh any gain. Add to these expenses the cost which a single colonial war will come to, and it will be seen that colonies have been a burden financially.<sup>1</sup>

To these reflections of an economic nature, Bentham wrote, many considerations of justice and humanity could be added. Colonies are at too great a distance to be governed well; the feelings of their population are viewed with indifference, their resentments with disapproval, their desperation with insults.<sup>2</sup> They should be emancipated as soon as they are capable of a secure independent life. If false mercantilistic ideas and power rivalries could be swept away, wise nations would only desire to see their sons strong enough to be free.<sup>3</sup>

The year 1813 had seen the defeat of the French troops in Spain by the English and Spanish allies, and the end of Joseph Bonaparte's regime. To escape the severe penalties decreed by the cortes, his most prominent Spanish supporters fled the country. Among this group was the granadino Francisco Antonio Zea, who reached England in 1814 but soon took ship for the British Antilles. There Simón Bolívar was also to find asylum after the Spanish Pacificator Morillo had defeated revolutionary armies everywhere in Venezuela and New Granada, and in 1815 Zea would join him in Haiti.

Ferdinand VII, the "long-wished-for" Spanish monarch, re-entered his kingdom in March, 1814, and was enthusiastically received. Confident of his position, he dissolved the cortes in May, disavowed its decrees, and declared the Constitution null and void forever. Liberal leaders were systematically

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<sup>1</sup>Ibid., pp. 119-20.

<sup>2</sup>Ibid., p. 120.

<sup>3</sup>Ibid., p. 123.

pursued and imprisoned during the reactionary period initiated at this time.

With their reform program thus proscribed, Spanish liberals were driven to conspiracy, and found in Freemasonry an institution consonant with their ideals and suited to their needs. The lodges, it appears,<sup>1</sup> were an importation of the early nineteenth century. Interest in Freemasonry had passed from the French to the afrancesados<sup>2</sup>--Lista, for example, had entered a lodge in Seville during the period of French control<sup>3</sup>--and this process must explain, at least in part, the popularization of the institution in Spain. After 1814 numerous liberals became Masons and gave the society an important role in Spanish history.

In the political climate of the reaction the afrancesados conceived the hope of a reconciliation with Ferdinand. The former collaborationists, who considered themselves the victims of the liberals of Cádiz, despite some close ideological affinities between the two groups, produced a series of apologetic works--declarations of their affection for the King, attempts to defend themselves against the imputation of treason, and attacks upon the liberals. The most notable of these efforts was the work of Félix José Reinoso, who had remained in Seville in spite of having compromised himself in

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<sup>1</sup>Ramón Salas, El Cádiz de las Cortes: La vida en la ciudad en los años de 1810 a 1813 (Madrid: Instituto de Estudios Políticos, 1956), p. 325; A. Ramos Oliviera, Politics, Economics and Men of Modern Spain, 1808-1946, trans. by Teener Hall (London: Victor Hollancz, Ltd., 1946), p. 42. Herr concluded that although most histories of Masonry written in the nineteenth century and even in the twentieth century see Spain riddled with Masonry in the late eighteenth century, "this is a fable fostered in the nineteenth century by the Spanish Freemasons and their Catholic enemies for which there is no contemporary evidence. I have seen no indication of Freemasonry in Spain before Napoleon's invasion of 1808 and feel confident that there was none." (Herr, Eighteenth Century Spain, p. 326, n. 42.)

<sup>2</sup>Menéndez y Pelayo, Heterodoxos, IV, 110.

<sup>3</sup>Juretschke, Lista, p. 61.

the time of the French by accepting a prebend to which a patriot priest held the title.<sup>1</sup> His book, Examen de los delitos de infidelidad a la patria, was first published anonymously in France in 1816, and became a compendium of the position of the afrancesados.<sup>2</sup> Reinoso's biographer asserted that its clear treatment of law won for its author a reputation as a modern Grotius.<sup>3</sup> The publication also contributed greatly to Bentham's prestige in Spain, if Menéndez y Pelayo was correct.<sup>4</sup>

Reinoso quoted Bentham to the effect that persecution conducted by a magistrate is of the same nature as that perpetrated by any criminal, but is more active and strong,<sup>5</sup> and that when a punishment would cause more evil than good, "as after seditions, conspiracies, and public disorders," it is not only useful but necessary to use the power of pardoning.<sup>6</sup> A page-long excerpt presented Bentham's contention that an act of depriving a person, without compensation, of an office to which he has a right constitutes a violation of security and property.<sup>7</sup> And Reinoso included a passage which reveals the ease with which the early works of Bentham could be used to support a conservative

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<sup>1</sup>Juretschke, Afrancesados, pp. 200, 217.

<sup>2</sup>Ibid., p. 218.

<sup>3</sup>Antonio Martín Villa, "Noticias de la vida del Sr. D. Félix José Reinoso," in Obras de Don Félix José Reinoso. Sociedad de bibliófilos andaluces, 2d Ser. (Seville: Imprenta de D. Rafael Tarasio y Lasso, 1872-79), I, lxviii. Hereinafter cited as "Vida de Reinoso" and Obras de Reinoso.

<sup>4</sup>See above, p. 14.

<sup>5</sup>[Félix José Reinoso], Examen de los delitos de infidelidad a la patria imputados a los españoles sometidos bajo la dominación francesa (Auch, France: Imprenta de la Sra. Viuda de Duprat, 1816), p. 322.

<sup>6</sup>Ibid., p. 401.

<sup>7</sup>Ibid., p. 170.



position. He wrote that he was entirely persuaded that "the best constitution for a people is the one to which they are accustomed," quoting the proposition which Dumont had attributed to Bentham in the Preliminary Discourse of the Traités. In Spain the monarch had always exercised the faculty of legislation, Marina's historical studies notwithstanding. It had been a mistake to violate the privileges of the monarch, the clergy, and the nobles, and to assemble the cortes as a single body.<sup>1</sup>

Although Bentham was by no means the only authority cited in the Examen, he must have been very influential in the thought of Lista and Reinoso. In 1817 Lista referred to Bentham, in a letter to Reinoso, as "your master and mine." He discussed the new emphasis which French writers were giving to the power of the king, and to the central part which he should have in legislation, a function which, to a greater or less degree, "even the most rabid constitutions, such as the Constitution of 1791 and the Constitution of Cádiz," had conceded to the crown. But Lista advised his friend, while keeping this truth in mind, to "return to your Bentham and to your Spirit of the Laws, and don't hope for new light from the authors of the day, except perhaps in minor questions."<sup>2</sup>

Later, during the constitutional period following the revolution of 1820, the former afrancesados emerged as a party of moderate liberals; and Lista, then one of the editors of El Censor, an organ of the group, described in his political articles the value of a "moderating, regulating, or intermediate party,"--a "third force," of which "Bentham as well as Constant had forgotten to speak."<sup>3</sup>

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<sup>1</sup>Ibid., pp. 6-7.

<sup>2</sup>Letter of Dec. 10, 1817, in Juretschke, Lista, p. 543.

<sup>3</sup>Ibid., p. 358.

## CHAPTER II

### LIBERATION AND PROVISIONAL GOVERNMENT

#### IN CUNDINAMARCA, 1819-1821

After the return of peace and the restoration of the traditional monarchy, the Spanish government directed its attention to the pacification of America. In 1815 and 1816 Venezuela, and then New Granada, were reconquered by the expeditionary force under General Morillo; Cartagena was taken in December, 1815, after a siege of 106 days, and on May 6 the Spanish entered Santa Fe de Bogotá without meeting resistance. A day earlier two thousand republican troops under General Serviez, with Colonel Santander second in command, had left outlying Usaquén in a retreat to the remote eastern llanos of the province of Casanare. The army immediately suffered mass desertions and was pursued by an enemy detachment; only fifty-six men reached Pore with Serviez and Santander on June 23.<sup>1</sup>

An assembly held at Arauca on July 16 designated Santander military commander of the patriot remnant in Casanare, but during the next month the soldiers and emigrés had to withdraw still further, into Venezuela, to escape capture by a force sent from Santa Fe.<sup>2</sup> There Santander's brief command was absorbed by the authority of the llanero chief José Antonio Páez, whose daring leadership was winning the mounted plainsmen, formerly royalists, over to the cause of independence. Santander fought with the llaneros in the valley of

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<sup>1</sup>Henao and Arrubla, Colombia, p. 283.

<sup>2</sup>Ibid., p. 298.

the Apure during the remainder of 1816, but early the next year he went with other officers to southeastern Venezuela to join Bolívar. The indomitable Liberator had returned from the Antilles to assemble a force which included llaneros, hired volunteers from Europe--especially from the British Isles--and various other reinforcements, and to effect an alliance with the troops of Páez operating farther to the west.

Zea was in the company at Angostura, the headquarters Bolívar had chosen near the mouth of the Orinoco River far south of Caracas and the Spanish-held territory, an especially desirable site because it afforded water communication with Europe and the rest of the world. In 1818, when Bolívar ordered the publication of a weekly gazette "to refute the calumnies of the Spaniards, especially of the Gaceta de Caracas . . . explain the principles which justified independence, and give the homeland and foreign nations news of the war,"<sup>1</sup> he charged the ex-afrancesado with the chief responsibility of editorship. There is no doubt that during these days Zea took particular notice of his younger countryman Santander, and that their relationship was at least conventionally cordial; they certainly discussed the future of their common homeland, as later correspondence would show.

Santander's career took an important turn in August, 1818, when the Liberator promoted him to the rank of Brigadier General and authorized his return to Casanare. He was commissioned to create and command an army there, looking to the overthrow of the Spanish in all of the New Kingdom. Santander had really been expecting this honor, and probably he had for a long time thought it likely that he would assume the responsibilities of leadership in

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<sup>1</sup>José Manuel Restrepo, Historia de la Revolución de la República de Colombia (8 vols., 3d ed.; Bogotá: Ministerio de Educación Nacional, 1942-50), V, 75. Hereinafter cited as Revolución.

New Granada when liberation came. General Serviez had been assassinated in 1816, and he had been a foreigner--a French officer serving the republican cause. En route to eastern New Granada in October, Santander wrote to General Páez: "My position is so natural, and was even so slow in coming, that already the London gazettes speak of me as if I were operating in Casanare."<sup>1</sup> He had shown before this time that he was determined to do whatever he could to defend New Granada against arbitrary annexations by the Venezuelan armies; in a letter to Páez on this topic he had written: "Force has no right whatsoever to destroy the system established by the free and spontaneous will of men."<sup>2</sup> Zea, too, must have foreseen Santander's destiny, and had apparently given him some counsel. "I remind you of all our conversations and ask that you forget nothing," he wrote to him in December, 1818.<sup>3</sup> By this time Santander was in Casanare, establishing his authority over the military and political affairs of the province.

During late 1818 Bolívar felt that certain military successes justified the assembling of a representative body to sanction his authority, and to advance his plans for the creation of a great unitary republic in the territory of the old viceroyalty. The London Morning Chronicle of December 26, 1818, quoted Bolívar's speech proposing the convocation of this assembly to his council of state, and in this way the interesting news came to the attention of Jeremy Bentham. Almost at once Bentham composed a long letter to the General, but for some reason did not send it. A substantial fragment remains

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<sup>1</sup>Letter of Oct. 3, 1818, Cartas y mensajes del Gral. Francisco de Paula Santander, comp. by Roberto Cortázar (10 vols.; Bogotá: Librería Voluntad, 1953-56), I, 89. Hereinafter cited as Cartas y mensajes.

<sup>2</sup>Letter of June 22, 1818, ibid., p. 78.

<sup>3</sup>Letter of Dec. 1, 1818, Archivo Santander, I, 373.

in rough copy among the Bentham papers,<sup>1</sup> and seems to indicate that Bentham's intention was to offer his assistance to the projected assembly, probably in his capacity as draftsman of legal codes. As proof of qualifications he wrote a number of pages describing the reputation he enjoyed in the United States, France, and Spain.

In this connection Bentham announced the proximate appearance of his works---those edited by Dumont--in the Spanish language. Part of the translation would be the work of Mr. Antonio A. Jonte, whom Bentham had met in March or April, when he was Chile's agent in Great Britain. Jonte had expressed his admiration for these books and his resolution to translate them for publication in Buenos Aires, "for the use of that state and Chile."<sup>2</sup> This gentleman had introduced Bentham to Bernadino Rivadavia, at that time the "appointed agent of Buenos Ayres" in England,<sup>3</sup> and Rivadavia had proposed doing a translation of "the first and principal" of the works; that is, of the Traité de Législation civile et pénale. Jonte had accordingly agreed to begin work on another of them, the Traité des sophismes politiques, which had been published in 1816 as the second volume of Tactique des Assemblées législatives.<sup>4</sup> It should be noted that Bowring's Memoirs of Bentham contain the information that

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<sup>1</sup>Bentham MSS, x, 3-6. Bentham's notation on sheet 6, dated Jan. 24, 1820, says that the draft had been written "more than a year ago but not sent."

<sup>2</sup>Ibid., sheet 3. According to Alfred Hasbrouck a man named Jonté, representing Buenos Aires, was enlisting recruits for the South American wars at a London office during 1819. See his Foreign Legionaries in the Liberation of Spanish South America (New York: Columbia University Press, 1928), p. 164.

<sup>3</sup>Draft letter, Bentham to Bolívar, n. d., Bentham MSS, x, 3.

<sup>4</sup>Ibid., sheet 4.

Rivadavia was engaged for some time with such a project, but that his work never saw the light.<sup>1</sup>

Another translation of the Traité de Législation was said to be in progress. This information, Bentham wrote for Bolívar, had come from his brother, Sir Samuel Bentham, "whom you saw at my house."<sup>2</sup> Sir Samuel was residing in southern France in 1818, and had heard that Don Pedro de Mendoza, identified as a Professor of Law at the University of Santiago and member of the Royal Academy of Public Law at Madrid in the time of King Joseph,<sup>3</sup> had not only finished the translation but had sent the work to be printed, and was "in treaty with a bookstore at Nismes to forward it to the New Governments in South America."<sup>4</sup> Samuel Bentham had received this information from another afrancesado exile, Cambronero, an acquaintance of his at Montauban, who had been Head of the Judiciary Department, under the Minister of Justice, in the time of Joseph Bonaparte, and had occupied himself in "giving currency to [Bentham's] works at Madrid during that short reign."<sup>5</sup> Bentham added to all of this that even before the French occupation of Spain a certain ecclesiastic had instructed his friends with gratuitous lectures based upon the Traité de Législation, or so he had been told by Blanco White.<sup>6</sup>

Mendoza's translation apparently came to nothing, even as Bentham's

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<sup>1</sup>x, 500.

<sup>2</sup>Draft letter, Bentham to Bolívar, n. d., Bentham MSS, x, 4.

<sup>3</sup>Ibid., sheet 4; Letter, Sir Samuel Bentham to Jeremy Bentham, Dec. 4, 1818, Bentham MSS, xiii, 1.

<sup>4</sup>Draft letter, Bentham to Bolívar, n. d., ibid., x, 4.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

letter never left England, but Bolívar's plans for an assembly, on the other hand, did materialize in the Congress of Angostura, which opened its sessions in February, 1819. The granadino Zea was chosen president of this body and was probably its most influential member,<sup>1</sup> which well suited Bolívar's dream of uniting New Granada--and Quito--with Venezuela. Meanwhile Santander was raising a respectable force in Casanare and soon began to send encouraging reports based on information he was receiving from the interior of New Granada; an invasion of the granadino highlands through Casanare and across the eastern cordillera of the Andes became a serious possibility.

Writing to the Venezuelan Colonel Pedro Briceño Méndez on June 1, 1819, Santander repeated his conviction that the time was opportune for an assault on the New Kingdom, where men and resources could be gathered for a strong united effort against the Spanish. He deplored recent evidences of rivalry, but thought that a union of Venezuela and New Granada, freely accepted by the legitimate representatives of both peoples, could be successful. "We are going to remake the world,"<sup>2</sup> he wrote on this date, which was really the eve of the invasion, for Bolívar's army was already approaching Casanare, and entered the province three days later.<sup>3</sup>

Santander wrote a postscript to this letter which indicated that the reconstruction might involve more than a redrawing of the political map. "I am sending a reform of religious communities which has been sent to me from the Kingdom [New Granada] by the prelate of one of them, for what influence it

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<sup>1</sup>Letter, Bolívar to Santander, Dec. 22, 1819, Correspondencia, II, 92.

<sup>2</sup>Cartas y mensajes, I, 259.

<sup>3</sup>Henao and Arrubla, Colombia, p. 314.

may have in our enterprise."<sup>1</sup> This paper, bearing the title "Reform of religious communities which the Most Eminent Señor Archbishop of Toledo will put in practice for the purpose of limiting the excessive number of religious," is printed with Santander's letter in the Archivo Santander,<sup>2</sup> and outlines a program characteristic of the kind of radical religious reform which had been discussed in Spain for years, and had become part of the liberal program. It was very likely a production of the constitutional years 1810-1813, but the Cardinal Luis de Borbón, Archbishop of Toledo, had been associated with projects for the reform of the orders years before either the Napoleonic regime in Spain or the cortes tried their hands at it.<sup>3</sup>

The presence of this document in Santander's correspondence surely indicates his interest, in 1819, in reform along the lines marked out by the liberals of Spain. The circulation of this Spanish paper in New Granada at the time is, of course, understandable, as "normal" relations with the metropolis had obtained there since 1816.

Zea wrote to Santander on June 22, and included in his letter the first reference to Jeremy Bentham found in Santander's correspondence. He was extremely busy at Angostura, for in addition to writing for the Correo del Orinoco and attending to other accumulated responsibilities, he was now fulfilling the office of vice president in the government set up there. He complained to Santander that he could not find time to write to him at length as he would wish:

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<sup>1</sup>Letter to Briceño Méndez, June 1, 1819, p. 260.

<sup>2</sup>II, 154-55. Santander's notation records that he sent a "legal copy" of the proyecto to Briceño Méndez.

<sup>3</sup>See Menéndez y Pelayo, Heterodoxos, IV, 146.



The people have poor habits, and it will cost much to make them understand that it is wrong to insist that the executive be judge of the primary court, administrator, provision clerk, and everything he shouldn't be in order to govern. The illustrious Bentham says very well that metaphors have perverted the principles of government and politics. The idea of going to the source is the cause of this disorder, just as the idea of the Mother Country which he cites has given rise to fancied obligations which are equally repugnant to reason and to nature.<sup>1</sup>

Zea was citing here Bentham's chapter dealing with "false methods of reasoning in legislative matters" from the Traité de Législation.<sup>2</sup>

On June 22, the date of Zea's communication, the liberating army began its heroic ascent of the cordillera. Infantrymen and cavalry from Casanare had been added to Bolívar's Venezuelan troops and foreign legionaries; Santander commanded the advance guard.

Boyacá, on August 7, was the climax of the campaign--a republican victory which left Santa Fe so defenseless that the viceroy fled when the news arrived. Bolívar with a small number of aides hurried ahead of his escort to establish his authority within the city, arriving on the afternoon of August 10, the day after the Spanish exodus.<sup>3</sup>

## II

Bolívar remained at Santa Fe for a little longer than a month, during which time he organized a de facto government which left the precise status of the New Kingdom quite obscure.<sup>4</sup> Santander was given the title Vice President

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<sup>1</sup>Archivo Santander, II, 166.

<sup>2</sup>Tratados de legislación, I, 162.

<sup>3</sup>Henao and Arrubla, Colombia, p. 326.

<sup>4</sup>David Bushnell, The Santander Regime in Gran Colombia, University of Delaware Monograph Series, No. 5 (Newark, N. J.: The University of Delaware Press, 1954), p. 10. Hereinafter cited as Santander Regime.

of New Granada,<sup>1</sup> and remained in the capital to administer the liberated areas along the lines of the existing Spanish system, while he mobilized their resources in support of the war.

In December Santander admitted feeling some incapacity for this office to Dr. José Manuel Restrepo, a civilian who was to perform distinguished service in the highest appointive offices, and win the respect of scholars for his histories of the times:

I confess to you in good faith that I find myself very perplexed in the labyrinth of the government. I know nothing but war, because I pride myself on having attended to the duties of the profession which chance assigned to me; I am a stranger to all the other areas of knowledge--economic, political, and the rest--which a man placed at the head of a people in revolution should possess.<sup>2</sup>

He continued to make protestations of this kind, mainly to Restrepo, and wrote near the end of his first vice-presidential period:

During my government I have tendered my resignation three times: I have sought counsel on whatever matters have not been military; whenever it has been possible I have delegated my faculties; a mortal hatred of administering matters foreign to my profession has been my most frequent sentiment.<sup>3</sup>

Given the responsibilities of his office and the acute problems of the times, such statements can be understood, but they should not be accepted uncritically. Santander was definitely more than a man of action--a soldier in politics. In the first place, as a former classmate from San Bartolomé reminded him, he had "the happiness of having received [his] education in a

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<sup>1</sup>His title was changed to Vice President of Cundinamarca by the Fundamental Law of Union passed by the Congress of Angostura in December, 1819. At that time Santa Fe was dropped from the name of the capital city of Cundinamarca, which became simply Bogotá.

<sup>2</sup>Letter of Dec. 7, 1819, Cartas y mensajes, I, 355.

<sup>3</sup>Letter to Restrepo, Aug. 22, 1821, ibid., III, 299.

colegio," which was more than some of the leaders of the day could claim.<sup>1</sup>

Santander was genuinely interested in learning. He may have been influenced in this respect by his uncle, Dr. Nicolás de Omaña, a priest and professor at San Bartolomé, to whose direction his schooling had been entrusted when he came to Santa Fe as a student at the age of thirteen.<sup>2</sup> Omaña was apparently rather outstanding among the educators of his time. In 1811 the junta suprema of New Granada commissioned him and another citizen to purchase printing presses and weapons in the United States; when the priest returned he brought with him from Philadelphia a young man who was to inaugurate a course in English at San Bartolomé.<sup>3</sup> He became rector of the colegio in 1812,<sup>4</sup> and Santander's letters indicate that he and his uncle kept up some kind of contact at least into 1814.<sup>5</sup>

Santander's earliest responsibilities as a young officer seem to have been secretarial.<sup>6</sup> Even in 1814 he wrote, "You know that in the midst of flies, heat, dances, girls, etc., I am tireless with the pen."<sup>7</sup> This is not to deny his admirable military record, which is presently receiving much attention

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<sup>1</sup>Letter, Bernadino Tobar to Santander, March 25, 1820, Archivo Santander, IV, 190.

<sup>2</sup>Manuel José Forero, Santander: Su vida, sus ideas, su obra (3d ed.; Bogotá: Editorial Aguila, 1937), p. 24. Hereinafter cited as Santander.

<sup>3</sup>Groot, Historia, IV, 114.

<sup>4</sup>"Colegio de San Bartolomé: Cuadro biográfico de los rectores," Constitucional de Cundinamarca (Bogotá), Dec. 4, 1831.

<sup>5</sup>See his letters to Nariño, Jan. 15, 1813, and to Manuel del Castillo, June 4, 1814, in Cartas y mensajes, I, 7, 51.

<sup>6</sup>Forero, Santander, p. 25.

<sup>7</sup>Letter to Manuel del Castillo, Aug. 6, 1814, Cartas y mensajes, I, 56.

from Colombian historians, but only to say that he was a warrior and something beyond that. David Bushnell, having analyzed his attitudes and policies as Vice President of Gran Colombia, considered Santander more of a civilian intellectual than an army officer.<sup>1</sup>

His love of books cannot be doubted. He assisted the historian Restrepo by collecting all the materials he could purchase or otherwise obtain and sending them to him in Antioquia. A passage in their correspondence indicates that Santander not only had continued his reading while he was serving with Bolívar in Venezuela, but that he had not limited himself to books written in Spanish: "He visto la obrita Outline, etc., en Guayana, y aun yo traduje la parte de Nueva Granada . . ." <sup>2</sup> (I have seen the little work Outline, etc., in Guayana, and I even translated the part about New Granada . . .) Friends in a position to send him books from abroad were repeatedly asked to obtain specific works; at the time of his death Santander's library contained 1,266 volumes.<sup>3</sup>

During these years of the provisional government Santander's statements on political theory reveal his hopes that the government would one day conform to liberal ideals, but also his conviction that independence would have to come first. Granadinos of that time had been deeply impressed by the disasters of the period 1810-1816, which the national histories call the

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<sup>1</sup>Santander Regime, p. 213.

<sup>2</sup>Letter, Santander to Restrepo, June 19, 1820, Cartas y mensajes, II, 180.

<sup>3</sup>Martínez Briceño, Rafael, "La biblioteca del General Santander," Boletín Cultural y Bibliográfico (Bogotá), IV, No. 1, p. 14.

patria boba,<sup>1</sup> and tended to place the blame on an excess of theorizing and constitution making, and especially on premature experimentation with the federal form of government which had been successful in the United States.<sup>2</sup> With the outcome of the war still in doubt, Santander and other leaders were determined to be "realistic and not naïve," as Bolívar said the new republic would be.<sup>3</sup>

A few months after the victory at Boyacá Santander published anonymously in the Gaceta de Santa Fe de Bogotá an extended letter to the editor which gave a detailed account of the campaign; the provisional military government Bolívar had set up was defended on the grounds that any vigorous government capable of defeating the Spaniards was preferable to their cruel domination.<sup>4</sup> The article argued that, by and large, the citizens were even then protected in the enjoyment of their essential rights,<sup>5</sup> and there was, moreover, no reason to doubt the Liberator's promise that he would convoke the free and legitimate representation of the peoples, where the bases of the future system would be fixed. "The rights of free men will be restored in all their fullness to the granadinos."<sup>6</sup>

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<sup>1</sup>This phrase has been translated as naïve fatherland in Robert Gilmore, "Federalism in Colombia, 1810-1858," (unpublished Ph.D. dissertation, University of California, Berkeley, 1949), p. 4, n. 6. Hereinafter cited as "Federalism in Colombia."

<sup>2</sup>Ibid., pp. 1-2, 9, 21, 24.

<sup>3</sup>Letter, Bolívar to Santander, Nov. 8, 1819, Correspondencia, II, 64. Bolívar's expression is "Esta patria es caribe y no boba." Quoted and translated in Gilmore, "Federalism in Colombia," p. 36.

<sup>4</sup>Un Granadino [Santander] to the Editor of the Gaceta de Santa Fe, Oct. 4, 1819, Cartas y mensajes, I, 298.

<sup>5</sup>Ibid., p. 297.

<sup>6</sup>Ibid., p. 300.

In his private correspondence Santander was naturally more candid, even with civilian liberals like J. M. Restrepo and José María del Castillo, while his letters to Bolívar seem almost to overstate the case for his tough-mindedness. He wrote to Restrepo in December, 1819:

Right now it is necessary to save the country, as you very wisely say, and afterwards we will occupy ourselves in making it free and happy. . . . There are many who clamor against the military government, and I hate it too, but without it it isn't possible to save ourselves.<sup>1</sup>

In June, 1820 to Bolívar:

I have seen various Chilean publications of the year 1818, which do very little honor to that republic. Liberty of the press is the best means invented to discredit a people and a government, and if the government and people are in the state of formation, the devil can take them, as he took New Granada.<sup>2</sup>

In August, 1820, to Castillo, referring to the future constituent congress:

Would you believe that I feel an aversion to this meeting? At recalling the realities of our former congress, its willingness to capitulate, its withdrawal in time of danger, I become angry and would like to forget that we need a representative system. I'm not more attracted when I consider that the intrigues will be repeated, and that four ambitious men could demolish the structure we have raised at such a cost. . . . If we return now to the system of sessions, considerations, apathy, irresolution, and collegial bodies, we will return without fail to death. . . . While the Spanish knife is at my throat without hope of salvation, by means licit or illicit, this will be my opinion. . . . Let us finish with the godos and then let come the congresses, deputations, electoral colleges, liberty of the press, etc., etc., etc.<sup>3</sup>

In view of the systematic executions which had followed the Spanish reconquest of 1816, Santander's plain statement that his life was in jeopardy must be considered accurate. He could have added, but probably did not need to, that all the republican leaders, civilian as well as military, would be in

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<sup>1</sup>Letter of Dec. 7, 1819, ibid., p. 354.

<sup>2</sup>Letter of June 16, 1820, ibid., II, 177.

<sup>3</sup>Letter to José María del Castillo, Aug. 19, 1820, ibid., p. 258.

grave personal danger if the revolution should fail; perhaps this was really the point he wished to make.

In September Santander wrote, again to Castillo:

Experience . . . has taught me that in our revolution without resources, without a well decided opinion, it is impossible that there be order, discipline, and whatever there would be in more tranquil times. It is necessary that a very unlimited power preside among our peoples, and this power should make itself more feared than loved. Without this, believe me, we would not have a patria, nor will we have it unless the government understands the maxim "the welfare of the people is the supreme law." I am much the enemy of despotism, especially military despotism, but even more the enemy of the Spanish . . .<sup>1</sup>

By September, 1820, Santander had a right to say that he had learned from experience. He had governed Casanare from late November 1818, to June, 1819, and had been acting Chief of State in liberated New Granada since Boyacá, during which time he had acquired some specialized knowledge of the sovereign people. He had just described for Bolívar some of the things he had learned from the experience of draining the country of recruits and supplies:

The people judge by external things; they are not capable of calculating what they will lose if we suffer a reverse; we offer to better their condition, and because that improvement doesn't touch them yet they detest liberty. What they desire is that a son or a father should not be taken from them to be a soldier, that not a real, not a horse, not a weapon--nothing be asked. . . . Twenty-five recruits come and I am surrounded by thirty women and forty children crying for their husbands and fathers; to talk to them of the patria is to speak an unknown language.<sup>2</sup>

The difficulty of Colombia's liberal leaders seems clear: because of the ongoing state of warfare and the absence of a "well decided opinion," they could not seriously follow out the implications of popular sovereignty and other approved doctrines consecrated by the North American and French

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<sup>1</sup>Letter of Sept. 29, 1820, ibid., p. 312.

<sup>2</sup>Letter to Bolívar, Sept. 23, 1820, ibid., pp. 301-302.

revolutions. In 1821 Restrepo must have proposed Jean Jacques Rousseau's solution to the problem, and Santander said that he approved:

I am much pleased with your opinion that if we leave the people in absolute liberty we will return to the former disastrous anarchy, and that it is necessary to force them to be free; such has been the principle which has guided me in my government to restrain a little the subjects' liberty. . . . I have believed, and still do, that to drive the Spaniards out of the country comes first, by whatever means and at the cost of irregular and even unjust measures, if there are no others, and to teach the people to obey blindly; afterwards follows the adoption of all the liberal institutions of a really free people.<sup>1</sup>

Many, including Bolívar, doubted that peace would really change this situation: would not illiteracy, "fanaticism," a wide divergence in the cultural levels of the races, caudillismo, local separatist movements, and other evils destroy stable and progressive government if the people were really allowed to work its will, to make and break social contracts as it pleased?

The dilemma of the South American liberals was not unique, though their problems were different from those of their European counterparts, who had to somehow take power out of the hands of kings and nobles, as well as priests, while keeping it from the still uninstructed democracy. Among the continental liberals of 1815, the chastened survivors of the French Revolution and the Napoleonic Wars, Montesquieu had been the most highly regarded of the old philosophes precisely because of his gratifying vagueness on the question of sovereignty.<sup>2</sup> Authors who employed the principle of utility proved to be still more satisfactory, and many of the cautious European progressives of the post-Napoleonic era came to favor this formula as the answer most suited to the

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<sup>1</sup>Letter to J. M. Restrepo, Jan. 9, 1821, ibid., III, 10.

<sup>2</sup>Artz, Reaction and Revolution, p. 93.



times.<sup>1</sup> By 1821 a few Colombians may have read in Bentham's Traité de

Législation:

The true political bond is in the immense interest of men in maintaining a government; because without government there is no family, no security, no property, no industry. Here is where the base and justification of every government, no matter what its form or origin, should be sought; by comparing the government with its object, one can reason solidly about its rights and obligations, without having to refer to supposed contracts which serve only to produce interminable disputes.<sup>2</sup>

Possibly no one had read Bentham's critique of the various declarations of the rights of man and of the citizen, which he called "anarchical fallacies," published in 1816 in the second volume of the Tactique des Assemblées législatives. Although the same doctrine is taught in the Traité de Législation, there is a passage in the later work which neatly justifies Santander's withholding recognition of the citizens' rights during the war:

What is the language of reason on this point? This: reason says that, public happiness being the only principle which should be attended to in establishing laws, there is no right whatsoever which should not be preserved, while it is advantageous to society, and none which should not be abolished when it becomes harmful.<sup>3</sup>

Bentham's works did become known in Colombia and achieved remarkable popularity there; not least among their merits would have been the utilitarian treatment of sovereignty. The Spaniard Toribio Nuñez testified that when the Traité de Législation appeared in Spain he saw in them the causes of the

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<sup>1</sup>Ibid., pp. 82-85.

<sup>2</sup>Tratados de legislación, I, 166.

<sup>3</sup>Jeremy Bentham, Tratado de los sofismas anárquicos, in Tratado de los sofismas políticos, por Jeremías Bentham. Nueva edición aumentada con el tratado de los sofismas anárquicos por él mismo (Madrid: Imprenta de D. L. Amarita, 1838). Hereinafter cited as Sofismas anárquicos and Sofismas políticos.

failure of the French Revolution.<sup>1</sup> Bentham's greatest admirers in Spain seem to have been afrancesados and moderados who were as eager for reform and progress as the Spanish American liberals, but probably just as fearful of anarchy.

The Colombian leaders of this period showed little interest in democracy; the very word was looked upon with disfavor.<sup>2</sup> It may seem strange, in view of Bentham's record as a radical reformer and a democrat, that he was soon to become their favorite author. But the fact is that Bentham had come only gradually to support democratic reform, when his career was already well advanced--between 1808 and 1818, according to the most widely accepted account.<sup>3</sup> The Tratados de legislación civil y penal, far more than any other of Bentham's works, were the volumes which were read and studied in Colombia, and this material had been written almost in its entirety before 1789.<sup>4</sup> During that early period Bentham had been indifferent to forms of government, actually behind the times in politics, while his doctrine was ahead of the age in judicial matters.<sup>5</sup> A series of personal experiences and associations changed his opinion, although his principles also led easily to the position that political power should be placed in the hands of the greatest number, who would be the best judges and promoters of their own interest and happiness.

Bentham stated his early position in the Tratados de legislación:

If one were to form a political theory about the national representation . . . one would soon be able to prove that what should be established is the universal suffrage or right to vote. . . . [But]

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<sup>1</sup>See above, p. 14.

<sup>2</sup>Bushnell, Santander Regime, p. 18.

<sup>3</sup>Halévy, Philosophic Radicalism, pp. 254-64.

<sup>4</sup>Ibid., pp. 153, 515-17.

<sup>5</sup>Ibid., p. 4.

in submitting this question to the principle of utility it is not the logic of the argument, but only the effects which should be studied. As regards the election of a legislative assembly, the right to vote should be granted only to those of whom it can be believed that they will possess the confidence of the nation in exercising it. Elections decided by the vote of those in whom the nation places no confidence will undermine the confidence it should have in the legislative body to be elected.<sup>1</sup>

There is nothing to indicate that Santander was familiar with Bentham's writings during the period of the provisional government. His most comprehensive statement on political theory, written in May, 1821, seems to follow very closely the doctrine of the popular origin of sovereignty as it had been treated by the classical Spanish school and taught by the Jesuits in New Granada down to the time of their expulsion. This exposition was part of a letter Santander wrote to the Spanish-born Bishop of Popayán, who had fled to royalist-held territory, to ask him to return to his diocese and continue his episcopate under the republican regime. He may have tailored his statements to his correspondent, but he did publish the letter in the Gaceta:

Now let us see the question in the part which claims relation to public law and look into the true origin of legitimate authority. It is true that it all comes from God; but the author of nature has left to secondary causes the power to produce their effects. . . . Thus it is that man, with life and spirit, receives from God the faculty to sustain himself, provide for his security, better his condition, and establish himself in society in the manner that may appear best to him; the union of these faculties forms the general authority of the nation, which is founded in a monarchy, or republic, or whatever; the result of this founding is a legitimate power, whether considered on the part of public law or of the Gospel.

These are the truths, Illustrious Señor, which all peoples proclaim and the Spanish nation itself knows and practices, truths with which the bishops of Spain are imbued, as are the most notable men of all nations, even the Catholic ones. Only absolute power has ever disavowed them and has wished that they never be known; the kings have announced themselves emanations of the divinity and

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<sup>1</sup>I, 173-174.

have pretended to persuade others that they have received their authority from God immediately. They have blasphemed impiously; such imposters could only have been tolerated in those times of darkness and blindness . . .

In the passage which follows Santander located the times of the absolute monarchs rather too far back into the medieval period, identifying them with the days of trial by ordeal, and of papal attempts to dispose of kingdoms and thrones--days that dishonored the human race, philosophy, and reason. The argument continues, utilizing examples drawn from the revolution which had occurred in Spain in 1820:

But now the lights are different and all of us, Spaniards and Americans, know that civil power comes originally from God and immediately from the people. . . . If Ferdinand had received his authority from God in the sense in which all, including Your Illustrious Lordship, used to preach it, would it have been necessary for the nation assembled in cortes to proclaim the sovereign anew? Would the nation have been able to limit his faculties and submit him to a law of which the preceding centuries had no notion?

Let us apply these doctrines to Colombia. . . . America in its infancy needed to depend on Spain; it obeyed its government and observed its laws; now it is in the robust age proper for emancipating itself, and it wishes and desires this, not because the tutelage has been discharged by Spain in a manner to which it is impossible to refer . . . but because it believes itself capable of managing its affairs for itself and of making itself the equal of other nations. . . . From here, then, comes the authority of the peoples of Colombia and the legitimacy of the power we are exercising among them . . .<sup>1</sup>

Legitimacy in another form, that is, respect for the letter of the law, is now remembered as Santander's most outstanding virtue as a magistrate. During this early period he could disregard the liberal creed to the extent of telling Bolívar that he would vote for him as President for life,<sup>2</sup> but he already seemed convinced that a policy of legality (insofar as conditions

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<sup>1</sup>Letter of May 27, 1821, Cartas y mensajes, III, 176-78.

<sup>2</sup>Letter, Santander to Bolívar, Sept. 26, 1820, ibid., II, 311.

allowed)<sup>1</sup> would really be the best safeguard against chaos. He wrote in June, 1821: "My principles have convinced me that a society in which the laws are not respected by him who governs, and above all the penalties are not carried out, is a true anarchy."<sup>2</sup> He wrote of his government of Cundinamarca: "If I have used the legislative faculty, it is because I have detested arbitrary acts, and if my laws have been severe, circumstances dictated that they should be."<sup>3</sup>

Santander's insistence upon strict legality was to be so characteristic of his administration that Bolívar, in a famous letter of 1825, would call him the "man of laws"; this title was a source of pride to Santander during his lifetime and is still associated with his name. His concern for the integrity of the constitution and the laws, clearly related to his fear of anarchy, is recorded in numerous statements made throughout his career. It probably represents one reason why Jeremy Bentham's writings, emphasizing clear, explicit, statute law, which would preclude arbitrary interpretations and "judge-made laws," would attract him. Their attitudes did not coincide perfectly, as the Bentham treatises which were popular in Colombia were concerned mainly with civil and penal laws and their application in the courts, while Santander, although he emphasized a rigorous application of the penal laws, was considering constitutional law and administration as well. He made repeated declarations that he was only the executor of the laws and the constitution and could not exceed the limits these imposed, and seemed to hope that the laws could become so perfect that the discretionary powers of the

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<sup>1</sup>Bushnell, Santander Regime, p. 69.

<sup>2</sup>Letter to Restrepo, June 22, 1821, Cartas y mensajes, III, 214.

<sup>3</sup>Letter to Restrepo, Aug. 22, 1821, ibid., p. 299.

executive could be reduced to a minimum. In 1824 he wrote: "The day in which the executive can do only what the laws prescribe for all imaginable cases, we will have made the solid advancement of our government secure . . ."1 and "The republic of Colombia would no longer be in a state of infancy if we had a code of laws which, embracing all the imaginable cases, would leave neither to the magistrates, nor to the citizens, any doubt as to the measure of their conduct."2

There is much evidence that Santander was a Freemason during this period of his life. According to the historian Groot, events at Bogotá during his first weeks in office indicated Santander's affiliation with the society.

Acting in accord with the usages of the "war to the death," he later claimed, and justified by the provocations of the prisoners, he ordered the execution of thirty-eight Spanish officers who had surrendered at Boyacá, including the young commander Colonel José María Barreiro. On the morning he was to be shot, wrote Groot:

Barreiro wanted to talk with General Santander, but he refused. Then he sent to him his masonic credentials and the insignias of his high degree, knowing that Santander was a brother, but [Santander] said that the fatherland came before Freemasonry. We have had in our hands the diplomas and insignia of Barreiro, and also his masonic books.3

Groot, an ardent spokesman for the orthodox Catholic position in the religious disputes of the time, is recognized as a "biased but invaluable source" on Masonry for this period, as he was himself a member of the lodge founded at

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<sup>1</sup>Message to the President of the Senate, May 18, 1824, ibid., IV, 430.

<sup>2</sup>Message to the President of the Cámara de Representantes, May 22, 1824, ibid., p. 442.

<sup>3</sup>Historia, IV, 48.

Bogotá in 1819 or 1820, and the nephew of one of its founders.<sup>1</sup> Bushnell considered Groot's treatment of all aspects of the Gran Colombian period "biased but extremely well informed."<sup>2</sup>

Within a year Santander published an explanation of this act of reprisal in a manifesto "to the Government of the Republic and to the civilized world."<sup>3</sup> He felt obliged to do so because Zea, on the first lap of an official journey abroad, had written from the Antilles to the permanent deputation of the Congress of Angostura requesting that that body take action to repair the scandal which news of the executions had caused in Caracas and

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<sup>1</sup>Bushnell, Santander Regime, p. 212, n. 72. Groot implied that the Bogotá lodge was founded in 1820; at least he stated that regular meetings in a rented house began to be held in January of that year (Historia, IV, 84-85). He seemed to think it possible, however, that Freemasonry had existed at Santa Fe at some earlier time (ibid., II, 238). In 1853 Fray Joaquín Gálvez wrote that in 1820 he had been initiated in the lodge "Fraternidad de Bogotá," installed the previous year ("Franca exposición de un religioso," El Catolicismo [Bogotá], Oct. 29, 1853). Julio Hoenigsberg believed that the meetings held in Nariño's home had been Masonic, but offered no real proof for this supposition (Influencia revolucionaria de la masonería en Europa y América [Bogotá: Editorial A. B. C., 1944], pp. 167-69, hereinafter cited as Masonería). This author wrote that the "Fraternidad bogotana" became affiliated with the Masonic organization in Jamaica, and that Francisco Urquinaona (Groot's uncle) traveled to the English colony to obtain the necessary authorization (Santander y Bentham, p. 33). A letter to Santander from Alejandro Osorio, dated July 6, 1821, indicates that Urquinaona had just completed the mission at that time (Correspondencia, IX, 471). A Masonic lodge was founded at Angostura by the Englishman James Hamilton in 1820 (Bushnell, Santander Regime, p. 211).

<sup>2</sup>Santander Regime, p. 366.

<sup>3</sup>"El General de División F. de P. Santander, Vicepresidente de Cundinamarca, presenta al Gobierno de la República, y a los pueblos del mundo civilizado, los motivos y razones que le obligaron a ordenar la ejecución de 38 oficiales españoles, prisioneros de la campaña de 1819, verificado en la ciudad de Bogotá, el 11 de octubre del mismo año," in Archivo Santander, II, 343-78. First published in 1820. Hereinafter cited as "Motivos y razones."

before world opinion.<sup>1</sup> To defend his action Santander appealed to the natural law, which justified Bolívar's war to the death as a means of self-preservation.<sup>2</sup> It seems significant that seventeen years later, when he wrote an apology for another widely criticized execution, he cited Bentham's theory of penal law instead.<sup>3</sup>

In the early 1820's the Bogotá lodge was flourishing, and at some point Vice President Santander was elected its Venerable.<sup>4</sup> Groot's account of this organization is interesting and believable. He recorded that membership was prized because it provided one with the opportunity, rare in those days of lingering colonial formality, of associating familiarly with leading figures in the government and in the city's commercial life.<sup>5</sup> Freemasonry was very popular among the Liberators; Bushnell has called it a sort of continent-wide officers' club.<sup>6</sup> In Spain after the restoration of Ferdinand VII the Masonic lodges had become the organs of liberalism and army officers had been initiated in large numbers. According to Juna Ferrando Badía, it was the intellectual bourgeoisie, together with part of the officer corps, which made up the secret societies which began to swarm in the

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<sup>1</sup>Zea is quoted in the letter of the President of the Deputation of the Sovereign Congress to Bolívar, May 24, 1820, reproduced in Santander's "Motivos y razones," p. 343.

<sup>2</sup>Ibid., p. 367.

<sup>3</sup>Santander, "Apuntamientos para las Memorias sobre Colombia y la Nueva Granada," first published in 1837, in Archivo Santander, I, 78.

<sup>4</sup>Groot, Historia, IV, 141.

<sup>5</sup>Ibid., pp. 148-49.

<sup>6</sup>Santander Regime, p. 212.



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Peninsula in the first years of the Restoration.<sup>1</sup> Apparently a number of the officers of the Spanish expeditionary force in America were Freemasons; Groot called them "masons and founders of Freemasonry," and Hoenigsberg declared that Pablo Morillo himself had been initiated into the brotherhood.<sup>2</sup>

Besides members of the military officialdom, all of Santander's secretaries of state, the ministers of the Supreme Court, many wealthy merchants, lesser government office-holders, and liberal-minded priests and friars joined the lodge at Bogotá; "rare was the man who wished to pass for enlightened and talented who was not received as a Mason."<sup>3</sup> While he emphasized its recreational, social, and business advantages, Groot also considered the lodge a school of anti-religious propaganda and a "parody of Spanish liberalism."<sup>4</sup>

Probably it was not the lodge as much as his position as acting Chief Executive that brought Santander into close contact with the leading civilian liberals of Santa Fe. One of the first whose collaboration he sought was Dr. Vicente Azuero, the lawyer, journalist, and public servant who would be called Colombia's "earliest and most enthusiastic partisan of the doctrines of Jeremy Bentham."<sup>5</sup> Azuero had survived the Reign of Terror at the capital, though he

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<sup>1</sup>"Vicisitudes e influencias de la Constitución de 1812," Revista de Estudios Políticos (Madrid), No. 126 (1962), p. 176.

<sup>2</sup>Groot, Historia, III, 513, n. 1; Hoenigsberg, Masonería, p. 148.

<sup>3</sup>Groot, Historia, IV, 148-49.

<sup>4</sup>Ibid. Santander remained a member of the lodge until 1823, by which time both he and Bolívar seemed to consider Freemasonry troublesome to the republican regime. See Restrepo, Revolución, VIII, 239.

<sup>5</sup>Fabio Lozano y Lozano, "Apuntes para la biografía del Doctor Vicente Azuero," in Documentos sobre el Doctor Vicente Azuero, ed. by Guillermo Hernández de Alba and Fabio Lozano y Lozano (Bogotá: Imprenta Nacional, 1944), p. xlvi. Hereinafter cited as "Azuero" and Documentos sobre Azuero.

later testified that he suffered intermittent harassment and imprisonment during the Spanish occupation,<sup>1</sup> and was one of an assembly of notables who presented a statement of the city's gratitude to Bolívar's army after the battle of Boyacá.<sup>2</sup> On September 15, 1819, Santander recommended that Dr. Azuero be appointed the government's legal counsel on military affairs, while he could continue to discharge his duties as asesor de hacienda.<sup>3</sup>

There seems to be little doubt that Azuero directed the first newspaper in Santa Fe after the liberation, the official publication known initially as the Gazeta de Santa Fe de Bogotá and later as the Gazeta de la Ciudad de Bogotá.<sup>4</sup> When the Gaceta de Colombia began its official life in Bogotá the name of the older gazette was changed again--to the Correo de la Ciudad de Bogotá at first and finally to the Correo de Bogotá. Groot's history records that Azuero and Francisco Soto were responsible for the Correo in 1822, when the public still considered it semiofficial, and common opinion held that Santander himself was another of the anonymous editors.<sup>5</sup>

Eduardo Acevedo Latorre, who made a careful study of the men who worked with Santander, noted that during the first years of his government

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<sup>1</sup>Quoted in Eduardo Acevedo Latorre, Colaboradores de Santander en la organización de la república (Bogotá: Editorial Cromos, 1944), p. 46. Hereinafter cited as Colaboradores.

<sup>2</sup>"Acta de la junta de la capital, Sept. 9, 1819," in Archivo Santander, II, 266-71.

<sup>3</sup>Letter, Santander to Bolívar, Cartas y mensajes, I, 268-69.

<sup>4</sup>Acevedo Latorre, Colaboradores, p. 49; Lozano y Lozano, "Azuero," p. xvii. See also the aviso in the Gazeta de Santafé de Bogotá, Jan. 23, 1820, which informs the public that subscriptions for the paper should be left with Dr. Vicente Azuero.

<sup>5</sup>Historia, IV, 219, n. 3.

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Azuero held official posts which were, in reality, of secondary importance; and that, therefore, the effects of his labors might be presumed to have been quite limited. "Nevertheless," wrote this historian, "when we study the history of Colombia . . . we end by concluding that Doctor Azuero was one of the most important, perhaps the principal, of Santander's collaborators from the beginning of his administration . . ."<sup>1</sup>

This conclusion is supported by one of Santander's letters to Bolívar on the early date of February 15, 1820. He had been informed of the creation of the republic of Colombia by decree of the Congress at Angostura on December 17, 1819, and wrote that he would be happy to be relieved of his duties as Vice President under the new arrangement, suggesting that he might well be replaced by a civilian. "Hasn't Roscio," he asked, "without being a military man, been able to obtain the vice presidency of Venezuela? Why cannot Restrepo, Echevarría, or Azuero . . . merit that of Cundinamarca?"<sup>2</sup>

José Tiburcio Echevarría, Santander's second nominee, had been appointed civil governor of the province of Bogotá at the time of its liberation. He is not specifically remembered as a Benthamite, but he did meet Bentham a few years later when a change of appointment took him to England, and their acquaintance has left some interesting traces in the archive of the English philosopher.

Bushnell considered Vicente Azuero and Francisco Soto Santander's most conspicuous political supporters.<sup>3</sup> Dr. Soto, already mentioned as co-editor

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<sup>1</sup>Colaboradores, p. 45.

<sup>2</sup>Cartas y mensajes, II, 51. Ellipsis is in the published letter.

<sup>3</sup>Bushnell, Santander Regime, p. 11.

of the Correo de la Ciudad de Bogotá in 1822, was an outspoken liberal and anticlerical with a special interest in political economy. He was named governor of Pamplona during the weeks following Boyacá.

The independent government soon gave evidence of its liberalism in the most admirable way, when it registered, in an order of Bolívar of October, 1819, its first efforts to promote the founding of schools.<sup>1</sup> The dedicated services which liberals of the nineteenth century, European and American alike, rendered to the cause of popular education surely present a more attractive history than do their attacks upon the clergy and the established churches. Yet the two activities were related, for education, according to the liberal creed, had to be state-controlled. Spanish and Colombian liberals shared the characteristic zeal for public enlightenment, and Santander especially is remembered gratefully for the very real beginnings which he made, against great obstacles, in establishing an improved system of public schools.<sup>2</sup>

In the remaining sections of this chapter the years 1820 and 1821 will be examined for evidence of events in England, Spain, and America which made Santander and his associates aware of the value of Bentham's thought. Not least among the agents of this development will be Bentham himself and certain of his friends, Bolívar, Naríño--possibly, and the Spanish revolution of 1820, which occasioned increased interest in political writings and the translation of several of Bentham's works, publicized his name in the Spanish world because of the personal role he attempted to play, and intensified the influence of the Spanish liberals over the Colombian reformers. In surveying

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<sup>1</sup>Ibid., p. 183.

<sup>2</sup>Orlando Fals Borda, La subversión en Colombia: El cambio social en la historia (Bogotá: Departamento de Sociología, Universidad Nacional, and Ediciones Tercer Mundo, 1967), p. 107.

Colombia's history during these two years, minor attempts on the part of delegates to the constitutional convention to utilize Bentham's writings will be pointed out, as well as the means by which Santander and the Congress consolidated the state's control over the educational system, as this was the major area in which his government would try to apply the fruits of Bentham's labor to the profit of the new republic.

### III

On January 1, 1820, Spain's trienio constitucional was opened with insurrection among the large expeditionary force assembling at Cádiz for service in the American war; Colonel Rafael Riego, commanding the Asutrias battalion, was the first to raise the standard of rebellion. The revolution, in which a severe depression and fiscal shortages brought on by the war years and the loss of the American empire had had a part,<sup>1</sup> was the work of dissatisfied liberals and the disaffected military class, operating through the Masonic lodges, and was almost bloodless. By July the Constitution of 1812 had been proclaimed and the cortes assembled, but the early promise of the movement seemed less sure when rivalry among exaltados and moderados, former afrancesados, liberals of the Cortes of Cádiz, and the younger romantic revolutionaries, orthodox Masons and schismatic Comuneros became evident. Meanwhile Spain's economic troubles were not relieved, and the anticlericalism of the cortes introduced a bitter religious issue.

Jeremy Bentham saw in the plastic state of Spain's legal and political institutions an opportunity to promote the greatest happiness of the

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<sup>1</sup>C. Wentz Fehrenbach, "Moderados and Exaltados: The Liberal Opposition to Ferdinand VII, 1814-1823" (Paper presented at the 1967 meeting of the Southern Historical Association, Atlanta, Georgia, Nov. 10, 1967).

greatest number. On April 18, 1820, five weeks after the King had accepted the restored constitution, he published his first overtures to the Spanish nation in the columns of the London Morning Chronicle. His article opened with the salutation "Spaniards!"--in the style of the military proclamations of the time--and outlined his objections to the severe penalties threatened against any Spaniard who would refuse to swear allegiance to the liberal constitution.<sup>1</sup>

Bentham's appeal against the decree was only the small beginning of his efforts on behalf of the Spanish revolution. During the remainder of the year he composed a "Letter to the Spanish Nation on the . . . Proposed House of Lords," four letters "On Liberty of the Press and Public Discussion," and a pamphlet containing "Observations on Judge Advocate Hermosa's Panegyric on Judicial Delays . . ." Apparently all were sent to Spain in the hope that they would be published there, and the first letter did appear, translated into Spanish by José Joaquín Mora, who was at that time editor of the Madrid newspaper El Constitucional.<sup>2</sup> On August 18, 1820, Mora announced a Spanish version of the series on liberty of the press in an article which was highly complimentary to Bentham,<sup>3</sup> but the work was interrupted by his imprisonment and was never resumed.<sup>4</sup>

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<sup>1</sup>Morning Chronicle (London), April 18, 1820. Bentham's article is dated April 14.

<sup>2</sup>The translation was published as Consejos que dirige a las Cortes y al pueblo español Jeremías Bentham, traducidos del inglés por José Joaquín de Mora (Madrid: Repulles, 1820).

<sup>3</sup>Cuervo and Cuervo, Vida de Cuervo, II, 184, citing El Constitucional.

<sup>4</sup>"Advertisement," Jeremy Bentham to the Spanish People on the Liberty of the Press and Public Discussion, first published in 1821, in Works of Bentham, II, 276.

All of this material was published in England in 1821. Two of the articles formed part of a little work with the candid title Three Tracts Relative to Spanish and Portuguese Affairs, With a Continual Eye to English Ones,<sup>1</sup> which leaves no doubt that Bentham believed that Englishmen could profit from lessons drawn from events in Spain. It has even been suggested that Bentham's letters to the Spanish people were intended for the home mail all along,<sup>2</sup> but there is so much evidence that Bentham really hoped to have an influence in Spain, and even become its lawgiver, that this conclusion cannot be accepted. Among his unpublished papers are numerous letters which he addressed to persons in Spain in an effort to have these messages, and his legislative proposals, translated, published, or brought to the attention of the cortes or the ministry. And both John Bowring and Edward Blaquiére have left testimony of their personal efforts, during visits to the Peninsula, to interest prominent liberals in Bentham's writings.<sup>3</sup> It is impossible to believe that Bentham was insincere when he offered Spain his advice.

The result of these attempts to intervene at high levels of government were disappointing in the end. But during the constitutional period the

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<sup>1</sup>This publication is included in the Works of Bentham, VIII, 463-86.

<sup>2</sup>Courtney Kenny, "A Spanish View of Bentham's Spanish Influence," Law Quarterly Review, XI, No. 41 (January, 1895), 58. Hereinafter cited as "Bentham's Spanish Influence."

<sup>3</sup>See Bowring, Memoirs, X, 516, 528-30; Edward Blaquiére, An Historical Review of the Spanish Revolution, Including Some Account of Religion, Manners, and Literature in Spain (London: G. & W. B. Whittaker, 1822), pp. 582-84, hereinafter cited as Spanish Revolution; Letter, Blaquiére to Bentham, July 10, [1820], Bentham MSS, xiii, 6; Letter, Blaquiére to Bowring, Dec. 28, 1820, ibid., sheets 123-24; Draft headed "Matter for a Letter proposed to be written by Mr. Bowring in behalf of Mr. Bentham to Count Toreno, Member of the Spanish Cortes, and employed by him in a Letter (in Spanish) sent from Q[ueen's] S[quare] P[lace] . . . 28 Nov., 1820, ibid., sheets 75-85.

Dumont editions of Bentham's works did attain genuine prominence in Spain, along with other French legal and political treatises, and the first Spanish translations appeared. Menéndez y Pelayo declared that among Spanish jurists Benthamism became a vogue, which endured even during the years 1834-37, another period of liberal influence.<sup>1</sup> José Antonio Maravall, analyzing the work Principios naturales de la moral, la política, y de la legislación by Francisco Martínez Marina, the very celebrated historian of Spain's traditional representative institutions, found that its central theme was the refutation of Benthamism, which "had penetrated very widely in Spain" by 1824, when Martínez Marina's book was published.<sup>2</sup> The Spanish Ateneo, founded in June, 1820, for the purpose of introducing liberal ideas, was employed in expounding and disseminating, above all others, the works of Bentham, Constant, and Destutt de Tracy to serve this end.<sup>3</sup> Alberto Lista was one of the outstanding instructors in this institution, which seems to have been a venture in adult education, akin to the Athénée of Paris.

The leading philosophy of the day was "no longer the sensationalism of Condillac, but a gross materialism, ultimate extract and quintessence of the ideology of Destutt-Tracy and the physiological observations of Cabanis, to which Bentham's utilitarian morality and politics were a worthy complement," wrote Menéndez y Pelayo.<sup>4</sup> The political writings of Benjamin Constant and the Idéologue Destutt de Tracy, and those of the Doctrinaires Royer-Collard and

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<sup>1</sup>Heterodoxos, IV, 181, n. 46.

<sup>2</sup>"El pensamiento político en España a comienzos del siglo XIX: Martínez Marina," Revista de Estudios Políticos (Madrid), LIX, No. 81 (May-June, 1955), 50.

<sup>3</sup>Juretschke, Lista, p. 115.

<sup>4</sup>Heterodoxos, IV, 178.



Victor Cousin were also greatly admired, as they were in France and elsewhere on the Continent, while Rousseau and the Social Contract were falling into discredit.<sup>1</sup>

There are certain common elements in the thought of these writers. Constant and the Doctrinaires owed much to the writings of Montesquieu;<sup>2</sup> Royer-Collard and Victor Cousin were more conservative than Constant or Destutt de Tracy, but shared many of their views.<sup>3</sup> The opinions of Destutt de Tracy, who wrote on political questions as well as philosophical "ideology," were so close to Bentham's that Artz referred to him as one of the men who spread Bentham's views on the Continent.<sup>4</sup>

Bentham's works probably could not have been translated, or his utilitarian morality taught openly during the years 1814-1820, when the traditional monarchy, press censorship, and Inquisition had been restored. A book such as Reinoso's which praised Bentham's writings in a general way, but cited his opinions only on non-sensitive legal points, was able to become very popular, but Ramón Salas, Bentham's translator and commentator, wrote in his prologue to the Tratados de legislación:

When I dedicated myself to this work I was very far from believing that it could ever see the light in Spain; but now that the infamous religious Inquisition and the policy of superstition and despotism have disappeared from our beautiful land . . . and we are enjoying the holy liberty of the press, only sure guarantee of all the other liberties, I have thought I would be able to publish this work with utility to my dear country . . .<sup>5</sup>

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<sup>1</sup>Ibid., p. 181, n. 46.

<sup>2</sup>Artz, Reaction and Revolution, p. 93.

<sup>3</sup>Ibid., p. 95.

<sup>4</sup>Ibid., p. 84.

<sup>5</sup>"Prólogo del traductor," Tratados de legislación, I, xii.

News of the Riego revolt reached Bogotá on May 14. The Gazeta of that date added an extra to permit fuller coverage of the momentous events, and published as much information as had been brought by a French ship which had reached the Orinoco at the end of March.<sup>1</sup> Rufino Cuervo's biographers described the joy and excitement with which these notices were received, and the hope of peace which was awakened. The Gazeta's article closed with the words:

America congratulates you, brave champions of liberty--America, who has suffered with you and much more than you. . . . Remember that you have brothers in this hemisphere who [also] aspire . . . to establish the rule of law and to save the patria.<sup>2</sup>

On May 16 Santander informed Bolívar that Bogotá had celebrated the announcement with "the pealing of bells, dancing, the firing of rockets, etc.," and that he had rushed copies of the Gazeta to all parts. His own comment was somewhat restrained: these events, he wrote, were "without doubt very important."<sup>3</sup> The accounts in the next issue of the gazette spoke with greater ardor of the "triumph of liberal principles," and reproduced from the Correo del Orinoco an article which supplied more gratifying details, taken from El Español Constitucional of London.<sup>4</sup> Zea, who heard the news in St. Thomas, considered the situation so hopeful that he decided to cancel his scheduled trip to the United States and proceed at once to London; the Venezuelan Vice President advised Santander that the conventionalists of Spain had Zea so enchanted "that he now thinks we don't need guns any more."<sup>5</sup>

<sup>1</sup>Gazeta de la Ciudad de Bogotá, Capital del Departamento de Cundinamarca, May 14, 1820.

<sup>2</sup>Ibid.

<sup>3</sup>Cartas y mensajes, II, 132.

<sup>4</sup>Gazeta de la Ciudad de Bogotá, Capital del Departamento de Cundinamarca, May 21, 1821.

<sup>5</sup>Letter of Juan G. Roscio, May 5, 1820, Archivo Santander, IV, 250.

In September the Correo del Orinoco carried an article with the title

"Third Letter of an American to His Friend," which included this passage:

Let's stop citing extreme cases: we cannot cease to be Spaniards, to speak the same language, to venerate the religion of our fathers, to have family interests with the people of the peninsula, unless violent efforts are made to tear from us these goods which are so dear to us. . . . Emancipation will succeed in recouping [our] love for that people.<sup>1</sup>

The letter, dated March 12, 1820, had originated in Cádiz and was signed "Henry Somoyar"; the real author, however, was none other than Antonio Nariño, who had been a prisoner of the Spanish since he had surrendered in Pasto in May, 1814. If he did not use false dates as well as a pseudonym, he wrote the letter while he was still a prisoner, before the fortunes of revolution released him on March 23. He chose to remain for two months on the Island of León, "at the side of the illustrious defenders of liberty," as he wrote of the revolutionary army to his old friend Zea. "The heroes of the transformation of Spain desire our independence with the same sincerity that they desire their own."<sup>2</sup> In May he left Cádiz for Gibraltar, England, and, ultimately, America.

Colombia's military leaders were not so ready to believe that the Spanish liberals would end the war. Representatives of the Spanish did meet with Bolívar's commissioners during November, when a six-month armistice was arranged, but Bolívar was determined that any permanent settlement must give full recognition to Colombia's independence. Nevertheless, he and his officers banqueted with Morillo and the Spaniards when the November conference closed,

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<sup>1</sup>Correo del Orinoco, Sept. 16, 1820.

<sup>2</sup>Letter of June 1, 1820, in El Precursor: Documentos sobre la vida pública y privada del General Antonio Narino, ed. by Eduardo Posada and Pedro M. Ibáñez (Bogotá: Imprenta Nacional, 1903), p. 479. Hereinafter cited as El Precursor.

exchanging every sign of tolerance and brotherhood,<sup>1</sup> and he wrote to Santander during the next month: "We should hope for everything from the Spaniards now that they are free, just as we feared all when they were servile."<sup>2</sup>

There is every indication that for a period of time following the Riego Revolt, Spain became almost respectable in the opinion of Colombian liberals, or more accurately, that segment of Spain which was also liberal, the intelligent and articulate minority which regretted the "three centuries of barbarism" to which they reduced Spain's modern history as much as Colombians did.

During this period influences from the Peninsula, which had always been decisive in the intellectual life of the colony, were renewed, or, one should say, reinforced, for they had never been cut off. Even when much of Spain was under French control news and opinions--and authors such as Blanco White--found their way from Cádiz to London, and from London there were many channels open to America. Practically the whole territory of New Granada had been restored to Spanish rule from 1816 to 1819, when a real effort had been made to re-establish the civil institutions and political relationships of the colonial system.<sup>3</sup> José María Ots y Capdequi's investigations in the Bogotá archives have shown that the reform decrees of the Cortes of Cádiz are on file along with the royal cédulas and orders of the last days of Spanish control,<sup>4</sup>

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<sup>1</sup>Henao and Arrubla, Colombia, pp. 346-47.

<sup>2</sup>Letter of Dec. 22, 1820, Correspondencia, II, 245.

<sup>3</sup>José María Ots y Capdequi, Las instituciones del Nuevo Reino de Granada al tiempo de la independencia (Madrid: Consejo Superior de Investigaciones, 1958), pp. 315-89, hereinafter cited as Instituciones del Nuevo Reino; J. M. [Ots y] Capdequi, "Impact of the Wars of Independence on the Institutional Life of the New Kingdom of Granada," ed. and trans. by M. C. Kiemen, Americas, XVII (October, 1960), 131-32.

<sup>4</sup>Ots y Capdequi, Instituciones del Nuevo Reino, pp. 315-89.

and Caracas was not liberated until 1821. The number of influential Colombians who spent time in Spain during the independence period, in or out of confinement, is remarkable; Zea and Nariño are only the best known. The Cuervos recorded that at the height of the enthusiasm for the Spanish constitution-  
alists the "Hymn of Riego"--the Marseillaise of the Revolution of 1820--was sung at Bogotá with as much enthusiasm as at Madrid,<sup>1</sup> and that for a long time Colombians were extremely proud to believe that its author was Lino de Pombo, a granadino serving in the Spanish army. In due course Pombo returned to America and was Santander's Secretary of Interior in the 1830's--while responsibility for the Hymn was eventually conceded to the Spaniard Evaristo San Miguel.

The course of Spanish politics could be followed in the major foreign newspapers, or with greater detail in the Spanish-language journals and papers published in London by Latin Americans living abroad, or by Spanish liberal expatriates such as the editors of El Español (1810-1814) and El Español Constitucional (1818-1825). News came from Spanish and near-Spanish sources as well. The pages of the Correo del Orinoco and the Bogotá press of this period contain a good deal of material culled from the gazettes of the Antilles, including Puerto Rico, and the newspapers of Gibraltar, Cádiz, and Madrid. The Colombian editors sometimes referred to Spanish papers or letters which had been received, and there are similar references in Santander's correspondence.

Successive waves of emigrating intellectuals and political activists kept Paris and London supplied with Spanish writers and translators, first the afrancesados and then the men of Cádiz, and their work found its way to Spanish America. The liberals who fled after Ferdinand was restored to his prerogatives by the French in 1823 again took up their pens and flooded the South American market with a variety of publications, including some

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<sup>1</sup>Vida de Cuervo, I, 13.

translations of Bentham, probably following the imperious necessity of eating, as the Cuervos said, as much as any desire to indoctrinate the Americans.<sup>1</sup>

By whatever channels, the fact seems to be that a heightened interest in Jeremy Bentham, and certain other writers, which was felt among the Spanish liberals from 1820 to 1823, was communicated from Spain to Colombia during those years, or from Spanish Paris or London after that time. Bentham's letters to Bolívar and other persons living in Colombia, the gifts of his writings which he presented, and his personal attempts to intervene in Spanish affairs, which were imperfectly understood in America, gave him additional exposure from time to time and added to his prestige. Yet it is true that Bentham had been known in Spain before 1820, and, to some degree, was also known in New Granada. Vicente Azuero has left some testimony on the point, written in 1826. His references to the earliest appearances of Benthamism are too vague to inspire much confidence:

From the ominous times of the ancient government Bentham's tratados de legislación were the object of the studies and secret meditations of the Camillo Torres, the Camachos, the Pombos, and other illustrious martyrs and first founders of independence; his doctrines were inserted in La Bagatela, which General Nariño published in the first epoch of the Republic.<sup>2</sup>

But he is on firmer ground in the passage which follows:

Where does this sudden persecution of the works of Bentham come from? . . . For many years Bentham has been known, cited, copied, and venerated by various of our national writers, even since the time of the Spanish domination and the infamous Inquisition. In the greater part of the librerías, and in the hands of all the jurists, is the discourse on crimes and punishments written by Don Marcos Gutiérrez and placed at the end of the first volume of his Práctica criminal de España; there Bentham is cited with high praise, and his

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<sup>1</sup>Ibid., p. 26.

<sup>2</sup>Vicente Azuero, "Representación dirigida al Supremo Poder Ejecutivo contra el presbítero doctor Francisco Margallo--1826," in Hernández de Alba and Lozano y Lozano (eds.), Documentos sobre Azuero, p. 290. Hereinafter cited as "Representación contra Margallo."

doctrines are utilized and explained. In the times of the Spanish Cortes his Tratados de legislación were translated and commented upon for the purposes of public instruction, and have circulated freely, without being impeded by the fact that, according to the Constitution of that government, the Catholic religion was the religion of the State, the only and exclusive religion.<sup>1</sup>

The work Azuero was citing is Práctica criminal de España by José Marcos Gutiérrez, first published at Madrid, 1804-06, which had gone through five editions by 1828, besides publication as part of an eight-volume legal collection.<sup>2</sup> Gutiérrez based his discourse on the works of modern authors, beginning with Becarria, and admitted heavy reliance upon the treatise of Larizabal, published in Spain in 1782.<sup>3</sup> It is certainly too much to say that Bentham's doctrines are explained in this work, as only his ideas on prison reform are even alluded to. He is cited just once, without any particular praise or blame. Gutiérrez described a plan for a house of correction which a Spanish group known as the Royal Association of Charity had drawn up, and mentioned that the authors had utilized data on the penal institution at Philadelphia and material from the Panopticon plan of the English juriconsult Bentham, included in his Traité de Legislation civile et penale.<sup>4</sup>

This reference could hardly have alarmed the Inquisition, but it does indicate that Spanish reformers and professional jurists were taking some notice of the Traité by 1806. The circulation of the Discourse in New Granada illustrates transfer of a knowledge of Bentham from Spain to America

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<sup>1</sup>Ibid., p. 289.

<sup>2</sup>Antonio Palau y Dulcet, Manual del librero hispano-americano (2d ed., v.-; Barcelona: Librería Anticuaría de A. Palau, 1948-), VI, 485. Hereinafter cited as Manual del librero.

<sup>3</sup>José Marcos Gutiérrez, "Prólogo," Discurso sobre los delitos y las penas, in Práctica criminal de España (3d ed., 3 vols.; Madrid: En la Imprenta de D. Fermín Villalpando, 1824), III, n. p. Hereinafter cited as Práctica criminal.

<sup>4</sup>Gutiérrez, Práctica criminal, III, 289.

through normal channels, by means of a legal treatise which was accepted as a standard source.

Azuero did not mention that extracts from Bentham's works had long been available in New Granada wherever there were old copies of El Español, but they certainly had been, and at least one Bentham article was utilized from this source by Azuero himself, for the benefit of the Congress of Cúcuta in 1821. Nor did he refer to the 1802 French edition of the Traités, and actually there seems to be no evidence that it was well known in New Granada. On the contrary, the Cuervos wrote:

The French version of Dumont had scant circulation among us, and thus it appears to be beyond all doubt that without the Spaniards' enthusiasm for Bentham, thanks to which his works were popularized and made available to Colombian youth under such special circumstances, they perchance would never have left the closets of the learned to be converted into the standard of a party on the grounds that they were the mark of patriotism and liberalism.<sup>1</sup>

Groot, the Cuervos, and Gutiérrez Ponce agreed that the successful revolt of 1820 gave Spanish liberal thought an unprecedented influence in Colombia during its earliest years, but of these sources, the Life of Rufino Cuervo offers the most interesting generalizations. Cuervo's sons wrote:

In the first steps which our revolution took one can see the impulse of the doctrines proclaimed in France; then the prosperous condition of the United States and the power which Great Britain had attained under her liberal institutions increased our inclination to look to foreign nations for all things, and to despise the inheritance of the metropolis. But when the patriots seemed to have definitely allied their ideology and their aspirations to the order and stability of the Anglo-Saxon nations, and to the graceful literature of France with the remembrances of Greece and Rome which it evoked, an unlooked-for event distracted them from such thoughts for a time.<sup>2</sup>

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<sup>1</sup>Vida de Cuervo, II, 184.

<sup>2</sup>Ibid., I, 12.



That event was the Spanish revolution, and the Cuervos took no neutral position on its effects in Colombia:

Hardly had the patria been recovered [in 1819] when there came to us the maleficent influence of the Spanish liberals, with their ideas on public ecclesiastical law and their nimble writings so apt to undermine piety and the institutions of religion; and what is more singular, Spanish liberalism served as the bridge over which foreign sensationalism and utilitarianism were communicated to us, with their crudity aggravated, at least in Bentham's treatise on legislation, whose notes were even more pernicious than the text.<sup>1</sup>

The propagation of these works and others was the final cruelty which the Spaniards inflicted on the land which had been their colony.<sup>2</sup>

Angel and Rufino Cuervo probably stated the case for the impact of the Revolution of the 1820's too strongly, and attributed too much to the liberals of that era, while neglecting the influence of the doceañistas of Cádiz, the afrancesados of the Napoleonic period, and all their predecessors. It must have been inevitable that the Spanish reform style would persist in the former colonies, along with so much else, though the liberal revolution intensified its influence and made it politically respectable. It is also clear that reliance on Spanish precedents in reform outlasted the restoration of the absolute monarchy in Spain and the subsequent sad state of that country when, the Cuervos maintained, the young men of America, zealous for progress, turned their eyes away from la pobre España.<sup>3</sup>

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<sup>1</sup>Ibid., II, 183.

<sup>2</sup>Ibid., I, 17. For an indication of anticlerical and Jansenist writings of Spanish origin in Colombia compare the objectionable works Groot found circulating in the 1820's with the titles discussed by Menéndez y Pelayo in his chapters on Spanish heterodoxy from 1808 to 1823. Cf. Groot, Historia, IV, 40, 147, 200-201, 372, 383, 404; Menéndez y Pelayo, Heterodoxos, IV, 93-186, passim.

<sup>3</sup>Vida de Cuervo, I, 26-27.

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The constitutional trienio was responsible for a renewed burst of interest in books on law and politics in Spain, and in the atmosphere of liberty which had been proclaimed, favored volumes, especially from among the French works then considered most advanced, were studied and published in translation. The Bentham-Dumont treatises were among these, and it appears that Bentham was a good deal more popular in Spain than he was in France. It is quite understandable that enthusiasm for this author would have been communicated to Colombia and that Bentham's translated works would be sought after there; their subsequent fortune in the republic, nevertheless, must be judged apart.

At about the time that Colombians were learning of the revolution in Spain, Santander's government initiated a series of steps designed to expand and improve the educational system of Cundinamarca--and to bring it more closely under the control of the state. On May 26, 1820, the Vice President wrote to President Bolívar, asking him to declare the government patron of the colegio of San Bartolomé, which had been considered a seminary and was under ecclesiastical control. This measure, wrote Santander, would be in line with the official policy that the government should be "the only and exclusive patron of all educational establishments, and the principal head of all the institutions consecrated to the prosperity of the republic."<sup>1</sup>

Bolívar responded with the decree of June 20, 1820, which declared that the patronage, direction, and authority in all educational institutions, whatever might be their form, belonged to the government of the republic.<sup>2</sup>

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<sup>1</sup>Cartas y mensajes, II, 150.

<sup>2</sup>Gazeta de la Ciudad de Bogotá, Capital del Departamento de Cundinamarca, July 30, 1820.

With his authority thus assured, the Vice President imposed a new plan of studies upon the colegios and casas de educación of the Department on October 16, 1820. Certain reforms were introduced: the Spanish grammar was to be taught before the Latin, the history of each subject was to be presented as an introduction to its more intensive study, and rhetoric, arithmetic, geometry, trigonometry, and civil and military architecture were to receive particular attention.<sup>1</sup>

On October 22 the hopeful intentions of the government were further revealed in the decree which ordered every city or village possessing any public lands to establish a school of its own, paying the teacher from the products of that property, according to article 24 of the Ordinance of Intendents of Mexico. Every convent of religious was ordered to open a public school, with the exception of the Hospitallers of San Juan de Dios. The children were to be taught reading, writing, the principles of arithmetic, the dogmas of religion, and Christian morals, with additional instruction in the rights and duties of man in society, and military exercises on stipulated occasions. Punishment with the ferrule or cane was forbidden, and whipping was to be used only in extreme cases.<sup>2</sup>

These early measures demonstrate the commitment of Santander's government to programs being urged by progressive elements in many parts of western Europe. Most of the reforms had been proposed or even inaugurated in Spain, and can be traced in such documents as the Constitution of 1812, which, in Article 366, ordered that every town and village have a primary school where

<sup>1</sup>Memoria del Encargado del Despacho Interior y Justicia del Departamento de Cundinamarca, presentada a S. E. el Vicepresidente en 31 de diciembre [1820], "in Archivo Santander, VII, 337-38.

<sup>2</sup>Gazeta de la Ciudad de Bogotá, Capital del Departamento de Cundinamarca, Oct. 22, 1820.

the children would be taught, basically, the same elementary subjects named in Santander's decree, the 1813 decree of the cortes which forbade the use of corporal punishments in the schools,<sup>1</sup> and Manuel José Quintana's influential Report on Public Instruction of 1813.<sup>2</sup>

During the year 1820 Bolívar received more than one communication from Jeremy Bentham. Bentham dispatched his first letter, according to a notation he made, on January 24, 1820, in the care of "Mr. Hall, engaged as Quarter Master General by General Devereux."<sup>3</sup> The writer has been unable to locate this letter, although Bentham noted that the draft had been preserved, and subsequent correspondence makes it clear that Hall actually delivered the letter.<sup>4</sup>

A little later in the year Edward Blaquiére, a man whom Bowring called "a sort of wandering apostle of Benthamism,"<sup>5</sup> chose General D'Evereux himself as the bearer of a letter and a book he wished to send to the Liberator. Blaquiére explained to Bolívar that he was taking advantage of General D'Evereux's kind offer to deliver the volume, thinking that by chance another copy sent earlier had not reached its destination.<sup>6</sup> The book or

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<sup>1</sup>Decree of Aug. 17, 1813, Decretos de las Cortes, IV, 171.

<sup>2</sup>Manuel José Quintana et al., "Informe de la junta creada por la Regencia para proponer los medios de proceder al arreglo de los diversos ramos de instrucción pública," in Obras completas del Ecmo. Sr. D. Manuel José Quintana, Biblioteca de Autores Espanoles, Vol. XIX (Madrid: M. Rivadeneyra, 1867), pp. 175-91.

<sup>3</sup>Bentham MSS, x, 6.

<sup>4</sup>Letter, Bentham to Bolívar, Dec. 24, 1820, Bentham MSS, clxiii, 23; Letter, Bentham to Admiral Mordvinoff, n.d., Works of Bentham, XI, 33.

<sup>5</sup>Bowring, Memoirs, X, 514.

<sup>6</sup>Letter, Blaquiére to Bolívar, April 12, 1820, in O'Leary (comp.), Correspondencia de extranjeros, I, 60.

pamphlet was not named, but it seems very possible that it was some work of Bentham. A few months later, when Blaquiére was in Spain, he told Bentham that his "favorite project" was "disseminating a more extensive knowledge of the Traités."<sup>1</sup>

In September the Correo del Orinoco published a portion of Bentham's appeal to Spain which had appeared in the Morning Chronicle the preceding April. The article was introduced by the words: "The illustrious and profound Jeremías Bentham has published a judicious examen of Ferdinand's decree of March 30," and included Bentham's exhortation to revoke or soften the measure, so that "the Spanish nation might, in the field of humanity and magnanimity, not to speak of prudence . . . distinguish itself among all other nations."<sup>2</sup>

More indications of Bentham's prominence reached Colombia through the foreign press. An interesting bit of speculation appeared in El Español Constitucional in August, and was probably seen by a number of persons in Colombia some months later, as this paper, constantly quoted at Angostura and Bogotá, was undoubtedly read by the most influential Colombians:

It is said that the Cortes, after organizing the system of finance, will devote themselves at once to the formation of a civil and criminal code, naming for this purpose a commission of twelve deputies, those most knowledgeable and profound in legislation, and that the leading jurists of England and France will be consulted in regard to the draft of both codes; and it is even added that the Cortes will invite the celebrated English jurisconsult Mr. Jeremías Bentham to come, if he will, to Spain, to contribute with his vast knowledge to the great work of our legislation. We do not doubt that this will be the most perfect in Europe, and that it will serve as a model even for the more civilized nations.<sup>3</sup>

<sup>1</sup>Letter, Blaquiére to Bentham, July 10, 1820, Bentham MSS, xiii, 6.

<sup>2</sup>Correo del Orinoco, Sept. 2, 1820.

<sup>3</sup>"Aspecto-Político Mensual de América y Europa," El Español Constitucional (London), IV, No. 24 (Aug., 1820), 157.

Bentham did not fail to take notice of this hopeful report; he had the paragraph copied out in Spanish, and quoted it in full in one of his letters.<sup>1</sup> He was later gratified to receive further marks of attention directly from Spain. Perhaps these were not known in Colombia, but they may have been, even at this time. Not much later Bentham had these and other testimonials published, and sent to Colombia and elsewhere, as part of his Codification Proposal. The first of these flattering communications was a letter from the Patriotic Society of the Friends of the Constitution, meeting at the Cross of Malta Cafe in Madrid. The officers of the society informed Bentham that his work addressed to liberal Spaniards--presumably the letter on the House of Lords--had been read in their society and received with gratitude. The society had conferred upon him the title of Honorary Associate, and wished to salute him with sentiments of intimate fraternity.<sup>2</sup> Los amigos de la Constitución, called anilleros by their enemies, were, it is said, a semi-secret society of moderates formed by those who were known as foes of anarchy. It had been organized by Martínez de la Rosa, Count Toreno, the Duke de Frías, and the deputy Calatrava, under the presidency of the Duke de Anglona;<sup>3</sup> at least three of these distinguished persons can be identified as admirers of Bentham.

From some source Bentham received an "Extract from the Report of the Prison Committee of the Cortes, Recommending the Application of Mr. Bentham's Plan of Construction and Management, Styled the Panopticon Plan, to All

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<sup>1</sup>Letter to Edward Bell, Aug. 5, 1820, Bentham MSS, xiii, 7.

<sup>2</sup>Quoted in Bentham, Codification Proposal, p. 570. This letter has been preserved among the Bentham MSS, lx, 54.

<sup>3</sup>Menéndez y Pelayo, Heterodoxos, IV, 174, 176; José Luis Comellas García-Llera, El trienio constitucional (Madrid: Ediciones Rialp, 1963), p. 104.

Prisons throughout Spain and Her Dependencies--28th September, 1820." Bentham had it printed in his Codification Proposal,<sup>1</sup> and there seems to be no reason to doubt its authenticity. Blaquiere's history of the Spanish Revolution carries an account of the cortes' voting, on October 21, 1820, to send an expression of gratitude to Bentham for his offers of assistance. This source recorded that it was to be drawn up by Mora and transmitted by him;<sup>2</sup> if it ever reached Bentham it failed to appear in print with the other testimonials.

In January, 1821, with the armistice in effect, Bolívar was invited, in a note from the Spanish representative at Caracas, to send commissioners to the Peninsula to discuss a peace settlement.<sup>3</sup> A little earlier, on December 24, Bentham had written him an extraordinary letter, which will be quoted almost in full. Its direct effects, if any, are unknown; probably there were none.

Sir:

.....  
To will the end, is to will the means, if they are not dishonest ones. My wish is at the same time, and by the same means, to render to you, and to Spain, whatever service may be in my power. At the hands of Spain, I possess already as much confidence as I need desire. At your hands, it cannot but be my wish to possess whatever confidence may be necessary, or conducive, to that same purpose. I know not, as yet, what it may come into my mind to say to you: but, for an introduction to it, whatever it may be, I will take the liberty of referring to a character given of me the 2d of June 1818, in--and as I think you will see--by our House of Commons.

My principles on the subject of legislation are more or less known to you. On the ground of these principles I expect, within a month, a commission from the King of Spain, in form, to draw up for Spain an all-comprehensive body of law to be submitted to the Cortes. Before me lies the copy of a commission, given, in the

<sup>1</sup>Pp. 571-72.

<sup>2</sup>Blaquiere, Spanish Revolution, p. 583.

<sup>3</sup>Henao and Arrubla, Colombia, p. 349.

King's name, to the principal Secretary of the Spanish mission here, to consult and treat with me about a matter of finance.<sup>1</sup> I have, for some time, been laboring, might and main, in the joint service of yourself and of your till-late-inhuman enemy. I say, in your joint service: for the title of my work, is--"Rid yourselves of Ultramarina."<sup>2</sup> It wants little of being completed: the titles of the sections will accompany this address. Regarding this as the greatest service I, or anybody, or all the world together could render to Spain, I stake my whole credit in that country, for whatever chance I may have of rendering it. If rendered by anybody, it must be by me: for the attachment to that most oppressive of all their burdens, except the so lately mitigated despotism, is no less blind and deaf than it is extensive.

I know of a number of leading men in Spain, who were beforehand with me in this persuasion, but who dare not make any public avowal of it. Should my code be good for anything, with reference to Spain, it would not be good for less with reference to you: In proportion as I send anything to Spain, I will do what depends on me towards making communication of it to you. I have commenced what promises to ripen into intimacy with the Chevalier de Colomb who, I see already, is a man of very considerable talent, and in whom I see the marks of excellent dispositions: the confidence he

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<sup>1</sup>This document has been preserved among the Bentham MSS, ix, 56, and may be translated as follows:

My dear sir:

With the date of 5 November last, the Finance Minister of His Catholic Majesty communicates to me the following Royal order: 'Mr. Jeremías Bentham having offered to make available, to the person who communicates with him through this Ministry, his work, of which he has only one copy, relative to a new species of paper money, desiring to contribute to the good of the Spanish Nation, and judging his idea eminently adaptable to our present circumstances; the King has come to name you for this important charge, so that taking as many notations or memoranda as may be necessary, and requesting from Bentham the explanations that will be able to clarify the material, you may make the result known through me with all clarity and exactitude.'

I forward this to you for your advisement and the consequent effects. God keep you many years. London, 7 December, 1820 . . . Diego Colon"

<sup>2</sup>This composition, the title of which is reminiscent of the title of the pamphlet addressed to the National Convention of France--"Emancipate Your Colonies!" published in 1793, has not been published. Hundreds of pages of manuscript, comprising the various drafts of the work, exist in the University College collection of the Bentham Papers.



manifests in me cannot fail, as you may well imagine, to be reckoned by me in the number of those marks.<sup>1</sup>

I have not yet sounded him on the subject of Ultramarina. But, as even his Master, the Duke de St. Frías, makes no secret of his being of the same persuasion, I regard his being so as a matter of course. I have it not from the Duke himself; for, though he has, at different times, and to different persons, expressed a curiosity to see me, I have done by him, as I do by everybody else: I have declined seeing him unless there should be any special use in it. I understand already pretty distinctly, that, when any real business is done, it is by de Colomb that it is done.

What I tell the Spanish people is--that, so far as they do but get rid of Ultramarina, it is no matter to them who gets it, or any part of it, except in so far as the government there is good: since, the better the government, the more numerous and richer will be the customers for all such goods as they have to dispose of: and the community of language, customs, and religion, and to a more or less considerable degree, of laws, will secure to them, so there be no express stipulations to the contrary, the preference, and that an enduring one, over all other nations.

The Cortes, in their hurry, have come out with a most abominably foolish law, full of prohibitions, in the style of the old school, striving to make the whole people, in the quality of consumers, pay enormous prices for bad commodities under the notion of benefiting a few manufacturers, who, after all, will not be benefited: nor anybody but the smugglers, who will continue to be alternately benefited and ruined, till, in the character of smugglers, or highway robbers, they are either shot or hanged. The only persons benefited, will be certain merchants at Gibraltar, that nuisance to Spain and to England which, if it depended on me, I would rather sink into the sea with all that are upon it, than that it should stand where it does, and as it does.

Speaking of the Cortes, I said in their hurry; for no imaginable reason, the Constitution makers, as if for fear of their having time to do their business in, condemned them to a sleep of nine months out of the twelve; or, at least, of eight months.

Whatever slice of their Ultramarina you may happen to take a fancy to, unless I see reason for thinking that there would be better hands for it, which does not seem likely, let me know what it is,--I

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<sup>1</sup>The University College collection contains two letters from Diego Colon to Bentham: the official communication quoted above, and a brief letter in English, also dated Dec. 7, 1820. The correspondence from Bentham to Colon is comprised of the draft of a rather lengthy letter on "paper money and codification," dated Dec. 6, 1820, and a letter dated Feb. 13, 1821, not studied by this writer. See Bentham MSS, lx, 56, 55; xiii, 125-42, 169-70.

will do what depends upon me toward your having it, always understand you in the plural number and not in the singular: but I must have good reasons to work with--reasons, applying to the good of mankind in general and the parties more immediately interested in particular:-- as to will--neither that of A., nor that of B., will weigh with me. I accept of no remuneration, and I serve no one party at the expense of any other.

As to your own children of all colonies, I am not in a condition to form any judgment how far they are in a condition to go alone: but this I have a notion of--viz., that if it be not your design to form to yourself a Monarchy transmissible to natural descendants, you would during your life time, with little more nominal power than the President of the Anglo-American United States, have as much effective power as if you were acknowledged absolute, and exercise it in a manner much more pleasant to all parties.<sup>1</sup>

Perhaps Bentham's artless remarks should be interrupted here to permit recalling that even the realists who were managing the Colombian government entertained some hope of a negotiated peace settlement at this time. Responding to the Spanish overtures, Bolívar ordered the Venezuelan José Rafael Revenga and the granadino José Tiburcio Echeverría to proceed to Europe to take part in the projected discussions. What neither Bolívar nor Bentham understood as yet was that on the last day of November, 1820, the Duke de Friás had informed Zea, Colombia's diplomatic and fiscal agent abroad, that his government would consider any proposal based upon Colombian independence "absolutely inadmissible."<sup>2</sup>

Departing from international diplomacy in the last pages of his letter, Bentham added a number of paragraphs on a topic which, he said, could be considered either important or frivolous, according to one's point of view. He referred to attempts of the Horticultural Society to procure the vegetable plant Arrachaca from South America, of which he had read in the Morning

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<sup>1</sup>Letter of Dec. 24, 1820, Bentham MSS, clxiii, 24-27.

<sup>2</sup>Henao and Arrubla, Colombia, p. 349; letter, Bolívar to Santander, April 21, 1821, Correspondencia, II, 251.

Chronicle. This plant, the best species of which was said to be cultivated near Bogotá, was thought to be superior to the potato in some respects and probably adaptable to the soil and climate of Europe. Bentham, whose humanitarian concerns were genuine, pointed out that at least half the population of Ireland was subsisting on "a root (the potato) originally imported, it is said, from Santa Fe de Bogotá, the theatre of some of your recent glories."<sup>1</sup> Bentham made his point quite frankly: "For these many years, necessity has compelled you, to a degree which you cannot but deplore, to contribute to lessen the numbers of mankind: should it be in your power, at the expense of a few words, in any degree to repair the breach, they will, I flatter myself, not be grudged."<sup>2</sup> Bentham asked the Liberator to use his influence to further the project, and descended, characteristically, to outrageous details concerning the dispatch of seeds, roots, and directions for cultivation: if no more could be done, "in whatever occasion Mr. Hall sends a letter to this country, a few seeds of this plant might be enclosed . . ."<sup>3</sup>

IV

According to the historian Groot 1821 represented the crest of Spanish liberalism's prestige in Colombia. This was the year which was made memorable by the congress which met at Cúcuta to establish Colombia upon a solid legal base, reaffirming the union which had been declared--illegally in Santander's opinion--at Angostura in December, 1819. The Fundamental Law had provided that a constituent convention should meet on the first day of the

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<sup>1</sup>Letter to Bolívar, Dec. 24, 1820, sheet 28.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid., sheet 29.

year, but this proved to be impossible, and the Congress did not open its sessions until May. Meanwhile Santander continued his administration of Cundinamarca under the provisional government, in a manner which generally merited the approval of his contemporaries. All the important commentators-- Bolívar, José Manuel Restrepo, Groot, O'Leary--though often critical of Santander in other phases of his career, freely praised the administrative talent, energy, and firmness he displayed as Vice President of Cundinamarca.

Elections for the national congress were held early in the year. The basic suffrage requirements in these indirect elections were modest, though not to be compared with the generous arrangements of the Spanish Constitution, praised by Bentham, which stipulated no property qualifications whatsoever.

The deputies began to leave for Cúcuta as early as February; but numbers at Cúcuta failed to reach a quorum and a long delay resulted. A letter from José Manuel Restrepo to Santander during this time of national expectancy expressed one liberal's concern that public opinion be prepared beforehand for the reception of radical changes--religious reforms, specifically, which he seemed to think would come somewhat later than the Cúcuta meeting. He suggested that the writings of the Spanish liberals be utilized:

I am sending for you the enclosed paper which I have taken out of El Español Constitucional. It seems to me that it is time now to go about enlightening the people on ecclesiastical matters, and I judge it to be of major importance that you have inserted in the Gaceta these principles on ecclesiastical jurisprudence, which are most enlightening and appropriate to a free people. They can come out as the Editor inserts them, so that it will not be thought that the Government has complied, so as to avoid alarming the clergy and the friars--those indomitable individuals with whom we must temporize for a while until we are strong enough.<sup>1</sup>

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<sup>1</sup>The Spanish reads: "gentes indómitas con quienes es preciso contemporizar algún tiempo mientras que somos bastante fuertes."

I am thinking of sending you another article from the same Español, on Tolerance. I doubt that it is time yet to include it in our only gazette, because we would make all the priests our enemies; but coming out as from the judgment of the Editor, it seems to me that we should go along speaking to the people about these things. There is in the same Español a political history of the Papacy, which would be very serviceable for enlightening the peoples about the weak foundations of the Colossus of clay. It has some extremely strong things to say about the canonization of saints and other points on which we are superstitious. I hope this little work, which would be a pamphlet of 100 pages, will be published, because it would be very useful. In order for it to circulate, it would be necessary to give it away free of charge, and only the Government could print it (preferably in a foreign country), so that no one would discover its origin, for that would discredit the government with the clergy. The paper cited, which demolishes the power of the Popes, is in the first volume of the Español Constitucional. You see how important this material is. In ecclesiastical matters we have a hundred reforms to make which will be useless if we have not first formed public opinion in their favor.<sup>1</sup>

This letter is interesting in that Restrepo, though a convinced liberal during this period of his life, was always considered a moderate. Later he became more conservative, cooperated honorably with Bolívar during the dictatorship, and expressed regret in his histories for certain imprudent measures of the liberal administrations, such as the imposition of the Bentham textbook, which offended the Church. Perhaps it was, indeed, the liberal exaltation of 1821 which made him feel that it was time to go about enlightening the people on such controversial matters.

Despite the aversion to the thought of a constituent assembly which he had expressed in 1820, the Vice President was occupied, too, in preparing a brochure on reform, but his materials were planned more specifically for the use of the congress than were Restrepo's, and were presented through official channels. On May 2 he sent the Minister of War a message which contained his recommendations on the subject of education, and requested that these be

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<sup>1</sup>Letter of March 26, 1821, Archivo Santander, VI, 121-22.

communicated to the sovereign congress. He included representations from the civil governors of Pamplona and the Cauca which suggested that schools could be established within their jurisdictions with means made available by the suppression of those religious houses which did not "maintain a complete community." Santander warmly endorsed this idea, and added a rationale which argued that the corruption of customs common in the smaller convents was a scandal to the faithful, and that the situation was more deplorable when the local convents depended upon a distant central house. This drew off the funds which the pious people of the area had donated at great sacrifice for the maintenance of divine worship.

To extinguish these useless establishments would be a positive good, he argued, and their buildings and endowments would supply the state with the funds necessary to attend to public education, "the primary base of the social edifice, without which 'republic' is no more than a meaningless term."<sup>1</sup> Santander believed that the religious orders, with their personnel concentrated in the surviving, consolidated houses, could provide public instruction in grammar and philosophy in each of their establishments; in this way the republic would benefit from the services of the religious, who had formerly been useful only to the Church. Nuns could occupy themselves with the education of women, who also had an inalienable right to instruction. Their religious rules would be no impediment, for a papal brief included in the Cédula of the King of Spain of July 8, 1816, currently published in the Gaceta de Chile, granted them all the needed dispensations.<sup>2</sup>

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<sup>1</sup>Cartas y mensajes, III, 131.

<sup>2</sup>Ibid., pp. 131-36.

The congress was opened at last on May 6 by Don Antonio Nariño, for Bolívar had named him Vice President of Colombia after his arrival in America, to replace the deceased Dr. Roscio and his successor, who had quickly followed Roscio in death. Nariño took the occasion of his opening address to announce to the congress some of his views on government. As one of his first topics he urged the necessity of a unicameral legislature, "in spite of examples to the contrary." He recommended that every citizen be permitted to vote in the small local assemblies which would be the "first term" in a system of "gradual elections," and that everyone capable of voting should be considered capable of being elected.<sup>1</sup>

Congress confirmed Bolívar's nomination of Nariño on May 7, and on the following day the small Boletín del Gobierno, Número 1<sup>o</sup>, printed on a press set up at Cúcuta, made its appearance. It contained a report of the opening ceremonies of the congress,<sup>2</sup> and was quoted at length, as were the subsequent numbers, by the Bogotá Gazeta and the Correo del Orinoco.

The second Boletín del Gobierno, on May 17,<sup>3</sup> announced that the congress had adopted a set of rules which were "nothing more than a set of the wise regulations which long experience had taught the British Parliament." "We believe it opportune," continued the editor, "to include a brief indication of the observations of Mr. Dumont in this particular, and of the principal

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<sup>1</sup>Antonio Nariño, "Discurso del Vicepresidente interino de la República General Antonio Nariño, al Soberano Congreso Nacional, el día de su instalación en la villa del Rosario de Cúcuta, 6 de mayo de 1821," in Posada and Ibáñez (eds.), El Precursor, p. 501. Hereinafter cited as "Discurso al Congreso."

<sup>2</sup>Quoted in Gazeta de la Ciudad de Bogotá, Capital del Departamento de Cundinamarca, May 27, 1821.

<sup>3</sup>A copy of this paper is preserved in the Biblioteca Nacional (Bogotá), Fondo Pineda, #883.

rules of debate proposed by Mr. Jeremías Bentham. Bentham has been the first to reduce to formal principles the art (as he calls it) of managing a gathering of men . . ." There followed a brief series of extracts from Blanco White's article on the work Tactique des Assemblées politiques, published in El Español in 1810. According to Alejandro Osorio, Azuero was the sole author of this second Boletín.<sup>1</sup>

After affirming the union of Venezuela and New Granada, and assuming the adherence of Quito to the republic of Colombia, congress set about determining the form of government most suitable for adoption by the new state. During the series of debates which followed both Vicente Azuero and Alejandro Osorio presented detailed plans which were actually constitutions in outline, and discussion was terminated on June 4 by a vote in favor of a centralized government.<sup>2</sup> With this basic question decided, the drafting of the new constitution was entrusted to a legislative and constitutional committee of five members: José Manuel Restrepo, Vicente Azuero, Luis Mendoza, Diego Fernando Gómez, and José Cornelio Valencia. According to Restrepo, Vicente Azuero actually composed the draft,<sup>3</sup> and Restrepo's statement is corroborated in a letter written by Azuero on June 6:

I am on the commission of legislation and constitution and am with all speed preparing a draft so that the whole commission may examine and modify it, to pass it afterwards to the congress. I have at hand the original project which General Bolívar presented to the Congress at Guayana, plus a multitude of constitutions from which I

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<sup>1</sup>Letter, Osorio to Santander, May 21, 1821, Correspondencia, IX, 463.

<sup>2</sup>Gilmore, "Federalism in Colombia," pp. 41-47.

<sup>3</sup>José Manuel Restrepo, Biografía de José Manuel Restrepo, Escrita por el mismo (Bogotá: Biblioteca de la Presidencia de Colombia, 1957), p. 34.



am copying that which seems to me to conform best to our circumstances and the ideas of the congress.<sup>1</sup>

This same letter informed Santander of another constitutional proyecto:

Nariño has also presented the first part of a draft constitution which he has composed or is composing, but all the wiser heads have considered it unadaptable. It begins with an exposition of the rights of man and principles of a political body which are very diffuse, better for a course in public law or for a school catechism than for a constitution where everything should be concise, practical and dispositive--nothing theoretical or pedagogical in tone. . . . It establishes a national representation composed of the electors of the whole republic (a disastrous and anarchical idea); and an undivided legislative body with permanent sessions. Who knows what other deliriums this project will involve, for up to now he has presented only a very small part, which already would fill a large volume.<sup>2</sup>

Angel and Rufino J. Cuervo wrote much later that Nariño had quoted Jeremy Bentham "from memory" in the proyecto de constitución which he read at Cúcuta, and that the "celebrated author" he cited in support of the proposed single-house legislature was the same Bentham of the Letter to the Cortes, which "without doubt he had seen in Spain, translated by José Joaquín de Mora."<sup>3</sup>

Even without questioning the possibility of Nariño's having seen this translated letter in Spain before the end of May, 1820, a comparison of his constitutional draft with Bentham's pamphlet does not confirm the Cuervos' statement in a really satisfactory way. The introductory discourse to Nariño's code reads:

A legislative body of two houses is not proposed . . . because, besides increasing our embarrassment by increasing the number of functionaries, the system of opposition is, as a celebrated writer

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<sup>1</sup>Letter to Santander, June 6, 1821, Correspondencia, I, 304.

<sup>2</sup>Ibid.

<sup>3</sup>Vida de Cuervo, II, 184.

says, a system of civil war authorized by the Constitution which destroys unity, introducing discordant wills.<sup>1</sup>

He had used the same argument in his address at the opening of the congress when he spoke against a bicameral legislature: "That which is called a system of opinions is looked upon today by the men best versed in this matter as a real system of civil war established by the Constitution."<sup>2</sup> The writer has not seen Mora's translation of Bentham's letter on the subject, but if it is faithful to the English version it does not include the metaphor of a civil war. The emphasis is on the hereditary, non-elective and non-removable character of the membership of the House of Lords which Bentham assumed to be under consideration in Spain. Yet Bentham did write that "between an assembly of the ruling few thus constituted on the one part, and the interests of the subject many on the other part, there exists . . . a pointblank opposition, and that opposition an unchangeable one,"<sup>3</sup> which, perhaps, has something in common with Nariño's system of opposition and civil war.

It is interesting to notice that some of the features which Azuero criticized in Nariño's document--the pedagogical elements, the permanent sessions of the legislature and its unicameral organization--did conform to Bentham's views as expressed in writings available in 1821. But there are numerous elements within the proyecto which are at variance with Bentham's principles: article 21 reads, for example: "There is no case in which the public welfare [salud pública] can demand the violation of the rights of a

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<sup>1</sup>"Proyecto de Constitución que el ciudadano Antonio Nariño presenta al Soberano Congreso general de la República de Colombia," in Posada and Ibáñez (eds.), El Precursor, pp. 515-16. Hereinafter cited as "Proyecto de Constitución."

<sup>2</sup>Nariño, "Discurso al Congreso," p. 501.

<sup>3</sup>Spanish and Portuguese Affairs, p. 468.

citizen or of a nation, because there is no case in which universal justice can demand an injustice in order to sustain itself."<sup>1</sup> Nariño described a general will which was infallible, although he considered it to be "composed of all the individual wills."<sup>2</sup> And he considered the principle of the separation of the three functions of government "important and sacred,"<sup>3</sup> whereas Bentham rejected the distinction of the executive, legislative, and judicial powers in government as "vague and obscure."<sup>4</sup> Whether Nariño knew Bentham or not, or had ever read and studied his works, it seems impossible to prove a definite Benthamite influence in the constitution which he proposed at Cúcuta.

Nariño's proyecto was passed to the legislative commission and there allowed to die. The draft presented by Azuero and his colleagues met with little opposition on the floor, except over the religious question: their document gave no privileged position to the Catholic Church--did not mention it, in fact. The Constitution of 1821 was signed on September 6, and does indeed show that indebtedness to the most highly considered political instruments of the day which its authors acknowledged when presenting it to the congress.<sup>5</sup> A reading of the two texts makes it clear that the Spanish Constitution was one of these. Rufino Cuervo's biographers, who emphasized the parallels between Spanish and Colombian laws during this period, wrote at a later time:

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<sup>1</sup>Nariño, "Proyecto de constitución," p. 534.

<sup>2</sup>Ibid., article 14, p. 520.

<sup>3</sup>Ibid., article 22, p. 521.

<sup>4</sup>Bentham, Tratados de legislación, IV, 276.

<sup>5</sup>"Informe con que la Comisión de Legislación presentó al Soberano Congreso el proyecto de la Constitución de Colombia," Gazeta de la Ciudad de Bogotá, Capital de la República de Colombia, Nov. 25, 1821.

Whoever thinks about it supposes that the Constitution of the United States contributed a major part to the framers [of the Constitution of Cúcuta] and this is true; but today nobody considers what they took from the Constitution of Cádiz. It is inconceivable that this was unnoticed at the time, for the Cádiz charter was well known to all, as it had been sworn in [Spanish-occupied] Caracas and Cartagena the year before. Clearly the intention of our Founding Fathers was to say to the Metropolis: "That which you are offering to us we are doing for ourselves; the rights you are consecrating are as much ours as yours."<sup>1</sup>

There is no recognizable trace of Benthamism in the Constitution. The utilitarian declaration on the object of government which Bentham praised in the Spanish Constitution had been omitted, while two of the four major defects he found in that document were retained; that is, the "sleep-compelling clause," which prescribed congressional sessions of three months plus one in Spain, two months plus one in Colombia, and the "immutability-enacting" or "infallibility-assuming" clause, which forbade constitutional amendment, for eight years in Spain, ten years in Colombia.<sup>2</sup> He might well have found more to criticize in the charter of Cúcuta than in the charter of Cádiz; the two-house legislature, for example, and possibly the property qualification for suffrage. But he would have been pleased that the Colombians had omitted declarations of the natural and imprescriptible rights of man--as had the Spaniards at Cádiz--and gratified that they had reduced the "monstrous complication" of the four steps he counted in the Spanish provisions for indirect elections to two.

Both before and after adopting the national constitution the congress legislated important liberal reforms, such as the gradual abolition of slavery. On July 12 the commission on public education read its reports, "concerning the decree issued by the Vice President of Cundinamarca, relative

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<sup>1</sup>Cuervo and Cuervo, Vida de Cuervo, I, 17.

<sup>2</sup>Cf. Bentham, Spanish and Portuguese Affairs, 483-85.

to the establishment of schools, and concerning the petition of the Civil Governors of the Cauca and Pamplona, directed to the Congress by the Minister of the Interior," and the four proyectos of laws it had drawn up on these recommendations.<sup>1</sup> The issues, involving the closing of the smaller religious houses, were controversial and provoked a good deal of discussion. In the end the congress not only approved the suppression of the conventos menores and the confiscation of their property for the benefit of public education, but turned down Santander's suggestion that the religious of all convents which were not suppressed could serve the republic by conducting public schools. Diego Fernando Gómez, a pro-Santander liberal, objected during the debate that this would give the friars an importance which they did not merit in the light of the present century. If it was really desirable that the convents cooperate in the education of Colombian youth he knew a better way: they could contribute their income, which was not justly theirs in any case.<sup>2</sup> He returned to the discussion later to ask that the university at Bogotá be taken away from the friars as well.<sup>3</sup> José Ignacio Márquez, a future president of Nueva Granada, said he saw two consequences in the proposed law--both fatal: all of Colombia would be populated with friars, and the education of youth would be abandoned to them.

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<sup>1</sup>Roberto Cortázar and Luis Augusto Cuervo (eds.), Congreso de Cúcuta: Libro de Actas (Bogotá: Imprenta Nacional, 1923), p. 273. Hereinafter cited as Congreso de Cúcuta. Perhaps the election of Alejandro Osorio, Secretary of War, to the Congress of Cúcuta as a delegate explains why he did not direct Santander's recommendations to that body, as ordered.

<sup>2</sup>Ibid., p. 313.

<sup>3</sup>Ibid., p. 315.

When the four measures were enacted into law on August 6<sup>1</sup> there was no provision made for opening schools in the religious houses of men, but a school for girls was to be conducted in every convent of women. That this was only an imperfect measure, made necessary by the war and the shortage of funds, was made clear in the preliminary section of the law.<sup>2</sup> The law suppressing houses of fewer than eight religious had been founded in various "ancient rulings of the popes as well as the kings of Spain," according to the preamble.<sup>3</sup> The Cuervos believed that it had been inspired by the decree of the Cortes of 1813,<sup>4</sup> which permitted only the convents of twelve or more religious to reopen after the overthrow of the French regime (which had closed them all), and the decree of 1820<sup>5</sup> which suppressed all religious houses which counted fewer than twenty-four religious ordenados in sacris.<sup>6</sup>

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<sup>1</sup>Codificación nacional de todas las leyes de Colombia desde el año de 1821 (v.-; Bogotá: Imprenta Nacional, 1924-), I, 21-30. Hereinafter cited as Codificación nacional.

<sup>2</sup>Ibid., p. 23.

<sup>3</sup>Ibid., p. 21.

<sup>4</sup>Decree of Feb. 18, 1813, Decretos de las Cortes, III, 211-12.

<sup>5</sup>Decree of Oct. 1, 1820, ibid., VI, 155-59. This decree suppressed outright the orders technically classified as monastic, most of the canons regular, the hospitallers, and the military orders. Of those groups which could qualify to exist under these and under stipulations, local communities numbering fewer than twenty-four would be suppressed, although a house of twelve would be tolerated if it were the only convent of the town where it was located. The surviving religious were to recognize no central authority, but would be subject to the jurisdiction of the diocesan authorities. No new religious foundation could be made or candidate professed. The goods of the extinguished convents were to be applied by the government to works of public utility.

<sup>6</sup>Vida de Cuervo, I, 18.

The indications supporting this theory are quite strong: besides reprinting numerous articles of Spanish origin which criticized monastic institutions, the government gazette had been assiduous in publishing the Spanish orders and decrees on the subject. On January 21, 1821, the Gazeta printed the royal order of May 7, 1820, which commanded the religious communities to suspend profession of new members, and forbade them to alienate any of their property, until the cortes should meet.<sup>1</sup> In the issue of April 8, 1821, some of the leading provisions of the cortes's comprehensive decree of October 1, 1820, were publicized.<sup>2</sup> The local religious evidently thought they saw the point and expected the early application of this decree in Colombia; Santander found it necessary to restore tranquility by assuring the friars on April 12 that this was not the government's intention.<sup>3</sup>

A letter which Alejandro Osorio, Santander's Secretary of War and a member of the constituent congress, wrote from Cúcuta in May probably reflects the thinking behind the publicity given to the liberal Spanish reform measures:

The great science of a writer who pretends to form public opinion and enlighten his fellow citizens is to destroy their scruples without confronting them directly. . . . The conduct of the Spanish Cortes will show us the way; they not only gain supporters for us here in these lands, but their decrees and their writings will instruct our people.<sup>4</sup>

Santander apparently believed that the decrees of the cortes would also make profitable reading--or even acceptable legislative models--for the deputies at

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<sup>1</sup>Gazeta de la Ciudad de Bogotá, Capital de Cundinamarca, Jan. 21, 1821.

<sup>2</sup>Ibid., April 8, 1821. The article was reprinted from the Gazeta del Gobierno de Madrid and described the King's sanctioning the suppression of the various groups of religious named in the decree.

<sup>3</sup>Groot, Historia, IV, 223.

<sup>4</sup>Letter to Santander, May 6, 1821, Correspondencia, IX, 460-61.

Cúcuta. Osorio wrote to him in June: "I received the decrees of the cortes, which will be very useful to me."<sup>1</sup>

The laws of congress concerning education generally followed Santander's recommendations and the precedents of his decrees for Cundinamarca. The government was to establish a plan of studies, to be uniform throughout the republic, which would regulate educational pursuits in the colegios, casas de educación, and universities. The law treating primary education contained a new provision which authorized the executive to establish "normal schools of the Lancastrian or mutual instruction method" in the first cities of Colombia.

The system of Bell and Lancaster enjoyed the support of most liberal leaders of the time. Jeremy Bentham had been one of the first to recognize its merits and had been deeply involved in a plan to extend this method from elementary to higher levels of education.<sup>2</sup> But the man who introduced the system into Colombia was not a British intellectual but a native Franciscan friar, Sebastián Mora, who had learned the new method in Spain.<sup>3</sup>

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<sup>1</sup>Letter of June 6, 1821, ibid., p. 466.

<sup>2</sup>See Jeremy Bentham, Chrestomathia: Being a Collection of Papers, Explanatory of the Design of an Institution, Proposed to Be Set on Foot . . . for the Extension of the New System of Instruction to the Higher Branches of Learning for the Use of the Middling and Higher Ranks in Life, first published in 1816, in Works of Bentham, VIII, 1-191.

<sup>3</sup>On the progress of the monotorial system in Spain, beginning in 1810, see Pío Zabala y Lera, Edad contemporánea, 1810-1923, Tomo V of Historia de España y de la civilización española by Rafael Altamira and Pío Zabala y Lera (2 vols.; Barcelona: Sucesores de Juan Gil, 1930), I, 228, hereinafter cited as Edad contemporánea; Gaceta de la Ciudad de Bogotá, Capital de Cundinamarca, April 29, 1820. Mora's career is traced in Bushnell, Santander Regime, pp. 184-85, and the newspapers of the time. These sources also record the efforts of the French educator Pierre Comettant and Joseph Lancaster, who took up the work in Colombia a little later.



On September 17, 1821, the Congress of Cúcuta approved a law regulating liberty of the press, a topic on which Bentham had done so much work. According to Azuero, Diego Fernando Gómez prepared the draft.<sup>1</sup> He must have considered the Spanish press law of October 22, 1820, roughly adequate for Colombia's needs, as he limited himself to making slight variations in this model. The Colombian law substantially reproduces the provisions of the Spanish law, and many of the articles duplicate each other word for word and line by line. Both were based upon constitutional articles which, while they are not identical, are surely similar. Article 371 of the Spanish Constitution of 1812 reads:

Todos los españoles tienen libertad de escribir, imprimir, y publicar sus ideas políticas, sin necesidad de licencia, revisión o aprobación alguna anterior a la publicación, bajo las restricciones y responsabilidades que establezcan las leyes.<sup>2</sup>

The Colombian provision is in Article 156 of the Constitution of Cúcuta:

Todos los colombianos tienen el derecho de escribir, imprimir y publicar libremente sus pensamientos y opiniones, sin necesidad de examen, revisión, o censura alguna anterior a la publicación. Pero los que abusen de esta preciosa facultad sufrirán los castigos a que se haga acreedores conforme a las leyes.<sup>3</sup>

The introductory section of the Colombian law, which does not follow the Spanish version very closely, contains a unique clause which recalls something that Bentham had written:

The General Congress of Colombia, desiring to implement . . . the precious right which every man has to write, print, and publish.

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<sup>1</sup>Letter, Azuero to Santander, June 20, 1821, Correspondencia, I, 310.

<sup>2</sup>Constitución española, pp. 155-56.

<sup>3</sup>Constitución de la República de Colombia de 1821 in Las constituciones de Colombia, ed. by Miguel Antonio Pombo and José Joaquín Guerra (2 vols., 2d ed.; Bogotá: Imprenta de "La Luz," 1911), II, 751. Hereinafter cited as Constituciones de Colombia.

his thoughts, which prerogative is as natural as the very faculty of speaking . . .<sup>1</sup>

Bentham had declared, in his article in 1811 in El Español:

Printing being a modification of the faculty of speaking, it can be applied, generally speaking, to all the uses to which that faculty is applicable.<sup>2</sup>

Since there is no doubt that some sort of collection of Blanco White's journal was available at Cúcuta, the Bentham article was very possibly utilized in this modest way. It is really of little consequence, as the Colombian law did not follow the conclusions of Bentham's arguments, but the decree of the cortes, which he had vigorously opposed when it was under consideration in 1820. The law is usually considered liberal in its dispositions, which included the use of juries for judging alleged violations, but Bentham had written four letters "On the Liberty of the Press and Public Discussion" in an effort, he said, to prevent its sanction by the cortes, and had rushed them to Madrid for publication. The tracts arrived too late to exert any influence, for the law had already been approved.<sup>3</sup> During the following year, however, Bentham wrote that the law had not caused the evil results he had anticipated: "The effects, at the production of which it aimed, have not been produced. The Spanish press has not been enslaved."<sup>4</sup> Just so the law proved to have very little inhibiting effect upon Colombian

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<sup>1</sup>Law of Sept. 17, 1821, Codificación nacional, I, 39. Italics are mine.

<sup>2</sup>"Libertad de la imprenta: Artículo comunicado, en Inglés," El Español, Jan. 30, 1811, p. 330.

<sup>3</sup>Jeremy Bentham, "Advertisement," On Liberty of the Press and Public Discussion, in Works of Bentham, II, 276.

<sup>4</sup>Ibid.

writers, probably because it did not work very well.<sup>1</sup>

The enactment forbade the publication of writings which opposed the dogmas of the Catholic Church, but, as Bushnell's study of the press in Gran Colombia has shown, this prohibition, in particular, was disregarded on every hand, and the clergy did not even bother to accuse the authors of offensive publications. Apparently the only publication ever condemned under the law during the Gran Colombian period was <sup>LA</sup> El serpiente de Moisés, an anti-liberal pamphlet of the Bogotá priest Francisco Margallo, which argued against religious toleration, when it was reprinted in Caracas.<sup>2</sup>

The press law did not, of course, touch the circulation of books imported from Europe, but the Congress of Cúcuta, which abolished the Inquisition, seemed to give some authority over these matters to the bishops in the decree of September 17, 1821. This authority proved to be severely limited, however, as the Provisor of the Archdiocese of Bogotá, Fernando Caycedo y Flórez, learned when he attempted to forbid the circulation and sale of certain books in 1823. A strongly worded court order forced him to withdraw his edict, which had been posted at the church doors without the prior

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<sup>1</sup>David Bushnell, "The Development of the Press in Great Colombia," Hispanic American Historical Review, XXX (Nov., 1950), 449. Hereinafter cited as "Press in Great Colombia."

<sup>2</sup>Ibid. Bentham's opinion on the contribución directa, one of the most controversial reform measures of the Gran Colombia period, may also be studied indirectly, through his sharp criticisms of the French theories of direct personal taxes, advanced during the Revolution. See his Anarchical Fallacies: Being an Examination of the Declarations of Rights Issued during the French Revolution, in Works of Bentham, II, 517-18. French ideas and pronouncements of this subject, as described by Bentham, seem close to the spirit of articles 8 and 339 of the Spanish Constitution of 1812, the Spanish decree of a contribución directa on Sept. 18, 1813 (Decretos de las Cortes, IV, 229-37), and the tax law passed at Cúcuta, Sept. 30, 1821 (Codificación Nacional, I, 79-84).

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consent of the government.<sup>1</sup> There was never any danger that authors such as Bentham would be outlawed in Colombia, unless the government should choose to take this step.

In order that the new government might begin to function at once, the Congress of Cúcuta had determined to elect the first executives who would serve under the constitution, and this was done on September 7. Bolívar was elected President by a very large majority, and Santander received two-thirds of the votes cast for the Vice Presidency of Colombia, in a contest in which Nariño was the other leading candidate. Santander and the Liberator came personally to Cúcuta to take the oath of office on October 3.

Bolívar's oration was memorable, suited to this occasion filled with drama and with hope. The reaction of one Colombian patriot, José Tiburcio Echeverría, can be judged from a piece of his writing which is found, in translation, among the manuscripts of Jeremy Bentham. It seems to be an introduction to Bolívar's discourse at Cúcuta, probably prepared for publication.<sup>2</sup>

Echeverría and Revenga had come to Spain at the Liberator's order, expecting to take part, with Zea, in peace negotiations with the constitutional government, but they left Madrid in September, 1821, when it became clear that their hopes had been unfounded. Echeverría went to France with Zea, and spent

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<sup>1</sup>Groot, Historia, IV, 314-15; José Restrepo Posada, Arquidiócesis de Bogotá: Datos biográficos de sus preladados (v.-; Bogotá: Editorial Lumen Christi, 1961-), II, 31. Hereinafter cited as Arquidiócesis.

<sup>2</sup>José Tiburcio Echeverría, "Dos palabras," trans. by Mrs. Austin, Bentham MSS, xii, 54-61. Possibly this composition served as an introduction to a publication of 1822, for which Echeverría and Zea seem to have been responsible, Colombia constituida, por un español-americano, ... Dado a Luz por J. De Echeverría, ciudadano de la misma (Paris: En la imprenta de Moreau, 1822).

the winter there, but crossed to England in late May or early June, 1822, and during a short stay in London met Bentham. On June 5 he wrote to Santander: "Along with the things which I have announced to you there go publications and letters sent by the celebrated Bentham. I don't know if perhaps he will write to you, also, as he has told me. What a commendable old gentleman!"<sup>1</sup>

Echeverría's composition, "Dos palabras," presents an outline of characteristic liberal objectives of the time, as well as interesting observations on Spanish affairs and some extravagant praise of Simón Bolívar. Only a portion of it will be presented here:

What have the inhabitants of Spanish America attempted since 1810 more than the Spaniards of Europe accomplished in 1808? Precisely nothing--both have combated for their independence, and in order to obtain so great an advantage have repelled force with force.

What other principles do the former now proclaim but those which had already been consecrated in the national code of their former metropolis? None; both worlds seek to establish national representation, liberty of the press, individual security, equality in the sight of the law, and all the guarantees which the information of the age in which we live has recognized as appropriate or indispensable for the consolidation of the common well being.

With what then can the Europeans have to reproach the Americans when they first set them the example and taught them the means?  
.....

Bolívar, who cannot be ignorant that he is the sole director of the armed force and the idol of the people: Will he seek to be the Washington or the Buonaparte of Colombia? . . . At length came that moment in which Bolívar bound himself to [the Constitution] by oath and placed himself entirely at the disposal of the laws; this was the crisis which for eleven years had been contemplated with anxious hope.

Oh wonder! Bolívar was infinitely more a hero in the hall of congress than he had been in the field of battle . . .  
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<sup>1</sup>Correspondencia, V, 323.

. . . To celebrate this heroic act was the object which the author of these pages proposed to himself.<sup>1</sup>

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<sup>1</sup>Echeverría, "Dos palabras," sheets 54-61.

### CHAPTER III

#### VICE PRESIDENCY OF COLOMBIA 1821-1828

During 1821 Bentham invested increased amounts of time and effort in his Spanish project, for, as he had told Bolívar, he believed that he enjoyed vast influence among the leaders there; he must have felt himself justified in thinking that Spain would make him its lawgiver. He received further encouragement when two of the most influential men in the government sought his advice in personal letters.

Agustín Argüelles, the "divine" liberal orator of the cortes of Cádiz, who headed the Spanish ministry in 1820 and 1821, wrote to ask Bentham's ideas on the institution of the jury, and on the advisability of introducing the system in a country where it had not been established and "in which there are party divisions." He mentioned that a clear exposition of the mode of proceeding in criminal cases by jury would be helpful, as the institution was not understood outside England.<sup>1</sup>

Bentham's answer was cautious:

You ask me about Juries. It is with reluctance that I answer you. For, were they constructed in the best manner possible, the usefulness of them would depend upon the Judicial Establishment in whose hands they were, and the system of procedure of which they were an instrument. And neither that Establishment nor that procedure are given quantities. Were I, therefore, to indicate to you, were I even to give you the best set of Juries possible, I might

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<sup>1</sup>Undated letter in Bentham, Codification Proposal, p. 570.

still do you more harm than good: meaning to give you a security against oppression, I might give you but a cloak for oppression, and that cloak an instrument of it.<sup>1</sup>

It would have been difficult for Bentham to have answered such an inquiry in a more straightforward way, as his own position on the usefulness of the jury had not been completely consistent. Fundamentally, according to Halévy, he opposed the institution and thought it unsuited to an enlightened century. Only its undeniable popularity and the imperfections of the English legal system justified its preservation even in Britain.<sup>2</sup> Dumont described the process by which Bentham gradually excluded the jury from both civil and criminal cases as he developed his system of judicial organization in various manuscripts and successive publications.<sup>3</sup> In 1823 he developed the formula of the quasi-jury, whose members could take no part in deciding cases, but would observe the action of the court, serving, more than anything else, as a delegation of the public at court proceedings.<sup>4</sup> Halévy judged that only once in his life did Bentham defend the institution of the jury, when he wrote On the Art of Packing Special Juries in 1809.<sup>5</sup> Some time after April 7, 1821 Bentham sent the Spanish minister a copy of this pamphlet.<sup>6</sup>

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<sup>1</sup>Letter of April 7, 1821, Bentham MSS, x, 49. Bentham had written rather extensively to Mora on the subject of the jury during 1820. See his drafts, ibid., xiii, 11-25, passim; 231-36.

<sup>2</sup>Philosophic Radicalism, pp. 400-401

<sup>3</sup>De la Organización judicial y de la codificación, extractos de diversas obras de Jeremías Bentham, por Etienne Dumont ... traducida al español por Don D. L. de Bustamante (3 vols.; Paris: Hector Bossange, 1828), II, 167-71. Hereinafter cited as Organización judicial.

<sup>4</sup>Halévy, Philosophic Radicalism, pp. 401-402; Bentham, Organización judicial, II, 171-72.

<sup>5</sup>Philosophic Radicalism, p. 400.

<sup>6</sup>Letter, Bentham to Nuñez, March, 1822, Bentham MSS, xiii, 296.



Argüelles's letter to Bentham became known in Colombia because it was included among the testimonials published in Bentham's Codification Proposal. In 1825 Colombian liberals were expressing some interest in extending the use of the jury system beyond that prescribed in the press law, and an article in the Gaceta de Colombia recalled the question put to Bentham by the distinguished Spaniard, reminding the readers that there was scarcely a nation which had failed to consult this famous jurist on legislative questions. The editor confessed that he shared Argüelles's uncertainties, and lamented the circumstance of Bentham's answer being unknown to him. Whatever it might have been, he wrote, one could only desire to know the opinion of such respectable authority.<sup>1</sup>

In the same collection Bentham published a letter from the Finance Minister, José Canga Argüelles, who was, like Agustín Argüelles, a veteran liberal of Cádiz, considered moderate during the trienio constitucional. The communication seems only conventionally flattering to Bentham, as the Minister was informing him that he had received, through Diego Colón, his offer to form a complete code of laws for Spain, but as the matter was not within the competency of his office, he had passed it on to the Minister of Grace and Justice.<sup>2</sup> Canga Argüelles assured Bentham that his generous intentions were highly grateful to the government, and added that he personally had long entertained "the highest respect for that mass of intellectual light, of which you have given such resplendent proofs."<sup>3</sup>

Some time during the year Bentham printed a pamphlet containing his

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<sup>1</sup> Issue of Jan. 30, 1825.

<sup>2</sup> Letter of Feb. 20, 1821, in Bentham, Codification Proposal, p. 570.

<sup>3</sup> Ibid., p. 571.

"Observations of the Restrictive and Prohibitory Commercial System, Especially with Reference to the Decree of the Spanish Cortes of July, 1820," bearing on the title page the device "Leave Us Alone."<sup>1</sup> Bentham laid down, "as a universal maxim, that the system of commercial restriction is always either useless or mischievous; or rather mischievous in every case, in a less degree or in a greater degree," and went on to demonstrate that Spain's prohibition of manufactured woolens, cottons, linens, and silks, and the heavy duties attached to many other manufactured items would be prejudicial to her and to the rest of the world.

Juretschke has noted that Bentham's tract was translated into Spanish and that Alberto Lista tried to refute it in a long commentary published in El Censor,<sup>2</sup> and it is possible that it became known in Colombia. According to Rafael Valle, Bentham's tract, or, more likely, a part of it, was published in El Sol, a daily of the Mexican capital, on August 16, 1823.<sup>3</sup>

On August 6 a major epistolary effort was touched off by a letter to Bentham from another distinguished doceañista and member of the cortes, José María Queipo de Llano, Conde de Toreno, future Spanish Prime Minister and historian. The Count informed Bentham that their common friend Mr. Bowring was forwarding to him a volume containing the draft of a penal code which a special commission had presented to the cortes, for the deliberations of the next winter's session. Toreno invited Bentham's comments upon the code,

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<sup>1</sup>Jeremy Bentham, Observations on the Restrictive and Prohibitory Commercial System; Especially with a Reference to the Decree of the Spanish Cortes of July 1820, first printed in 1821, in Works of Bentham, III, 85-103.

<sup>2</sup>Lista, pp. 362-63.

<sup>3</sup>Valle, "Bentham," p. 2.

assuring him that he would attend carefully to his suggestions and utilize them during the coming discussions.<sup>1</sup>

Colombians had received some notice of Spain's proposed penal code even before the deputies left Cúcuta; the second issue of the Gaceta de Colombia, whose first numbers were published in that provincial town, contained an article on the subject. English newspapers of June 7, 1821, had brought the news that the proyecto of the code had been read in the cortes for a second time, and that it seemed to be based upon good principles, "but we were hoping for more from a legislative body which counted on an unlimited field of progress in this part. . . . The authors are especially culpable for not having taken advantage of the excellent views of Bentham. . . ." <sup>2</sup> If the last comment was from the English journalist and not from the Brussels newspaper he was copying, it may have been inspired by some reaction expressed by Bentham himself. At least it is certain that Bentham made no effort to hide his feelings on the subject. His seven voluminous Letters to Count Toreno, which made up a good-sized pamphlet in 1822, seem to be, more than anything else, an unabashed statement of his disappointment that the code under consideration at Madrid had not been written by himself.

He accused the legislative committee of deliberately excluding him when they had earlier invited criticism of their published proyecto, by arranging that the time interval allowed for comments would be so short that a Londoner could not respond.<sup>3</sup> It seemed to him that the object of the committee members had been to divide the "whole stock of power and glory

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<sup>1</sup>Letter of Aug. 6, 1821, in Bentham, Codification Proposal, p. 571.

<sup>2</sup>Gaceta de Colombia (Villa del Rosario de Cúcuta), Sept. 9, 1821.

<sup>3</sup>Bentham, Letters to Toreno, p. 498.

among themselves,"<sup>1</sup> and that they regarded the still-unfinished codes which he had hoped to submit to the Spanish nation as rival productions.<sup>2</sup> He even suspected that the articles of the proposed penal code which dealt with press offenses in the case of foreign works might be aimed at his writings: "If there be any foreigner who, more than any other, not to say more than all others put together, has been the object of their jealousy, who can it be, Sir, but your unfortunate humble servant?"<sup>3</sup>

Bentham answered Count Toreno's request by telling him frankly that his comments on the Spanish code could serve no useful purpose, chiefly because there was no pre-established standard of right and wrong by which its articles could be judged. In fact he knew of no attempt to set up such a standard other than that contained in his own works. This standard he called the rationale of the code, to be "interwoven throughout" with its specific provisions.<sup>4</sup> It was essential that the penal code, and every law whatsoever, be accompanied by an expression of the reasons which "justified and elucidated" its arrangements, proving that they would contribute to the greatest happiness of the greatest number<sup>5</sup>--the great principle enshrined in the Spanish Constitution.<sup>6</sup> The absence of such a rationale was Bentham's fundamental criticism of the proposed code.

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<sup>1</sup>Ibid., p. 536.

<sup>2</sup>Ibid., p. 495.

<sup>3</sup>Ibid., p. 511.

<sup>4</sup>Ibid., p. 490.

<sup>5</sup>Ibid., p. 491.

<sup>6</sup>Ibid., p. 523.

He informed Toreno that he would probably never read more than a small part of the proyecto, as a perusal of a few of its articles had convinced him that adequate criticism would consume the remainder of his life span.<sup>1</sup> Nevertheless, in the course of the seven letters he did point out some of its specific defects. He found, for example, that in the eighty-nine articles he had scanned the death penalty had already been attached to twenty-one offenses.<sup>2</sup> In common with the framers of the other accredited European codes which they said they had consulted, the Spanish legislators had evidently judged that the "subject many" could be kept in submission by no image "less appalling than the dance of death perpetually staring them in the face."<sup>3</sup>

He criticized the organization of the code, its classification of offenses, and other technical aspects. Laws regarding the press and religion received some special attention, as did certain provisions treating attempted subversion of the constitution. Yet in spite of all he recommended that the code be adopted. "No mass of laws so bad," he wrote, "that I would not vote for it, on condition of its taking the place of a worse."<sup>4</sup> He made his recommendation subject to a condition, however: that the code be adopted for a trial period only--say one or two years.<sup>5</sup> He further suggested the addition of an article forbidding recourse to earlier laws for the purpose of increasing the penalties appointed by the new code or applying punishment to any act not

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<sup>1</sup>Ibid., p. 508.

<sup>2</sup>Ibid., p. 515.

<sup>3</sup>Ibid., p. 522.

<sup>4</sup>Ibid., p. 538.

<sup>5</sup>Ibid., pp. 536-38.

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punishable under its terms. Finally, he recommended that during the trial period drafts of other penal codes from any interested party be welcomed.<sup>1</sup>

Bentham made it clear that his own work would go on:

If life and faculties continue, my Codes will successively be drawn up. The encouragement which, from so many quarters, I have received, would, of itself, have been a sufficient stimulus. The discouragement, received at the hands of the Legislative Committee of the existing Cortes--not to speak of the Cortes itself, which on this ground knows nothing of what it has seen, heard, or received--has been an additional stimulus. As the work proceeds, it will find its way into various languages: the Spanish will not be the last.

Into your Ultramarina--including all that was your Ultramarina--it will, in that as well as other dresses, find its way without difficulty.

Thus far my determination reaches.<sup>2</sup>

According to the Kenny-Silvela article, Bentham's letters had no effect upon the progress of the projected penal code, which passed safely through the perils of revision. It nominally took effect in July, 1822, but the early overthrow of the liberal regime, and the confusion which preceded this, cut short its implementation.<sup>3</sup>

Both the letters and the code reached Colombia, where the work of the Spanish commission was to enjoy a brighter future. Once, at least, a notice of Bentham's critique appeared in the Bogotá press, and the published English Letters were in Santander's library.<sup>4</sup> The Spanish penal code was adopted, with

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<sup>1</sup>Ibid., pp. 539, 543.

<sup>2</sup>Ibid., p. 544.

<sup>3</sup>Kenny, "Bentham's Spanish Influence," pp. 59-60, 63. Kenny's article was, in part, a translation of a study by the Spanish jurist Luis Silvela. These writers asserted that the letters never appeared in Spanish, but Palau y Dulcet's Manual del librero, II, 170, carries a notice of their publication, in Spanish, at Madrid in 1821.

<sup>4</sup>Guillermo Hernández de Alba and Rafael Martínez Briceño, "Santander íntimo" (work in preparation).

modifications, by the republic of New Granada during the presidency of Santander's successor.

In the face of the patriarch's comments it can hardly be considered a Benthamite code. His indignation had not been dissipated when he wrote in the Codification Proposal, intended for distribution in various parts of the world:

Would any man wish to see in how big a degree inimical to the greatest happiness of the greatest number, a proposed code is capable of manifesting itself?--of manifesting itself, after all the lights, which, down to the present time, have been spread over the field of its dominion? let him turn to the work, with which, in the character of a penal code, Spain, while this page is penning, is still menaced.<sup>1</sup>

Nevertheless, José María Calatrava, who was the "soul of the commission and principal collaborator" in the work of preparing the code,<sup>2</sup> had been described to Bentham as an admirer, along with Antonio Puigblanch and Count Toreno and, as Bentham wrote, "a cooperater with them in relation to me."<sup>3</sup> In his "Supplementary Advertisement" to the Letters Bentham confessed his surprise at learning from a private message, written in Madrid two months after he had sent his final letter to Toreno, that Calatrava had just made "a most eloquent eulogium on the illustrious, the learned, the humane Bentham."<sup>4</sup> This had taken place in the cortes, presumably, and at a time when Bentham was sure that Toreno must have already advised him of the content of his Letters.

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<sup>1</sup>p. 551.

<sup>2</sup>Bentham, Letters to Toreno, p. 554; Villa, "Vida de Reinoso," p. xcvi.

<sup>3</sup>Letter, Bentham to Mora, Nov. 23, 1820, Bentham MSS, xiii, 105. Bentham referred to "friends of mine in the Cortes whom you mention--Mr. Puigblanch, Mr. Giraldo, and Mr. Calatrava," in another letter to Mora, Nov. 13, 1820, ibid., sheet 54. Puigblanch was the author of the celebrated Inquisición sin máscara of 1811.

<sup>4</sup>p. 554.

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It does seem surprising that the writings of Bentham, whom the Spanish liberals surely considered one of the important modern authors on the subject of criminal law, had had no effect whatsoever on their penal code. Yet the disappointed lawgiver Bentham was not the only observer who felt that this had been the case. Félix José Reinoso, who, according to his biographer Antonio Martín Villa, was still imbued with ideas of the "school of Beccaria and Bentham" in 1821,<sup>1</sup> published a critique of part of the code in that year, and declared it to be unrepresentative of the most advanced thinking in the field.<sup>2</sup> Villa described Calatrava as a competent and highly respected jurist, but a man who belonged to an epoch and a school which was no longer dominant in Spain in 1821.<sup>3</sup>

Angel and Rufino J. Cuervo's book contains the statement that a translation of Bentham arrived in Bogotá with other Spanish books in the middle of the year 1821, and cites Groot as the source of the information.<sup>4</sup> Groot did mention Bentham among a number of authors in a statement deploring the importation of objectionable books, which began at that time, but wrote nothing about the appearance of a Spanish translation of his Treatises in mid-1821.<sup>5</sup> If a Spanish rather than a French version was really available in Bogotá at that early date it can only have been Toribio Nuñez's very brief

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<sup>1</sup>"Noticias de Reinoso," p. xcix.

<sup>2</sup>Ibid., p. xcvi.

<sup>3</sup>Ibid., p. xcvi.

<sup>4</sup>Vida de Cuervo, II, 184.

<sup>5</sup>Groot, Historia, IV, 201.



Espíritu de Bentham, published late in 1820.<sup>1</sup> While this book did contain some of the fundamental ideas of the Traité de Législation, it was only a sort of potpourri intended to serve as an introduction to a two-volume Spanish edition of the "works of Bentham" which Nuñez planned to bring out specifically for the use of students.

Nuñez praised Bentham extravagantly in the Preliminary Discourse to this introductory work, and addressed part of it directly to him as "the true friend of mankind";<sup>2</sup> elsewhere in the text he referred to the Englishman as the "inventor of the social science."<sup>3</sup> Bentham received a copy of the book from a friend and was deeply touched. He opened a correspondence with Nuñez, whom he called his "well beloved disciple," early in 1821: "Yes," he wrote, "thy mind is the very child of my mind."<sup>4</sup> He noted that Nuñez seemed to be familiar only with those works of his which Dumont had published, and promised to send him a collection of his English publications.<sup>5</sup>

In a subsequent letter to Nuñez Bentham spoke of having undertaken a "course" for "scattering around for the benefit of the other hemisphere, the first fruits of that zeal on your part which is so honorable and so gratifying to me."<sup>6</sup> Probably it was for the same undertaking that Bentham instructed John

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<sup>1</sup>Espíritu de Bentham: Sistema de la Ciencia Social, Ideado por el Jurisconsulto Inglés Jeremías Bentham, y puesto en ejecución conforme a los principios del Autor original por el Dr. D. Toribio Nuñez, Jurisconsulto Español (Salamanca: Imprenta nueva: Por D. Bernardo Martín, 1820).

<sup>2</sup>Ibid., p. vii.

<sup>3</sup>Ibid., p. 41.

<sup>4</sup>Draft letter of April 21-May 9, 1821, Bentham MSS, xiii, 177.

<sup>5</sup>Ibid., sheet 179.

<sup>6</sup>Letter of Feb. 12, 1822, ibid., sheet 287.

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Bowring to purchase one hundred copies of Espíritu de Bentham on his account.<sup>1</sup>

A letter to Nuñez of March, 1822, contains an interesting statement by Bentham on the change which his political thought had undergone during the preceding twenty years:

You speak of inconsistencies as having been found by you in my works by Dumont. Be they whatever they may I have no recollection of any such thing. Erroneous views yes, these I have a recollection of: Views radically erroneous, I mean in relation to the Constitutional Department of the field of legislation. That the errors may in some part of them have been the work of Dumont seems not altogether improbable. . . . But what I am sure of, is that in a great part if not in the whole they must have been mine. The case is that at the time of my writing any of the papers from which the work was made I had not as yet turned my attention to that part of the field. My conceptions on that ground were of course taken from the common stock, and the constitution so loudly and universally trumpeted. . . . But, after that, proceeding in my slow manner, I at length arrived at the field of Constitutional Law and in that field lifting up my eyes by degrees I beheld the really existing Constitution of the Anglo-American United States flourishing like a green bay tree . . .<sup>2</sup>

Volume One of Nuñez's Obras de Bentham appeared in 1821 bearing the title Principles of the Social Science or of the Moral and Political Sciences.<sup>3</sup> Bentham's material, of which it was mainly composed, had been translated to Spanish from the French of Dumont, but rearranged by Nuñez and "applied" to the Spanish Constitution. This book was occasionally mentioned in Bogotá, but as Nuñez made numerous allusions to the Spanish nation, its constitution, laws, and institutions, and even tried to show that Bentham's condemnation of colonialism did not apply to the Spanish Empire, the book was

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<sup>1</sup>Letter, Bentham to Nuñez, March, 1822, ibid., sheet 296.

<sup>2</sup>Ibid., sheet 289.

<sup>3</sup>Principios de la ciencia social; o De las ciencias morales y politicas. Por el Jurisconsulto Inglés Jeremías Bentham; ordenados conforme al sistema del autor original y aplicados a la constitución española por D. Toribio Nuñez (Salamanca: Imprenta nueva: Por D. Bernardo Martín, 1821).

not really suitable for an American state. Volume Two of the Works was never published.

Ramón Salas's translation of the Traité de Législation, with his commentary, was a much more satisfactory work. It was published at Madrid in 1821 and 1822, in five volumes.<sup>1</sup> Gutiérrez Ponce, without referring to editions, wrote in the biography of his father: "This translation [of the Traité de Législation civile et penale] made in Madrid by D. Ramón Salas in 1821-22 was the first which arrived in Colombia, in 1824, when our most notable statesmen were already familiar with Bentham."<sup>2</sup> Groot had written earlier that it was the Salas translation and commentary which had been known in Bogotá since 1824.<sup>3</sup>

Bibliographical clues in the references to this work from Santander's time seem to point rather consistently to the eight-volume second edition of Salas's translation and commentary, published at Paris in 1823, not the five-volume first edition of Madrid.<sup>4</sup> The 1823 publication date would coincide well with the appearance of the Salas translation in Bogotá in 1824, and Santander's order of the next year that the Tratados de legislación be studied in Colombia's schools. It must have been the Paris edition which was sold in considerable numbers--probably the first edition was little known in the Colombian capital.

<sup>1</sup>This work is cited above, p. 38, n. 1.

<sup>2</sup>Gutiérrez Vergara, I, 462.

<sup>3</sup>Historia, V, 63.

<sup>4</sup>Cartas Críticas de Un Patriota Retirado (Bogotá), June 9, 1826; La Cáscara Amarga (Bogotá), Nov. 29, 1835, Dec. 6, 1835; "Aviso," in La Bandera Nacional (Bogotá), June 24, 1838, repeated in the issues of March 17, April 7, and April 14. The inventory of Santander's library, 1840, included a reference to "six volumes of the Ley de Legislación civil y penal of Bentham." See Hernández de Alba and Martínez Briceno, "Santander íntimo."

The earliest of the quotations from this work, which were seen and heard in Bogotá beginning in 1822, were probably drawn from Dumont's publication of 1802, or the second French edition of 1820, although it is possible that the five-volume Spanish edition of 1821-22 reached Colombia as well.

Bentham and his friends had not abandoned their efforts to bring utilitarian works to the attention of the Colombian Liberator. When José Rafael Revenga left Europe late in 1821, shortly after the failure of the mission to Spain, Edward Blaquiére dispatched with him a letter for Bolívar, dated at Paris on October 15. He sent as a gift to the Liberator a pamphlet by Dumont, containing the plan of a civil code for the Republic of Geneva, founded on the principles of Bentham. Dumont had said that he "would see with pleasure that his efforts to simplify such a difficult and important matter might be useful to the legislators of Colombia." It would be superfluous to mention, wrote Blaquiére, the lively interest which Mr. Bentham took in all that concerned Colombia.<sup>1</sup>

A political question had been raised in Colombia, meanwhile, by the declarations of the municipality of Caracas, contained in the published Acts of December 29, 1821, and January 3, 1822. Bolívar had liberated the city by his victory at Carabobo on June 24, 1821, when the Congress of Cúcuta was already in session. Now the city council swore fidelity to the constitution produced by that body, but with some reservations, maintaining that Caracas had not been represented at the constituent assembly, and protesting that the peoples of Colombia had been given no opportunity to ratify the work of the

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<sup>1</sup>Letter of Edward Blaquiére, in O'Leary (comp.), Extranjeros notables, I, 61-64. Blaquiére also wrote two letters to Bolívar during 1822: on January 1 (ibid., p. 65) and January 10 (ibid., pp. 68-71).

congresistas.<sup>1</sup> Santander chose to regard the declarations as seditious propaganda, but, as Bushnell observed, manifested a careful regard for legality in the course he chose to follow. He instructed the Intendent of Venezuela to prefer charges under the law regulating liberty of the press. When the local jury exonerated the publications he let the matter drop.<sup>2</sup>

This affair stimulated some exchange of ideas among prominent Colombians. General Páez wrote to Santander, while protesting his incapacity for discussing political questions:

The idea of sovereignty of the peoples in a democratic government is the most abstract of all ideas; everybody is persuaded that one individual or ten constitute the people, and this is what makes it a little difficult to understand . . .<sup>3</sup>

Santander wrote to Dr. Francisco Yanes, a man associated with the declarations:

Permit me, while applauding the excess of your liberal ideas, to reprove the use of them in these circumstances. Cundinamarca or New Granada, composed of twenty-two provinces and without any legitimate representation at Guayana, consented to the fundamental law which the deputies of the liberated part of Venezuela sanctioned in 1819, and did it for convenience; because it was convinced that it would be stronger united to Venezuela, sacrificing to this convenience its rights, its prerogatives, and its political ascendancy. There were men here who knew the social contract from memory, and as many other doctrines as have been written to express the manner in which societies are formed and peoples obligated; but all judged that no real good was gained in claiming these rights, and that real advantages were obtained in sacrificing them to a law so useful, so necessary, as that of the union.

The results have justified it, although it has cost Cundinarmaca immense sacrifices.

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<sup>1</sup>"Resolución sobre una protesta de la municipalidad de Caracas," Archivo Santander, VIII, 123-24.

<sup>2</sup>Santander Regime, p. 42.

<sup>3</sup>Letter of Jan. 26, 1822, Archivo Santander, VIII, 80.

Let us be moderate and not wish to submerge this country once more in the evils which enthusiasm for liberal ideas caused it; let us advance by measured and cautious steps, with the hope that year by year we will add another solid stone to the edifice.<sup>1</sup>

La Indicación, a newspaper which Azuero published in Bogotá from July, 1822, to January, 1823, found the solution for the same troublesome question of sovereignty in Bentham's utilitarianism. The fifth number of the paper contained the following reflections on the authority of the people:

It is necessary for people who talk this way to know that there is a superior authority, resting on the nature of man itself, which is superior to that omnipotent will of the people: it is the public utility. It is this which in the primitive forests united families, which established governments. . . . Let us not exalt, then, more than is just the wisdom and virtues of the peoples: let us not imitate in the opposite extreme those who flattered the monarchs; let us attend solely to the common utility in the legislative concurrences, and let us not forget that the universal clamor of all centuries and all people for the institutions of government proves that men prefer to give up a part of their liberty and of their rights in exchange for order and tranquility.<sup>2</sup>

In its important features, this doctrine, with its overtones of Hobbes, is Bentham's as well as Azuero's. Bentham had explained it when he had exposed the falseness of the various theories of the social contract and taught that the immense interest of men in maintaining a government is the true political bond.<sup>3</sup> It is related to his discussion of security as the principal object of the laws:

This inestimable good, distinctive index of civilization, is entirely the work of the laws. . . . To estimate the value of this great benefaction of the law, it is enough to consider the state of the savages. . . .<sup>4</sup>

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<sup>1</sup>Letter of March 7, 1822, Cartas y mensajes, IV, 32, 35.

<sup>2</sup>Issue of Aug. 24, 1822.

<sup>3</sup>See above, p. 64.

<sup>4</sup>Tratados de legislación, I, 257.

He had ridiculed, in the Traité de Législation, Rousseau's "grand discovery" that the law is the expression of the general will;<sup>1</sup> elsewhere he had called this proposition "the sponge which wipes away all governments."<sup>2</sup>

Azuero certainly knew the Traités or their Spanish translation by this time, as the work was being cited by name in El Correo de la Ciudad de Bogotá, which he edited with Francisco Soto.<sup>3</sup> And the passage from La Indicación quoted above was by no means exceptional. The principal theme of the newspaper was, in Bushnell's judgment, that the popular will is limited by the "public utility."<sup>4</sup>

Later in the year General Bolívar tried to establish a suitable revision of popular sovereignty, in the midst of some rather alarmed speculation that the Colombian congress, when it assembled, might wish to revise the constitution in favor of a federal system, to which he was so strongly opposed. He wrote to Santander:

I am resolved not to recognize any type of federation, because it is contrary to the fundamental law which they have made me swear, and because no one, not even the people itself, has the right to alter the social system every year.<sup>5</sup>

On December 31 of the same year he wrote:

The sovereignty of the people is not unlimited, because justice is its base and perfect utility sets limits to it.<sup>6</sup> This is the doctrine of the constitutional apostle of the day.

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<sup>1</sup>Ibid., p. 160.

<sup>2</sup>Bentham, Sofismas anárquicos, p. 351.

<sup>3</sup>See the issue of June 20, 1822.

<sup>4</sup>Santander Regime, p. 29, n. 11.

<sup>5</sup>Letter of Dec. 6, 1822, Correspondencia, II, 343.

<sup>6</sup>"La soberanía del pueblo no es ilimitada, porque la justicia es su base y la utilidad perfecta le pone término."

From where do the representatives of the people believe themselves authorized to constantly change the social organization? What, then, will be the foundation of the rights, of the property, of the honor, of the life of the citizens?<sup>1</sup>

Gilmore cited these two letters and added that the "constitutional apostle" was Jeremy Bentham.<sup>2</sup> It seems certain, however, that most of what Bolívar was quoting was drawn from Benjamin Constant's "De la souveraineté du peuple," which contains this passage:

The sovereignty of the people is not unlimited: it is circumscribed within the limits which justice and individual rights trace for it.<sup>3</sup>

But Bolívar altered the statement, adding to it the notion of utility. He could not have found this in Constant, who specifically took issue with Benthamism, declaring that it was inconvenient and dangerous to substitute Bentham's idea of utility for the concept of natural rights.<sup>4</sup> It is more than likely that Bolívar was following Bentham or his interpreters, and Vicente Azuero, in the pages of La Indicación, may have figured as one of these.

Bentham's name continued to appear in the Bogotá press in connection with the news from Spain. In March the Correo printed a patriotic discourse

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<sup>1</sup>Letter to Santander, ibid., p. 350.

<sup>2</sup>"Federalism," p. 54.

<sup>3</sup>"La souveraineté du peuple n'est illimitée: elle est circonscrite dans les bornes que lui tracent la justice et les droits des individus." (Cours de politique constitutionnelle, ou Collection des ouvrages publiés sur le gouvernement représentatif [2 vols., 2d ed.; Paris: Librairie de Guillaumin et Cie., 1872], I, 15. Hereinafter cited as Cours Constitutionnelle.) In 1826 an article in the Gaceta de Colombia pointed out that "the sovereignty of the people is not unlimited, as the writer of the day, among others, has wisely and profoundly demonstrated," and a footnote identified the writer as Benjamin Constant. See the issue of Sept. 10, 1826.

<sup>4</sup>Cours Constitutionnelle, I, 347.



read in La Coruna which exhorted magistrates to study the maxims of Montesquieu, Rousseau, Bentham, Tracy, and Say, and the Spaniards Saavedra, Jovellanos, and Marina.<sup>1</sup> And his works began to be utilized by Colombian editors and contributors as well. An attack on the contribución directa, Colombia's controversial reform tax, sent to the Correo by an unnamed correspondent, summarized certain views on taxation expressed by Bentham "en su tratado de legislación civil y penal."<sup>2</sup> Other articles, all from interested readers, supposedly, appeared at once to criticize or defend the tax. One writer charged that his opponent, for all his ostentatious citing of Bentham and other authorities, had not read the Colombian laws.<sup>3</sup> Another contributor wrote he did not care to use quotations from Bentham and others who knew nothing of the situation in Colombia.<sup>4</sup>

La Indicación of September 21 referred to Bentham as the respected sage whose authority was so much venerated by all the friends of liberty, and paraphrased the Traités de Législation (without naming the work) on the ideal and the practical perfection of the goal of security.<sup>5</sup> The next issue quoted Bentham's opinion on the advisability of admitting anonymous complaints against the government, from the same source.<sup>6</sup> In October the Correo de la Ciudad de Bogotá ridiculed the conservative and devout Dr. Manuel Baños, who had been elected to the Congress of 1823 by the province of Tunja. Mock instructions

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<sup>1</sup>Correo de la Ciudad de Bogotá, March 7, 1822.

<sup>2</sup>Ibid., June 20, 1822.

<sup>3</sup>Ibid., July 4, 1822.

<sup>4</sup>Ibid.

<sup>5</sup>Cf. Bentham, Tratados de legislación, I, 288.

<sup>6</sup>Issue of Sept. 28, 1822. Cf. Bentham, Tratados de legislación, III,

for this delegate mandated the burning of books by pagan and infidel authors such as Cicero, Van Espen, Vattel, Bentham, and Constant.<sup>1</sup> An article in the Gaceta attacking federalism utilized Bentham's ideas on equality,<sup>2</sup> while one of Bentham's anti-slavery arguments from the Traités was cited in a letter to the editor supporting the manumission law, published in La Indicación in the last issue of the year. Bentham's work was quoted directly, and accurately, in this letter, but slight differences in expression make it clear that the writer was not using the Salas translation, published in 1821 and 1822.<sup>3</sup>

As the ideas of European authors like Bentham and Constant were being imported into Colombia, a counter-current was carrying out its major legislative acts, the discourses and proclamations of Bolívar, the annual messages of Santander to the Congress, and the reports of the Secretaries of State, and these appeared in translation in western Europe and the United States. The Constitution of Cúcuta was published in London in 1822, and a copy of its titles was filed among Bentham's papers.<sup>4</sup> From time to time the Gaceta reported the tributes which distinguished foreign liberals paid to the wisdom of Colombia's laws and the regularity of her government. Santander always took particular pleasure in these signs of approval, and anticipated the effect which any new course of action would have upon liberal world opinion.

During these years, when Colombia was seeking recognition of its independent government from foreign nations, and loans from foreign capitalists, this policy was practical as well as enlightened. Colombia did attract

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<sup>1</sup>Issue of Oct. 31, 1822.

<sup>2</sup>Gaceta de Colombia, Nov. 24, 1822. Cf. Bentham, Tratados de legislación, I, 280.

<sup>3</sup>Issue of Dec. 28, 1822. Cf. Bentham, Tratados de legislación, II, 102-103.

<sup>4</sup>Bentham MSS, xii, 64.

considerable attention from European investors and enterprisers, who, in the early days of its independence, tended to be excessively optimistic about the profits which could be realized from investments there.

Bentham became interested in the most speculative of all Colombian opportunities, the interoceanic canal site, probably because it seemed to afford a chance to promote human progress and happiness, and to apply the principle of utility to international relations. During June, 1822, he wrote and prepared for publication his "Proposals for the Junction of the Two Seas--the Atlantic and the Pacific, by means of a Joint Stock Company, to Be Styled the Junctiana Company."<sup>1</sup>

Basing his choice upon the recommendations of William Davis Robinson's Memoirs of the Mexican Revolution, published in London in 1820, Bentham selected the Panama route as the most promising of the proposed canal sites. The company was to indemnify the governments and individuals who had any interest in the lands along the route, and receive them in outright ownership. After the canal had been completed the company was to admit vessels of all nations on exactly the same basis, charging a uniform price of transit based on tonnage.

The United States would be requested to take Junctiana--the canal zone--under its protection, and to admit the territory into the federal union when it met the requisites for statehood. This step was considered necessary as an assurance to foreign capitalists, in view of the magnitude of the advances they would have to make, that their investment would not be jeopardized by the instability to which the Spanish American states, "so

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<sup>1</sup>Jeremy Bentham, "Appendix--Junctiana Proposal," Principles of International Law, in Works of Bentham, II, 561-71. Hereinafter cited as "Junctiana Proposal."

recently emancipated from so bad a form of government," were likely to be exposed.<sup>1</sup>

Bentham considered it essential that the lands bordering Junctiana not be included in the domain of a single state, and judged that Mexico and Colombia would be willing to make any needed boundary adjustments so that the zone could be bordered by Mexican territory on one side and Colombian territory on the other. Much of his proposal was devoted to utilitarian demonstrations that the pain of the sacrifices made by each one of the contracting parties would be outweighed by the pleasure of the benefits, including a share of the honor and glory, to be anticipated. Disappointed expectation on the part of Colombia, which, as Bentham understood, was considering a similar project on its own account, was taken into consideration. Among the inducements to foreign capitalists Bentham thought it was not improper to mention the following:

The five men in whose hands the executive power is at present; namely, General Santander, vice-president of the Republic, Mr. Gual, minister of Foreign affairs, Mr. Restropo [sic], minister of the Interior, Mr. Castillo, minister of Finance, Mr. Briceno, minister of War and Marine department, are all of them, it seems, well acquainted with the English language; and to men of English lineage, acquaintance with the English language, will naturally serve as a sort of circumstantial evidence of English ideas and English affections.<sup>2</sup>

Like so many isthmic schemes which preceded and followed it, Bentham's project foundered. Possibly John Bowring's Autobiographical Recollections supplies one of the reasons, in an entry for the year 1822:

Echeverría came to Europe with Revenga to induce the Spanish government to recognize the independence of Colombia. His health had been shattered. . . . Bentham endeavoured to persuade him to use his influence with the Colombian government in favour of the cession of

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<sup>1</sup>Ibid., p. 563.

<sup>2</sup>Ibid., p. 568.

a part of the Isthmus of Darien to a company, to be called Junctiana, who should undertake to make a water communication between the Atlantic and the Pacific, and to allow equal privileges of transit to all nations, but Echeverría would not hear of the alienation of a foot of land belonging to the Republic.<sup>1</sup>

Echeverría wrote his last letter to Santander on June 5, 1822, and died a short time later, in Diepp.<sup>2</sup> In a subsequent letter to Bernardino Rivadavia, Bentham expressed his regret at the premature death of this talented man who had expressed enthusiastic admiration for his principles.<sup>3</sup> Within a few months Francisco Antonio Zea died at Bath, England, his earlier contributions obscured for the moment by general dissatisfaction with his handling of Colombia's fiscal negotiations abroad.

By the time these events were taking place in Europe, Bentham's friend Colonel Francis Hall had closed one period of his American career, his journalistic enterprise in Caracas as editor of El Anglo-Colombiano. Hall's paper had been the first non-official newspaper published there after the liberation.<sup>4</sup> It was financed by British commercial interests in the city and was eminently respectable, and, according to Bushnell, Hall had used it to propagate the most advanced ideas of British liberalism.<sup>5</sup>

The Anglo-Colombiano was also the chosen publicity organ of a group of ultra-liberal federalists referred to by its critics as the "Caracas club." Francis Hall came to share the opinion of this radical and anticlerical group,

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<sup>1</sup>Autobiographical Recollections of Sir John Bowring (London: H. S. King & Co., 1877), pp. 322-23.

<sup>2</sup>See the editor's note, Archivo Santander, VIII, 255.

<sup>3</sup>Draft letter, April 5, 1824, Bentham MSS, xxi, 273.

<sup>4</sup>Bushnell, "Press in Great Colombia," p. 441.

<sup>5</sup>Santander Regime, pp. 290-92.

which was later a center of separatism and rebellion in Venezuela, that the government at Bogotá was illiberal, pro-clerical, and selfish. The Santander administration became so alarmed at the paper's attacks that Hall was ordered away from Caracas on official business.<sup>1</sup>

This was the most celebrated case of alleged injustice to the opposition during Santander's vice presidency,<sup>2</sup> but even Hall admitted that the action had been entirely legal and proper, since he had accepted a commission as chief of the topographical department on the general staff of the army after he arrived in Colombia, and was therefore subject to military orders.<sup>3</sup> He felt proud of his accomplishment in Caracas: "The example of a free Newspaper has roused a spirit of bold inquiry which will never be laid but in blood."<sup>4</sup>

Bolívar shared Santander's opinion of Francis Hall's newspaper, and wrote:

That which you say of the Anglo-Colombiano I say of all the writings that will come out in the future to prove whether there is liberty of the press. Now they speak of laws, tomorrow it will be of persons, and the next day of dead men.<sup>5</sup>

In 1822, undeterred by his disappointment in Spain and encouraged by events in Portugal, Bentham printed his Codification Proposal, Addressed by Jeremy Bentham to All Nations Professing Liberal Opinions. It contains much of the material used in the Letters to Toreno, and, true to his threat or promise to the Count, Bentham immediately had it translated to Spanish, and in May he

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<sup>1</sup>Ibid.

<sup>2</sup>Ibid., pp. 41-42.

<sup>3</sup>Letter, Francis Hall to Bentham, Oct. 17, 1822, Bentham MSS, xii, 85.

<sup>4</sup>Letter, Hall to William Empson, July 10, 1822, ibid., sheet 135.

<sup>5</sup>Letter to Santander, Aug. 13, 1822, Correspondencia, II, 317.

sent both the English and the Spanish versions to Francis Hall.<sup>1</sup> He told him that he was using other channels to convey copies to Bolívar,

having reason to hope that my labours are already regarded with a not altogether unfavourable eye, by himself as well as by divers persons who have the honor and happiness to be sharers of his confidence; and nest eggs being now upon the carpet, you will judge whether that which I am now presenting you with may not on the part of the constituted authorities in Colombia possess a chance more or less favourable of being productive . . .<sup>2</sup>

Bentham called his friend's attention to a part of the pamphlet which mentions the Panopticon system of prison construction and management. He seemed to feel that the Englishman could do something to promote its adoption in Colombia:

Supposing the conduct of this Panopticon scheme to suit your inclinations, there may perhaps be a preponderant use, not to say necessity, in your crossing over to this country for the purpose of establishing it there to the best advantage, in particular for profiting by the resources which are afforded by machinery here in such perfection of abundance.<sup>3</sup>

Hall, who could have enjoyed no influence at all with the constituted authorities, must have been surprised at Bentham's letter. He wrote to him from Bogotá:

You will scarcely expect, my dear Sir, that with its hands as full as they are at present, the government should be well disposed to turn much of its attention towards your excellent plans of Prison reform. In fact, they have much to reform here 'ere they come to prisons--schools, churches, courts of Justice, the Senate itself, all need the same salutary medicine, which, I am sorry to say, is for some time likely to be slowly and partially administered.<sup>4</sup>

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<sup>1</sup>Letter, Bentham to Hall, May 17, 1822, Bentham MSS, xii, 62, p. 1.

<sup>2</sup>Ibid., p. 3.

<sup>3</sup>Ibid., sheet 63, p. 4. The Panopticon scheme included specific architectural and mechanical arrangements for the prison edifice and furnishings.

<sup>4</sup>Letter of Oct. 17, 1822, ibid., sheet 85, p. 4.

The Liberator spent the last months of 1822 in Ecuador, where he found time to write long-overdue replies to the letters of Jeremy Bentham and Edward Blaquiére. His letters to Blaquiére acknowledged earlier correspondence and the books sent to him:

Mr. Revenga left in the Capital of Bogotá the little collection of modern political and philosophical writers which you have been so good as to send to me, and I am eagerly anxious to obtain information on the subjects last treated of by Dumont and Bentham, the reading of whose works you recommend to me in preference to the rest.<sup>1</sup>

His very complimentary letter to Bentham contains the following passages:

It is some time since, in a time of the most violent agitation, General Devereux put into my hands a packet which I understood was addressed to me by you; doing me that honor for the benefit of our young Republic, at that time so sharply pressed by legions of exterminators. I received with the sincerest gratitude a present which could not but be of high value, coming as it did from your hands; but, at that moment, the pressure of circumstances was such, that forgetting all the admiration I feel for the author of such admirable works, I left it drowned in the midst of papers which had but a momentary value; and an urgency which I at present lament--

The fact is, that I was not able to do more than just to run over the precious communication you favored me with, which I have not seen since having led so unsettled and embarrassed a life, and having been obliged to take the whole weight of affairs on my own shoulders.

But, Sir, could you have conceived, that the name of the Preceptor of Legislators is never pronounced in these savage regions of America, without veneration, nor without gratitude?-- I am moreover particularly indebted to you, for the direct communication, without any particular merit of my own, of a part of those sacred truths, which you have scattered over the Earth to fecundate the moral world. I have paid my tribute of enthusiasms to Mr. Bentham and I hope Mr. Bentham will adopt me as one of his disciples, as, in consequence of being initiated in his doctrines, I have defended liberty, till it has been made the sovereign rule of Colombia--

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<sup>1</sup>English translation of letter, Bolívar to Blaquiére, Sept. 27, 1822, *ibid.*, lx, 68.



I shall not here repeat the motives of gratitude which animate me, towards the Geometrician of Legislation; but I cannot forbear entreating that his light may be permitted to search even here--<sup>1</sup>

## II

Early in the new year Bentham wrote another letter to Bolívar, to introduce to him Leander Miranda, who was the son of the deceased Francisco de Miranda and his English housekeeper. Bentham was perhaps unaware of the tragic end of General Miranda's association with Bolívar, for he wrote that the young man's name would, of course, suffice to ensure that he would receive every kindness from the Liberator.

He intended to locate in Bogotá and edit a newspaper, which would be subsidized by an English business firm. Understanding that the family was well taken care of, Bentham had never seen any prospect of being of use to Miranda's son "until the other day, when I heard of his being engaged in the above mentioned enterprise, on account of an opulent mercantile partnership here."

Leander had been educated in one of England's old established public schools, where Bentham supposed he had learned nothing but Latin and Greek, and had been able to spend two or three years on the Continent. His ability in the journalistic profession was as yet untried, but, wrote Bentham, "Mr. Mill has assured me, that such of my works, as by the favor of M. Dumont are in French, have been read by him: of those in English, such as seemed to afford a chance of being of use to him where he is going, I have given him copies of."<sup>2</sup>

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<sup>1</sup>English translation of letter, Bolívar to Bentham, Sept. 27, 1822, ibid., x, 7.

<sup>2</sup>Letter of Jan. 6, 1823, ibid., xii, 86-88.

Bentham referred to this young man several years later:

When Miranda, son of the celebrated General Miranda, with whom I was on intimate terms, went some years ago from this country, in which he was born and bred, to Colombia, I think it was--at that time Venezuela--to set up a newspaper in the English style, I drew up for his use a little plan, having for its object this species of impartiality as far as practicable.<sup>1</sup>

As a newspaper editor Miranda turned out to be an unqualified success. His El Constitucional, established in 1824, gave Bogotá for the first time "a metropolitan newspaper befitting the capital of a great republic."<sup>2</sup> Miranda admitted that he was supported by an unnamed foreign business concern.<sup>3</sup> He used the best British equipment and the services of an English printer, and, for the most part, "displayed a serenity in the face of controversial issues which was also a novelty" in Gran Colombia.<sup>4</sup> For the benefit of the numerous English colony in Bogotá--and perhaps for foreign readers as well--as much as half the paper was printed in the English language. But it performed no particular service in promoting the vogue of Benthamism.

Bentham took advantage of Miranda's departure to renew his association with Colonel Hall, sending him a brief letter which answered his correspondence of the preceding October. In reality Vicente Azuero, a man he probably knew nothing about, was doing much more to make him known at Bogotá, and in the nation, than any of his English contacts or his distinguished correspondent Bolívar himself, to judge from the frequent references to

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<sup>1</sup>Letter to José del Valle, Sept. 8-13, 1829, Works of Bentham, XI, 19.

<sup>2</sup>Bushnell, "Press in Great Colombia," p. 439.

<sup>3</sup>Ibid., p. 445.

<sup>4</sup>Ibid., p. 440. For information on El Constitucional and on Miranda's career, see also Gustavo Otero Muñoz, Semblanzas colombianas (2 vols.; Bogotá: Editorial A. B. C., 1938), I, 311-14.

Bentham's works in Azuero's newspapers. Possibly an examination of El Anglo-Colombiano would reveal that Hall had done something to make Bentham's principles understood in Caracas, but even if this were true, the paper does not seem to have been important in New Granada, and Hall could have had very little influence with Santander's government.

The contrast seems to exemplify the Spanish rather than the English origin of Bentham's popularity in Colombia. Azuero's attention to the writings of the Spanish liberals may be judged from his utilization of their work in his own legislative drafts, including the Constitution of Cúcuta and his adaptation, in 1823, of the Spanish penal code--and the part he played in the production of the Colombian plan of studies, which is not quite so well documented. No doubt there are other less conspicuous examples of his willingness to draw upon Spanish models. One is found in an item which appeared in El Conductor, a newspaper which he edited: "We recommend to our Congress the articles relative to promotions in the Organic Law of the Permanent Army approved by the Spanish Cortes, so that they may adopt them, or take them as models for a similar law."<sup>1</sup>

Azuero's La Indicación suspended publication after the issue of January 23, 1823, but favorable references to Bentham continued to appear in El Correo de la Ciudad de Bogotá, of which he was joint editor. In January, 1823, this paper summarized an article on the government of Iturbide from El Indicador del Orinoco, developing the proposition, identified as Bentham's, that the best constitution for a people is the one to which it is accustomed. The article advised the Mexicans to accommodate themselves to the new imperial government, if that was what the country wanted, to form their political

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<sup>1</sup>Issue of April 13, 1827.

constitution and their civil code "with the wise Bentham in their hands" who would tell them how it was to be done, to open schools of mutual instruction without handing them over to the friars, and to propagate useful knowledge in politics, the moral sciences, and philosophy.<sup>1</sup>

The statement on constitutions is really Dumont's, who wrote of Bentham in his introduction to the Traité de Législation:

He thinks that the best constitution for a people is the one to which it is accustomed. He thinks that happiness is the only end, the only thing with an intrinsic value, and that political liberty is only a relative good, one of the means of arriving at this end. He thinks that a people which has good laws can arrive at a high degree of happiness even without having any political power, and, on the contrary, that it may have the widest political powers and yet necessarily be unhappy, if it has bad laws.<sup>2</sup>

Bentham never felt that his thought had been betrayed by these expressions of Dumont,<sup>3</sup> but in 1821 they were too much for the liberal Spaniard Ramón Salas, who felt that Bentham and his editor were countenancing despotism.<sup>4</sup> In his translator's preface Salas confessed that he had never appreciated Bentham's political principles, "which don't seem liberal enough to me," as much as his teachings on civil and penal legislation.<sup>5</sup> Apparently Salas, like Nuñez, did not understand that Bentham's opinions on "constitutional law" had changed.

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<sup>1</sup>Correo de la Ciudad de Bogotá, Jan. 23, 1823.

<sup>2</sup>Quoted and translated in Halévy, Philosophic Radicalism, p. 143. This passage also appears in the "Discurso preliminar" of Salas's Spanish translation.

<sup>3</sup>Halévy, Philosophic Radicalism, p. 143.

<sup>4</sup>Salas, Commentary on the "Discurso preliminar," Tratados de legislación, I, 19.

<sup>5</sup>"Prólogo del Traductor," ibid., p. xiii.

Azuero was not the only Colombian quoting Bentham in 1823. Citations by Vice President Santander, Jerónimo Torres, the aristocratic senator from Popayán, and contributors to the Gaceta de Colombia indicate that the Treatises on Legislation were being read by some important Colombians even before the Salas edition from Paris arrived in quantity in 1824.

Santander wrote for publication frequently--often anonymously. He told Bolívar in February that he, Azuero, and Torres were the only writers who had attacked the federalists in the press, and that the discourses which had appeared in the Gaceta de Colombia were his own. It was widely understood that the miniature-sized El Patriota, published from January to August during 1823, was the work of Santander. Its appeal was to an unsophisticated audience, the Colombian troops and the average man, by whom--or to whom--it was designed to be read.<sup>1</sup> The earliest references to Bentham in the paper are not complimentary: he was grouped with other "theorists" whose influence was regretted, following one of the paper's themes that federalism, which was justified by an appeal to principles and supported by such doctrinaire liberals as the members of the Caracas club, would be impractical in Colombia:

Theories, theories . . . We say no more because we fear to alarm the Montesquicistas, Benthamistas, Tracyistas, Constantistas, Daunonistas, and the rest. If only someone were able to bring these illustrious apostles of the liberty of the people to Colombia, so that they could write their doctrines here, then we would see if Pasto is like Paris and Ciénaga like London. God spare us from incurring the wrath of our exalted liberals!<sup>2</sup>

Santander was not concerned with fine distinctions here, of course, but in point of fact Bentham had no liking for federalism, as his later writings on constitutional law would show, while Santander's feelings on the subject

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<sup>1</sup>Bushnell, "Press in Great Colombia," p. 435.

<sup>2</sup>El Patriota, Feb. 16, 1823.

fluctuated with changing conditions.

An article published in El Patriota in April developed Bolívar's opposition to any tampering with the centralist constitution: "For the people of Colombia the opinion of General Bolívar is worth more than that of Bentham, Constant, Rousseau, Montesquieu, etc., even though these should argue the nullity of a law freely sanctioned by the legitimate representatives of the people."<sup>1</sup> Here it can only be said that no one was more chary than Bentham of declaring laws null on the basis of any principle.

By July Santander had apparently read the Codification Proposal, or the attached testimonials, at least. There seems to be no way of determining how he had come upon the rather recent work of Bentham, but Hall and Miranda had been given copies of it, Bentham had sent more to Bolívar by "other channels," and presumably Santander had been supplied from one of these sources. Or the thorough and persistent Bentham may have sent duplicates directly to the government at Bogotá, since he knew that Santander and his cabinet were directing national affairs during the President's absence. In an article urging adoption of the proposed penal code<sup>2</sup> El Patriota quoted from one of the testimonials, choosing the letter of an anonymous distinguished congressman of the Anglo-American United States describing the hostile attitude of lawyers toward codified law.<sup>3</sup> In place of being roughly handled along with other theorists, Bentham was identified as "the celebrated English juriconsult," in the phrase Colombians almost invariably used to describe him.

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<sup>1</sup> Ibid., April 6, 1823.

<sup>2</sup> See below, pp. 150-51.

<sup>3</sup> Issue of July 6, 1823. Cf. "Extract from a private Letter to Mr. Bentham from a distinguished Functionary in the United States . . .," in Bentham, Codification Proposal, p. 578.

Foreign news still included an occasional reference to the involvement of Bentham and his friends in Peninsular affairs. John Bowring was imprisoned by the French government in October, 1822, when he attempted to carry warnings of a French invasion to the liberal government of Portugal, and the incident was mentioned in the Bogotá press the following February.<sup>1</sup> If Bowring's association with Jeremy Bentham was not understood in Colombia at the time it was soon to be made clear to Bolívar, at least. Bentham wrote him a long letter in April, proposing his talented young friend as the ideal candidate for the position of Colombia's English agent--empowered to handle the republic's diplomatic, financial, and commercial affairs in the British capital.<sup>2</sup>

In 1823 the first congress was assembled under the constitutional provisions, and serious attempts were made to continue the program of reform begun at Cúcuta. Santander had tried to prepare for a reform of Colombian law early the previous year, when he appointed a committee of four to prepare the draft of a penal and a civil code,<sup>3</sup> but the Secretary of the Interior, in his memorial presented to the congress, explained that plans had been altered because of a fortunate circumstance:

To facilitate some of the work of the Congress in the formation of the code the Government created a commission in the month of January of 1822. [But the ] proyecto of the criminal code adopted by the Spanish Cortes having arrived subsequently, an enlightened magistrate who desires the reform of our legislation took upon himself to print it anew with the variations required by the fundamental laws of Colombia. The Executive will present to the Congress a sufficient

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<sup>1</sup>Gaceta de Colombia, Feb. 16, 1823.

<sup>2</sup>Draft letter, April 20-21, 1823, Bentham MSS, xii, 110-14. See also another draft, March 27-June 3, 1823, which seems to deal with the same subject (ibid., sheets 129-34).

<sup>3</sup>Order of Jan. 5, 1822, Gaceta de Colombia, April 28, 1822.

number of copies, and this code being simple, complete, and accomodated to our ancient usages, customs, and religion, recommends to the legislative body that it be adopted provisionally and by way of a trial.

The first general congress ordered the observance of the Spanish laws, without having been able to examine the utility and convenience of each one of them. With much more reason could the same be prescribed of the new Spanish Code, drawn up in conformity with the advances of the century, and in the light of the best codes which have been published in cultivated Europe.<sup>1</sup>

Predictably, the magistrate was Azuero. He had submitted his personal offer to edit a draft based upon the Spanish code, and the Vice President had approved the plan on February 25, 1823.<sup>2</sup>

Accepting the responsibility which the Congress of Cúcuta had assigned to the executive for planning educational reforms, Santander had appointed another commission on January 5, 1822. The men he named were Dr. Pedro Gual, his Foreign Secretary; Dr. Jerónimo Torres; the priest Dr. Francisco Guerra; Dr. Santiago Pérez Valencia; and Dr. Benedicto Domingues.<sup>3</sup> The writer has seen nothing to indicate that these men were not, in effect, the authors of the projected law passed to the Congress of 1823.

Restrepo's Memorial, besides reporting good progress in the founding of schools, contained this section on education:

Regarding colegios as well as universities, the Executive will propose all the reforms deemed convenient, as well as the plan of studies which, by his order, a commission of chosen men has prepared. This proyecto, with all the other necessary reports, will soon be submitted to the Congress.<sup>4</sup>

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<sup>1</sup>José Manuel Restrepo, "Memoria que el Secretario del Estado y del Despacho del Interior presentó al Congreso ... el 22 de abril del año 1823," in Archivo Santander, X, 76. Hereinafter cited as "Memoria al Congreso de 1823."

<sup>2</sup>Letter, Secretary of the Interior to Azuero, Feb. 25, 1823, in Hernández de Alba and Lozano (eds.), Documentos sobre Azuero, p. 84.

<sup>3</sup>Decree of Jan. 5, 1822, Codificación nacional, VII, 43-44.

<sup>4</sup>"Memoria al Congreso de 1823," p. 69.



The proposed penal code and the proyecto de ley concerning education were both discussed during the congressional session, but both left pending when it closed.

The vogue of Benthamism has left a few traces upon the records of this Congress. The most notable of these, according to Francis Hall, was a measure which became law on June 11, 1823, in the following terms:

The Senate and the House of Representatives of the Republic of Colombia, united in Congress,

CONSIDERING

1. That according to the nature of the representative government and the liberal principles which Colombia has adopted, the laws should be given rather as the useful and salutary precepts of a father to his sons, than the capricious and arbitrary commands of a lord to his servants or a monarch to his vassals,
2. That the laws are better obeyed, if to the duty of obedience is added the force of conviction,
3. That the legislators being so many agents or commissioners of the peoples, and responsible for their actions before the tribunal of public reason, they should, consequently, present the bases which have guided them in their deliberations,

DECREE THE FOLLOWING:

When the laws are promulgated and compiled, they shall go accompanied by an exordium which shall contain the fundamental reasons which the Congress has had in view for their resolution, and which have counted with the Executive for his sanction.<sup>1</sup>

In a letter to Jeremy Bentham which he published as a dedicatory preface to his book Colombia: Its Present State, Hall referred to this piece of legislation:

You will be pleased to know that your ideas on legislation are gaining ground in Colombia; a law of Congress of the 11th of June, 1823, orders, "That all laws shall be accompanied by an exordium, containing the fundamental reasons for their enactment." I have no doubt

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<sup>1</sup>Codificación nacional, I, 186.

that this idea was suggested by the present of your Codification Proposal to this Government. For its sake, rather than for yours, I could have wished the obligation had been acknowledged.<sup>1</sup>

The law had been proposed by Senator Torres,<sup>2</sup> the administration leaders' ally against federalism. There is no doubt that he was acquainted with Bentham's writings, as he cited this author by name at the last session of the Senate in 1823. The matter of accompanying every law with a rationale had been emphasized in Bentham's Codification Proposal,<sup>3</sup> as Hall said, but it was also explained at length in the Traité de Législation.<sup>4</sup> Presumably Torres would have had access to either source.

Bentham considered the matter essential. He criticized the traditional form of the laws because "they do not order more than obedience . . . and do not know how to lay aside their severity to speak to men as a good father speaks to his sons."<sup>5</sup> He wrote that the major advantage of publishing the reasons for the laws would be that of "winning over minds, satisfying the public judgment, and making the laws obeyed not because of a principle of passivity or blind fear, but because of a consensus of wills."<sup>6</sup> The phrase public opinion tribunal, which is not far from the tribunal of public reason in the Colombia law, was very characteristic of Bentham. It was

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<sup>1</sup>Francis Hall, Colombia: Its Present State (London: Printed for Baldwin, Cradock, and Jay, 1824), p. iv. The letter is dated Feb. 5, 1824.

<sup>2</sup>Roberto Cortázar and Luis Augusto Cuervo (eds.), Congreso de 1823: Actas (Bogotá: Imprenta Nacional, 1926), p. 72. Hereinafter cited as Congreso de 1823.

<sup>3</sup>See pp. 538-45.

<sup>4</sup>See Bentham, Tratados de legislación, III, 280-82, V, 68-100.

<sup>5</sup>Ibid., V, 90.

<sup>6</sup>Ibid., p. 92.

used in a number of his works, including the Tratados de legislación and the Codification Proposal.<sup>1</sup>

The senators tried to clarify the measure so that it would not apply to laws compiled in a code--which would have violated one of Bentham's cardinal points on codification--then passed Torres's proposal "almost unanimously."<sup>2</sup> Encouraging as this legislation may have appeared to Francis Hall, its effect does not seem to have been profound. The Colombian laws were already preceded by brief rationales. As Senator Soto pointed out, this had been the unvarying form of the laws passed by the Congress of Cúcuta.<sup>3</sup> The same style may be observed in the executive decrees of the time of the provisional government, and to investigate no further, in the laws and decrees of the Cortes of Cádiz.

Santander's messages to the Congress of 1823 contain one clear citation of Bentham, in a communication to the Senate:

The execution of the laws is where inconveniences become noticeable, doubts arise, and almost insuperable obstacles are found. For this reason, I ask explanations and I wish the law to be so clear that it will not leave room for prejudicial interpretations which will block the benign intentions of the Congress. Do not think me impertinent in requiring the clarity which Bentham has explained well when he has said that the words of the laws should be weighed as diamonds.<sup>4</sup>

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<sup>1</sup>Ibid., III, 236; Salas, "Comentario," ibid., pp. 283-89; Codification Proposal, pp. 555-56, n. Bentham also gave more fundamental reasons for the necessity of including a rationale with every law. He considered every law an evil because it is a violation of liberty. The legislator should, therefore, be required to show that the pleasure to be anticipated or the pain avoided as a result of the law will outweigh the inevitable pain of restriction and coercion. He did not conclude that laws should not be imposed because they violate liberty, but believed that his method would restrain the corrupt and despotic legislator, and give the laws a single, luminous principle. See Tratados de legislación, I, 214-15, V, 86.

<sup>2</sup>Cortázar and Cuervo (eds.), Congreso de 1823, pp. 82-83.

<sup>3</sup>Ibid., p. 44.

<sup>4</sup>Message of June 2, 1823, Cartas y mensajes, IV, 165. Cf. Bentham, Tratados de legislación, IV, 344.

Congress closed its sessions on August 6, and Torres, delivering a farewell speech in the absence of the president of the Senate, called upon the departing senators to "remember and repeat often with Bentham: 'What a thing is a law! How many things in a law!'"<sup>1</sup>

### III

By the beginning of the new year the Colombian reading public was aware that another brief constitutional period had ended in Spain, and that domestic disunity had contributed greatly to the failure of the regime and the successful intervention of the French. If Santander and his administration had sometimes profited from advance work done by the Spanish liberals, he hoped now that his critics among the ultra-reform groups would profit from the lesson of their failure. He wrote to one of these men in February, 1824:

My friend! The Spaniards carried the principles of reform to extremes in all things, offended many persons of influence, divided opinions, and provoked the tragic scenes which today are presented to us in the Peninsula . . .

. . . in regard to political or ecclesiastical reforms, and certain widespread prejudices on which the major part of the population nourishes itself, why should we not be moderate? To answer we should place in the balance the evils which immoderation produces, and those which the opposite system avoids . . .<sup>2</sup>

Santander was defending his moderation here with an argument from Bentham, found in the Tratados de legislación:

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<sup>1</sup>Cortázar and Cuervo (eds.), Congreso de 1823, p. 388. The writer has been unable to locate this quotation in the Tratados de legislación. The English Principles of Morals and Legislation, which Dumont utilized in writing the Traité, contains this passage: "'What a multitude of things there are,' exclaimed the dancing-master Marcel, 'in a minuet!' May we now add?--and in a law!" See Bentham, An Introduction to the Principles of Morals and Legislation, first published in 1789, in Works of Bentham, I, 154. Hereinafter cited as Principles of Morals and Legislation.

<sup>2</sup>Letter to Francisco Rivas, Feb. 15, 1824, Cartas y mensajes, IV, 303.

When the prejudices of the people are violent and tenacious, it is to be feared that the legislator will resort to extremes, one of which is to become inflamed against these prejudices, and determine to extirpate them, without weighing in the balance the utility of the good and evil effects of this course.<sup>1</sup>

Yet, as if trying to avoid the other extreme of "indolence and pusillanimity" which Bentham had criticized, his government went ahead with the innovations considered advisable, and permissible under the law. In the area of education Santander began to introduce specific reforms by executive order during 1824. His decrees appear to represent component parts of the two comprehensive measures which were enacted in 1826: the Congress's law of March 18 "concerning the organization and arrangement of public instruction," and the plan of studies inaugurated by executive decree on October 3.<sup>2</sup> Both of these were patterned after reforms introduced in Spain in 1820 and 1821. The proposed law regulating public education was already under consideration in the Congress,<sup>3</sup> and Santander anticipated the provisions of the 1826 plan of studies when he ordered that the works of Lepage, Constant, and Vattel be used as texts for the study of law, in his decree of January, 1824, reorganizing the colegios of the recently liberated southern departments.<sup>4</sup> Later in the year he ordered

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<sup>1</sup>v, 173.

<sup>2</sup>See below, pp. 173-77, 189-92.

<sup>3</sup>Restrepo must have been referring to the proyecto of this general law regulating public education when he told the Congress of 1823 that a commission of chosen men had prepared a plan of studies, although later the term "plan of studies" was applied only to the more specialized decree approved on Oct. 3, 1826, which described the courses of studies for use in the schools, colegios, and universities, and prescribed the use of certain texts. The Spanish enactments which served as precedents for this decree were certainly known by 1823, and the plan could have been written before April of that year, but this seems unlikely, as Santander went to the trouble, in 1826, of appointing another commission to draft the "plan of studies."

<sup>4</sup>Decree of Jan. 20, 1824, Codificación nacional, VII, 190-91.

that a chair of political economy be established at San Bartolomé, specifying that lessons be given from the author J. B. Say.<sup>1</sup> These provisions would be made general in the law and decree of 1826.

The chair of political economy was awarded in public opposition to Doctor Francisco Soto,<sup>2</sup> Santander's political supporter and close adviser, another man who quoted Bentham in the Colombian senate. It seems that the new course was not immediately popular, as Soto was complaining to the rector by May 9 of the next year that only seven students had appeared for his class.<sup>3</sup> Among the names on his brief class list, however, was that of Ezequiel Rojas, a youth who would become a professor himself and the heir of the liberals and utilitarians of Santander's generation. Due to men like Rojas, wrote Jaime Jaramillo Uribe, the vogue of Benthamism, though it waned at certain periods, was prolonged in Colombia until approximately 1870.<sup>4</sup>

Francis Hall published his book Colombia: Its Present State, dedicated to Jeremy Bentham, during 1824; at some time Santander added it to his library.<sup>5</sup> It was designed to offer prospective settlers in Colombia a realistic but hopeful picture of the conditions they would find. The author spoke with perfect frankness of Great Britain's paramount interest in building up a nation of customers in this South American state, which would remain agricultural under a system of free trade, if it learned to act in its true

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<sup>1</sup>Decree of Oct. 6, 1824, ibid., p. 229.

<sup>2</sup>Archivo Histórico Nacional, Bogotá, Instrucción Pública (Sección de la República), CXXXIV, 90. Hereinafter cited as A. N. All of the volumes on public instruction to be cited are from the Sección de la República.

<sup>3</sup>Ibid., sheet 240.

<sup>4</sup>"Benthamistas," p. 13.

<sup>5</sup>Hernández de Alba and Martínez Briceño, "Santander íntimo."

interest.<sup>1</sup> And Colombians learned during this year that another of Bentham's books was available in Spanish, when the Gaceta carried the notice that the translation Táctica de las asambleas legislativas had been published at Paris.<sup>2</sup>

Congress met in April, and the session produced the important legislation conferring upon the government of the republic the rights of patronage over the Church formerly exercised by the Spanish crown. Santander's message at its opening suggested that the pending educational reforms and the proposed penal code be given the legislators' attention.<sup>3</sup>

In Groot's ironic phrase, the Correo de Bogotá passed its message to the Congress a few days later.<sup>4</sup> The editors, popularly supposed to be Azuero, Soto, and Santander, recommended that the penal code be adopted provisionally, arguing the advantages of a system of legislation which could be reduced to a small number of pages: "The administration of justice has become an intricate and difficult art, a labyrinth of doubts and confusions, very apt to eternalize the legal processes and destroy the defendants." The people would bless the legislators for the great benefit of knowing that the security of their persons, the tranquility of their consciences, and the fate of their families depended on a single--and, presumably, available--book. The congressmen were asked to put an end to the system under which the most sacred rights of men, and even their lives, depended upon the arbitrariness of judges, the opinions

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<sup>1</sup>Pp. i-ii, 38-39, 46.

<sup>2</sup>Gaceta de Colombia, April 18, 1824.

<sup>3</sup>Message to the Citizens of the Senate and the House of Representatives, April 6, 1824, Cartas y mensajes, IV, 323.

<sup>4</sup>Historia, IV, 366.

of lawyers, the arguments of commentators, and that which is called practice.

The following footnote was added to this section:

The enlightened jurisconsult Bentham, that superior genius, of whom it can be affirmed that he will form an epoch in this science, says in the examen he wrote on this projected code, and which he directed to the Spaniards in 1822, that notwithstanding the defects which it has (some of which have been avoided in its application to Colombia), that it should have been adopted by Spain under these conditions . . . We cite the authority of this learned man with pleasure, because it cannot be of small weight for those who know some of his writings.<sup>1</sup>

The reasons advanced by the Correo in favor of the penal code seem so characteristic of Bentham's views that the writer must have drawn his arguments from the Tratados. Bentham had written in the section on penal law: "The system of procedure has been complicated so that it has become an obscure and difficult science . . . What is the consequence of all this accumulation of procrastination and delay? That the laws are not executed."<sup>2</sup> He argued elsewhere in favor of clarity in the laws, because "life, liberty, property, honor, all that is most dear to us" depends upon them.<sup>3</sup> A code formed upon correct principles "will not require schools of law for its explanation . . . nor require casuists to unravel its subtleties. It will speak a language familiar to everybody; each one might consult it at his need . . . The father of a family, without assistance, may take it in hand and teach it to his children . . ."<sup>4</sup>

Bentham deplored appeals to unwritten, foreign (Roman), or "natural" systems of law, and said of England's unwritten law: "If it has a lawgiver it is the judge himself: a legislator whose laws are always particular, and

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<sup>1</sup>Correo de Bogotá, April 9, 1824.

<sup>2</sup>Tratados de legislación, III, 212.

<sup>3</sup>Ibid., IV, 340.

<sup>4</sup>Ibid., p. 345.



necessarily ex post facto . . . the citizen . . . is reduced to consultations, he assembles the lawyers, he collects as many opinions as his fortune will permit, and all this ruinous procedure often serves only to create new doubts."<sup>1</sup>

Bentham's comments on the penal code, cited in the Correo de Bogotá are, of course, from his Letters to Count Toreno. There was probably at least one copy of the pamphlet in Bogotá in 1824, in the collection of his English works which Bentham had given to Miranda when he left England early in 1823, and it is possible that there were others. Miranda evidently kept his books for a time and then decided to dispose of them; at least this suspicion is aroused by an advertisement which appeared in his newspaper in March, 1825:

It is intended to raffle 11 boxes of books, containing 338 volumes . . . [among them] all the works of Jeremy Bentham, including the pamphlets which he wrote up to the year 1823, except the Treatise on Judicial Evidence. The number of chances will be seventy-two, at twenty dollars each . . .<sup>2</sup>

The Congress of 1824 did discuss the penal code, but failed to complete its examination before the end of the session. It took an important step toward modernizing the national economy when it passed legislation which outlawed entailed estates. The law also forbade all future transfers of property to ecclesiastical mortmain.

A few senators, including the Bishop of Mérida and Jerónimo Torres, opposed the special provision that entailed estates which had been destined eventually for the Church had to be conceded at once to their current holders with full rights of ownership. After the article had been approved Torres

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<sup>1</sup>Ibid., p. 331.

<sup>2</sup>El Constitucional, March 31, 1825.

wrote a formal protest, to be included in the Acts of the Senate. He based his objections on Article 177 of the constitution, which guaranteed property rights and on the "luminous principles solidly established by the most learned jurists of the world, such as Bentham, who has presented the difficult and intricate science of legislation in its greatest clarity and light." He wrote, correctly, that Bentham considered security the primary object of the laws--and cited his description of the fatal effects which attacks upon property could have upon the spirit of enterprise.<sup>1</sup>

The proposed Organic Law of the Judicial Power was discussed in part at the senatorial session of May 31. The liberal Francisco Soto, who had also read the Tratados de legislación, objected to an interpretation of the law which would give the right to remove inept public servants to the executive power exclusively. He "cited the authority of Bentham and Trito [sic] and other authors, who maintain that responsibility would remain illusory in the employees, if the faculty of suspending them were to reside exclusively with the Executive."<sup>2</sup>

Bentham's works continued to be cited outside the Congress in the periodical press. The Gaceta of June 27 congratulated the administration on reports that the republic had been highly praised in the British parliament--apparently referring to Lord Lansdown's speech in favor of recognizing the

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<sup>1</sup>Roberto Cortázar and Luis Augusto Cuervo (eds.), Congreso de 1824, Senado (Bogotá: Imprenta Nacional, 1931), pp. 262-64. Cf. Bentham, Tratados de legislación, I, 257, 275. While Bentham firmly defended the principle of security and the rights of property, he was opposed to laws of entail, and to legal restrictions, generally, placed upon the alienation of land. (Ibid., II, 34-36.)

<sup>2</sup>Cortázar and Cuervo (eds.), Congreso de 1824, Senado, p. 423. Cf. Bentham, Tratados de legislación, III, 270. Bentham wrote that the power of displacing should be put in other hands than the power of appointing.

independent government of Colombia, delivered in the House of Lords during March--and the editor added that he would have hesitated to assign the credit to the nation's magistrates if Bentham had not permitted praise of public officials when it was deserved.<sup>1</sup> The reference here may be to Bentham's Tratado de los sofismas políticos, published first in French as part of the Tactique des Assemblées législatives in 1816, and then separately in English and Spanish editions in 1824, in which a political party in opposition was urged to praise the good actions of the party in power.<sup>2</sup> An article in the Correo de Bogotá of July 9 may also have utilized this treatise in its criticism of some conservative senators who were enlightened and well intentioned, but dominated by the "unfortunate error that the people still have not sufficient preparation to receive the improvements which their happiness requires . . . and thus they never escape from the sophism which has caused most damage to the human species; that is, 'this is good and even very good, but it is not opportune.'"<sup>3</sup> Nevertheless, the passage does not follow this later work of Bentham exactly, and sophisms had also been discussed in the Tratados de legislación.<sup>4</sup>

The next issue of the Correo recommended the study of Bentham on freedom of the press to an editor who had criticized the Colombian law on the subject.<sup>5</sup> In September the administration proved its own respect for the laws

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<sup>1</sup> Gaceta de Colombia, June 27, 1824.

<sup>2</sup> Sofismas políticos, p. 257.

<sup>3</sup> Quoted in Groot, Historia, IV, 378.

<sup>4</sup> Bentham, Sofismas políticos, pp. 110-12; Tratados de legislación, I, 170.

<sup>5</sup> Correo de Bogotá, July 16, 1824.

guaranteeing a free press when it met an attack in the Gaceta de Cartagena by merely publishing a defense of its position in the government newspaper. The tone was self-righteous and angry:

If the result of slanderous writing is, as Bentham affirms, that public opinion will brand its author an imposter, we hope that after the publication of the documents offered, the sensible and patriotic part of Colombia will say what the editor of the Gaceta de Cartagena has been in this respect.<sup>1</sup>

#### IV

The Congress of 1825 assembled in January, and Colombians congratulated themselves that the national legislature had been able to open its session on the day appointed by the constitution--this for the first time. By January 3 congressional business was under way, and the Vice President returned the projected Organic Law of the Judicial Power, approved by the legislature in 1824, with the reasons which had prompted him to withhold his sanction.

He objected to both the form and the substance of certain of its provisions, and explained his point of view in a detailed commentary. There seems to be little doubt that Santander paraphrased Bentham in this message at two points. Preparing to raise a point of grammar, he explained that his "desire that the laws should leave [the lawmakers] perfect, even in their composition,"<sup>2</sup> impelled him to do this. In another passage he reminded the senators that, as they knew very well, "clarity should always be sought, even if the same word is repeated many times, as long as it is the most

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<sup>1</sup>Gaceta de Colombia, Sept. 26, 1824. Cf. Bentham, Tratados de legislación, III, 99.

<sup>2</sup>Message to the President of the Senate, Jan. 3, 1825, Cartas y mensajes, V, 42.

appropriate."<sup>1</sup> Both statements recall Bentham's chapter "On the Style of the Laws" in the Tratados de legislación, which devotes space to the "essential perfections" and "secondary perfections" which the law should have.<sup>2</sup> This chapter offers the practical rule: "To express the same ideas the same words will always be used."<sup>3</sup>

Early in the session the Senate took under consideration a proposed law, already approved in the lower house, which would have recognized the validity of debts contracted by the colonial government in pre-revolutionary times, provided they were owed to Colombians and that a part of the funds, at least, had been used for the benefit of the colony. Much of the debt was in the form of clerical mortgages or censos, and the more conservative congressmen generally favored the measure. It had other supporters, too, such as the respected Dr. José Félix Restrepo and the liberal ministers Castillo y Rada and José Manuel Restrepo.<sup>4</sup> In the senatorial debates on the question Jerónimo Torres, who represented the upper-class interests of his region, made extensive use of Bentham's treatises.

The Actas of the Senate for January 15 record that Torres argued that justice and the respect due to private property demanded recognition of the debt, and pointed out the evils which would follow repudiation:

He supported his reasoning with the authority of Bentham, reading the chapter in which this writer treats of the suppression of offices, and demonstrates the injustice which is committed in attempting to sacrifice the property of individuals to the pretended general interest . . .

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<sup>1</sup>Ibid., p. 46.

<sup>2</sup>IV, 338.

<sup>3</sup>Ibid., p. 344.

<sup>4</sup>See Bushnell, Santander Regime, pp. 103-104.

He added that, according to these principles, the Colombian public would gain nothing by taking the censos from those who held them and that all would redound to prejudice and ruin . . . and the Legislature [would begin] with this predatory act to feed upon the property of others, like the uncontrolled fever which Lucan describes in the verses which Bentham cites . . .<sup>1</sup>

One of Torres's opponents in this debate was the liberal Diego Fernando Gómez, who could also quote Bentham. Gómez responded at this point that the important question was whether the government of Spain or the government of Colombia had received the funds, because, "as the same Bentham said, . . . every obligation caused a right, and every right an obligation."<sup>2</sup>

On January 20 Torres again cited Bentham to the effect that confiscation of this kind would violate the rights of individuals and be equivalent to robbery.<sup>3</sup> Both these discussions, including references to Bentham, were, in due time, given full coverage in El Constitucional,<sup>4</sup> which made a practice of publishing the congressional debates.

During 1825 Santander and the Congress were called upon to deal with a kind of insurrection that had broken out in the island-province of Margarita, off Venezuela, when the departmental commander had tried to recruit a small number of soldiers there for the war in Peru. Santander sent the reports of the occurrence to the House of Representatives, along with his comments on the pretensions of the islanders:

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<sup>1</sup>Roberto Cortázar and Luis Augusto Cuervo (eds.), Congreso de 1825, Senado: Actas (Bogotá: Imprenta Nacional, 1952), pp. 10-12. Hereinafter cited as Congreso de 1825, Senado. Cf. Bentham, Tratados de legislación, I, 340-58.

<sup>2</sup>Cortázar and Cuervo (eds.), Congreso de 1825, Senado, p. 102. Cf. Bentham, Tratados de legislación, I, 213.

<sup>3</sup>Cortázar and Cuervo (eds.), Congreso de 1825, Senado, pp. 134-35.

<sup>4</sup>Issue of March 31, 1825.

No people individually makes a contract with its government to place itself at its service in a war such as ours; the people deposit their will in their representatives, and tacitly have agreed to carry out and do that which those representatives determine . . . The law made this disposition and against the law there is nothing except the right of representation before the same legislator. Unhappy the nations which follow principles of public law as anarchical as those which the representation of Margarita claims.<sup>1</sup>

Bentham had treated some questions related to this problem in the small work he had written between 1791 and 1795, Anarchical Fallacies: Being an Examination of the Declarations of Rights Issued during the French Revolution. The Declaration of 1791, he believed, had pretended to set limits to the authority of both the executive power and the legislative body. But the power of the executive had already been limited by the constitution, and if the words of a declaration were really capable of restricting the power of the legislature, this would be a great evil. Any limitation imposed upon this body would be "futile and dangerous":

In a country which tries to give the people influence, where the right to elect its representatives is conceded to it, along with the right of presenting petitions, everything which the nature of the case permits has been done to prevent abuses of the legislative authority. In a free people which freely elects its deputies the public voice is the true brake on the National Assembly. When the Assembly has been placed in this state of dependence with respect to the general will, there is nothing to fear, nor is it necessary to take any precaution whatever.<sup>2</sup>

Santander advised the insurrectionists that the rule of law, not exaggerated liberty, had justified the independence movement:

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<sup>1</sup>Message of Feb. 3, 1825, Cartas y mensajes, V, 143.

<sup>2</sup>Bentham, Sofismas anárquicos, pp. 317-18. It seems probable, but not really certain, that Santander and his advisers had access to this work in French during the 1820's. A work listed as "Asambleas legislativas--2 tomos" was found in Santander's library at the time of his death (Hernández de Alba and Martínez Briceno, "Santander íntimo"); since only the French edition was in two volumes this was presumably the French publication of 1816 or 1822, which contained the Sophismes anarchiques. Although the Sophismes anarchiques were published in Portugues at Rio de Janeiro in 1823, they apparently did not become available in Spanish until 1834. See Everett, "Bibliography," pp. 536-37.

It is necessary that [Margarita's] good patriots understand that its sacrifices and those of all the republic have not had for their object leaving each one empowered to do whatever pleases him and trespass the law, but on the contrary, to organize us under a system in which the authorities shall be only the organ of these same laws.<sup>1</sup>

The Congress of 1825 gave some attention to the proposed penal code, but sentiment in its favor was far from unanimous. One senator said he wished to make it clear that he had had no part in the composition of the proyecto, as some had thought, because he had no wish to pass for a Draco, if the code were really severe and cruel, or for a Bentham, if it were wise and well thought out.<sup>2</sup>

One more aspect of the pending general reform of education was introduced in April, 1825, when the Executive decreed that in all colegios and casas de educación the customary closing exercises should be replaced by public examinations, in which students selected by the professor of each class would participate.<sup>3</sup> Groot asserted that such examinations had actually been conducted for the first time in 1824; it was in these certámenes, he wrote, that the aggrandizement of the civil power at the expense of the Church, and the tolerance of cults began to be urged.<sup>4</sup> It is easy to believe that these presentations were made a showcase for advanced ideas, especially when the classes were directed by such outstanding liberals as Francisco Soto and José Ignacio Márquez, who were devoting a part of their time to public instruction. Azuero joined this group when he was awarded the chair of public law at San

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<sup>1</sup>Message of Feb. 3, 1825, p. 146.

<sup>2</sup>Cortázar and Cuervo (eds.), Congreso de 1825, Senado, p. 443. The speaker was Senator Pérez Arroyo.

<sup>3</sup>Decree of April 23, 1825, Gaceta de Colombia, May 1, 1825.

<sup>4</sup>Historia, IV, 402-403.



Bartolomé in June, after Márquez had been named Intendent of Boyacá.<sup>1</sup>

In August Bentham showed that he had not forgotten Colombia by writing Bolívar a long letter, the last such communication of which the writer has knowledge. He sent it to America in the charge of Mr. Nicholas Mill, an enterpriser interested in the refining of platinum,<sup>2</sup> with a number of books and papers. His letter contains a most detailed listing of the contents of this collection, summarized as follows:

1. Leading Principles of a Constitutional Code for Any State: 3 English copies, 6 copies of the Spanish translation.
2. Spanish translation of "Legislator's Inaugural Declaration," Chapter VII of the (then-unpublished) Constitutional Code.
3. "Aptitude Maximized, Expense Minimized," comprising certain sections of Chapter IX of the Constitutional Code: 6 Spanish copies were to be included if the translation were completed in time; if not, a single manuscript copy in English would be sent.
4. Titles of the chapters and sections of the Constitutional Code. To be accompanied by a Spanish translation of the same, if completed. "It can serve as a kind of map for this part of the field of law and legislation."
5. Possible addition of a less recent work--the Spanish version of the Codification Proposal which, Bentham had been told, was a poor translation.<sup>3</sup>

Bentham mentioned that the principles of education for public servants, included in the material he was sending, could serve as a guide for a national system of public instruction, without increasing the expenses of the state.<sup>4</sup> Bentham's plan in the Constitutional Code includes specialized

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<sup>1</sup>Gaceta de Colombia, June 26, 1825.

<sup>2</sup>In a document presented in Bogotá in 1826, Mill named John Bowring of London as one of his associates. See Gaceta de Colombia, Sept. 4, 1826.

<sup>3</sup>Letter of Aug. 13, 1825, in O'Leary (ed.), Correspondencia de Extranjeros, II, 40-42.

<sup>4</sup>Ibid., p. 41.

technical training for those who will aspire to fill particular government positions or hold public office. The cost of this education would be carried, as much as possible, by fees and tuition paid by the candidates and their relatives.<sup>1</sup>

After identifying his translator as Dr. Puigblanch, Bentham told the Liberator that he was now a decided republican, that the object of his yet unfinished Constitutional Code was the happiness and the interest of the passive multitude, and that its adoption would require that the governing few be willing to sacrifice some of their special interests. "If there exists, or some day could exist, a nation in which there would be a probability that such a necessary sacrifice be made, it is that nation, or rather those nations, whose destinies are now in the hands of Your Excellency . . ."<sup>2</sup> He referred to the corruption of England's office holders, and said he had no reason to believe that the same class in Colombia would voluntarily follow a better political system. Nevertheless, "if extraordinary things are to be done, extraordinary men should do them." If this type of sacrifice was really to be made, it should be done under Bolívar's leadership. "By sacrifice I understand that which consists in reducing to its minimum, rather than increasing to its maximum, the accumulated benefits, which under all their forms, are obtained by the powerful, along with their natural allies, which are the opulent classes, to the detriment of the rest."<sup>3</sup>

He spoke of the sacrifices to which the hero had already accustomed himself and challenged him to further acts of generosity: "Your Excellency

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<sup>1</sup>Bentham, Constitutional Code, pp. 272-78.

<sup>2</sup>Letter of Aug. 13, 1825, p. 45.

<sup>3</sup>Ibid., pp. 45-46.

will be in a position to judge if, in a case of such a nature, another proof so unequivocal and incontrovertible of the sincerity of Your Excellency's declarations as the adoption of the leading principles of the code in question, coupled with their undeviating application in all their details, can be given."<sup>1</sup>

After pleading in this way for the consideration of his last great work, Bentham turned to other matters. He advised Bolívar that Rivadavia had given him a printed copy of the rules of procedure for the assembly at Buenos Aires, adapted, he had said, from Bentham's work on parliamentary tactics. Bentham thought that the Colombian and Peruvian governments could profitably use this work, and that Bolívar might want to request a copy; perhaps he would wish to order at the same time the translation of James Mill's fundamental work on political economy, which Rivadavia had said was on sale in the same American capital.<sup>2</sup>

The Liberator did not sponsor Bentham's Constitutional Code; he had, in fact, just written one of his own, and hoped that Colombia would adopt it in place of the Charter of 1821, which he considered excessively liberal. This episode, and the whole record of Bentham's personal efforts to become constitution-maker and legislator of the new state, leave the impression that he was functioning at a very great distance from the realities of Colombian politics, without any serious chance of success. Yet within the limited world of those realities, and in a manner which he had not anticipated, Bentham's finest moment had really come.

Early in November the Vice President issued a brief order concerning

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<sup>1</sup>Ibid., p. 47.

<sup>2</sup>Ibid., p. 55.

the teaching of derecho público, the area in which Vicente Azuero now presided at San Bartolomé, including this stipulation:

The professors of public law will teach the principles of legislation from Bentham, the principles of public constitutional law from the work of Constant or Lepage, and public international law from the work of Vattel . . .<sup>1</sup>

The decree was published in the Gaceta on November 27, and editorial comment which appeared in the same number makes it clear that the measure met sharp opposition immediately; it must indicate, too, that some sort of knowledge of Bentham was fairly widespread. The editor was already using arguments which would be repeated often: that opposition to Bentham was unpatriotic, and that those who objected to the required study of his work would logically have to oppose the study of any writer who was not a Catholic.

It appears that the decree of the government . . . has scandalized at the same time the pious souls and those who are attached to the former regime. In their concept it is enough that Bentham is English and Protestant in order that his works on civil and penal legislation be banned and proscribed in our colegios. But . . . they forget that the works of Montesquieu and Rousseau, who are by no means Roman Catholics, have been used in the Colegio del Rosario . . . And if the Protestantism of Jeremías Bentham inspires such terror, his táctica parlamentaria, tratado de sofismas, and panopticon should also be proscribed . . .<sup>2</sup>

Miranda's El Constitucional commented on the decree some days later:

We have heard with some surprise that the decree of the Government . . . has alarmed the religious scruples of some of our fellow citizens. . . . we fear [the explanation] is alone to be found in that anxiety to keep the people in a state of ignorance, which is unfortunately rather prevalent amongst our clergy.

. . . The selection of such authors as Bentham, Constant, etc., seems to them too well calculated to excite that thirst for enquiry they are so desirous of putting down, and . . . they avail themselves

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<sup>1</sup>Decree of Nov. 8, 1825, Gaceta de Colombia, Nov. 27, 1825.

<sup>2</sup>Gaceta de Colombia, Nov. 27, 1825.

of insinuations against their religious principles (which have as much to do with a book on Legislation, as they have with one on Mathematics).<sup>1</sup>

Secretary of Interior Restrepo wrote later that many parents were alarmed by the decree, and that time proved that Bentham's Tratados were, in effect, prejudicial to the morals of youth. This unfortunate result was not anticipated at the time, he wrote, "because the work was not well known."<sup>2</sup>

Groot, writing later, challenged Restrepo's explanation:

Wasn't Bentham's treatise on legislation, in ten octavo volumes, translated into Spanish and commented upon by Salas, in Bogotá from the year 1824? And wasn't this author being taught at San Bartolomé much before the decree was issued? From that time Santander studied legislation from Bentham without letting the book out of his hand. In his office he kept it open on his desk, and only put it to one side when he had something to write or when the secretarial officers brought him some resolution or dispatch to sign (the author was one of them and so he knows).<sup>3</sup>

If anyone had introduced Bentham's principles at San Bartolomé before November it must have been Azuero, as professor of public law. It is difficult to believe that Santander was studying quite so diligently at the governmental palace, given his remarkable activity in office. Nevertheless, as Groot was employed in the executive department, it is possible that he saw Bentham's work on the Vice President's desk.

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<sup>1</sup>Issue of Dec. 1, 1825.

<sup>2</sup>Revolución, VI, 352.

<sup>3</sup>Historia, V, 63. Groot's reference to the ten volumes may be an error, as the Madrid edition, used by the writer, is in five volumes, and the Paris editions of the Salas translation and commentary, of 1823 and 1838, were in eight volumes, as was another edition of the same translation brought out at Burdeos in 1829. The Manual de librero does list a "linda edición" of the 1823 publication, printed at Paris in 1826, but does not indicate a change in the number of volumes (Palau y Dulcet, Manual del librero, II, 170). It does seem noteworthy that Juan Francisco Ortíz, author of a newspaper published in 1835, mentioned the Tratados as circulating in a "magnificent" Spanish-language edition "of ten tomitos" (La Cáscara Amarga [Bogotá], Oct. 31, 1835, Biblioteca Nacional [Bogotá], Fondo Pineda, #184). Nevertheless, most of his paper's numerous references to the Tratados explicitly cite the French edition of 1802 or the Spanish edition of 1823, both published at Paris.

Some of the reaction to the Bentham order must have been favorable. The official Gaceta, at least, spoke of the Englishman as the "writer of the day" and, early in the year 1826, quoted Bentham and his "judicious and learned" Spanish commentator, in articles published to defend Santander against charges of timidity in reform and indulgence toward seditious clergymen.<sup>1</sup> The material used was from the Tratados de legislación.

The Congress of 1826 was not timid at all, and produced a number of thoroughgoing reforms. One of its measures, which became law in March, forbade aspirants to enter religion until they had completed twenty-five years, and looked to the gradual extinction of the orders, according to José Manuel Restrepo.<sup>2</sup> Though Santander later favored a slight mitigation, which the Congress refused to enact,<sup>3</sup> it appears that his administration had proposed the law in the first place, in Restrepo's Memorial to the Congress.<sup>4</sup> Bushnell's conclusion that Santander alternated between moderation and anti-clericalism<sup>5</sup> must surely be accepted, and the complaints against his church policy from the right and from the left mutually bear it out.

During the same month the long-pending law organizing and regulating

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<sup>1</sup>Gaceta de Colombia, Jan. 29, Feb. 5, 1826.

<sup>2</sup>Revolución, VI, 518.

<sup>3</sup>Bushnell, Santander Regime, p. 219.

<sup>4</sup>José Manuel Restrepo, "Memoria del Secretario de Gobierno," Jan. 2, 1826, in Archivo Santander, XIII, 380-81.

<sup>5</sup>Santander Regime, p. 242.

public instruction received the approval of Congress.<sup>1</sup> The antecedents of this legislative act would afford an interesting study of the transfer of liberal ideas from Europe to Colombia through revolutionary Spain, for the greater part of the law is unmistakably an adaptation of the Spanish Reglamento general de instrucción pública of 1821.<sup>2</sup> It seems almost as obvious that the Spanish law was inspired by the "Report of the Junta Created by the Regency" of 1813, on the subject of public instruction.<sup>3</sup> The principal author of the report was Manuel José Quintana, the distinguished liberal who so much admired the reforms of the French revolutionary period. And if certain authors are correct, Quintana had adapted many of his recommendations from a similar report which Condorcet submitted to the French legislative assembly in 1792,<sup>4</sup> and had profited from the example of the French educational system under Napoleon.<sup>5</sup>

The brief exordium which introduces the Colombian legislation seems to be written in the spirit of the eighteenth century reformers. It assured the citizens that general illustration in the sciences and useful arts would be a perennial fount of riches and power for the nation which cultivated them. Article #5, promising that education would be gratuita, comun, and uniforme in Colombia, echoes articles #1 (pública and uniforme) and #3 (gratuita) of the

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<sup>1</sup>Law of March 18, 1826, Codificación nacional, VII, 226-40.

<sup>2</sup>Decree of June 29, 1821, Decretos de las Cortes, VII, 362-81.

<sup>3</sup>"Informe de la Junta creada por la Rejencia para proponer los medios de proceder al arreglo de los diversos ramos de instrucción pública," in Obras completas del Ecmo. Sr. D. Manuel José Quintana, Biblioteca de Autores Españoles, Vol. XIX (Madrid: M. Rivadeneyra, 1867), pp. 175-91. The similarities between this report and the Spanish law of 1821 are obvious and have been widely noted.

<sup>4</sup>Juretschke, Afrancesados, p. 263; Zabala y Lera, España, Tomo V, Vol. I, 228.

<sup>5</sup>Juretschke, Afrancesados, p. 263.

Spanish decree. Chapter II on the Dirección General de instrucción pública follows the provisions of the Spanish title De la Dirección general de estudios very closely, setting up a body of directors--at least three in Colombia, where seven had been provided for in Spain--charged with the supervision of the educational system. Similar duties were assigned to these officials, Colombian and Spanish, while the Colombian group was given, in addition, some unique functions related to guiding new institutions and new teachers, and enlightening the general public on educational matters. Both laws ordered the founding of a National Academy, and the dispositions of the Colombian act concerning this institution generally followed those of the Spanish decree, although they did not stipulate that this group should assist in the direction of public instruction, as the law of the cortes had.

Provisions for the primary schools are roughly similar in the two laws. The Colombian act used the term secondary education, which had not been traditional in Spain or Spanish America, following the decree of the cortes, but did not conform fully to the cortes's classification of the secondary and "tertiary" studies. The Colombian law provided for casas de educación not mentioned in the Spanish law, in the cantonal capitals. But the departmental universities projected in the American act correspond to the Spanish provincial universities, and the articles regarding the three central universities--for Cundinamarca, Venezuela, and Ecuador--seem to have been drawn from the Spanish articles #52-#79, while the institutions themselves were apparently inspired by the Spanish universidad central, planned for Madrid.

Although medical education was to remain within the universities in Colombia, and to remove to separate institutions in Spain, the American law did provide for a number of schools for special studies, which correspond to those



described in the Spanish decree. Every one of the courses to be offered at the reorganized museo of Bogotá duplicates an item in the curriculum of the projected Spanish escuela politécnica. The courses and subjects listed for all levels of education, as a matter of fact, practically reproduce the Spanish listings, though some of the most lavish projections have been omitted. The first course listed for the class in jurisprudence in Colombia was "principles of universal legislation"--which became the vehicle for teaching Bentham's Tratados; it was also the first cátedra of law named in the Spanish reglamento. Provisions for laboratories, botanical gardens, libraries, medical amphitheatres, and so on, are about the same.

Each law required that candidates for professorial chairs be selected through public competition, and that students submit to annual public examinations. Special articles in both documents expressed the legislators' conviction that girls must be given a suitable education, but left the implementation of this principle to local ingenuity. Both laws ordered that the textbooks used should be in Spanish rather than in Latin, except for works on Roman Law, canon law, and theology--and Colombia added Sacred Scripture. Both laws stated that teaching methods would be uniform and that specific works would be designated as required texts.

The Spanish decree provided that detailed regulations for the various institutions would be arranged by the Dirección general de estudios. The Colombian Congress passed a separate decree which authorized the executive power to form a plan for the general ordering of instruction, to be prepared by the Dirección general de instrucción pública and submitted by the executive to Congress for its approval.<sup>1</sup> Meanwhile the executive was to issue a

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<sup>1</sup>Decree of March 18, 1826, Codificación nacional, VII, 241.

provisional plan independently.

On the day these laws were signed Santander met with the Council of Government to select a commission to draft the provisional plan of studies. The men appointed were Dr. José Manuel Restrepo and Dr. José María Castillo y Rada, both of them Secretaries of State; Dr. Vicente Azuero, who was a minister of the Alta Corte de Justicia; the senator Dr. Jerónimo Torres; the canon and rector of San Bartolomé Dr. José María Estévez; and Dr. José Fernández Madrid,<sup>1</sup> who possibly did not serve actively on the commission, as he was named to a mission in France in May and left soon afterwards.<sup>2</sup>

Dissatisfaction with public instruction in utilitarianism occasioned a public controversy in April when Vicente Azuero directed to the Vice President a strongly-worded representation describing the criminal defamation of his character, and the government's, perpetrated by Dr. Francisco Margallo, a popular preacher who was a formidable champion of orthodoxy, although he was generally considered both humble and patriotic.<sup>3</sup> Azuero wrote that Margallo had attacked the government's wise dispositions regarding the education of Colombian youth--specifically the provision that civil and penal law be studied from the treatises of Jeremy Bentham. He had characterized Azuero himself as a man who had been perverted by bad company and bad books, since the days when he had been his student in theology. These attacks were made, Azuero alleged, during a course of spiritual exercises which Margallo had directed, to

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<sup>1</sup>Acuerdos del Consejo de Gobierno de la República de Colombia, 1821-27 (2 vols.; Bogotá: Ediciones del Consejo, 1940-42), II, 68-70. Hereinafter cited as Acuerdos del Consejo.

<sup>2</sup>Raimundo Rivas, Escritos de Don Pedro Fernández Madrid: Publicados con noticias sobre su vida y su época (Bogotá: Editorial Minerva, 1932), p. 21

<sup>3</sup>Bushnell, Santander Regime, p. 241.

about forty persons, repeated at another such spiritual function, and finally included in a most offensive declamation delivered to the students at San Bartolomé.

Azuero called the action "seditious." "Among us the ministry of preaching is a function of the government, not to pass the limits fixed by the laws." The government had a right "to use its supreme and imprescriptible inspection to take care that the public order is not disturbed, and that these sacred functions are not abused." The mission of the preacher consisted in explaining dogma in simplicity and recommending good morals. "Anything which exceeds these two objects is an abuse, a usurpation deserving of punishment."<sup>1</sup>

Azuero exposed the fanaticism and irrational character of the ancient papal bull In coena Domini, in which he said Margallo founded his imprecations. These same characteristics were discovered, along with royalist attachments, in the preacher, who was said to have declared openly that he had read neither Bentham's book nor any of the publications of the government, including its laws and the official Gaceta.<sup>2</sup>

Bentham, on the other hand, was described as the author who, far from attacking religion, had sustained it as one of the four sanctions which a legislator should respect and make use of for the promotion of public happiness.<sup>3</sup> This was true, always assuming a strict public control over the churches. The Tratados de legislación taught that the tendency or direction of religion should be "in conformity with the plan of utility: its penalties should be attached to acts harmful to society and to these alone; and its

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<sup>1</sup>"Representación contra Margallo," pp. 282-83.

<sup>2</sup>Ibid., pp. 287-91.

<sup>3</sup>Ibid., p. 291.

recompenses should be promised to those acts which have a tendency which is useful to society, and not to others." Beyond this "all is indifferent, and everything which is indifferent in religious beliefs is liable to become pernicious."<sup>1</sup> "Considering only the facts, in both Protestant and Catholic countries, it is necessary to confess that religion has had a very great part in the misfortunes of the people, and has more often been the enemy than the instrument of the civil government."<sup>2</sup> The vulgar response to this evidence was to attribute all the evil to superstition, and the good to religion, but this was a purely verbal and false distinction.<sup>3</sup> Bentham did note, nevertheless, some hopeful signs that in his own day religion was disengaging itself from futile and pernicious dogmas, and tending to support sound morality and sound policy.

Azuero accused his attacker of unpatriotic and even conspiratorial acts, and "a pronounced passion for ultramontanist principles and the books of the Jesuits."<sup>4</sup> The bull In coena Domini, which Margallo took seriously, would condemn, along with all Colombians and certain popes, "the churches of France and Germany, which have constantly sustained the superiority of the General Councils over the Pope . . . all the classical theologians and canonists who have taught the same doctrine, and, to say it all at one time, the Ecumenical Councils of Constance and Basel, where the superiority of the Councils over the Popes, and the fallibility of the latter, have been formally declared."<sup>5</sup>

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<sup>1</sup>Bentham, Tratados de legislación, III, 239.

<sup>2</sup>Ibid., pp. 243-44.

<sup>3</sup>Ibid., p. 244.

<sup>4</sup>Representación contra Margallo," p. 295.

<sup>5</sup>Ibid., p. 288.

Azuero's representation seems to indicate that the Colegio del Rosario was not yet teaching principles of legislation from Bentham's work, as ordered in the decree of November, 1825, as he wrote that Margallo had counseled students to transfer to this institution where they would study public law from Lepage.<sup>1</sup> Azuero disclaimed any blind following of Bentham or anyone else on his own part, and wrote that he did not pretend to agree with all of the English writer's opinions.<sup>2</sup> Yet he considered Bentham a creative genius and his work immensely valuable. "Before him we had Montesquieu, Beccaria, and Filangieri," but their books left much to be desired. "The Tratados de legislación civil y penal form a body of doctrine, and I know of absolutely no other work which could fill its immense void." It included a treatise on penal science, the only reasonably founded study of civil law, and an excellent course on the logic of legislation, "the true elements of the social art," and exquisite notions of political economy; "in it we learn at one time the elements of Public Law, Private Law, and International Law, and of the purest morality, most conformable to the principles of the Gospel. More is learned in this one work of Bentham than in thousands of the volumes of many bookstores and libraries."<sup>3</sup>

Azuero asked for an investigation of the matter, and included a list of witnesses who could be questioned. He requested that the archdiocesan Provisor be asked to revoke Dr. Margallo's licenses for preaching and hearing confessions, and that a legal process be instituted, suggesting banishment and whatever other punishments the law might allow as fitting penalties.<sup>4</sup> Within

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<sup>1</sup> Ibid., p. 293.  
<sup>2</sup> Ibid., p. 292.  
<sup>3</sup> Ibid., p. 290.  
<sup>4</sup> Ibid., p. 302.

the week he received the Vice President's assurance, in a communication from the Secretary of Interior, that his petitions would be honored.<sup>1</sup>

Although a complaint was registered in the Corte Superior de Justicia of the department,<sup>2</sup> the only penalty Margallo suffered was imposed by the Provisor, Dr. Caycedo y Flórez, who required that he spend ten days of retreat in one of the religious houses of the capital, after which the renewal of his faculties would be considered. Bushnell believed that the prelate's auto added insult to injury by praising "the obviously heretical Azuero" for his religiosity,<sup>3</sup> but it also included some kind words about the mildness and the notable zeal of Father Margallo. In addition, the Provisor requested that Santander, in order to calm fears and doubts about the matter in the future, convoke a junta of theologians and canonists to examine Bentham's work, and order that its use in the classes of jurisprudence be suppressed, or the objectionable propositions expunged, as the junta might recommend.<sup>4</sup>

Early in the controversy a small newspaper called Cartas Críticas de Un Patriota Retirado appeared to defend Margallo's stand, and eleven numbers were published at irregular intervals from May until October. Eduardo Posada's bibliography lists its authorship as uncertain, as the name "Antonio S. Alvarado," which appears in the paper, has been thought to be a pseudonym.<sup>5</sup>

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<sup>1</sup>Letter of April 17, 1826, in Hernández de Alba and Lozano y Lozano (eds.), Documentos sobre Azuero, pp. 128-29.

<sup>2</sup>Gaceta de Colombia, Aug. 20, 1826, quoted in Groot, Historia, V, 104.

<sup>3</sup>Santander Regime, p. 241.

<sup>4</sup>Auto of Fernando Caicedo y Flórez, July 26, 1826, in Gaceta de Colombia, Aug. 20, 1826.

<sup>5</sup>Bibliografía bogotana (2 vols.; Bogotá: Arboleda and Valencia, 1917-25), II, 160.

But an anti-Bentham sheet of a later era declared that the writer was Rosillo,<sup>1</sup> presumably Dr. Andrés María Rosillo, dean of the cathedral chapter of Bogotá.

The earliest numbers attempted to disprove Azuero's charges and to explain that he had been deceived by rumors; the second issue reasoned that, after all, anyone had the right to criticize a book, even if the book did not teach principles which were contrary to the religion which enjoyed the special protection of the Colombian laws--but the writer promised to show that Bentham's book did teach such propositions. "If the government ordered that our youth be taught the principles of the Koran, would it be criminal to protest and to warn the students that they are pernicious? If so, then the Colombians are the most unhappy and oppressed people on earth . . ."<sup>2</sup> In the third number the author began a closer study of the Tratados de legislación and mentioned that he was acquainted with two editions, those of 1802 and 1823, both published at Paris. He felt that the real purpose of Bentham, Dumont, and Salas in this enterprise had been to strike at Christianity in a veiled manner and to convert their readers into atheists.<sup>3</sup> This number and subsequent issues pointed out specific objectionable features of the work, and challenged the author's denial of the natural law.<sup>4</sup>

In the tenth issue the writer of the Cartas compared Bentham to the infernal spirit, because he pretended to a precision in governing and directing men through the love and use of pleasures, "or that which is the same thing,

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<sup>1</sup>La Cáscara Amarga, Oct. 16, 1835.

<sup>2</sup>Cartas Críticas de Un Patriota Retirado (Bogotá), May 22, 1826.

<sup>3</sup>Ibid., June 9, 1826.

<sup>4</sup>Ibid., Sept. 24, 1826.

through our unfortunate propensity to evil."<sup>1</sup> No doubt the writer was concerned only with the religious issue here, but he had touched an aspect of Bentham's system which others have criticized for its authoritarian base. Halévy was rather close to the Retired Patriot when he wrote that the fundamental thesis of the Benthamites was the thesis of the mechanism of the egoistic passions.<sup>2</sup> Crane Brinton classed Bentham among those who believed that "a relatively few wise and gifted men in authority could manipulate the environment so that everybody would be happy," and "were, in fact, authoritarians."<sup>3</sup> He thought Bentham's system of rewards and punishments, which would offer the individual more pleasure than pain as a result of socially desirable behavior, a typical example of the "carefully contrived environment, contrived from above by the wise, fatherly authority."<sup>4</sup> Bentham's conversion to political democracy had really not changed this; according to Halévy he had merely "passed from a monarchic authoritarianism to a democratic authoritarianism, without pausing at the intermediary position, which was the position of Anglo-Saxon liberalism."<sup>5</sup>

Serious as the Bentham matter was, the Santander administration was simultaneously called upon to meet problems of much greater urgency. The republic was facing the collapse of its credit abroad, as it became evident that funds to meet the payment on the British loan due in July would not be available. Still more serious was the threat to the nation's unity which came

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<sup>1</sup>Ibid., Oct. 1, 1826.

<sup>2</sup>Philosophic Radicalism, p. 203.

<sup>3</sup>Ideas and Men: The Story of Western Thought (2d ed.; Englewood Cliffs N. J.: Prentice-Hall, Inc., 1963), p. 303.

<sup>4</sup>Ibid., p. 305.

<sup>5</sup>Philosophic Radicalism, pp. 375-76.



from Venezuela: an attempt by the Congress to bring General Páez to trial for alleged official misconduct led to his defiance of the Bogotá government. Meanwhile the Liberator was urging from Peru that his friends consider as a model for reform his Bolivian constitution, which had some liberal features but more which were plainly authoritarian; it provided for a President elected for life, with the power to propose his Vice President-successor to the chambers. It seemed most unlikely that the liberals of New Granada--or liberals anywhere--would favor its adoption, even if the Constitution of Cúcuta had not expressly forbidden any constitutional change until the year 1831.

Against this background of multiple tensions the government took the first steps toward implementing the new law regulating public instruction. With the support of the Council Santander chose the venerable scholar and patriot Dr. José Félix Restrepo for the office of Director of Studies, with Dr. Estanislao Vergara and "the inevitable Vicente Azuero"<sup>1</sup> as his associates.<sup>2</sup> Santander actually did take action on Caycedo y Flórez's request for an examination of Bentham's Tratados--to the extent of passing his communication to this newly organized body, attaching to it an unnamed publication denouncing Bentham's work as contrary to Catholic dogma, and requesting that the Director look into the matter and report upon it.<sup>3</sup>

Nicholas Mill, the bearer of the letter Bentham had written in August of 1825, had arrived in Bogotá in the early part of the year 1826 and sent the letter with the chapters of the Constitutional Code and other items to the

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<sup>1</sup>Bushnell, Santander Regime, p. 194.

<sup>2</sup>Session of May 29, 1826, Acuerdos del Consejo, II, 159.

<sup>3</sup>Secretary of State of the Department of Interior to the Director General of Studies, Aug. 6, 1826, A. N., Instrucción Pública, CXXXIV.

Liberator in Peru. In June he sent Bolívar another letter from the same correspondent,<sup>1</sup> but even the first of these letters did not overtake Bolívar until late in the year, when it was delivered to him in Guayaquil. When he answered from Caracas in January, 1827, he had not yet received the books and papers.<sup>2</sup>

Bentham continued to be cited in the press. In June, July, and August a number of remarkable letters signed "Unos Frailes," from the Dominicans of the monastery of Santo Ecce Homo in Boyacá, appeared in El Constitucional. The friars were attempting to defend their monastery against the determination of the Intendent José Ignacio Márquez to close it--unjustly, they said--under the law of 1821 which required the suppression of the conventos menores. The friars took their stand on the Tratados de legislación civil y penal, and chided Márquez for forgetting what he had learned in Bentham's chapter on attempts against security and property, which condemned the suppression of monasteries and the dissolution of religious orders.<sup>3</sup>

Bentham, really no patron of monasticism, did oppose confiscation, but favored the "mild and excellent measure" of forbidding the orders to receive new members; their possessions could gradually be applied to useful purposes, but the actual holders would suffer no privation.<sup>4</sup> That, at least, was his opinion as found in the Traités of 1802. By 1820 it may have changed, for he

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<sup>1</sup>Letter, Nicholas Mill to Bolívar, June 3, 1826, in Pérez Vila (comp.), Bolívar y su época, II, 35.

<sup>2</sup>Letter, Bolívar to Bentham, Jan. 15, 1827, Cartas del Libertador, ed. by Vicente Lecuna (10 vols.; Caracas: Lit. y Tip. del Comercio, 1929); Vol. XI, ed. by Manuel Pérez Vila (New York: Colonial Press, 1948), VI, 154. Hereinafter cited as Cartas del Libertador.

<sup>3</sup>El Constitucional, June 22, 1826.

<sup>4</sup>Bentham, Tratados de legislación, I, 342.

wrote to José Joaquín Mora in that year: "I am so disheartened, my dear Sir, by the Spanish news of the day, that my faculties seem to have left me. . . . The news I allude to is the passing of the law against public discussion: coupled with the rejection of the law for the suppression of Monasteries."<sup>1</sup> But most Colombians, of course, knew Bentham through his Tratados de legislación.

Márquez published a response a month later, using the pages of the same El Constitucional: "I do not know with what purpose we have been reminded of the doctrines of Jeremy Bentham. Whatever the opinions of the authors may be, or even my own, I must attend to the law."<sup>2</sup> The friars were back in August, defending some action of their Provincial Superior in 1821, justified by the legislation then in force, though not by the law of suppression, which had not taken effect until August 6 of that year. To prove that this had been proper the friars quoted Ramón Salas, Bentham's translator and commentator, to the effect that laws must be promulgated before they can be considered binding.<sup>3</sup>

Bentham was mentioned casually and somewhat irrelevently, along with other "luminaries of the century," in El Chasqui Bogotano,<sup>4</sup> an effort in popular journalism which began publication during this year.

The constitutional crisis precipitated by the accusation against Páez had meanwhile acquired new dimensions. Because the group around him and the areas under their influence now did not obey the government in Bogotá, some

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<sup>1</sup>Draft letter of Nov. 1, 1820, Bentham MSS, xiii, 45. The phrase concerning public discussion has been written through and reworded in such a way that it could be read "the rejection put upon the law against public discussion," but it seems unlikely that this was Bentham's intention.

<sup>2</sup>Issue of July 27, 1826.

<sup>3</sup>Ibid., Aug. 17, 1826.

<sup>4</sup>Nos. 14, 16, 21, n. d.

assumed that the binding force of the Constitution of 1821 had been destroyed. Bolívar believed that an exaggerated liberalism, dating at least from the Congress of Cúcuta, had caused the government to fail, and he dramatized his conviction in a memorable letter of June 7, 1826: "If the Constitution and the laws which the Congress has made have the Republic in ruins, it isn't my fault."<sup>1</sup>

Santander tried to reassure the Liberator that the rebellious faction in Venezuela was small. Declarations of support from some quarters in Venezuela were welcomed gladly at Bogotá. The Gaceta declared that the manifestation of the loyal commander José Francisco Bermúdez was worthy of "Montesquieu, Constant, D'Tracy, and Bentham."<sup>2</sup>

The Vice President and acting Chief of State could find no justification for the position of the rebels, and wrote to General Juan Paz del Castillo: "Once a people forms its laws, they may not exercise other rights than those which the laws have given them. Popular reunions to decide about reforms, cabildos abiertos, are not permitted by our fundamental laws."<sup>3</sup>

This was close to Bentham's opinion of the subject of rights, as expressed in the Tratados de legislación:

A right properly so called is the creature of a law properly so called: real laws produce real rights. A natural right is the creature of the natural law; and is one metaphor produced by another metaphor.<sup>4</sup>

To imagine that natural rights existed was no innocent error. Men convinced of their reality were apt to judge laws not by their good or bad effects but "only

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<sup>1</sup>Letter to Santander, Correspondencia, III, 90.

<sup>2</sup>Gaceta de Colombia, July 23, 1826.

<sup>3</sup>Letter of Aug. 20, 1826, Cartas y mensajes, VI, 403.

<sup>4</sup>I, 178.

for their conformity or nonconformity to this supposed natural right"--which everyone, in the last analysis, could define as he wished. "Is this not to put weapons in the hands of all fanatics against all governments?"<sup>1</sup>

Bentham did devote a footnote in the Tratados to the problem of the unjust law: "the law which openly contradicts the principle of utility--should it be obeyed?" He called this "a most difficult question." With attention to prudence and benevolence, the consequences of breaking the law and following it would have to be studied and compared to determine which course would be less productive of evil and danger.<sup>2</sup> Presumably Bentham would have justified the best founded and most carefully considered revolutions on the same basis; Santander, as a General of the wars of independence, could hardly have done less.

In his correspondence with Bolívar Santander was willing to admit that Colombia's laws might be excessively liberal for a people vitiated by centuries of Spanish rule, yet he wrote to him:

Bad example is contagious, and the protesters and reformers who abound in all peoples, no matter what their form of government is, far from placing salutary limits upon the contagion, encourage it. . . . What can be expected after these habits have been contracted? Anarchy--and after the anarchy the Spaniards.<sup>3</sup>

The first threats to the Constitution in the South occurred in Guayaquil during July and August. In view of the unsettled state of the republic, a statement produced there declared that dictatorial powers should be given to Bolívar and endorsed the Bolivian constitution.<sup>4</sup> Similar

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<sup>1</sup>Ibid., pp. 178-79.

<sup>2</sup>Ibid., p. 145, n. 1.

<sup>3</sup>Letter of Aug. 21, 1826, Cartas y mensajes, VI, 406.

<sup>4</sup>Bushnell, Santander Regime, pp. 333-34.

pronouncements in favor of constitutional reform were made in Quito and Cuenca, and later in Cartagena and other cities. Bolívar's attitude was not known with certainty, but it became a matter of concern when news of these events reached Bogotá a few months later.

Reports of dissatisfaction with the liberal regime generally included complaints about the tax structure, and specifically the contribución directa. The "irreligious laws" were mentioned, too, along with many other causes of discontent. Restrepo, writing in his later conservative period, explained the opposition in this way:

Our Congresses in those days . . . were composed of lawyers and young men whose heads were filled with the theories of the French and the North Americans. They wished to implement, without further examination, and acclimatize among the peoples of Colombia the doctrines of Rousseau, Voltaire, Destutt de Tracy, Constant, Say, Bentham, and Fritot. As a result a most profound discontent was built up, and a general clamor was raised against the Colombian laws, which displeased the influential classes of society. The clergy and the army, which were the most powerful, rejected them, saying that inexperienced lawyers had taken control of the government in all its branches. Neither did the agriculturalists and merchants love them, because they were contrary to their interests in a thousand different ways.<sup>1</sup>

Whatever their attitude toward evidences of reaction might have been, Santander and his government showed no immediate sign of moderating their educational program; the Vice President, in the manner of liberals everywhere, had placed his long-range hopes on the success of this reform. The plan of studies which the executive branch had been authorized to form was placed in operation by Santander's decree of October 3, 1826;<sup>2</sup> certain features of this detailed enactment will be summarized here.

Certámenes públicas were made compulsory for all the universities of

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<sup>1</sup>Revolución, VI, 425.

<sup>2</sup>Codificación nacional, VII, 401-51.

Colombia, to be held during the month of October, and were clearly separated from the annual public examination of all students. Propositions to be defended during the certámenes were to be submitted to the Director General or one of the Sub-directors of Studies two months in advance of the act, and these officials were allowed fifteen days to refuse or grant permission for their use. Certámenes were to be conducted with all possible solemnity, and honored with the attendance of public officials and notable persons, in the role of examiners or guests.<sup>1</sup>

The subjects listed for study in the course of law generally followed the arrangements of the law of March 18, but now were definitely organized under six cátedras. Administrative science had been added to the list, and the course titles of two of the materias had been modified. Derecho de gentes was given the alternative and more modern name of derecho internacional,<sup>2</sup> but no change in the content of the course seems to be indicated. To the title principios de legislación universal the phrase y de legislación civil y penal had been added, certainly inspired by the name of Bentham's work, and its contents. The course suma de concilios, required only of the class of theology in March, was now listed for all students of law.<sup>3</sup>

"Special arrangements" for the class in jurisprudence were listed as follows:

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<sup>1</sup>Ibid., pp. 423-24.

<sup>2</sup>International was a word which Bentham had invented to describe the branch of law which he called international jurisprudence in his Introduction to the Principles of Morals and Legislation, first printed in 1780, and later incorporated, to a great extent, in Dumont's Traités. It is possible that the word came into use in Colombia through the Tratados de legislación. See the earlier English work, p. 149, n., and the Tratados de legislación, IV, 7-8, 40.

<sup>3</sup>Decree of Oct. 3, 1826, p. 431.

Principles of universal legislation and of civil and penal legislation: In this category, which is of the greatest importance for all those who follow the career of jurisprudence, the students will be made familiar with the natural laws which regulate the obligations and rights of men among themselves, considered individually and also forming political societies. The tratados de legislación civil y penal by Bentham should serve for now for the lessons of the different branches which are to be taught in this cátedra, in which the lessons of Rey de Grenoble can also be studied. The master will also consult the principios de la legislación universal, by an anonymous author, la ciencia de legislación, and other classic works available over various of the points which the course contains.

. . . Derecho público político will be taught in this cátedra by the elemental work of Constant until there is another more appropriate for a Republic. When the principles and bases upon which well established governments should rest are known, the Constitution of Colombia will be presented and explained. The professor of this subject will consult the luminous writings of Montesquieu, Mably, Tracy, Fritot, and other classical works. As for administrative science, the instructor will take care to present the laws of Colombia, the principal functions of its administrative officials and the different obligations which the laws impose upon them. He will give also an exact knowledge of the general principles of this science, in which the elements of commerce, agriculture, and industry, the theory of revenues and taxation, the statistics of the Republic, the annual budgets, and the discussions which they have occasioned in the Congress should be studied. Under these principles the professor will have the obligation of forming his course of lessons, until there is some elemental work appropriate for Colombia, and he can consult the work of Bonis and that of Poiriez, on administrative legislation.<sup>1</sup>

Heineccio and Vinio "corrected by Juan de Sala" were the authors designated for the study of Roman law, and Sotelo and Sala for Spanish law. The laws of Colombia were to be studied from the national codes. The classic work of Juan Bautista Say, revised by himself, was to be the basic text for the class in political economy, but the instructor was told to consult the works which would be subsequently published, in order to keep abreast of the advances made in the science. International law would be studied from the work of Wattel, "and at least a resumé of the principal treaties, especially of Colombia . . ." The professor was advised to consult the works of Martens,

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<sup>1</sup>Ibid., p. 437.



including his manual of diplomacy, of Burlamaqui and Azuni. The works of Segismundo Lackis, including his essay on the liberty of the Spanish church in both worlds, Van Espen, Marca, Bossuet, Covarrubias, and Cavalario were to be used for the study of church law and the canons. The works of Fleury were among those recommended for ecclesiastical history.<sup>1</sup>

Some special dispositions were included in a later section, providing that the Dirección general de estudios could vary the texts for the classes in literature and the natural sciences, and that any professor in these branches could devise a new course utilizing different texts. But to make such variations in the classes of jurisprudence or theology, the approval of the executive power would have to be obtained.<sup>2</sup>

Article 229 made this stipulation:

The authors designated in this decree for public education should not be adopted blindly in all their parts by the professors. If one or more should have doctrines contrary to religion, morality, and the public tranquility, or errors in some other sense, the professors should omit the teaching of such doctrines, suppressing the chapters which contain them, and pointing out to their pupils the errors of the author or authors in those points, so that they can be on their guard against them, and by no means shall they prejudice the sound principles with which the youths should be imbued.<sup>3</sup>

Groot believed that the plan of studies, and especially the article which imposed the Bentham text, was the most important element in a careful plan aimed at destroying the Catholic religion in Colombia.<sup>4</sup> Yet when the section on legal studies is considered on its own merits, the judgment of one group of Venezuelan rebels, jealous of the advances being made at Bogotá, seems

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<sup>1</sup>Ibid., pp. 437-38.

<sup>2</sup>Ibid., p. 450.

<sup>3</sup>Ibid.

<sup>4</sup>Groot, Historia, IV, 201, 227-28; V, 61, 128.

more accurate. They wrote before the October, 1826, decree had been issued, but after the gradual introduction of the reforms at San Bartolomé had begun: "We have seen with pleasure the literary dissertations dedicated to the Vice-president in the Colegio of San Bartolomé in Bogotá; by these it is known that there exists there a special plan of studies exact and appropriate for forming in a brief time men who will be useful to the State."<sup>1</sup> Although hombres útiles was a sort of educational cliché of the time, it does seem to describe quite accurately what the products of classes in legislation, law, administrative science, the constitution and laws of Colombia, political economy, taxation, statistics, finance, commerce, agriculture, and so on, might be expected to be.

The men who governed Gran Colombia often spoke of the dearth of enlightened candidates for public office as a serious administrative problem. Santander had declared himself unfit to govern a people in revolution because he lacked technical preparation--"economic, political, and the rest."<sup>2</sup> Now he and his collaborators seemed determined to provide this preparation for the lawyers and jurists who would draft the laws and staff the governments which would make Colombia a modern state.

The administration did not question its right to decide what direction education would take. Since the days of Charles III the enlightened ministers of the Spanish monarchy had believed that the new learning would liberate the fatherland from the intellectual and spiritual bonds which thwarted its progress, and little by little, wrote Sarrailh, they came "to consider that

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<sup>1</sup>"Acta de la Assamblea Reunida en Valencia," June 29, 1826, Archivo Santander, XV, 20.

<sup>2</sup>See above, p. 57.

culture a service of the state . . . a 'directed culture.'<sup>1</sup> The attitude of the liberals at Bogotá was in this tradition.

Bentham's treatises on legislation must have seemed perfectly apt to prepare public servants in that important branch. Even if one could not consent to the whole of Bentham's system, and such an important supporter as Vicente Azuero said that he could not, the work had an obvious usefulness. Men trained in Bentham's Tratados would be unlikely to consider the old unenlightened ways sacrosanct, and yet would know how to consider the good and evil consequences which might result from discarding them at any moment. Similarly, they would know how to utilize their training in other branches to create new laws and new institutions after a careful weighing of all factors--factors from the real world, not the supernatural assumptions of the Christian Commonwealth or any other system--monarchical, aristocratic, or ecclesiastical--which the liberals considered outmoded.

Benthamism would teach the legislators to encourage progress and an ever-widening prosperity, while providing safeguards against economic leveling.<sup>2</sup> It would justify almost any measure on the part of strong government if it could be shown to be in the public interest, and constitute a defense against anarchy. In addition to this Bentham's name carried with it the reputation of the advanced reform group for which he was the spokesman in England, which was considered the most advanced of liberal countries, and he had been the adviser of the Spanish liberals. Santander and his government, always conscious of enlightened world opinion, must have been proud that

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<sup>1</sup>España ilustrada, p. 186.

<sup>2</sup>See Bentham, Tratados de legislación, I, 220-29, 259, 279-86, for this author's views on equality as one of the objectives of the laws, and on its opposition with security, another of the four objectives.

Colombian youths were studying with the most modern of masters, even though the work they were using belonged, politically, to the age of enlightened despotism.

A clear majority of French, Italian, and Spanish writers is notable among the authors assigned for the study of law, and most--probably all--of these writers had been popular in Spain or studied in the Spanish universities. The works of some of them had been designated as texts there under earlier plans of studies. The first uniform and "centralized" assignment of required authors was made in the Plan of Studies issued under the government of Manuel Godoy in 1807, during the reign of Charles IV.<sup>1</sup> This plan practically imposed the curriculum and texts which had been adopted by the University of Salamanca, considered the most advanced of the Spanish universities since the introduction there of Pablo Olavide's controversial plan of studies in 1769. The Plan of 1807 remained in force only a short time, because the political upheaval which began in 1808 forced the universities to close their doors.<sup>2</sup>

Both the Junta Central and the Cortes of Cádiz stimulated the production of reports on public instruction, whose principal authors were Jovellanos and Manuel José Quintana, respectively, but no new plan of studies was decreed. After his return King Ferdinand restored to the universities the limited autonomy of the Plan of 1771, but the Cortes of 1820 ordered the major dispositions of the Plan of 1807 to be observed once more.<sup>3</sup> The decree authorized the government to make adjustments in the list of required authors on its own

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<sup>1</sup>Real Cédula ... por la cual se reduce el número de las Universidades literarias del Reyno ... y se manda observar en ellas el plan de Estudios aprobada para la de Salamanca en la forma que se expresa, July 12, 1807 (Madrid: Imprenta Real, 1807), A. H. N. (Madrid), Colección de Reales Cédulas, núm. 1722.

<sup>2</sup>Pio Zabala y Lera, Edad contemporánea, I, 232.

<sup>3</sup>Ibid.

account, "for this time only"<sup>1</sup> and this responsibility was passed to the comisión de instrucción pública, composed of Quintana and nine other members, by royal order. The new list of authors this body drew up was then communicated to the universities by Agustín Arguelles, in his capacity of ministro de Gobernación, in the real orden of September, 1820.<sup>2</sup> The Cortes approved the comprehensive Reglamento general de instrucción pública, already cited, in June of 1821, but the writer has seen no indication that the designation of texts made in 1820 was varied, until both reform measures were voided by the absolutist reaction of 1823.

Of the works assigned for jurisprudence in the Colombian Plan of Studies of October, 1826, Principios de la legislación universal, published anonymously, had been praised as a "luminous and fecund work" by the report of the comisión de instrucción pública which accompanied the Spanish order of 1820, and La ciencia de la legislación was undoubtedly the very influential treatise of Gaetano Filangieri,<sup>3</sup> translated at Madrid for the first time between 1781 and 1789.<sup>4</sup> The vogue of Constant, Destutt de Tracy, and Say in Spain has already been noted; works of all three authors were designated as texts in the real orden of 1820, and Say had also been recommended in the section on law of the Spanish Plan of 1807, in the following terms:

In the ninth year the students shall assist at the study of political economy, in which . . . they shall cover the Investigaciones sobre la riqueza de las Naciones of Adam Smith, the master being careful to

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<sup>1</sup>Decree of Aug. 6, 1820, Decretos de las Cortes, VI, 30.

<sup>2</sup>Royal order of Sept. 20, 1820, Archivo Historico Nacional (Madrid), Sección de Universidades, Leg. 575, 2.

<sup>3</sup>See above, p. 40.

<sup>4</sup>Herr, Eighteenth Century Spain, p. 60.

relate this to our nation as frequently as possible. This if the work of Juan Bautista Say in Spanish, which would be preferable, is not completed.<sup>1</sup>

Montesquieu's popularity scarcely requires comment, and at least one of Mably's works had been published in Spain.<sup>2</sup>

All the authors mentioned for Roman and Spanish law had been included in one or both of the Spanish plans of studies. Wattel's work on the law of nations had been recommended in the report of 1820, and Burlamaqui was admired in Spain as an authority on the same subject.<sup>3</sup> Vañ Espen had been required for the study of canon law in the Plan of 1807, and Lackis and Cavalario in both plans. The eminent Bossuet was mentioned frequently in Spain at the end of the eighteenth century,<sup>4</sup> and it seems likely that the listing "Covarrubias" refers to the sixteenth-century author Diego Covarrubias, who was himself a Spaniard. With the exception of this last author, all of these writers on church law can be identified as gallican, regalist, or Jansenist. The currency of Rey de Grenoble, Fritot, Bonis, Poiriez, Martens, and Marca in Spain is not known to the writer.

From the viewpoint of this study, Bentham's name seems conspicuously absent from the real orden of 1820, but this is not really surprising because "principles of universal legislation," the only course title with which the Tratados de legislación could be presumed to have some relation, is not listed here among the materias for jurisprudence. The report of the Spanish commissioner made the following statement concerning texts for the first courses in law:

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<sup>1</sup>Real Cédula of July 12, 1807, p. 12.

<sup>2</sup>Herr, Eighteenth Century Spain, p. 72.

<sup>3</sup>Sarrailh, España ilustrada, p. 276.

<sup>4</sup>Ibid., p. 599, n. 108.

Thus, after the study of moral philosophy, which is counted as the first course in one and the other career [of law], the study of Derecho natural y de gentes, newly re-established, should follow. The Commission would very much like to stipulate for this study one of the excellent works which fall within this branch, and have been so well received among the learned. Such would be, for example, the Principios de la legislación universal, a book so eminently luminous and fecund, and so necessary to prepare the understanding for the study of the positive laws. Such would be also, for another aspect, the masterful work of Mr. Vattel, whose applications of the natural law to the mutual relations of the nations are so certain and sure. The propagation of the maxims of one and the other author would be extremely useful to the Spanish youth; but the Commission is unaware whether the first work has been published in a Spanish translation; and even though the second was announced a short time ago, it still has not been completed, nor is it known when it can be. Therefore we abstain from listing them, and do the same with other works which are also appropriate, although not quite as estimable, as those of the professors Felice and Tamburini, of which the first is not translated, while of the second, written in Latin, there is not a sufficient supply. Thus the Commission has had to recur to the Elementos de Derecho natural y de gentes of Heinecio, a work which is sufficiently esteemed, already known in our studies, and, printed in past years in Madrid, offers the advantage of being easily available and inexpensive.<sup>1</sup>

By June, 1821, when the Cortes passed the reglamento general de instrucción pública, "principles of universal legislation" had been added to the course in jurisprudence, replacing "the law of nature and of nations" in the first year.<sup>2</sup> Perhaps this had been done to accommodate the anonymous work Principios de la legislación universal, which became available in Spanish during 1821;<sup>3</sup> a thorough search of the Spanish archives might uncover an order prescribing this work as the text for the new course. Or the Tratados de

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<sup>1</sup>Exposition of the Commission on Public Instruction, Sept. 15, 1820, Archivo Histórico Nacional (Madrid), Sección de Universidades, Leg. 575, 2<sup>o</sup>.

<sup>2</sup>Students desiring to matriculate in the faculty of laws were required by the law of 1821 to present a certificate of competency in "morality and natural law."

<sup>3</sup>Palau y Dulcet, Manual del librero, XIV, 159. According to Ramón Salas, some considered Holbach the author of the "precioso libro de los principios de la legislación universal." See his "Comentario," Tratados de legislación, I, 197.

legislación civil y penal, also translated in part that year, may even have been named, though it would seem strange that the sensitive Bentham had remained unaware of such a development. The most likely conclusion is that Bentham's Tratados de legislación was more popular among the santanderistas of 1826 than it had been among the Spanish liberals of 1820 and 1821, and that the Colombians decided that this work could be assigned for teaching the "principles of universal legislation," a course they found listed in the Spanish law of 1821, which they were using as a model for educational reform.

The broad heading of philosophy and natural sciences in the Colombian plan de estudios included a chair of "ideología o metafísica gramatical general y lógica." In this branch, which was to include "what there is that is useful in metaphysics," the ideología of Destutt de Tracy was to be taught, and the teacher could also "consult Condillac in his works on logic, the origin of human knowledge, and the sensations, and other authors also."<sup>1</sup> Menéndez y Pelayo's statement on Locke, Condillac, and Destutt de Tracy, who, he believed, succeeded each other in importance in Spanish philosophical thought, has been quoted.<sup>2</sup> The report of the Spanish commission of 1820 had declared that "a good compendium of Locke, some treatises of Condillac and Destutt, or the lessons of Mr. de la Romiguiere in philosophy" would serve the objectives of instruction in "the nature of the understanding, of its faculties, and of its direction in the way of truth." Yet the commissioners stated that these works had not been translated, and that their adoption would offer other difficulties—no one of these authors had actually been imposed by the royal order.

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<sup>1</sup>Decree of Oct. 3, 1826, p. 434.

<sup>2</sup>See above, pp. 16-17.



Groot was especially bitter because, according to article 21 of the Colombian plan de estudios and article 50 of the general law of studies, young men who wished to matriculate in law or theology in the universities had to complete these studies in logic and metaphysics, which "took away from them the idea of the soul and the whole spiritual order,"<sup>1</sup> during their preparatory studies in a colegio or casa de educación. The doors of the university, he wrote, opened only to those who carried the passport of the materialist Destutt de Tracy.<sup>2</sup> Although many unorthodox writers had been given a place in the Colombian schema, which was more daring in this respect than the earlier Spanish plans, the protests of Catholics and traditionalists were aimed almost exclusively at Bentham and Destutt de Tracy.<sup>3</sup>

There is something to be said for Groot's estimate of the religious spirit of the liberals. Certainly there were important men in the government who were indifferent to the specific interests of Roman Catholicism and the claims of the papacy. The administration leaders must have understood the implications of Bentham's materialism as well as his anticlericalism; presumably some of them felt that a measure of skepticism would be a useful antidote to the shameful fanaticism they talked about so much. Bentham's treatises seem

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<sup>1</sup>Groot, Historia, V, 183.

<sup>2</sup>Ibid., p. 136.

<sup>3</sup>There is reason to believe that Destutt de Tracy's political writings were influential in New Granada earlier than Bentham's: J. M. Restrepo wrote that the constitution of the State of Cartagena during the period of the patria boba was based upon the principles of this writer, whom he identified as the author of Commentaire sur l'esprit des lois, his work published in 1811. (See Gilmore, "Federalism," p. 5, for this citation.) An anonymous open letter to Antonio Nariño in 1821 chided him for having gone over to federalism, when in the years '12 and '13 he had preached centralism to his fellow-citizens, and quoted the maxim of "el señor de Tracy," that a state loses strength by dividing itself. See "Catilinaria contra Nariño," Archivo Santander, VI, 286.

to have been adopted because of their political value. The most influential santanderistas were probably unconcerned, at least, about their potential for undermining religious faith.

By October Santander had learned of the Acts favoring dictatorship published earlier in Guayaquil and Quito. He wrote that his surprise at reading them was proportionate to their absurdity and illegality, and that they manifested "absolute ignorance of the principles of public law."<sup>1</sup> Bolívar, who had now re-entered Colombia and was proceeding toward the capital, began to send the Vice President letters which described the South as "one chorus of lamentation." He speculated that the best service to the patria might be to destroy "the ideal romance of our utopia," dissolve the society with which Colombia had deceived the world, and admit its bankruptcy.<sup>2</sup>

Doctors José Félix Restrepo, Vicente Azuero, and Estanislao Vergara, named to the first Dirección general de estudios, took the oath of office on October 26,<sup>3</sup> no doubt amid increasing excitement at Bolívar's near approach. The Liberator arrived on November 14, and during the few weeks he passed at the capital decreed a number of economizing measures; most of the reforms had a reactionary direction. While the President remained at Bogotá, relations between Santander and himself were superficially cordial, but their attitudes on reform remained opposed, and effective public opinion in New Granada seemed to support Santander's stand in favor of constitutional legality. The Cuervos wrote that at this time the followers of Santander

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<sup>1</sup>Letter to Bolívar, Oct. 8, 1826, Cartas y mensajes, VI, 437.

<sup>2</sup>Letter to Santander, Oct. 8, 1826, Correspondencia, III, 110.

<sup>3</sup>Gaceta de Colombia, Oct. 29, 1826.

remained heartily attached to the institutions in force, either because they believed them to be good and consonant with the principles of public law or (and these were the majority) because they could not conceive either for that time or for the future how any stability could exist, if the people became accustomed to seeing the laws despised and changed because of changing opinions. This is what formed the cardinal principle of the liberalism of that time: the rest was accidental . . .<sup>1</sup>

Bolívar left for Venezuela on November 25, and in a long letter written to him in December Santander pledged his friendship and support, and sent along a message from Vicente Azuero: "Azuero is eager for you to send me the letters Bentham directed to you, and I'm interested in this also. Don't forget our request."<sup>2</sup>

Bentham's ideas were formally presented to the public at Bogotá at this time in the certámenes held by the class in principles of legislation, which probably took place during October, and were reported during December in La Bandera Tricolor, a newspaper which Rufino Cuervo had founded earlier in the year to defend the position of the national government in the Páez affair. The material quoted seems to be from an introductory discourse, probably read by one of the students, and presents Bentham's treatment of the principle of utility:

Señores: Today we present for the first time in Colombia a literary act, concerned with the universal principles of morality and legislation. But, is this strange? In Europe itself the elements of this science have scarcely begun to be fixed. It seems that this science, being that which most directly influences human happiness, has been the last to develop and to receive some perfection.

The speaker explained that, because of insufficient examination, many had believed that morality and politics could not be reduced to determined and constant principles, the principles of the social science. But the beneficent

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<sup>1</sup>Vida de Cuervo, I, 101.

<sup>2</sup>Letter of Dec. 6, 1826, Cartas y mensajes, VI, 478.

author of nature, who had implanted in men the desire for happiness had also provided them with the means of finding it: "He has given us the faculty of receiving impressions, by means of which we feel pleasure and pain; has conceded to us a will, which makes us seek the first and avoid the second; and endowed us, at last, with understanding, which is the faculty of calculating pleasures and pains, the good and evil which each action should produce . . ."

The unnamed Bentham was then briefly honored: "Eternal gratitude to the profound genius, observant and modest, who has indicated to men the natural and primitive road which they had abandoned, who has restored to morality and politics their eternal and unvariable bases . . ." Pleasure and pain were presented as the motives of all human action; the recognized need of the individual for the help of others in seeking his own happiness was cited as the foundation of societies and nations.

Virtue, so long misunderstood, was said to consist in the sacrifice of more immediate pleasures to greater but more remote pleasures, or of superficial pleasures to solid pleasures. "When the divine legislator of the Christians has recommended to us that we renounce ourselves . . . he has not taught any other doctrine than that of utility rightly understood." If men in their private morals, and legislators in the direction of peoples, had learned earlier to evaluate all human operations by their good and bad effects, they rarely would have erred in promoting the most solid human happiness.

The arbitrary and capricious performance of condemning an action by claiming that it is contrary to the natural law was described as unscientific and dangerous. The orator then tried to explain that the students did not intend to deny the existence of that to which the name of natural law had been given metaphorically because of its analogy with the written law promulgated by

human legislators. They would not only sustain the existence of these laws but even give evidence of them by means of the powerful motive of utility.

Some indication of the exact means of determining an action's effect through the calculation of the intensity, duration, purity, and extension of the pleasure or pain it might produce, and the fixed rules for calculating an individual's sensibility to pleasure and pain, were indicated. These were the bases upon which the legislator could designate certain acts as crimes. The consoling truth that morality and politics were really one and the same science, and should always assist each other, was presented to the assembled botoganos, and finally the speaker asked their indulgence during the presentation of the class's investigations which was to follow.<sup>1</sup>

Relations between the President and Santander had worsened meanwhile, and a permanent solution of the constitutional crisis was not in sight. Bolívar, in Venezuela, effected a reconciliation of General Páez with the Colombian government, but on terms which seemed to discredit Santander. Bolívar's presidential authority recognized, he proceeded to issue reform decrees for the Venezuelan departments, again along conservative lines. His reorganization of the University of Caracas conformed generally to the existing liberal plan of studies; the assignment of required texts, however, was omitted.<sup>2</sup>

Early in 1827 a mutiny occurred among the Colombian troops of the Third Division, which Bolívar had left behind as a garrison in Lima. The rebels

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<sup>1</sup>La Bandera Tricolor, Dec. 10, 1826. Azuero was a collaborator on the paper, and Groot guessed that he was the author of the article just cited. This historian wrote that the speaker did not lie in asserting that Bentham's science had scarcely been founded in Europe, and implied that its inauguration in Colombia was more of an aberration than a head-start. See his Historia, V, 139-40.

<sup>2</sup>Bushnell, Santander Regime, p. 346.

alleged that they had taken the action in support of the Constitution, and that their highest commanders had been involved in anti-Constitutional intrigue. Santander's imprudent handling of this affair, which had initially pleased him, has damaged his reputation as the Man of Laws,<sup>1</sup> and it shocked and infuriated Bolívar.

No one was certain how long the Liberator-President would remain in Venezuela; it was probably the mutiny and its consequences, together with the administration's mildness in restoring the proper subordination, which persuaded him to return to the capital later in the year.<sup>2</sup>

During his residence in Venezuela he had sent a reply, or perhaps two replies, to the letters of Jeremy Bentham. The first, responding to Bentham's letter of August, 1825, is courteous but brief. Perhaps its most sincere passage is found in his expression of sympathy for Bentham's bad experience with the representatives of the Greek patriots: "Unfortunately the weight of slavery destroys the spirits and places them in a state of being unworthy of liberty."<sup>3</sup>

The addressee of a second letter, written on the same day, is really unknown, but the editor of the Cartas del Libertador supposed that it might have been intended for Bentham.<sup>4</sup> It seems clear that Bolívar was writing to some eminent European; he thanked him for "el catecismo de economía" sent to him and received in Lima. He praised the work and wrote that he had ordered it

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<sup>1</sup>Ibid.

<sup>2</sup>Ibid., p. 354.

<sup>3</sup>Letter of Jan. 15, 1827, in Lecuna (ed.), Cartas del Libertador, VI, 155.

<sup>4</sup>Lecuna, ibid., p. 156, n.

translated into Spanish in Peru.<sup>1</sup> If the letter was really intended for Bentham the catecismo might have been James Mill's Elements of Political Economy, which Bentham had recommended to the Liberator in 1825,<sup>2</sup> or even the section on economics from Bentham's own Théorie des Peines et des récompenses, edited by Dumont, which was later published as the Manual of Political Economy in more than one language. Dumont's work, however, could probably have been sent in Spanish, as it became available in that language in 1825.<sup>3</sup>

## VI

In 1827 Azuero was editing a new publication, El Conductor, dedicated to combating the political system of the Liberator. Writing with "his accustomed exaltation," Azuero was now prepared to suggest federalism or even separatism as a safeguard for the liberal institutions of New Granada.<sup>4</sup> His newspaper continued to mention Jeremy Bentham with respect;<sup>5</sup> flattering references to this author also appeared in the Gaceta de Colombia and in a strange publication with the title Sin Nombre.<sup>6</sup> Occasionally his books were advertised for sale: in August the French Traité des preuves judiciaires, another work edited by Dumont and published in 1823,<sup>7</sup> in September and October

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<sup>1</sup>Letter of Jan. 15, 1827, ibid., p. 155.

<sup>2</sup>See above, p. 170.

<sup>3</sup>Everett, "Bibliography," pp. 531, 542-43.

<sup>4</sup>Restrepo, Revolución, VI, 503.

<sup>5</sup>El Conductor, Feb. 27, 1827; July 11, 1827; July 14, 1827; July 18, 1827; July 25, 1827.

<sup>6</sup>Gaceta de Colombia, April 22, 1827; Sept. 17, 1827; Sin Nombre, July 15, 1827.

<sup>7</sup>El Constitucional, Aug. 23, 1827.

"El Bentham," which, in Colombia, meant the Tratados de legislación,<sup>1</sup> and, in the final issue of El Conductor, the same work properly named.<sup>2</sup>

A casual citation of Bentham was included in a "Representation of the Convents of this City [Bogotá] to the Supreme Government," published during July. El Conductor carried this petition, signed by five major religious superiors, who asked that they be allowed to accept certain young applicants to their orders as devotos, since these individuals were too young to become members under the law of 1826. The youths would apply themselves to study within the religious houses, in order not to "lose the precious time of youth, as Jeremias Bentham calls it, speaking of the literary beginners."<sup>3</sup> A week later the paper published a letter represented as the composition of some young men who had formerly been devotos themselves; they enthusiastically supported the existing law and were opposed to any dilution of the kind proposed by the "Reverend Fathers." They had learned nothing during their days in the monasteries, they wrote, and would have to be excused for being ignorant of Bentham, but they were faithful observers of the law.<sup>4</sup>

Azuerro used a long quotation from Bentham in support of maintaining Colombia's guarantees of a free press. On July 14 he inserted "the principles of Jeremy Bentham on the subject" in El Conductor. He explained that these

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<sup>1</sup>El Conductor, Sept. 12, 1827. The aviso was repeated in several subsequent numbers.

<sup>2</sup>Ibid., Nov. 7, 1827.

<sup>3</sup>Ibid., July 11, 1826. Although this expression seems to be in the spirit of Bentham's Chrestomathia, which included plans for giving extensive instruction in scientific and technical subjects to students between the ages of seven and fourteen, the writer has been unable to locate this reference.

<sup>4</sup>Ibid., July 18, 1827.



were not found in any of Bentham's works which circulated in Colombia, but had been published by Blanco White in El Español.<sup>1</sup>

Complaints about public instruction in utilitarianism did not cease, and both the Plan of Studies and the education law of March, 1826 were drawing criticism on other grounds as well. As early as the congressional debates on the proyecto during 1824, the educational system outlined in the organic law had been called grandiose and pretentious, far beyond the economic means of the nation<sup>2</sup>--which was precisely the criticism the related law had received in Spain.<sup>3</sup> Other features of the legislation were also causing difficulties, and Santander recommended to the Congress of 1827, in view of "notorious censures," that the law be revised according to the congressmen's best judgment.<sup>4</sup>

The report and recommendation of the Dirección general de estudios on Bentham, inspired by the Provisor's request for a junta during the Azuero-Margallo controversy, was submitted to the Vice President in August, 1827. Signed only by the two associates Vicente Azuero and Estanislao Vergara, it recommended that the text be retained. The Director general José Félix Restrepo filed a separate report, which was not published in the official press, and has not been seen by the writer. Its content, however, may be conjectured from a subsequent second report of Restrepo, which recommended dropping Bentham's work from the list of texts.<sup>5</sup>

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<sup>1</sup>Ibid., July 14, 1827.

<sup>2</sup>Cortázar and Cuervo (eds.), Congreso de 1824, Senado, p. 64.

<sup>3</sup>Juretschke, Lista, p. 95.

<sup>4</sup>Message of May 12, 1827, Cartas y mensajes, VII, 151.

<sup>5</sup>See below, p. 215.

Azuero and Vergara took the position that article 229 of the Plan of Studies, recommending that objectionable material in the texts be omitted, or corrected by the instruction of the professor, provided all that could be asked even by those who were most zealous and most concerned for the purity of the Catholic religion. "To proscribe an entire work only because it contains some less orthodox propositions, or even errors in dogma, is not an act worthy of an enlightened government, protector of the sciences." It seemed to them that the government had provided article 229 specifically to resolve the question of Bentham's doctrines, which had been raised even before the drafting of the Plan of Studies. The two associates offered to support a directive which would impose upon professors of the class in universal legislation a particular responsibility to conform to article 229. More than that, the controversial Tratados de legislación could be dropped altogether as soon as another text had been found which treated the same matter "fundamentally and with some perfection." There was reason to believe that works of this nature were being published in France, and it might be possible to obtain them within a matter of months. The signers acknowledged that their views conflicted with the opinions of the Director, who was submitting another report.<sup>1</sup>

Santander responded to the recommendations contained in the report with his accustomed promptness; he issued a decree which dealt with this problem and another educational matter on August 16:

Petitions from some of the provinces asking a variation in the months assigned for vacations having come to the government, and protests against the teaching of the doctrines concerning principles of legislation of Jeremy Bentham also being received, I have come to decree the following:

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<sup>1</sup>Report of Vicente Azuero and Estanislao Vergara to the Vice President, Aug. 9, 1827, Gaceta de Colombia, Sept. 9, 1827.

Article 2. The Dirección general de estudios will charge the catedráticos of principles of legislation to fulfill rigorously the dispositions of Article 229 in respect to Jeremy Bentham, manifesting to their students the errors which some timorous persons judge to exist in his doctrines, and omitting the part or parts which contain them.

But, so that the scruples and the criticisms that are made . . . may cease entirely, the Dirección general de estudios is authorized, using funds of the university, to import from Europe some work of the principles of legislation which does not have the defects of Bentham's work, and when it arrives the teaching of the treatises of that author will cease . . .<sup>1</sup>

A pamphlet with the arresting name El Cuchillo de San Bartolomé was published at Bogotá during 1827, and probably at about this time of the year. The author repeated the rumor that Dr. Félix Restrepo's opinion, opposed to Bentham and worthy of a true philosopher, had been excluded from the Gaceta of September 9. In any case, the Dirección de estudios was certainly not the junta of theologians and canonists the former Provisor had requested for the examination of the text.

The pamphleteer felt that expurgation of Bentham's Tratados would be impractical because nothing of the book could be salvaged but the boards. Realistically, the choice was between declaring open war upon the Church and burning these erroneous books in their entirety. Claiming to base his statement on the bull In coena Domini, the writer declared that not only those who read and defended the Tratados must be considered subject to excommunication, but even those who kept the volumes about for adornment.<sup>2</sup>

The commentators and critics of the time, with the exception of Groot, seemed to make no clear reference to the fact that Bentham's Traité de Législation had been specifically condemned at Rome; yet, according to Monsignor

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<sup>1</sup>Decree of Aug. 16, 1827, ibid.

<sup>2</sup>El Cuchillo de San Bartolomé (Bogotá: Imprenta de Espinosa, 1827), Biblioteca Nacional (Bogotá), Fondo Pineda, #639.

José Restrepo Posada, the work had been prohibited as dangerous to faith and morals on March 22, 1819.<sup>1</sup> Groot, however, implied that Dr. Caicedo y Flórez, at least, should have been aware of the papal censure, when he asked how the Provisor could have suggested that a committee of theologians should evaluate Bentham's Tratados when the work was already on the index of prohibited books.<sup>2</sup> A substantial number of the works indicated in the plan of studies for jurisprudence and canon law must have received this distinction at one time or another. Constant's "elemental work," presumably the Cours de politique constitutionnelle, was interdicted on June 11, 1827.<sup>3</sup>

Before El Cuchillo de San Bartolomé was in the streets, the Liberator had returned to the capital. Azuero, Francisco Soto, and other liberals, fearing that their attacks upon the "Bolivarian faction" would be avenged, had found reasons for absenting themselves from the city, but Santander remained. When Bolívar did not initiate a persecution of his liberal critics, Azuero was sufficiently encouraged to come out of retirement and to continue publishing El Conductor, even though the city, as he saw it, was "inundated with troops."<sup>4</sup>

It appears that the Director General of Studies sent a communication to the departmental subdirecciones on September 26, recommending careful observation of article 229 of the plan of studies until the central body should determine the future status of Bentham's work. The Director for the departamento del Istmo, Dr. Juan José Cabarcas, returned his assurances that the order

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<sup>1</sup>Arquidiócesis, II, 40.

<sup>2</sup>Historia, V, 105.

<sup>3</sup>Restrepo Posada, Arquidiócesis, II, 40.

<sup>4</sup>Memorial, Azuero to Bolívar, Nov. 5, 1827, in Lozano y Lozano, "Azuero," p. xxxiv.

would be observed, and appended a resumé of the opinion of the Panamanian subdirección on the topic; the addition seems to have been unsolicited.

Bentham's principles, wrote Cabarcas, were prejudicial to "every society." He seemed to believe that there had been enough difficulties and obscurities in the works of the modern authors, even those who, like Fritot, recognized the existence of natural rights and natural law, but that had not sufficed:

It was necessary that in the past century a sect of Metaphysicians should arise to absolutely deny the existence of the Natural Law. Among these intrepid innovators the obscure Bentham comes to afflict us, aided by his interpreter Dumont and his daring commentator Salas. The doctrine involves, in the opinion of this subdirección, the ruin of the foundations upon which the science of law rests, and the complete subversion of morality as well. Pernicious and melancholy doctrine, against which the human species raises a cry of indignation! His false philosophy has invented for the present generation a system improperly called moral, based upon the ignoble and disreputable base of interest or individual pleasure--well or ill understood. It is capable of engendering in the hearts of Colombians a sad egoism . . .

The exposition quoted Benjamin Constant's criticism of Bentham and ended by suggesting that the work on principles of legislation by an anonymous author, already available in the Castilian language, would surely find wide acceptance, and could easily be obtained in quantity.<sup>1</sup>

Under Bolívar's administration reactionary changes were introduced in several areas of government, and the trend can be seen in education. On October 2 the Congress issued a decree authorizing the executive power to vary the plan de estudios, and the President ordered the decree passed to the Director General of Studies so that he might suggest the most necessary reforms. No change of texts was ordered before the date of the annual certámenes, which apparently were presented at the university during late October and early November. Dr.

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<sup>1</sup>Report of the Subdirección de Estudios del Istmo to the Director General de Estudios, Feb. 15, 1828, A.N., Instrucción Pública, CXXXIV, 792-94.

Clímaco Ordóñez was mentioned as the Director of the class in universal legislation in the Gaceta's account of these events, which also carried the information that his students presented material drawn from Bentham's treatise on the civil code.<sup>1</sup> The student who introduced the offerings of the class in political economy cited Jeremy Bentham to the effect that the prohibition of usury was an error in the laws and that the "crime" itself was an imaginary evil.<sup>2</sup> This was certainly a paraphrase of a section of the Tratados on "crimes of imaginary evils," which uses the example,<sup>3</sup> but of course the doctrine could have been conjectured from Bentham's Defence of Usury of 1781, or its French translation, published in 1790; the work was not available in Spanish until 1828.<sup>4</sup>

It may be remarked that there seems to be very little evidence that the Colombians used Bentham's writings on economics in an important way. This is understandable, as the topic was not treated systematically in the Tratados de legislación, their undisputed favorite among Bentham's works. Santander, who really looked more to practical considerations than to theories in fiscal matters, did not seem to give Bentham a prominent place among the economists, although he was aware of English writers in the field. In 1826 he wrote to Bolívar to assure him that the reactionary tax reforms he had ordered would be carried out to the letter: "If these reforms produce funds for the administration of the republic and for the repair of our national credit, at the same time causing less discontent among the people, we should consign Say, Malthus,

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<sup>1</sup>Gaceta de Colombia, Nov. 25, 1827.

<sup>2</sup>Ibid., Oct. 31, 1827.

<sup>3</sup>Bentham, Tratados de legislación, II, 183.

<sup>4</sup>Everett, "Bibliography," p. 541.

Ricardo, etc., to a bonfire"<sup>1</sup>--but Bentham was not named.

Vicente Azuero's newspaper suspended publication on November 7, 1827, shortly after the editor was assaulted and beaten by a Venezuelan army officer. According to Lozano y Lozano, Azuero was unable to obtain justice in this affair, and thought it best to retire from the city.<sup>2</sup> He lived quietly until his election as a delegate to the Convention of Ocaña brought him back into public life.<sup>3</sup>

## VII

The "Great Convention" had been called to meet in March, 1828, by order of the Congress of 1827, to make needed constitutional changes. In elections which must have been free, Santander and his supporters won a larger number of seats than the Bolivarian group. Bushnell considered this a striking proof that Bolívar had not subverted Colombia's liberal institutions after assuming the presidential power.<sup>4</sup> The presence of the Chief Executive in Ocaña had been expressly forbidden, but on March 16 Bolívar started north en route to Venezuela, alleging that a royalist threat existed there. He changed his destination while on the way, however, and remained at Bucaramanga, a city not far from the convention site, during the important days of the assembly.<sup>5</sup>

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<sup>1</sup>Letter of Dec. 9, 1826, Cartas y mensajes, VI, 485. Luis Ospina Vásquez's study, Industria y protección en Colombia, 1810-1930 (Medellín, Colombia: E. S. F., 1955), supports the conclusion that Bentham's great influence in Colombia was political rather than economic. See p. 88, n. 8.

<sup>2</sup>"Azuero," p. xxxv.

<sup>3</sup>Ibid., p. xxxvi.

<sup>4</sup>Santander Regime, p. 356.

<sup>5</sup>Arcadio Quintero Peña, La Gran Colombia (Bogotá: Ediciones Samper Ortega, 1942), pp. 277-78. Hereinafter cited as Gran Colombia.

A few days before the Liberator's departure from Bogotá, Dr. José Félix Restrepo sent him a communication through the office of the Secretary of the Interior:

Most Excellent Sir:

Satisfying the decree of Your Excellency in which you advise the Dirección General de Estudios to inform you whether it will be convenient to suppress the work of Jeremy Bentham, designated for the cátedra of "Principles of Legislation," I refer entirely to my previous report, which Your Excellency may order brought to you, adding that the doctrines of the author rapidly propagate impiety, exciting disdain, not only for the Christian religion, but also for the natural law, and removing restraints upon the passions. Therefore I judge it entirely dangerous for the education of youth.

As to whether the work could now be replaced, it will be sufficient for now for the master, consulting the best books, to gather the general principles which serve as norms in the formation of laws. This is my opinion which I address to you today, knowing that Your Excellency is leaving for Venezuela, and without waiting for the concurrence of my companion Dr. Estanislao Vergara, whose occupation in the Secretariate of foreign relations has impeded his meeting with me.<sup>1</sup>

It is doubtful that Restrepo's informe on the question received much publicity, but his opinion had already been known. His reputation in New Granada was altogether singular, founded on his achievements in educational reform during the last years of the colonial regime, the prestige he enjoyed as teacher of the founders of the republic, and his record as the humanitarian delegate who had proposed the manumission law adopted by the Congress of Cúcuta. Bushnell called Dr. Restrepo "the noblest Colombian of them all."<sup>2</sup>

Azuero had not been mentioned in the informe, but on the day after it was submitted Dr. Mariano de Falavera accepted an interim appointment to the Dirección general de estudios "in place of Dr. Vicente Azuero, elected to the

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<sup>1</sup>Report of Dr. Félix Restrepo, March 6, 1828, A. N., Instrucción Pública, CXXXIV, 838-89.

<sup>2</sup>Santander Regime, p. 367.



National Convention."<sup>1</sup> On March 12, Bolívar's executive decree suppressing the Bentham text was signed; it read, in part:

Having considered various reports directed to the government, manifesting that it is not advisable that the tratados de legislación civil y penal, written by Jeremias Bentham, be used for teaching the principles of universal legislation, which reports are supported by the Dirección general de estudios

I DECREE

Art. 1. In none of the universities of Colombia will the tratados de legislación by Bentham be taught . . .

Art. 2. . . . In the classes of jurisprudence and theology the dirección jeneral will be able to vary the elemental books, hearing the report of the governing junta of the university, at which the professors of the faculty [which is concerned] should assist . . .

Art. 3. If a basic work appropriate for instruction is not available in print in any of the branches of jurisprudence and theology, the respective catedráticos will dictate a new course to their students in the terms which article 228 of the plan of studies disposes.

Art. 4. The multiplication of basic works being very important, especially in certain branches in which books which are appropriate for Colombian youth do not exist, the dirección jeneral will encourage the subdirecciones and the universities so that the most competent professors may edit courses of study, which shall be printed at the expense of the universities . . .<sup>2</sup>

There evidently was a slight delay in the implementation of this decree, for the new professor of universal legislation at the Central University, Florentino González, wrote to the rector on April 30 that when he had received the directive on this matter the previous day he had already begun his lectures on Bentham's work. Rather than create a new course of his own he had started, on that very day, the reading of Filangieri on criminal law, and proposed to use Beccaria as well if the rector would authorize this

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<sup>1</sup>Letter, Mariano de Falavera to the Secretary of the Interior, March 7, 1828, A. N., Instrucción Pública, CXXXIV, 255.

<sup>2</sup>Decree of March 12, 1828, Gaceta de Colombia, May 23, 1828.

procedure.<sup>1</sup> Gonzalez's request was passed to the Director of Studies, and his use of Filangieri and Beccaria was approved, "until the government should resolve the question."<sup>2</sup>

The Great Convention opened at Ocaña on April 9. Bolívar's presidential message described the evil state of the nation in alarming terms, and on April 16 the assembly voted unanimously that the Constitution of 1821 should be reformed. In May, after the unitary-federalist issue had been decided in favor of a centralized government, a committee was appointed to prepare a new constitutional draft. Azuero presided in this group and the document produced has been known as the Constitución azuerina in Colombian history. Yet many of its provisions must be considered the result of the needs and political compromises of the times rather than simple products of Azuero's creativity, and it seems possible to argue an influence of Bentham only in the part of the code which treats liberty of the press.

The proposed constitution conceded the right, already well established in Colombia, to publish without prior inspection or licensing, but added some specifics which must have been inspired by the old and familiar source "Libertad de la Imprenta," the resumé of Bentham's principles translated by Blanco White and published in El Español in 1811. Article 274 declared that no one would be prosecuted on account of his writings unless these had provoked disobedience of the law or some act which the law declared to be a crime.<sup>3</sup>

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<sup>1</sup> A. N., Instrucción Pública, CXXXIV, 818.

<sup>2</sup> Letter, Rector of the Universidad Central to the Director General de Estudios, April 30, 1828, and Marginal Note of May 9, 1828, ibid., sheet 617.

<sup>3</sup> "Proyecto de Constitución presentado a la Convención Nacional de Colombia por la Comisión respectiva el 21 de mayo de 1828-18," in Hernández de Alba and Lozano y Lozano (eds.), Documentos sobre Azuero, p. 415. Hereinafter cited as "Proyecto de Constitución, 1828."

Bentham felt that, ideally, there should be no special laws to regulate the press; if it was used as the instrument of cooperation in some crime, the offender should be prosecuted on that basis.<sup>1</sup> He had written, according to the version of Blanco White, "When an individual is accused of a crime against the government, in which the press has been an instrument, it would be suitable to require that the accusers specify exactly the crime, such as rebellion, sedition, etc., of which they are accusing him; . . . and that they prove that the accused has caused the offense in question, or that he has criminally attempted to cause it."<sup>2</sup> Criticism of public functionaries touching the exercise of their offices was to be expressly permitted under the Constitución azuerina, but writings which censured the private actions of private citizens were to be subject to condemnation.<sup>3</sup> Bentham had specifically proposed both these arrangements in his article of 1811,<sup>4</sup> quoted by Azuero as recently as July, 1827, in El Conductor.

The proyecto of the commission was not adopted, and the congress itself ended in failure when Bolívar's followers began to abandon the little convention city in early June, leaving the assembly without a quorum on June 10. Shortly before that date the Liberator had left Bucaramanga to return to Bogotá. Before he arrived in the capital a meeting of citizens there withdrew the mandate of the province's deputies and proclaimed Bolívar invested with dictatorial powers. Similar acts followed in the other cities of Colombia, and

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<sup>1</sup>"Libertad de la Imprenta," El Español, Jan. 30, 1811, p. 330.

<sup>2</sup>Ibid.

<sup>3</sup>"Proyecto de Constitución, 1828," p. 415.

<sup>4</sup>See above, p. 35.

on August 27 Bolívar signed the Organic Act of the Dictatorship, which declared the executive and legislative powers united in his person.<sup>1</sup>

By September an article in the official gazette on "Abuse of the Liberty of the Press against the Catholic Religion"<sup>2</sup> marked the change which had occurred in the attitude of the national administration over a year's time, and, perhaps, one of the means the new regime was using to appeal for support. On May 15, while the national convention was meeting in Ocaña, the Gaceta had published an extract on federalism from La convención nacional: Sus deberes i funciones, which was identified as the work of Francis Hall;<sup>3</sup> this title does not appear in standard bibliographies. And Bentham's Tratado de los sofismas políticos had been cited on May 18.<sup>5</sup>

The decreto orgánico provided that the president of the reorganized Council of Government would act as chief executive in the absence of the President of the Republic; since the office of Vice President was not mentioned, Santander seemed to have no place in the Colombian government. He considered his honor to be involved in this obscure and irregular procedure, and formally requested clarification.<sup>5</sup> The answer from the Secretary of the Interior was unequivocal enough: "His Excellency has ordered me to say to you in answer that the vice-presidency of the republic has been suppressed by the dispositions of the organic decree of last August 27, and that you, therefore, are no longer Vice President of Colombia."<sup>6</sup>

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<sup>1</sup>Quintero Peña, Gran Colombia, pp. 293-96, 301.

<sup>2</sup>Gaceta de Colombia, Sept. 7, 1828.

<sup>3</sup>Ibid., May 15, 1828.

<sup>4</sup>Ibid., May 18, 1828.

<sup>5</sup>Letter, Santander to the Secretary of the Interior, Sept. 1, 1828, Cartas y mensajes, VII, 432.

<sup>6</sup>Letter of Sept. 4, 1828, Correspondencia, XI, 34.

## CHAPTER IV

### IMPRISONMENT AND EXILE, 1828-1832

The government of the dictatorship offered Santander a decent alternative by naming him Minister Plenipotenciary and Envoy Extraordinary to the United States. After arduous self-examination the fallen Vice President chose to regard the nomination as a sign of the government's confidence in him and a vindication of his innocence and patriotism.<sup>1</sup> He accepted the post, stipulating that Luis Vargas Tejada, a talented young republican, should accompany him as secretary of the legation. His decision has tended to confound liberal historians, but Santander wrote later that he was convinced that even de facto governments should ordinarily be obeyed.<sup>2</sup>

Within days of these events Colombia was shaken by the news that a group of youthful civilian conspirators, in association with some members of the military who were opposed to the dictatorship and two persons of French origin, had broken into the presidential palace and attempted to take the Liberator's life. They had met on the momentous night, September 25, at the home of Vargas Tejada, whom Santander had chosen for a place in his mission to Washington.

Other distinguished youths were implicated, and some were personal friends of General Santander. Florentino González was among the group which

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<sup>1</sup>Letter, Santander to Azuero, Sept. 17, 1828, Cartas y mensajes, VII, 433-34; letter, Santander to Francisco Montoya, Sept. 21, 1828, ibid., p. 438.

<sup>2</sup>Quintero Peña, Gran Colombia, p. 304, quoting Santander, "Memoria de las desavenencias . . . Por Un Colombiano en 1829."

had entered the palace; at his interrogation he declared his occupation to be the professorship of civil and penal legislation at the University of Bogotá, his age as twenty-three, and his religion belief in one God, the Author of nature.<sup>1</sup> Since the answer which Santander gave to the last part of the same question, "Roman apostolic Catholic,"<sup>2</sup> must have been the only acceptable response, his testimony supports Bushnell's belief that concerned Catholics in Bogotá sometimes objected to the liberal professors as much as to the liberal Plan of Studies, and refused to believe that the explanations given by these masters would satisfactorily adjust the works of Bentham and Destutt de Tracy to orthodox Catholic positions.<sup>3</sup>

González was sentenced to death, but the penalty was commuted; Pedro Celestino Azuero, however, died before a firing squad for his part in the September night. This youthful relative of Dr. Vicente Azuero had taught philosophy at the colegio of San Bartolomé and was also something of a poet. The Gaceta de Colombia's first account of the execution reported that he died impenitent: "The arguments of the priests could not convince him that this was a crime against society and the will of God--what kind of philosophy could such a master have taught?"<sup>4</sup>

Banishment was recommended for young Dr. Ezequiel Rojas, who had been named professor of civil and penal legislation at the University of Boyacá the

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<sup>1</sup>"Interrogatorio hecho a Florentino González con motivo de la conjuración de 25 de septiembre," in Archivo Santander, XVIII, 11.

<sup>2</sup>"Proceso seguido al General Francisco de P. Santander, Bogotá, octubre 22 de 1828, ibid., p. 17.

<sup>3</sup>Santander Regime, p. 193.

<sup>4</sup>Issue of Oct. 16, 1828.

previous June.<sup>1</sup> Vargas Tejada succeeded in escaping from the city after the assassination attempt, but lost his life while crossing a river in the llanos of Casanare. Mariano Ospina Rodríguez, Wenceslao Zuláivar, and Juan Miguel Acevedo are the other young men named by Quintero Peña as leading members of the conspiratorial Sociedad Filológica;<sup>2</sup> Zuláivar suffered the death penalty.

Santander was presumed to be the real author of the plot, but it could only be established that Florentino González had informed him of a project to restore the Constitution of 1821, and that he had not denounced the conspirators. He was condemned to death, loss of military rank, and confiscation of his goods in favor of the state. Various groups of citizens, including the Bogotá clergy led by the Archbishop and Dean Rosillo,<sup>3</sup> pleaded for clemency, and the Council of Ministers, apparently influenced by the courageous position taken by José Manuel Restrepo, recommended that his penalties be lightened. Bolívar acceded to these representations and commuted the sentence to exile and loss of rank. Santander, Rojas, and González were among those who were sent to Cartagena early in November to be imprisoned in its remarkable fortresses; fourteen of the accused had been executed.

Official and conservative reaction to the tragic occurrence pointed out that the young students and professors involved had been infected with dangerous and erroneous principles, and particularly mentioned Bentham's writings as the probable source of the poison. The Gaceta of October 12 called attention to

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<sup>1</sup>Director General of Studies to the Secretary of the Interior, May 30, 1828, and Marginal Note of June 12, 1828, A.N., Instrucción Pública, CXXXIV, 880.

<sup>2</sup>Gran Colombia, p. 305.

<sup>3</sup>"El Clero de Bogotá a Bolívar, Oct. 27, 1828," in Archivo Santander, XVIII, 96-97.

the part which, inadvertently, the immediate directors of public education and even the laws themselves have contributed to the parricidal attempt. . . . in all parts we find chairs of legislation and of the rights of men, and we have none of the social duties of men, or of practical morality. . . . how could Florentino González have held the chair of legislation of this city in the colegio of San Bartolomé? Florentino González, professor of legislation! Our blood runs cold when we remember that he was the one who taught our children what was just and what was unjust.<sup>1</sup>

Another pro-administration paper cited the same factors as causes of the evils afflicting the nation:

Youth handed over to preceptors and masters infatuated by the erroneous maxims of a false philosophy (we do not speak of all), and trained by the most detestable authors: el Bentham, the frightful fancies of Rousseau, the sarcasms of Voltaire, go from hand to hand. . . .<sup>2</sup>

On October 20 the Minister of Interior, José Manuel Restrepo, issued a circular which revised the Plan of Studies and explicitly linked the recent horrors to the liberal plan:

The scandalous occurrences which have taken place in this city as a result of the conspiracy of the 25th of September, and the part which, unfortunately, certain young university students had in it, the clamor of many honorable fathers of families, who deplore the corruption, now all too notable, in our youth, have persuaded the Liberator-President that without doubt the general plan of studies has essential defects which require a prompt remedy to cure the roots of the evils which the vices and immorality of the young presage for the patria.

His Excellency, meditating philosophically on the plan of studies, has believed that he finds the origin of the evil in the political sciences in which the students have been instructed at the beginning of their career in higher studies, when they still have not sufficient judgment to modify these principles as the peculiar circumstances of each country require. The evil also has increased beyond measure through the authors which were chosen for the study of the principles of legislation, like Bentham and the others, who, at the side of luminous maxims, include many others opposed to religion, morality, and the tranquility of the peoples, from which we have now received the sad first fruits.

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<sup>1</sup>Gaceta de Colombia, Oct. 12, 1828.

<sup>2</sup>El Regenerador (Bogotá), Oct. 12, 1828.



Add to this, that when a deadly poison was given to youth in those authors, which destroyed their religion and their morals, the true principles of either were not taught to them in any form, so that they could not resist the attacks of the impious and irreligious maxims which they were reading at every turn.

To avoid these and other dangers the Liberator-President, with the advice of the Council of Ministers and in view of the report of the Central University of Bogotá, has resolved to make the following variations in the plan of studies . . .

By the orders which followed Latin was restored to a place of importance, the study of morality and natural law was given special emphasis for students in philosophy, while the chairs of principles of universal legislation, derecho público político, constitución, and administrative science were entirely suppressed. Required courses in the Roman Catholic religion were introduced, to be financed by the endowments of the now extinct chairs of universal legislation.<sup>1</sup>

Groot quoted this circular, and wrote that it was true that the study of Bentham's immoral doctrines had had a great part in determining the crimes of September 25, "and to be convinced of this it is enough to read Carujo's writings on the subject, published in the Venezuelan press, in which he fortifies his position by citing the doctrines of Bentham every step of the way."<sup>2</sup>

Pedro Carujo, a Venezuelan artillery commander, had been deeply involved in the conspiracy, and had taken the life of Colonel Fergusson, one of the Liberator's aides, during the attempt. No doubt he cited Bentham in the manner which Groot recorded, but it is difficult to imagine what justification he or any of the conspirators could have found in that author for their

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<sup>1</sup>Public Education Circular, Republic of Colombia, Ministry of State of the Department of the Interior, Second Section, Bogotá, Oct. 20, 1828, Gaceta de Colombia, Oct. 30, 1828.

<sup>2</sup>Historia, V, 264-65, 349, n. 1.

impractical and hopeless attempt to restore constitutional government by killing Simón Bolívar. The conspirators' style, that "passionate delirium" which had always irritated Bentham so much, was very far from his reasoned and scientific way.

It would be beyond the competency of this study to assess the effects of three years of Bentham-reading upon the moral consciousness of Colombian youth, or to evaluate the action of the conspirators in the light of what they might have read in other sources. What does seem evident is that the presence of several intelligent young idealists among the number of the conspirators was a serious blow to the Liberator's glory, and that the government thought it best to fasten the blame upon the heterodox authors the liberals had set them to reading, and particularly upon Bentham, whose utilitarian morality had already outraged the religious-minded majority.

Santander remained a prisoner in the castles of Bocachica for seven months before the government was convinced that the danger of the September conspiracy, which had been linked to threatening events in the South, had passed. He credited the good offices of General Sucre and the learned and prestigious Joaquín Mosquera with having hastened his release from the fortress of San José in June, 1829, when he was sent by ship to Puerto Cabello.<sup>1</sup> At the end of August, Santander, Francisco Evangelista González--a young man who had attended to his needs in Bocachica, Dr. Ezequiel Rojas, and three servants were permitted to board a ship bound for Hamburg, Germany.<sup>2</sup> At least one of the servants seems to have been a slave, for Santander later wrote in his European

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<sup>1</sup>Santander, "Apuntamientos para las Memorias sobre Colombia y la Nueva Granada," Archivo Santander, I, 68.

<sup>2</sup>Santander, Diario del General Francisco de Paula Santander en Europa y los EE. UU., 1829-1832, ed. by Rafael Martínez Briceno (Bogotá: Imprenta del Banco de la Republica, 1963), p. 19. Hereinafter cited as Diario.

diary, in an entry for April 16, 1830: "Today I sent my negro Cruz Cabrejo to Puerto Cabello with Vicente Concha . . . I have given the negrito his carta de libertad."<sup>1</sup>

The party disembarked in Hamburg on October 15, 1829, and Santander was very soon received with interest and respect in a number of distinguished families. On November 9 he met John Bowring, Bentham's friend, at the home of the Danish minister,<sup>2</sup> and the two men began to exchange visits. This new acquaintance gave Santander letters of introduction for Paris and London, and showed a particular interest in Colombian affairs.<sup>3</sup>

During the two years and eight months he passed in Europe and the United States Santander visited public institutions and useful establishments with relentless interest: hospitals, prisons, penitentiaries, and houses of correction, orphanages and asylas for every kind of unfortunate, fire departments, an Owenite cooperative society, courts of law, stock exchanges, universities and every type of school, customs houses and patent offices, English cotton mills and other factories, gas and water works, and public parks. He rode on steamboats, steam and horse-drawn railways, and an omnibus, observed a dynamo and machines which utilized steam power, and remarked upon the division of labor in a prison workshop. Besides this he was an enthusiastic concert and theater-goer, and entered the social and intellectual life of the cities he visited to whatever extent was possible. He met some of the most admired people of the time. Lafayette, Constant, Destutt de Tracy, Jean Baptiste Say, Guizot, Royer-Collard, Madame de Staël, Sismondi, Alexander von

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<sup>1</sup>Ibid., p. 131.

<sup>2</sup>Ibid., p. 49.

<sup>3</sup>Ibid., p. 51.

Humboldt, and M. A. Jullien, founding editor of the Revue Encyclopédique, who maintained cordial relations with Bentham, should be mentioned, as well as the Spanish revolutionary Quiroga, and Joseph Bonaparte, whom he met in New York City and visited twice at his country home. He saw Manuel Godoy riding by in his carriage, at least, met General San Martín, renewed his acquaintance with Vidaurre, the Peruvian jurist who admired Bentham, and became more or less well acquainted with Bernardino Rivadavia and Próspero Herrera, José del Valle's relative, for whom Bentham had drawn up an interesting reading list in 1827.<sup>1</sup> By November, 1830, he wrote that he had learned more during his travels than in all past times.<sup>2</sup>

Santander kept up a correspondence with Dr. Bowring while he was in Europe, and they met again soon after his arrival in London, in June, 1830. Bowring arranged for him to meet Joseph Hume, the Benthamite Radical, and some other members of Parliament who had ties of friendship with Bentham.<sup>3</sup> On July 1 he wrote to Bentham, on the advice of John Bowring,<sup>4</sup> and asked for an opportunity to know him personally. His correspondence with Bentham, written in French, has been preserved in the British Museum:<sup>5</sup>

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<sup>1</sup>Ouvrages en Français que M. Bentham prenait la liberté de recommander à M. Herrera pour le compte de M. Del Valle, Jan. 15, 1827, Bentham MSS, xiii, 370.

<sup>2</sup>Diario, p. 259.

<sup>3</sup>Ibid., p. 152.

<sup>4</sup>Ibid., p. 172.

<sup>5</sup>Santander's letters of July 1, 3, 9, and 10 in this collection have remained unpublished. The writer is indebted to Fray Alberto Lee López, O.F.M. of the Academia Colombiana de Historia for the transcription of the portions of this correspondence which are presented here from the microfilmed originals, and to Sra. Amande de Fernández and Sra. Ana M. de García for their translation from French to Spanish.

Sir: Permit a Colombian, your pupil and admirer, the honor of presenting to you his homage and respect. Arriving in London, I have been unable to resist the desire to write you this letter; first, to fulfill a debt to which your character, and your learning, and your immense reputation have so many rights, and secondly, to beg that you may be pleased to allow me to know personally the creator of the Science of legislation, the sincere friend of the cause of the people and of humanity.

I would be most favored if you should wish to grant me this permission. After having been the first to order the professors of the colegios of Colombia to make use of your works for teaching the principles of legislation, and the tactics of representative assemblies, how could I be deprived of the honor and pleasure of meeting you in person? No, I hope of your benevolence that I will not leave England without seeing my ardent desires fulfilled.

Meanwhile, I beg you, Sir, to receive the assurance of my most distinguished consideration, and of the most profound respect, and very sincere admiration.

Your very humble  
and very obedient servant,

[Signed] F. P. Santander  
Former Vice President  
of the Republic of Colombia<sup>1</sup>

Bentham answered the same day, inviting Santander to dinner at his home. The letter, a whimsical piece which gives directions for reaching Bentham's "hermitage," has been included in the Bowring edition of his works.<sup>2</sup> Bentham's closing is not included in the published version of the letter, but Santander copied it in his diary, in an entry for July 3:

I have received a very satisfactory note of yesterday from Jeremías Bentham inviting me to dine next Monday. It is very noteworthy and honorable for me that this scholar, widely respected in the cultured world and leader of the radical, enlightened, and advanced party in England should conclude his letter with these words: "I am, sir, with the respect which your renown inspires in me, very truly yours, Jeremías Bentham."<sup>3</sup>

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<sup>1</sup>Bentham MSS, British Museum, X, 436. Cat.: Add. 33.546.

<sup>2</sup>XI, 53.

<sup>3</sup>Diario, p. 172.

He sent a courteous letter of acceptance on the same day,<sup>1</sup> and wrote this account of the visit in his diary for July 5:

I dined today with Jeremías Bentham. He is an old gentleman of more than eighty years, merry, short of stature, stocky, robust, with hair completely falling to his shoulders, dressed in an old fashioned and simple style without a necktie or any special grooming. Patriarchal habits, frank and pleasing manner, a clear head, although now he forgets people's names, the most vast talents, and a certain amount of vanity. Before dinner we walked in his little garden, and he showed me the house where the celebrated poet Milton lived, which is now the home of Mill, the friend of Gral. Miranda;<sup>2</sup> he showed me the bust of himself which the sculptor David of Paris had presented to him, and the portrait of General Miller, at the service of Peru. He spoke to me favorably of Rivadavia, and of General Lafayette with great respect.

We sat down at the table: two young men who are his secretaries, I across from him, and he; the food abundant and exquisite enough; little wine because he is not accustomed to it. During the meal we talked about Colombia, and about Bolívar, and his opinions are eminently liberal. He said there never was a tyrant who lacked his Timoleón, and that he hoped Bolívar would not be the exception to this rule so consoling for liberty.

He spoke of the Constitution of France and England, giving the superiority to the former;<sup>3</sup> he explained the radical party in England, reviewed the opinions of Canning, Brougham, Mackintosh, and Hume, of the Tories and Whigs. He spoke approvingly of Hume.

After dinner we remained alone; I took mocha coffee and he drank a great deal of tea; he showed me some of his works already published in Spanish and others not yet published in English; he made me a gift of three cuadernos of the former. Among the latter is the projecto of a Military Code for the land army and for the navy. He gave me two small coins of the time of George II and showed me a large medal representative of the Restoration. He also let me read printed

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<sup>1</sup>Letter of July 3, 1820, Bentham MSS, British Museum, X, 438.

<sup>2</sup>Santander probably misunderstood Bentham's explanation, as James Mill lived in this house for a time in 1810, but soon left it because it was unhealthy. See Halévy, Philosophic Radicalism, p. 250.

<sup>3</sup>This is surprising and uncharacteristic of Bentham. He wrote in a memorandum for the year 1830: "I prefer the English constitution, such as it is, to non-government, and to every other but the United States' government." See Bowring (ed.), Memoirs, in Works of Bentham, XI, 62. Perhaps Santander misunderstood Bentham on this point.

copies of letters which he has received from various prominent persons, among them one from the King of Bavaria and another from an Admiral of Russia. I also saw all the sample coins of Guatemala which Señor Valle had given him.

Our conversation lasted until midnight in a way which left me completely gratified. At my leaving he asked me to write to him and [told me] that he would send me some letters for Russia.<sup>1</sup>

On July 7 Santander wrote that he had finished some notes on events in Colombia which he meant to leave with Bowring, "who has been so intensely interested in the matter."<sup>2</sup> On the 9th he bade Bentham goodbye in a letter which included the following lines:

Santander sets out full of satisfaction at having made the acquaintance of the sincere and disinterested friend of humanity, to whom he will consecrate forever his remembrance, homage, and respect.

He leaves with Mr. Bowring a sketch of political events in Colombia since 1826 to which the country owes the loss of its liberties and the overthrow of its constitutional laws. The ambition and pride of a fortunate and intrepid soldier have caused all the public ills of those lands.<sup>3</sup>

Bentham wrote to him on the same day, forwarding a packet to be delivered to Admiral Mordvinoff in Russia, not knowing that Santander's request for permission to visit that country had been refused by the Russian minister two days earlier.<sup>4</sup> He asked Santander to write to him on the subject of the Bolivian constitution, sent him a gift, and wished him well:

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<sup>1</sup>Diario, p. 173. A letter from Santander to M. Jullien of Paris, dated Hamburg, July 28, 1830, transcribed from the original in the Library of Congress by Isabel Pérez Ayala, must refer to this meeting, even though Bentham's name appears as Berthan. Santander seems to have often used the spelling Benthan. For the July 28 letter see Cartas y mensajes, VIII, 89-93.

<sup>2</sup>Diario, p. 174.

<sup>3</sup>Bentham MSS, British Museum, X, 442.

<sup>4</sup>Santander, Diario, p. 174.

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At my request, you had the kindness, I believe, to indicate to me the name of the individual to whom we are indebted for cette belle constitution bolivienne, with some details about the matter. I put it all down in writing, but so quickly that I myself am unable to read it. If it is not too much to ask I would implore you to send me, before your departure, a few lines relative to this.

As our English language has the advantage of not being unknown to you, for that which regards reading, I take the liberty of sending you an example of the original English of my works, to take the place of the imperfect Spanish translations, so as to serve as a corrective of the faults which they tell me it contains.

Receive, monsieur le général, with the declaration of my most sincere respect, due to you for so many titles, my equally sincere wishes for your early restoration to that eminent and illustrious position from which tyranny hurled you down, and to which the good of your suffering country calls you with urgency.<sup>1</sup>

Bentham enclosed a copy of the letter he was sending to Mordvinoff with the package of books, so that Santander might read it and destroy the original if he considered it prejudicial in any way.<sup>2</sup> This letter, which apparently was written in English, was published with other examples of Bentham's correspondence in the Bowring edition of 1838-43, after a Spanish translation had been printed in Colombia in the Constitucional de Cundinamarca:

My dear Admiral,

I am alive: though turned of eighty-two, still in good health and spirits, codifying like any dragon. I hope to hear the like of you . . . I have commissioned my friend, General Santander who (I hope) will be the bearer of this, to endeavor to collect satisfactory evidence of the fact . . .

Now, for a short account of him, in justification of the liberty I am thus taking with you on his behalf. In the State of Colombia, in late Spanish America, in the military line, he is among the heroes who have had none above them but Bolívar: in the civil line, under Bolívar's presidency, he has been vice-president: but,

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<sup>1</sup>Letter of July 9, 1820, Correspondencia, I, 412-13. A Spanish translation of this letter appeared in the Constitucional de Cundinamarca (Bogotá), Nov. 4, 1832.

<sup>2</sup>Ibid.



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in company with your humble servant, having fallen into the disgrace of the arch-hero, has been made to share the same fate, being expelled from his country, as well as that work of mine, which had the honour of receiving (so I was told) two different translations into the language of yours. General Santander, so I hear from himself, as also from other quarters--General Santander, when in office, did what depended on him towards the diffusion of my works throughout the territory of the State, of which he was so distinguished a member; and such was the part, if any, which, till t'other day, was taken, in relation to them, by Bolívar. But, of late, Bolívar, as is natural to man, and even, in a greater or less degree, unavoidable, has been spoilt by power: and having for so many years deserved--so well deserved--his assumed title of Liberator--is now (alas!) become the tyrant of his country. At one time, he and I had something of a correspondence; and, in consequence of a recommendation from me, he had raised to a colonelcy a talented man of the name of Hall, an Englishman, who had been a lieutenant in the English service. But, in the course of the opposition made to him from various quarters, some person or other had made reference to some or other of my works; and such was the cause for which, under I know not what penalties, he thought fit, t'other day, to issue an edict, having for its declared object the preventing every one of them from being read by anybody. This is what I flatter myself will not be quite so easy to effect as to ordain; for I have from a bookseller's partnership in Paris (Bossange Freres) an account of 40,000 volumes of my works, (namely, those edited by Dumont in French,) translated into Spanish, and sold by them for the Spanish American trade.

As to General Santander's object in his visit to your capital, as far as I can comprehend, it has nothing political in it. Our Thames he has not, as yet at least, set on fire, or (I verily believe) so much as attempted it: and I do not think the Neva has anything more to fear from him. Being in easy circumstances (the tyrant not daring to confiscate his property,) his object is, I believe, neither more nor less than to amuse himself, by the observation of a state of society which forms a contrast with that to which he has been most accustomed: traveling about till tidings arrive of the tyrant-usurper's having shared the fate of Iturbide of Pseudo-Imperial memory.<sup>1</sup>

Through this channel I avail myself of the opportunity of sending you another article or two of my manufacturing . . . Here and there, I cannot but flatter myself, you might find in them a hint, capable of being made application of to advantage, in your country, notwithstanding its [being] stationed in the antipodes of

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<sup>1</sup>Letter of July 9, 1830, Works of Bentham, XI, 33. Only a fragment of the letter is published in the Bowring edition of Bentham's correspondence, but it is complete in the Archivo Santander.

those countries for the government of which my Constitutional Code was principally designed.

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Santander replied the next day:

I am infinitely indebted for your immense kindnesses. Your letter, and your opinion in my regard are to me more estimable and more honorable than the presidency of Colombia. Accept my most sincere thanks.

I will try not to fail in the commissions with which you have charged me. It is for me a most agreeable duty.

Bolívar is the author of the Bolivian Constitution, and Señor Pando, a native of Peru, educated in Spain, has been his intimate adviser. This gentleman is a man sufficiently instructed and of means, but like Bolívar predisposed in favor of monarchical forms, and pretends that we Americans cannot be governed by liberal and republican constitutions. This monstrous constitution has been the true apple of discord which has divided and ruined Colombia, Peru, and Bolivia.

I am on the point of embarking. I leave you my profound respect, and carry with me the satisfaction of having spoken with you, and the most fervent desires for your health, which is the health of humanity.<sup>2</sup>

Santander left England that day, and spent some time visiting the Low Countries. There he learned from the French gazettes that the Congress which Bolívar had promised to convoke for 1830 had elected Joaquín Mosquera President of the Republic on May 4, and that the Liberator had left Bogotá for

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<sup>1</sup>Archivo Santander, XVIII, 249. See also the Spanish translation in El Constitucional de Cundinamarca, Nov. 4, 1832. Bowring reported some remarks of Bentham which duplicate the sentiments of this letter in an entry, certainly misplaced, for 1826-27: "B.--'(General) Bolívar wrote to me very flattering letters. He said I had reduced matters of legislation to mathematical certainty . . . 'But are you aware that Bolívar has prohibited your writings? Their liberal principles are hostile to his despotic designs.' B.--'His despotism cannot tolerate the greatest-happiness principle. He must put the judge out of the way before whose tribunal he trembles--and, unhappily, he has the power to do so.'" See Memoirs, in Works of Bentham, X, 565.

<sup>2</sup>Letter to Bentham, July 10, 1830, Bentham MSS, British Museum, X, 442.

the coast, with the intention of traveling to England.<sup>1</sup>

By the end of the month he was in Hamburg once more, and wrote to Bentham on July 29; an extract of his letter, in an English translation, appears in Bentham's published correspondence:

Bolívar is acting prudently, in giving way to that general opinion which is opposed to his permanence at the head of public affairs. It would have been happy for the reputation of his country, and for his own, had his retreat, like that of Scylla at Rome, been voluntary. But we withdraw, leaving Colombia the prey of hostile parties--divided into two camps, just ready for civil war. Instead of giving us peace, tranquility, and freedom, he bequeaths hatreds, and resentments, and passions--a demoralized army, and a wretched example. What has his unhappy dictatorship brought to Colombia, and his overthrow of the Constitution of 1821? His daring has not even had the justification of success: his despotism has torn Colombia into pieces by factions and discord, and filled honourable families with mourning:--the scaffolds of criminals have streamed with the blood of honest citizens. Immorality and anarchy have triumphed; and Colombia has been dragged back to fanaticism and ignorance. In the last three years, Bolívar has sullied all the glories with which his perseverance, his boldness, his activity, his disinterestedness, and many other virtues, distinguished him during the War of Independence. Alas! the same sword which overthrew Spanish dominion, has destroyed the liberties of the Colombian people!<sup>2</sup>

On August 7 Santander sent Dr. Francisco Soto a copy of Bentham's letter, evidently the letter addressed to Mordvinoff which had pleased him so much.<sup>3</sup> A few days later he sent Bentham's letter and books on to the Russian admiral.<sup>4</sup>

During 1832, some months after Santander had returned to New Granada to assume the presidential office, Bentham's letter to Mordvinoff and the accompanying letter to Santander were published in the Constitucional de

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<sup>1</sup>Santander, Diario, p. 189.

<sup>2</sup>Works of Bentham, XI, 53.

<sup>3</sup>Santander, Diario, pp. 194, 175.

<sup>4</sup>Ibid., p. 194.

Cundinamarca, the official newspaper of the department in which the capital was located.<sup>1</sup> Santander's response to Bentham was not included, but two years later a letter which was represented as Mordvinoff's answer to Bentham's introduction of Santander was printed in Caracas. The broadside carried the title "Important for History" and this notation:

A happy coincidence has placed in the hands of a friend resident in London the following letter of the valiant Admiral Mordvinoff (written in French) in answer to one of the deceased Bentham which appeared in Number 59 of the Constitucional de Cundinamarca.

Those who doubt the existence of the original of this letter, may come to this press, where it will be shown to them.

(Note of the Printer)

The text of the letter followed:

Even if you had not said in your letter of July 9 that you had attained 82 years, it is evident from the sense of it that you are in your dotage. You have been miserably deceived by a man all too well known for his black doings. It is not just now that Santander's fame has reached my ears, although I had not heard him given the name of hero before. You do me a great injury to recommend to me a deceiver, thief, and assassin all in one, and this injury is aggravated by becoming the organ of the calumnies of this vermin against the Great Bolívar. The best thing that admirable man did was to prohibit in the country which he ruled that confused mixture of nonsense which you have published, and whose tendency to destroy the Christian Religion is so fatal. His having done this with the approval of various learned Doctors and pious men of Santa Fe proves besides the docility of Bolívar, and his desire to extirpate the heresy which is making so much progress in the world.<sup>2</sup>

This letter represents a radical departure from the tone of the published examples of Mordvinoff's correspondence with Bentham, whom he regarded as one of the four geniuses who had done most for the happiness of the

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<sup>1</sup>Issue of Nov. 4, 1832.

<sup>2</sup>"Importante para la Historia," Smolensko Mordvinoff, Almirante al servicio del Emperador de las Rusias a Bentham, Petersburgo, 7 diciembre, 1830 (viejo estilo), (Caracas: Imprenta de Devisme, 1834), in the Biblioteca Nacional (Bogotá), Fonda Quijano Otero, #15307.

human race.<sup>1</sup> There is no trace of it in the indices to Bentham's manuscripts, which record the Admiral's given name as Nicolai rather than Smolensko,<sup>2</sup> and unless the original really does exist in some Venezuelan collection, which seems unlikely, it can surely be regarded as a rather light-hearted forgery.

Santander was in Florence in March, 1831, when he read in the French Journal du Commerce that General Bolívar had died in Colombia, near Santa Marta, on December 17 of the previous year. He recorded the fact in his diary with the comment "a loss for independence."<sup>3</sup> By the end of May he was in England again, and attended a soiree in John Bowring's home on June 4.<sup>4</sup> Bentham invited him to dinner again, and his diary contains this entry for June 29:

I ate with Jeremy Bentham, and he gave me various pamphlets and works which he is publishing: the letter to the French on the house of peers, a pamphlet on the death penalty, his military code, and his codification. Our conversation, which lasted four hours, turned principally upon politics in general, jurisprudence, France, England, and Colombia.<sup>5</sup>

Bentham's "codification" was his work Justice and Codification Petitions, published in 1829,<sup>6</sup> as an autographed copy discovered in the Biblioteca Nacional at Bogotá by the Venezuelan writer Armando Rojas proves. Rojas included in his article "La batalla de Bentham en Colombia." a photocopy of the title page and the page preceding it, bearing a dedication written in English

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<sup>1</sup>Letter, Mordvinoff to Bentham, May 5-17, 1806, Works of Bentham, X, 419.

<sup>2</sup>Letter from Mrs. Patricia Basing, Department of Manuscripts, British Museum. A. Taylor Milne's catalogue of the Bentham manuscripts at University College, London, contains no listings for correspondence from Mordvinoff.

<sup>3</sup>Diario, p. 304.

<sup>4</sup>Ibid., p. 332.

<sup>5</sup>Ibid., pp. 335-336.

<sup>6</sup>Works of Bentham, V, 436-448.

in Bentham's hand. It reads quite simply: "The author to Mr. Santander of Colombia/London June 29, 1831."<sup>1</sup>

At least one more of Bentham's gifts is part of the collection of the Biblioteca Nacional--his Principios que deben servir de guía en la formación de un Código Constitucional para un Estado, published in London in 1824. The title page is torn, but the notation written across it is clear to the last two numerals of the date: "Presentado personalmente por Jeremías Bentham al Gen. Santander en Londres a 5 julio 18--," which would be July 5, 1830, the date of Santander's first visit.

In September, once more in France, Santander was informed of the restoration of his military rank and privileges by executive decree.<sup>2</sup> Three weeks later he recorded with pride that he had gone "in grand military uniform" to be presented to the King and Queen of France, and that Louis Philippe had told him that in his opinion Colombia's essential need was a government which would inspire confidence in Europe and preserve public order.<sup>3</sup> Within a week he took ship for the United States, as he had decided that he would not return at once to Colombia.

Santander's nine-month visit to the United States continued the pattern of his European tour, with visits to prisons, schools, and almshouses occupying much of his time. He met a number of famous persons, including President Jackson, Clay, Calhoun, Webster, and Gallatin. Some of the leading citizens of New York City, including Albert Gallatin and the Revolutionary War General Morgan Lewis, gave a public banquet in his honor, and he was elected an

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<sup>1</sup>Rojas, "Bentham," *Lám.* II, between pp. 56 and 57.

<sup>2</sup>Santander, Diario, p. 357.

<sup>3</sup>*Ibid.*, p. 358.

honorary vice president of the American Bible Society.<sup>1</sup> He was several times in the company of the American jurist and Secretary of State Edward Livingston, who is said to have been a disciple of Jeremy Bentham, but there is nothing to indicate that they discussed the English philosopher and his work.

During this period Santander continued to receive communications from New Granada, of increasing importance and interest. Upon his arrival in the United States word reached him that his native province of Pamplona had elected him deputy to the convention which was by that time meeting to organize a government for Nueva Granada<sup>2</sup>--the dissolution of Colombia being an accomplished fact.

Santander had sent some of his opinions on the subject of a granadino constitution to Vicente Azuero before leaving Europe:

. . . public liberties and the stability of power, the true object of representative governments, should stand guaranteed and therefore assured. In these few words, you understand, is contained as much as there is to say: if the governed should have guarantees to exercise their political rights and not to be molested in their civil rights, the governors should have guarantees that they will be obeyed and respected. Neither despotism nor anarchy should come near from any side to destroy the edifice. . . . Economy [in government spending] is indispensable. . . . My system is: everything for the people to the extent that they need it for their happiness; much for the [governing] power to the full extent necessary to maintain order, make the laws respected, and defend the country against the foreign enemy.<sup>3</sup>

He still cherished hopes for la Gran Colombia, but cautioned that negotiations among its former components, Venezuela, New Granada, and Ecuador, would have to be conducted with the greatest prudence and moderation in order to avoid conflict:

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<sup>1</sup>Ibid., pp. 364-65.

<sup>2</sup>Ibid., p. 359.

<sup>3</sup>Letter of Sept. 4, 1831, Cartas y mensajes, VIII, 134.

I have said in Europe: "After the death of Bolívar, Colombia is going to reorganize itself and live in peace; we are going to prove that we are capable of governing ourselves . . ."

. . . At the present time a war would be the culmination of our evils; if there are fears of one, I do not go to Bogotá. I would die first rather than present myself before Europe a spectacle of dishonor and shame.<sup>1</sup>

He wrote to Francisco Soto:

. . . I find no difficulty terrifying except division among the liberals. I am decided to serve the country with all my forces without any reservation, if the liberals of influence join with me in the work, and, adopting my ideas, help me with all their power.<sup>2</sup>

His experience in Europe and the United States had done nothing to bring Santander's opinions up-to-date with the current economic liberalism; in fact, his travels made him more convinced than ever that certain of its doctrines were erroneous. He wrote, for example, that luxury was a "great corruptor," and that he could see its influence being extended in the North American Republic:

Perhaps some of my compatriots will laugh to hear me declaim against luxury, since it is, on the other hand, a powerful motive force for creating the wealth of a people: let them laugh. I want citizens with republican virtues and middling fortunes, even though New Granada should never arrive at the level of England.

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. . . The customs law is vital in the state of penury in which the country remains. Por Dios [you deputies] abandon the theory of free trade . . . The practice of all the nations who are masters in commerce is in opposition to such theories. The question is being aired right here . . . Then protect our poor factories and arts, not by absolutely excluding, but by placing restrictions on the manufactured goods and the products which we also produce, or at little cost can produce. May Doctor Soto forgive me. I have spoken with Say about his political economy and I have said to

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<sup>1</sup>Letter, Santander to Azuero, Nov. 15, 1831, ibid., p. 148.

<sup>2</sup>Letter of Nov. 19, 1831, ibid., p. 155.



him that he saw men as they ought to be in relation to production, reproduction, and consumption, and not as they really were, for a million and hundred thousand circumstances . . .<sup>1</sup>

. . . That there be fewer colegios and more primary schools, that is what is so important, and I would that all those societies baptized with Greek, Latin, and Castilian names would dedicate themselves exclusively to this branch as the base of the whole edifice.<sup>2</sup>

On May 12, 1832, commissioners arrived from Bogotá to advise Santander of his election to the presidency of the new state by the constituent convention.<sup>3</sup> The United States government presented its felicitations and offered the President-elect a warship to carry him home, but since this offer was conditional upon his traveling from New York to Pensacola by his own means, and arriving there in time to embark at a rather early date, he considered the offer shabby and refused it.<sup>4</sup>

Santander continued his accustomed activities during the days before his departure. He paid a final visit to Joseph Bonaparte; perhaps it was at this time that he agreed to take with him to New Granada Bonaparte's nephew Pierre, later created a prince by Napoleon III, who wished to serve in the army there.<sup>5</sup> On June 23 he took ship for Santa Marta, and arrived in his homeland on July 17 to commence, as he said in his diary, his career in la Nueva Granada.<sup>6</sup>

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<sup>1</sup>Letter, Santander to Azuero, Jan. 19, 1832, ibid., pp. 183-85.

<sup>2</sup>Ibid., p. 186.

<sup>3</sup>Santander, Diario, p. 378.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid., p. 380; Letter, Pedro Alcantara Herran to Santander, Sept. 4, 1832, Correspondencia, VI, 333.

<sup>6</sup>Diario, p. 381.

## CHAPTER V

### THE PRESIDENCY OF NEW GRANADA 1832-1837

"My first duty upon treading once again the shores of our beloved homeland," Santander declared to his fellow-citizens on the day of his arrival in Santa Marta, "is to adore the supreme hand which has protected my days and sustained your patriotic efforts in re-establishing the rule of the laws."<sup>1</sup> Indeed the Republic had experienced years of conflict and trial during his absence: the period of Bolívar's dictatorship, which failed, in Bushnell's opinion, even more spectacularly than the Santander regime in its attempt to govern la Gran Colombia;<sup>2</sup> the ill-fated administrations of President Joaquín Mosquera and Vice President Domingo Caicedo, chosen by the Congreso Admirable of 1830 when Bolívar voluntarily relinquished his authority; and the military dictatorship of Rafael Urdaneta. The whole period from 1828 to 1831 can be considered an era of civil war in New Granada,<sup>3</sup> while Venezuela and Ecuador went their own ways under the leadership of Páez and Juan José Flores respectively. Much of the periphery of Nueva Granada had tried to break away as well

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<sup>1</sup>Santander to "Mis respectables compatriotas," July 16, 1832, Cartas y mensajes, VIII, 209-10, quoting the Gaceta Extraordinaria de la Nueva Granada (Bogotá), Aug. 7, 1832.

<sup>2</sup>Santander Regime, p. 358.

<sup>3</sup>Frank Stafford, "There Was No Lack of Individual Enterprise," in History of Latin American Civilization: Sources and Interpretations, ed. by Lewis Hanke (2 vols.; [Boston]: Little, Brown and Co., Inc., 1967), II, 119. Hereinafter cited as "Individual Enterprise."

and it was not until December, 1832, that the last of these frontier areas could be considered relatively stable.<sup>1</sup>

There are repeated references in contemporary sources to the economic retardation caused by these misfortunes, and all of these conditions had had their effect upon the progress of public education. According to an article which Rafael M. Vásquez published in the Constitucional de Cundinamarca,<sup>2</sup> during certain periods of disorder the "colegios were converted into barracks, the students became soldiers or refugees, and [military] records were kept in the school books." Nevertheless, the Bogotá colegios had managed to keep functioning--at least they had been able to present their public actos at the end of each school year.

It appears that the liberal curriculum introduced during Santander's administration had not been completely discarded during these interim years. The Vásquez article mentioned that ideología, gramatica general, and logic had been taught from the works of Destutt de Tracy, and a decree on studies which the Liberator had issued from Popayán in December, 1829, had even revived, at least on paper, the study of the principles of universal legislation, and of administrative science, both provisionally suppressed in 1828, although only for those students who had received the grade of bachiller and were pursuing studies leading to the degrees of licenciado and doctor en ambos derechos.<sup>3</sup> Textbooks were not named, and it seems certain that the ban against Bentham remained in effect.

During his brief period in power Rafael Urdaneta had issued a decree on studies, designating certain authors, not including Bentham, to be used for the

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<sup>1</sup>Gilmore, "Federalism," p. 135.

<sup>2</sup>Issue of Oct. 14, 1832.

<sup>3</sup>Decree of Dec. 5, 1829, Codificación nacional, IV, 103-105.

courses in law. This was apparently a departure from the policy of Bolívar's decree of March, 1828, which had left it to the Dirección general de estudios to vary the elemental texts, hearing the report of the governing body of the university.<sup>1</sup>

The legitimist government of Vice President Caicedo was re-established in Bogotá in May, 1831. Marking, perhaps, the return of such exalted liberals as Vicente Azuero to public life, Bentham's name began to appear again in the press. El Silfo of Bogotá carried an article on "Legislation" in July, 1831, which criticized the faulty legal system of Spain:

To what can we attribute this? Not to indifference, nor to ignorance of a better order of things, inasmuch as the codes of Napoleon, and the works of D'Aguesseau, Servant, Cochin, Romilli, Filangieri, Bentham, Blackstone, Delolm and Cottu are in the hands of everybody.

The Colombian writer argued that the new nations of America should study legislation and aspire to have codes formulated by their own lawmakers, and added a quotation from Bentham.<sup>2</sup>

The constituent assembly which Caicedo had ordered met in Bogotá from October, 1831, until April 1 of 1832. A new political code for Nueva Granada was approved in February, and Santander and José Ignacio Márquez were selected to serve the republic as president and vice president until national elections could be held. In Santander's absence Márquez assumed control of the executive branch.

Before adjourning, the Bogotá Convention restored the laws suppressing the conventos menores, excepting only the convents of Pasto and one religious house of Tunja, and the law forbidding persons under twenty-five years of age to enter religious life, both formerly abrogated by Bolívar. The immediate

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<sup>1</sup>See above, p. 216.

<sup>2</sup>Issue of July 24, 1831.

necessities of public instruction were met in a law signed by Márquez on March 31, 1832, which began with the following exordium:

Considering: That for as defective as the decrees given by Simón Bolívar altering the organic law of studies and the general plan of October 3, 1826, may be, it is not possible without grave inconveniences, either to re-establish said law and plan to their primitive force at this time, or to enter into the adjustments which this matter requires . . .

The law declared, therefore, that the main provisions of Bolívar's decree of December 5, 1829, would remain in effect, and specified the few minor changes which would be made. One of the articles required the Council of State to prepare a new law to facilitate the progress of public education.<sup>1</sup>

The Márquez administration, of course, was provisional, and all the liberals, at least, were looking to the return of Santander.<sup>2</sup> Historians of this time speak of two factions among the liberals--the moderados and the exaltados. The second group included some persons who had spent the period 1828-1830 in exile, and counted Vicente Azuero as its leader during Santander's absence.<sup>3</sup> The two factions had agreed upon the choice of Santander for the presidency, but liberal opinion had split over the selection of the Vice President, and José Ignacio Márquez had been the candidate of the moderados. The bolivianos were considered to be without political influence at the moment, and Santander had let it be known that while he would not persecute them he would not consider them for public office.<sup>4</sup>

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<sup>1</sup>Gaceta de la Nueva Granada, April 1, 1832.

<sup>2</sup>Cuervo and Cuervo, Vida de Cuervo, I, 149.

<sup>3</sup>Lozano y Lozano, "Azuero," lix.

<sup>4</sup>José Manuel Restrepo, Historia de la Nueva Granada (2 vols.; Bogotá: Editorial Cromos, 1952-63), I, 27. Hereinafter cited as Nueva Granada.

Santander arrived at the capital on October 7, and issued a presidential proclamation on the next day. Certain phrases could have been influenced by Bentham, although Santander's reference to the rights of the minority, if understood in the obvious sense of intrinsic and inalienable rights, would be unacceptable to a Benthamite:

I will govern you as I have wished and still wish to be governed: in conformity with the laws. . . . The law arranges our actions, it rewards and punishes them, and I will be its most faithful executor without respecting persons, conditions, or opinion. . . . I will not preach anarchy in the name of glory and liberty in order to create the necessity of altering [our] institutions. The laws will be a reality; I will respect the rights of the minority without impeding the triumph of the will of the greater number . . .<sup>1</sup>

A letter Santander wrote during the year indicates that his interest in legitimacy, and utilitarianism, was still related to his dread of anarchy and turmoil:

You know that I have been the enemy of revolutions in every epoch and that it pleases me to proceed by the road of the laws, and, lacking such a sure guide, by the road of reason and the public utility.<sup>2</sup>

The beloved José Félix Restrepo had died in September, 1832, shortly before Santander's arrival at Bogotá. The Gaceta of October 7 announced that Dr. José Manuel Restrepo would replace his uncle as Director General of Studies by nomination of the executive power,<sup>3</sup> notwithstanding his record of

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<sup>1</sup>Proclamation to the granadinos, Oct. 8, 1832, Archivo Santander, XIX, 373-74.

<sup>2</sup>Letter to Gen. Manuel Valdes, Dec. 16, 1832, Cartas y mensajes, VIII, 237.

<sup>3</sup>Gaceta de la Nueva Granada, Oct. 7, 1832. Possibly he was appointed to this position by Márquez, but Santander wrote in 1834 that Restrepo and Jerónimo Torres were among the friends of Bolívar who had preserved their friendship with him and had identified themselves with his government. See his letter to Gen. P. A. Herran, Nov. 27, 1834, Cartas y mensajes, IX, 140.

service under Bolívar. Francisco Soto was retained in the position of Secretary of Hacienda, to which Márquez had appointed him. By virtue of prior election, Vicente Azuero was president of the Council of State, a body chosen by Congress.

The Council of State, in accordance with its constitutional responsibilities, submitted to the Secretary of Interior on November 8 a proyecto de ley designed to remove the limits imposed by law on the rates charged for money lent at interest. It was published in the Gaceta, with a sort of preliminary discourse signed by Azuero.<sup>1</sup> Bentham had argued in favor of such measures since 1787 when he published his Defence of Usury, and the councilors may have been influenced by his writings, although Bentham was by no means the only author urging that interest rates be free. The introductory discourse shows no more than a general and perhaps inevitable resemblance to some of Bentham's arguments, but it is a very brief document. This measure was passed by Congress a few years later in May, 1835, and, according to Restrepo, alarmed many Catholics because it conflicted with the canons of the Church which forbade the practice of usury.<sup>2</sup>

Bentham's name was kept before the reading public at this time. In September, 1832, the Constitucional de Cundinamarca had carried a brief article which related a visit which Prince Talleyrand had made to Bentham's home several months earlier, and commented upon the advanced age of both illustrious persons.<sup>3</sup> Actually Bentham had died on June 6, and the news of his

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<sup>1</sup>Supplement to the Gaceta de la Nueva Granada, Nov. 15, 1832.

<sup>2</sup>Nueva Granada, I, 75.

<sup>3</sup>Issue of Sept. 9, 1832.

death was published early in November in the Gaceta de la Nueva Granada, with this tribute:

His writings on civil and penal legislation form a new era among all those which have appeared until now. He knew the motives which direct the human heart, and founded his system on them, explaining in this way what no other juriconsult had been able to explain. . . . Let us content ourselves, then, with lamenting his loss and transmitting to posterity his grateful memory.<sup>1</sup>

An account of Bentham's death and a review of his works appeared in December in El Constitucional del Cauca,<sup>2</sup> published in Popayán. A little later this paper carried the information that a treatise on the use of words, designed to be of assistance in the composition of laws, had been found unpublished among Bentham's papers. The editor expressed hope for the early publication of such a useful study.<sup>3</sup>

The Congress met in March, 1833, and occupied itself, as one of its first duties, with scrutinizing the results of the national elections held soon after Santander had assumed the presidency, in accordance with the plan agreed upon at the Bogotá Convention. The choice of Santander had been overwhelmingly confirmed by the electors chosen at the parochial assemblies, and the learned and respected ex-President of Colombia Joaquín Mosquera, absent from the country, was chosen by the Congress for the two-year vice-presidential term. On the day of his inauguration Santander promised again to govern according to the laws, always consulting "the utility of the majority in all my acts."<sup>4</sup>

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<sup>1</sup>Issue of Nov. 4, 1832.

<sup>2</sup>Issue of Dec. 8, 1832.

<sup>3</sup>Issue of Dec. 29, 1832. The first editors of El Constitucional del Cauca were Lino de Pombo and the Canon José Manuel Mosquera, later on opposing sides in the Bentham controversy.

<sup>4</sup>"Santander a los granadinos," April 1, 1833, Archivo Santander, XX, 121.



Santander had asked the Congress to act toward freeing the nation from the burden of complicated and confused legislation,<sup>1</sup> and in May the Gaceta reported that the Council of State, which was charged by the Constitution with the responsibility of preparing proyectos de leyes, had appointed a number of commissions to draft the principal legislative codes; that is, a penal code, civil code, codes of criminal and civil procedure, a code of public instruction, and so on.<sup>2</sup> By this time Vicente Azuero was no longer a councilor, Congress having accepted his resignation in March.<sup>3</sup>

The religious controversies which had troubled the Santander regime in the 1820's had been revived when the Colombian laws regarding the size of religious houses and the age of profession had been declared in force, and increased by the project to abolish the usury laws and other incidents. During 1833 and 1834 the provocative newspaper El Cachaco de Bogotá, founded by Florentino González and Lorenzo María Lleras, another young exaltado, increased the tension by its attacks on traditional religious practices, the more so because Santander was known to be a contributor.<sup>4</sup> When the school year ended in early July, 1833, the public certámenes held at the university and San Bartolomé created another issue, for the presentation in canon law was considered scandalous by ecclesiastics and others who were familiar with this

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<sup>1</sup>Message of March 1, 1833, Cartas y mensajes, VIII, 250.

<sup>2</sup>Gaceta de la Nueva Granada, May 19, 1833.

<sup>3</sup>Ibid., March 31, 1833.

<sup>4</sup>Gustavo Arboleda, Historia contemporánea de Colombia: desde la disolución de la República de ese nombre hasta la época presente (v.--; Cali, Colombia: Editorial America, 1933-), I, 185, citing Cuervo and Cuervo, Vida de Cuervo. Hereinafter cited as Historia. González soon became sole editor of the paper.

branch of jurisprudence, according to Restrepo.<sup>1</sup>

Following this performance a number of religious superiors sent formal complaints to the archdiocesan Provisor, denouncing certain of the propositions which had been defended as heretical or erroneous. The Provisor submitted them to the government of the Republic, and they were passed to the Dirección general de estudios for investigation.<sup>2</sup>

Restrepo wrote that these same certámenes greatly displeased the fathers of families, because their sons were being trained in the ideology of Destutt de Tracy and the legislative theories of Jeremy Bentham.<sup>3</sup> The writer has seen no other evidence of Bentham's having been reinstated in the schools so early, but as Restrepo at least held the title of Director General of Studies in 1833 his statement must be given due respect. Shortly after the certámenes had been concluded El Cachaco published an editorial on "the times" which contended that those who were enthusiastic for the past, but enemies of the present, were likely to disdain studies in the modern languages, Bentham's principles of legislation, Constant's constitutional law, and Bonin's administrative science--<sup>4</sup> but the editor did not reveal whether these materials were being taught in New Granada at the time.

On July 9 Diego Fernando Gómez, first associate of the Dirección general de estudios, responded to the executive's inquiry por impedimento of Dr. Restrepo. His report indicates that the President had asked to be informed whether the propositions which had been denounced had been taken from the texts

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<sup>1</sup>Nueva Granada, I, 39.

<sup>2</sup>A. N., Instrucción pública, CXXIV, 95.

<sup>3</sup>Nueva Granada, I, 39.

<sup>4</sup>El Cachaco de Bogotá, July 21, 1833.

listed in the plan of studies. Gómez responded that these propositions had been submitted to the Dirección general in advance of the July certámenes, and that examination had shown that they were all drawn from the piadosos autores mentioned in article 173 of the plan. Since this is the article which designated the texts for canon law in the Decree of October 3, 1826, it seems clear that Dr. Gómez, and possibly Santander, considered the liberal plan of studies still in effect. As a matter of fact, Gómez tried to prove that it was by citing the Constitution of 1832 and a number of laws and decrees. His arguments seem unconvincing, however, and the Congress later thought it necessary to reinstate the Colombian plan of studies by a special legislative act.

Restrepo felt that the tension over religious questions played an incidental part in the revolutionary conspiracy against Santander's government which was discovered during this month:

Astute men capable of exploiting the sentiments of pious persons for political ends were not lacking. They told them that the present government and the liberals who composed it were attacking the Religion of their fathers, and wished first to weaken and afterwards tear from the hearts of the granadinos the pure and ancient beliefs of Catholicism, teaching them doctrines which were as immoral as they were pernicious.<sup>1</sup>

The leaders of this plot were former army officers who had been removed from military service and felt themselves insulted and reduced to misery.<sup>2</sup>

The conspiracy was discovered before the coup planned for the night of July 23 could be executed, and those apprehended were judged under the severe law of conspirators which the Congress had passed in June. Yet justice was not rapid enough for the editors of the Gaceta, who commented early in September:

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<sup>1</sup>Restrepo, Nueva Granada, I, 39.

<sup>2</sup>Arboleda, Historia, I, 192..

"If there are laws of evidence," says the celebrated jurist-consult Bentham, "which favor the impunity of the crime, and which offer the means for eluding justice, it is better if such laws are ignored; but what kind of a system of legislation must it be that gains by being unknown?" It does not seem unjust to apply this doctrine to the laws which determine the mode of procedure in conspiracies against the state . . .<sup>1</sup>

Despite these misgivings the legal processes were terminated without undue delay, and by mid-October a court of appeal decreed a sentence of death against forty-six of the guilty, but asked that the penalty be commuted in the case of all but ten. The President, however, did not consider this recommendation completely justified, and wrote later: .

The ten suffered the punishment of the law, with seven more for whom, because of their anterior conduct, I judged that the public advantage did not indicate commutation. . . . The object of every penalty, Bentham has said, is to impede and remedy the evil of crimes, and all my reflections convinced me that this punishment would remedy the evil of conspiracies, assuring the order of society.<sup>2</sup>

The sentences were carried out in the plaza principal on October 16, with all the lugubrious drama which Bentham had recommended for such exceptional occasions, but which had anyway long characterized public executions in the Spanish world; Santander attended with his Secretary of War.

New Granada's Vice President-elect Joaquín Mosquera had returned from Europe earlier in the year, but after taking the required oath had obtained permission to visit his family in Popayán for a time before taking up the duties of his office. Mosquera, who had been a founder of the Universidad del Cauca in 1827,<sup>3</sup> had always been interested in the cause of education, and in

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<sup>1</sup>Gaceta de la Nueva Granada, Dec. 8, 1833. Cf. Tratados de legislación, V, 81.

<sup>2</sup>"Apuntamientos para las Memorias sobre Colombia y la Nueva Granada," in Archivo Santander, I, 78.

<sup>3</sup>Acevedo Latorre, Colaboradores, p. 207.

August, 1833, established a sociedad de instrucción primaria "in the style of those of France"<sup>1</sup> in his native city. This involved him, incidentally, in a bitter and noisy controversy with the Spanish Bishop of Popayán, who decided at one point to request his passport and leave the Republic forever, but changed his mind when Rufino Cuervo assured him that he was the most precious jewel and relic which the granadinos possessed.<sup>2</sup> Nevertheless the society prospered and did creditable work. At about this time another distinguished resident of Popayán, Lino de Pombo, accepted nomination to national office for the first time, assuming the cabinet position of Secretary of Interior and Foreign Relations in August, 1833.

Although Bentham was gone, his close friend John Bowring wrote to Santander in October, 1833. He thanked him for his letter, from which he said he had extracted information for the English newspapers, and promised that any official reports or memorials which the government might be able to send him would be used in the same way. Dr. Bowring made brief reference to the progress of free trade, adding an expression of his hope that New Granada would be tending in this way, which held out the only real promise of peace and prosperity. He wrote that he would send Santander a complete collection of Bentham's works, for presentation to one of the public libraries, at his first opportunity, and included an article on sound ideas in economics, which might be inserted in the periodical press.<sup>3</sup>

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<sup>1</sup>Letter, Salvador Jiménez, Bishop of Popayán, to Santander, Sept. 10, 1833, Correspondencia, VI, 431.

<sup>2</sup>Letter, J. Rafael Mosquera to Santander, Oct. 21, 1833, Correspondencia, VIII, 420.

<sup>3</sup>Letter of Oct. 14, 1833, ibid., III, 156-57.

News of another friend of Bentham, Francis Hall, began to reach Santander during the last months of the year in letters from Popayán. Hall had become editor of El Quiteño Libre of Ecuador, a liberal paper which dared to attack General Juan José Flores. Finally the news of his death arrived--he had been killed in the aftermath of an uprising against the caudillo. Bentham probably would have considered the end of Hall's American career an honor to both master and disciple, even though his body was exposed to public insult before burial in Quito.<sup>1</sup>

When the Congress of 1834 had assembled in March José Ignacio Márquez, president of the Council of State, forwarded to it the draft of a proposed penal code, together with his recommendation.<sup>2</sup> The earliest congressional debates on the code were reported in the press in early April. The history of this important proyecto de ley is not perfectly clear today, nor was it generally understood by contemporaries. It will be remembered that Santander had asked for such basic legislation in March, 1833, and that the formation of a committee within the Council of State to draft the penal code was announced in the Gaceta on May 19.<sup>3</sup> Surprisingly, the Council began its consideration of the first part of the draft on July 8, 1833,<sup>4</sup> which means that the commission had worked with incredible speed, if it really drafted an original code of criminal law.

El Cachaco de Bogotá published a significant editorial on the origin of the proposed code in April, 1834:

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<sup>1</sup>"Memoria esacta de los acontecimientos del Ecuador en 1833," Supplement to El Constitucional del Cauca, Feb. 1, 1834.

<sup>2</sup>Constitucional de Cundinamarca, March 9, 1834.

<sup>3</sup>See above, p. 248.

<sup>4</sup>Gaceta de la Nueva Granada, Aug. 18, 1833.

We have learned that the merit of drawing up the penal code which has been presented to the congress has been attributed to a person who has not done this work, but only made some variations in the projecto prepared and printed in 1824 by citizen Vicente Azuero, the only person who has the honor of having been the first to undertake this useful task. Citizen Azuero is the one who has gathered from the codes of the different nations, and drafts published by the jurisconsults, the compilation which the legislature of Colombia took into consideration, which the Council of State later approved, with some variations, and which is now under discussion in the Congress of New Granada. Let us honor those who merit honor.<sup>1</sup>

It is surprising that Florentino González, or whoever the author of this piece might have been, would write so inaccurately about the sources--and even the date--of Azuero's draft. This had been frankly represented, in the 1820's, as a copy of the Spanish liberals' penal code, adapted by means of slight modifications to suit the circumstances of Colombia, and the printed copy carried this information. Someone writing for El Constitucional de Cundinamarca caught these errors, and claimed to find another:

Somebody has believed that the projected penal code which the council of state presented to the congress is the same, with very few variations, as that which was presented by a commission to the Spanish cortes in the year 1821, and which was reprinted here in 1823, only replacing the name of Spain with that of Colombia and Spaniards with Colombians, and suppressing the dispositions relative to the person of the king. But the simple reading of one and the other projecto demonstrates the error, and makes it clear that the one presented by the council of state is very different from the other, in the plan of the work, the penalties adopted, in the classification of offenses, the application of the punishments, and finally even in the editing of the material.

The work of the commission of the Spanish cortes was very useful, despite the fact that it took much from the French code, and we do not question the good intentions which no doubt animated the citizen who made variations, although light, in order to adapt it in Colombia; but it is also necessary to admit that the present council of state, which, although it had all those models present, produced a work as new as it is possible to produce in works of this kind, and perhaps more in conformity with the lights of the century, ought not to be deprived of the honor which corresponds to it. Men who are truly patriotic and impartial will know the merits of the present council of state, and with how much reason the president of the

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<sup>1</sup>Issue of April 20, 1834.

republic has affirmed in his message directed to the congress in its sessions of this year, that this body has corresponded to that which the nation should have hoped of it. It is necessary to be just and to honor those who merit honor.<sup>1</sup>

El Cachaco offered no rebuttal, and, indeed, was incapable of doing so, because the paper had gone out of existence with Number 57, the issue which carried the editorial on the penal code. Restrepo, in his History of New Granada, later explained that issues #55 and 56 had carried articles so offensive to conservative Catholic opinion that Santander was forced to send preachers to the parishes of the province of Bogotá to tell the people that the reforms proposed did not represent the policy of the government. Meanwhile he used his personal influence with the editors to induce them to suspend publication, as thoughtful persons had been able to persuade him that El Cachaco, although it supported the government, was actually prejudicial to his administration.<sup>2</sup>

No doubt rival factions or rival personalities had been responsible for the exchange between the two newspapers on the true origin of the projected penal code,<sup>3</sup> but El Constitucional's suggestion that the texts should be compared seems to offer the only solution to the question. Azuero's draft<sup>4</sup> can be compared with the Spanish code adopted in 1822;<sup>5</sup> in almost all respects it

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<sup>1</sup>Constitucional de Cundinamarca, April 27, 1834.

<sup>2</sup>I, 58-59.

<sup>3</sup>The proyecto had been presented to the Consejo de Estado by its president José Ignacio Márquez, according to La Bandera Nacional, July 1, 1838.

<sup>4</sup>Proyecto de Código Penal para Colombia: Tomado, con las variaciones necesarias, del que se presentó a las Cortes españolas por una comisión en el año de 1821 (Bogotá: Imprenta de la República, 1823), Biblioteca Nacional (Bogotá), Fondo Pineda, #205.

<sup>5</sup>Law of June 8, 1822, Decretos de las Cortes, IX, 211-381.



is a faithful copy. The granadino code, adopted in 1837<sup>1</sup> after the Congress had made some modifications in the draft submitted by the Council of State, can then be compared with the draft of 1823 or directly with the Spanish code. Something will depend upon the importance which the investigator assigns to the variations; but it appears to the writer that, although the material of the Spanish code has been rearranged in the American law, the differences between the two codes are really slight. The basic discrepancies cited by the defenders of the granadino Council of State simply do not appear. The matter is of some importance to this study because it is a major instance of the export of ideas from liberal Spain to Colombia and New Granada; through this channel, it has been contended, Benthamism reached these nations. That Bentham's writings had influenced the formation of the Spanish--and therefore the Granadian--penal code in a direct way would be more difficult to establish.

A legal document which remains from the year 1834 demonstrates that Bentham's ideas in civil law were utilized in at least one case heard in Bogotá at that time. The paper is evidently an allegation presented in a suit involving an entailed estate, which the lawyer Ramón Ortíz maintained his young client should be able to inherit from his grandparents, even though the law of 1824 had forbidden the establishment of mayorazgos. He cited Jeremy Bentham to make a point:

"The legislator," says that jurisconsult, "is not the master of the dispositions of the human heart; he is not more than their interpreter and servant. The goodness of the laws depends upon their conformity with the general expectation, and thus it is very important

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<sup>1</sup>Law of June 27, 1837, Codificación nacional, VI, 425-562.

to know the direction of this expectation in order to work in concert with it. Such is the object in view.<sup>1</sup>

Santander used the same concept of the feeling of expectation, which Bentham had borrowed from David Hume's psychology and introduced into the civil law,<sup>2</sup> in one of his messages to Congress during 1834. He declared that a certain class of plantation owners who were asking a continued exemption from payment of the tithes would have no grounds for claiming that "their expectations had been frustrated" if they were made to pay.<sup>3</sup>

The Congress was devoting a part of its time, in 1834, to a code of public education which the Council of State had submitted to it on the same day that the proposed penal code had been forwarded. In May El Constitucional de Cundinamarca published a "Report on the Proposed Code of Public Instruction," by Diego Fernando Gómez and Vicente Azuero, which apparently had been drawn up at the request of the governor of the province, Rufino Cuervo. The comments which Azuero and Gómez made on the section of the draft dealing with the study of law seem to express the liberals' concern with this branch of education very well:

We must consider, besides, that our program in jurisprudence should not only prepare lawyers and jurists of integrity, but also statesmen, capable diplomats and financiers, enlightened legislators, and intelligent public servants, because it cannot be denied that this profession enjoys great influence among us, and that candidates to fill the most important public offices are sought principally in its ranks . . .

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<sup>1</sup>Ramón Ortíz, Alegato segundo presentado al Tribunal de Arbitrios ... el 12 de mayo de 1834 (Bogotá: Impreso por A. Roderick, 1834), Biblioteca Nacional (Bogotá), Miscelanea, #740.

<sup>2</sup>Halévy, Philosophic Radicalism, p. 76.

<sup>3</sup>Message to the President of the Senate, April 18, 1834, Cartas y mensajes, IX, 61. Santander used esperanzas burladas, the phrase used by Salas to express this concept.

The authors suggested that dispositions relative to the class in jurisprudence be redrawn to include the following courses:

Principles of universal legislation and of civil and penal law; principles of constitutional and administrative science, compared with our constitution and administrative laws; civil and penal law of the nation; principles of punishments and rewards, and of evidence and judicial organization; analysis of political fallacies; prenociones, history, and instituciones of ecclesiastical law; principles of political economy, compared with our fiscal legislation; and principles of international law with an examination of the treaties celebrated by New Granada with other nations.<sup>1</sup>

There can be no doubt that Azuero and Gómez were proposing that new courses based on the works of Jeremy Bentham be added to the curriculum.

Besides legislación universal y de derecho civil y penal, almost invariably associated with the Tratados de legislación, the course titles principios sobre penas i recompensas, i sobre pruebas i organización judicial, and análisis de los sofismas políticos, in the language of the report, are so many reproductions of the names of four of Bentham's works which had been published in Spanish before 1834. The following Spanish editions, all translated from Dumont's French works, are listed in Everett's bibliography: Teoría de las penas y de las recompensas (1826), Tratado de las pruebas judiciales (1825), De la organización judicial y de la codificación (1828), and Tratado de los sofismas políticos [sic] (1824).<sup>2</sup>

The santanderistas were never able to accomplish quite so much for the publicist of their choice, but his Tratados de legislación were definitely being studied in at least a few, and probably in most of the nation's colegios

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<sup>1</sup>Issue of May 25, 1834.

<sup>2</sup>For complete citations of these works see Everett, "Bibliography," pp. 531, 534, 539, 536. The final word in the last title is correctly spelled políticos in the 1838 edition, examined by the writer, and perhaps the error is Everett's.

and universities during 1834. Perhaps the work had been in use in 1833, as Restrepo's History indicates, or even earlier. Bolívar's decree of December 5 1829, which the Bogotá Convention had declared in force, did list universal legislation as one of the subjects to be studied in the last years of the course in law, as has been noted. In March, 1834, Santander signed an executive decree which established a chair of jurisprudence at the colegio of Vélez, and in July another reorganizing the curriculum at the colegio of Santa Marta. Both decrees ordered that "the materias designated in Articles 168 and 179" of the plan of studies be taught.<sup>1</sup> Article 168 was the part of the Plan of Studies of 1826 which described the study of universal legislation and specified Bentham's Tratados de legislación as the text, but it does not seem possible to determine whether these decrees of 1834 were understood to impose the text mentioned in the article as well as the subject matter. On August 9 a circular directed to the governors of the provinces ordered a new distribution of courses for the study of law, and legislación civil y penal was included, although textbooks were not named.<sup>2</sup> A document extant in the Colombian Archives of Congress does mention, however, that the Tratados de legislación was used as a text in the Colegio de Santa Librada in Cali during the school year which ended July 22, 1835,<sup>3</sup> and a report of the Director General of Studies dated September 23, 1835, refers to propositions from the Tratados

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<sup>1</sup>Decree of March 1, 1834, Codificación nacional, VII, 649-50, Decree of July 31, 1834, ibid., p. 664.

<sup>2</sup>Circular, Secretary of Interior to the Governors of the Provinces, Aug. 9, 1834, Gaceta de la Nueva Granada, Aug. 17, 1834.

<sup>3</sup>Archivo del Congreso (Bogotá), Camara de Representantes, Tomo XVI, Vol. 75, sheet 178. The Archivo del Congreso will be cited hereinafter as A.C.

having been defended at the certámenes which had closed the previous school year at the University of Cundinamarca.<sup>1</sup> Presumably these were not isolated cases.

Early in the year 1835 Domingo Acosta, writing to the President from New York City, informed him that the Memorias of the Secretaries of State of New Granada had been dispatched to Bowring in London, as requested.<sup>2</sup> A few months later the same correspondent told Santander that General O'Leary, Bolívar's friend, now in Europe, was said to be doing all that he could by way of conversation to discredit the current administration in New Granada. He and another critic were spreading the calumny that Santander and Vice President Mosquera were re-establishing the influence of the clergy, which Bolívar had destroyed. A friend had opportunely cited the teachings of Bentham, suppressed by the Liberator, "but there are no arguments which count against bad faith."<sup>3</sup>

The Congress of 1835, which was to remove the prohibitions which Bolívar had placed on these teachings seven years earlier, met in Bogotá in March and took up the task of completing the vice-presidential election, since no candidate had received an absolute majority of votes in the electoral assemblies. To the disappointment of Santander and his followers the congressmen chose the leader of the rival moderados Dr. Márquez, passing over Vicente Azuero and José María Obando, both prominent exaltados.<sup>4</sup>

Sentiments were somewhat agitated during these days by the apprehension

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<sup>1</sup>Informe de la Dirección general de instrucción pública ..., Sept. 23, 1835, Biblioteca Nacional (Bogotá), Fondo Pineda, #469.

<sup>2</sup>Letter of Jan. 17, 1835, Correspondencia, I, 43.

<sup>3</sup>Letter of April 29, 1835, ibid., p. 56.

<sup>4</sup>Arboleda, Historia, I, 234.

and trial of José María Serna, one of the principal conspirators of 1833, who had eluded capture at that time. Santander, as inexorable a partisan of law and order as ever, sent a message to the Congress to advise the legislators that he had successively named two judges to fill a vacancy in the tribunal which was to hear an appeal of Serna's case, and that both nominations had remained without effect. The first appointee had excused himself on the grounds that certain provisions of the law of civil procedure affecting the vacancy were unjust--the second nomination, apparently, had been considered unconstitutional by the other members of the tribunal. Santander was horrified:

What will become of society if each citizen can set himself up as an interpreter of the law? . . . The doctrines of the leading publicists, and reason itself, contradict such principles. The Congress knows that these sources tell us that it [causes] less evil to submit to an unjust law and obey the agents of authority . . .<sup>1</sup>

Whether Santander had Bentham in mind or not, these ideas do conform well with the principles of the Tratados de legislación--"exceptions excepted," as he would have said.

In May the Constitucional de Cundinamarca reprinted an article from a Caracas newspaper giving most enthusiastic notice of the publication of a posthumous work of Bentham on the science of morality. The writer said that he had felt himself raised to a celestial hemisphere at merely reading an announcement of the book, and quoted the Anales of Madrid to the effect that this new work would elevate men to the moral perfection required by the Gospel, "without violence, without force, and without sadness."<sup>2</sup>

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<sup>1</sup>Message to the President of Cámara de representantes, April 4, 1835. Cartas y mensajes, IX, 189.

<sup>2</sup>Issue of May 10, 1835, quoting El Nacional of Caracas. The work would be Bentham's Deontology, published in English in London and Edinburgh and in French at Paris in 1834. A Spanish edition appeared in 1836.

A completely different opinion of the English author's worth was registered in a petition against the utilitarian text sent to the Senate on May 18. Perhaps the public was aware by this time that Congress was considering some provisional measure regarding education, in view of the anticipated delay in the passage of the education code. The brief representation, asking for the "prohibition of the Tratado de legislación of Jeremías Bentham, as well as the others which contain pernicious doctrines," was signed by the Provisor of the archdiocese Pablo Plata, the Dean, and members of the cathedral chapter, many religious superiors, and 128 fathers of families,<sup>1</sup> according to the count of a contemporary.<sup>2</sup>

Congress evidently paid scant attention to the request, for almost at once it approved a law which specifically rehabilitated Bentham and all the other authors the petitioners must have had in mind, and passed it to the Chief Executive. Santander returned it to Congress on May 28 with these comments:

I have examined with the greatest pleasure the projected law . . . and I would invest it at once with the constitutional sanction if I did not consider it useful that some few and very slight defects in its composition be corrected . . .<sup>3</sup>

These objections satisfied, the measure became law on May 30. Its first article, arranging the distribution of courses in jurisprudence, located "principles of legislation" in the first year of study, the place it had been assigned in the law of public instruction of March 18, 1826. By the most

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<sup>1</sup>Representación al Senado, Bogotá, May 18, 1835, Biblioteca Nacional (Bogotá), Fondo Pineda, #275.

<sup>2</sup>G. T., Observaciones sobre el Decreto del Gobierno publicado en la gaceta nº 212 acerca de la enseñanza de los principios de legislación por Jeremías Bentham, Nov. 10, 1835 (Bogotá: Imp. por J. Ayarza, 1836), p. 5. A copy of this pamphlet has been preserved in the Biblioteca Luis Angel Arango, Bogotá.

<sup>3</sup>Message to the President of the Senate, Cartas y mensajes, IX, 246.

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significant of the provisions, article 20, the plan of studies decreed by the Vice President of Colombia on October 3, 1826, was restored "in all its force and vigor."<sup>1</sup> Printed copies of the new law were sent to the provincial governors on June 13, with an instruction making it clear that the designation of authors and textbooks included in the Colombian plan was to be observed in all its parts, until the Executive should make some variation.<sup>2</sup>

Restrepo's History of New Granada indicates that during these days in the capital anxious discussion of the Bentham text did not cease, and that various fathers of families, and the Dirección general de estudios, repeated the petition for the book's suppression which the cathedral chapter and a great part of the clergy had directed to the Congress.<sup>3</sup> The request of the Dirección general, directed to the executive power through the office of the Secretary of Interior, really asked the President to accomplish what the earlier solicitud had asked of the Congress: to use the authority which the laws had given him to vary the texts used in public instruction. It was written in the form of a somewhat lengthy report signed by the Director himself, Restrepo, and is especially interesting because of his intimate connection, during the days when he had been considered an outstanding liberal, with the Santander administration in Gran Colombia, and the fact that he had been a member of the commission which had prepared the Plan of Studies in the 1820's.<sup>4</sup>

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<sup>1</sup>Codificación nacional, V, 486-90.

<sup>2</sup>Circular acompañando la lei de 30 de mayo último que reforma el plan general de enseñanza, June 13, "Constitucional de Cundinamarca, June 21, 1835.

<sup>3</sup>Nueva Granada, I, 81.

<sup>4</sup>See above, p. 177.



The informe began by reviewing the past, and recalling that since the first years when Bentham's work had been introduced, the Executive had received many reclamations against it. Now, again, the discontent of parents was widespread and bitter:

These complaints are made, not only by men who can be called scrupulous, but by others who are liberal and enlightened in their principles. The Dirección knows that many parents will prefer to suffer the prejudice of cutting short the literary careers of their sons-- rather than permit that they be imbued with Bentham's principles of legislation.

If the teachings of this author contained the essential principles of government, of morality, or others of recognized certainty, the Dirección would not hesitate to recommend that the government continue its plan of studies, without regard for the unjust pretensions of the citizens. But this is not the case . . . Why, then, must the government insist that doctrines which the public rejects for solid reasons be taught to the young?

. . . The disciples of Bentham will never learn to imitate the generous enthusiasm of the noble rising of their fathers against the Spanish tyranny in 1810. They did not coldly calculate the pains and pleasures which that action might cause them, but the immense goods which independence and liberty would pour out upon the fatherland. . . . Doctrines which undoubtedly extinguish such noble sentiments in the hearts of the granadinos should be excluded from public education.

The report alleged, a little inaccurately, that Bentham taught that "nothing is intrinsically good or bad, because everything depends upon the laws formed by the legislators, from which emanate all rights and obligations,"<sup>1</sup> and

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<sup>1</sup>Bentham did teach that nothing is intrinsically good or bad, and that rights emanate from the law, but the Tratados recognized a morality, based upon the principle of utility, which existed apart from legislation. See Bentham's section "Of the limits which separate morality and legislation," Tratados de legislación, I, 139-46, and his English An Introduction to the Principles of Morals and Legislation, pp. 142-48, where the phrase "private ethics" is used in place of la moral. The Spanish translator and commentator Ramón Salas repeatedly charged that Bentham was inconsistent in trying to create such a system of morality, having denied the existence of the natural law. "But I," wrote Salas, "faithful to my principles, will say that there is no other morality than legislation; that that which is just and that which is unjust, virtue and vice, offense and innocence are born with laws, and that in the supposition that the laws did not exist, the good action would be that which would produce a good or a pleasure to the individual agent, and the evil that

denied dogmas which were fundamental to the religion which the granadinos professed:

Youth, which is commonly exalted in all its ideas, enthusiastically adopts all the doctrines of Bentham without exception; His Excellency the President of the Republic was a witness to the propositions interpreted by certain young men in the certámenes of legislación universal in the last school year in the University of Cundinamarca. Those propositions created a scandal, and increased the public's hatred for the principles of Bentham. The Dirección supposes that the professors did what Article 229 of the general plan of studies requires and omitted from their teaching the doctrines of Bentham which are contrary to religion and morality; in spite of that the young men have adopted those doctrines as truths; it must be inferred, then, that the precaution of the article cited is insufficient . . .

The report concluded that "the point has been reached at which the teaching of the principles of civil and penal legislation from the works of Jeremy Bentham should be at once suppressed in all universities, colegios, and casas de educación." The Dirección did not wish to recommend a new text until the vacationing junta of the Central University could be consulted, but suggested that the other works proposed for the study of legislation in the plan of studies might be substituted meanwhile. A note on Destutt de Tracy was added, classifying him as a writer of the sensationalist school, begun by Locke and developed by Condillac.<sup>1</sup>

During the next month two of the cámaras de provincia, the representative bodies established under the Constitution of 1832, made use of their prerogative of directing petitions to the Congress by addressing the national

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which would occasion him an evil or pain: behold in two words the only morality which can be imagined to exist distinct from legislation . . ." (Tratados de legislación, I, 153-54). Such statements explain why so many granadinos considered Salas more objectionable than Bentham himself.

<sup>1</sup>Informe de la Dirección general de instrucción pública sobre la enseñanza del Bentham, al que se refiere la resolución del Poder Ejecutivo publicada en la Gaceta, Numero 212, Sept. 23, 1835, Biblioteca nacional (Bogotá), Fondo Pineda, #469. The report is signed by José Manuel Restrepo.

legislature on the subject of Bentham. The petition of the Cámara of Buena-ventura in the Southwest, dated October 14, 1835, charged that Bentham's Tratados had been artfully written to attack the Catholic faith, and would effect without fail the seduction of those who had the bad fortune to study them. The petition cited the Cartas críticas de un patriota retirado, published in Bogotá in 1828, and asked Congress to appoint a commission to purge the work of its errors. Meanwhile it should be outlawed.<sup>1</sup>

The Cámara of Veraguas, on the Isthmus of Panama, sent a solicitud to the President on October 17, to be forwarded to the Congress. The document recorded that the petition of the previous May, signed by the clergy and parents of Bogotá, had been seen in Veraguas. The provincial cámara requested that the Chief Executive use his influence to rid the nation's classrooms of the doctrines of Bentham, which were anti-Catholic and destructive of the most precious good the granadinos had received from their fathers.<sup>2</sup>

On October 16 a newspaper of modest size and brief life span, La Cáscara Amarga, "consecrated to combating certain of the doctrines of the work on legislation by Jeremías Bentham,"<sup>3</sup> published its first number in Bogotá. Juan Francisco Ortíz later admitted that he had been its author.<sup>4</sup>

Possibly in response to the widespread concern, but specifically to answer the petition of the Dirección general de estudios, the administration prepared a kind of report of its own and published it in the Gazette. This document ended with three specific resolutions designed to meet the complaints

<sup>1</sup>A. C., Cámara de Representantes, 1836, T. XVI, Vol. 75, sheet 178.

<sup>2</sup>Ibid., sheet 164.

<sup>3</sup>Juan Francisco Ortíz, Reminiscencias (Bogotá: Librería Americana, 1907), p. 102.

<sup>4</sup>Ibid.

of Dr. Restrepo and other critics of the Bentham text, and was dated October 15, 1835. It was issued through the office of the Secretary of Interior and signed by the Secretary Lino de Pombo, but he was speaking for President Santander:

Having attentively and carefully examined the present report of the Dirección general de estudios, the Executive has considered: that if on the one hand the general principles of universal legislation established and developed by the jurisconsult Bentham, and above all his commentator Salas, can give some fathers of families motives for alarm, on the other hand, that which more likely influences this alarm is the lack of a minute and careful explanation of those same principles in the respective classes, and the overloading (recargo) of the materials which are taught during the course, for every error which arises in this way, and is propagated through a misunderstanding of the text, is really prejudicial to youth.

Neither is the Executive unaware of the ease with which this kind of alarm, and others similar, originate and grow, as since the beginning of the revolution and during its course occurred with the abolition of the tribunal called "of the holy office," the teaching of certain doctrines regarding the canons which were proscribed under the Spanish government, with the teaching of ideología, and even with the liberal maxims which are today political dogmas; and, nevertheless, the steps given impulse by the illustration of the century and for the benefit even of those who had taken alarm, did not recede, and the great work of reforming and generalizing public education did not cease. The progress of this education, the action of time, and other normal causes have been little by little calming excited spirits, dissipating illusions, and conducting the Republic in harmony with the present state of civilization, and with the liberty which has been proclaimed for thought, as well as for the nation and for the individual.

Other thoughts occurred to the Executive--first, that the national Congress had passed a law on May 30 which required that the Bentham text be used, and this after receiving a request to the contrary from some fathers of families. Secondly:

The treatises of Bentham, particularly those of civil and penal legislation, admirable for the spirit of analysis with which they are written, and for the profundity and lucidity of their doctrines, enlighten the understanding; although there is nothing in this work which, meditatively read and well understood, could be prejudicial and alarming, but [it is], far from that, advantageous and consoling for humanity, fragments or propositions isolated from their founding

principles, read hastily by ardent and enthusiastic youths, could mislead their unreflective spirit. The work circulates freely in all parts, and its introduction neither could or should be impeded; and if it has to be seen and studied by the students of jurisprudence outside the lecture halls, it is better that it be studied inside them, under the direction of professors who take care to explain it, where it may be pursued with fruitful results.

3. If this work can, by chance, cause some damage, misleading the ideas of one or another young person who reads it and understands it imperfectly, its study, well executed, will generalize exact notions about the important science it treats, and will cause the bases of the legislation of a free people to be sought in reason and nature, the only sources of that which is just and sure, and not in the spirit of emulation and routine . . .

It was observed, in the fourth place, that no one had come forward with a work on the principles of legislation which was capable of replacing Bentham's for the study of that branch of jurisprudence, which the Congress had required by law. The argument continued:

But the executive, in the present case, should conciliate the legal dispositions with the interests of the good education of youth; should, as always, take the law for his norm, and the public convenience for his object, these being superior to scruples of all kinds, which dominate or influence in a transitory way, and never are a good basis for reasoning. Consequently, in accord with the opinion of the council of government, it is resolved:

1. The catedráticos of the principles of universal legislation in the universities, colegios, and houses of study of the Republic shall be told, under the most rigid responsibility, with care taken to see that the order is carried out, that until another elemental author is designated as a text . . . they will scrupulously carry out the dispositions of Article 229 of the organic decree of October 3, 1826, explaining the doctrines and propositions of Jeremy Bentham in such a way that they may not be placed above (se sobrepongan) the laws which prescribe the teaching of morality and the natural law (Article 33 of the law of March 18, 1826, and 158 of the decree cited), and declare special protection for the revealed religion. Consequently, principles contrary to these dispositions cannot be taught, much less sustained in public certámenes, and the Dirección general will use its natural faculties to watch over this.

The Executive ordered further that the Dirección general should make a careful study of the other works on legislation mentioned in the plan of studies, or any other works in the same field, and report its findings, in the

likely event that a really appropriate work on this subject could not very quickly be drawn up within the country. The resolutions were to be read publicly to all students of law by their professors.<sup>1</sup>

This paper may be considered a major policy statement on the Bentham issue. Restrepo referred to it in his History, and mentioned that it was published in the Gaceta and other newspapers as well; but, he added, "nobody was convinced."<sup>2</sup> Santander was serious when he suggested that a granadino might write an acceptable compendium on the subject for use in the schools, and Vicente Azuero was his first choice. A communication to Azuero from the Secretary of Interior, dated October 29, 1835, informed him that the President had decided to require this important service of him.<sup>3</sup> Azuero's answer is not known, but Santander later approached Joaquín Mosquera with the same commission probably in late June, 1836; Mosquera declined for reasons of health.<sup>4</sup> John Bowring read the report and resolutions in the Gaceta and translated and published them in their entirety in his Memoirs of Bentham, in the long-standard edition of Bentham's works.<sup>5</sup> He commented:

It is curious to see, in this document, the hesitation with which the writings of Bentham are again introduced into the public schools of New Granada; and the embarrassed and circuitous manner in which the prejudices and opposition of the clergy are referred to.<sup>6</sup>

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<sup>1</sup>"Enseñanza por Bentham," Gaceta de la Nueva Granada, Oct. 18, 1835.

<sup>2</sup>Nueva Granada, I, 80.

<sup>3</sup>This letter is reproduced in Lozano y Lozano, "Azuero," p. lxiv.

<sup>4</sup>Letter, Joaquín Mosquera to Santander, July 5, 1836, Correspondencia, VIII, 380.

<sup>5</sup>X, 553-54.

<sup>6</sup>Ibid., p. 554.

Spirits were not calmed by the government's statement, to judge from the rapid escalation of the controversy in the Bogotá press. A pamphlet on the subject was brought out in the form of a letter on October 21. The author, who signed himself "Teófilo," wrote that he did not deny that the study of legislation was appropriate for a free people, but criticized Bentham's attempt to present this new science, which must vary infinitely in its applications, under the aspect of a fixed body of doctrines, and a universal system opposed to the principles of eternal law. Bentham's audacity was surpassed only by the imprudence of the government in imposing these doctrines on the granadino nation at the risk of undermining the entire social order, based as it was upon the natural law. The experienced nations, meanwhile, looked upon such experimental systems as mere exercises in human ingenuity. "Teófilo" made the obvious point that it would have been helpful if the petition of the Dirección de estudios had been made available to the public in the Gaceta, along with the government's answer to it.<sup>1</sup> Possibly it was not long after this that someone undertook to print Restrepo's report.

The government gazette tried to reassure the timid by carrying the complete text of the often-cited safeguards of article 229 of the Plan of Studies in its issue of October 25,<sup>2</sup> but La Cáscara Amarga's second number six days later testified that "in the plazas, the theater, the cafés, in the Calle de Comercio, and generally in all the terulias, nothing else is heard but the topic of taking such an evil book out of the hands of youth." Ortiz claimed

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<sup>1</sup>Carta sobre la enseñanza por Bentham en la clase de legislación, Bogotá, Oct. 21, 1835, Biblioteca Nacional (Bogotá), Fondo Pineda, #470.

<sup>2</sup>Gaceta de la Nueva Granada, Oct. 25, 1835.

that two distinct bands had formed on the question, and that everyone felt constrained to adopt one position or the other.<sup>1</sup>

An article in the official press on November 8 was conciliatory; the editors admitted that the law would be ineffective if public opinion were not enlightened and convinced. The Gaceta revealed that the Executive had charged an enlightened citizen with the responsibility of preparing a new textbook; meantime, excerpts from the discourse of one of the professors of law at the Colegio del Rosario, delivered the previous month, were presented for the consideration of the public.

That catedrático had remarked that fanaticism and party spirit had exaggerated the danger of Bentham's doctrines. Actually, the principle of utility, rightly understood, could never be dangerous, and "comes to the same thing as that which is called natural law, demonstrated in a more luminous manner, and explained under a system perfectly analytical and convincing . . ."<sup>2</sup>

A prominent granadino who had outdone all other speakers in quoting Bentham in the Colombian Senate, now entered the pamphlet warfare. The Index to the Fondo Pineda of the National Library at Bogotá lists Jerónimo Torres as the author of a lengthy pamphlet signed "G. T." and dated November 10.<sup>3</sup> Torres contended, in these Observaciones, that the popular sentiment which forms the social conscience of nations should be respected by every liberal government--

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<sup>1</sup>Issue of Oct. 31, 1835.

<sup>2</sup>Gaceta de la Nueva Granada, Nov. 8, 1835.

<sup>3</sup>Biblioteca Nacional (Bogotá), Catálogo del "Fondo Anselmo Pineda" (2 vols.; Bogotá: Editorial "El Gráfico," 1935), II, 261. Hereinafter cited as Catálogo del "Fondo Pineda." The work indexed, cited above, p.262, is G. T., Observaciones sobre el Decreto del Gobierno publicado en la gaceta n° 212 acerca de la enseñanza de los principios de legislación por Jeremías Bentham, Nov. 10, 1835. Hereinafter cited as Observaciones.



and up to a certain point even popular scruples and prejudices, when they are not offensive to the institutions of the state. When so many prominent citizens of the capital, the cámara of an entire province, and the distinguished members of the body entrusted with the care of education were agreed, could the government doubt that this represented the opinion of the nation?

Is the good education and sound morality of youth, by chance, found among us outside the special vigilance of parents and under the absolute direction of Congress and the Government? Is it expedient to place a public establishment in conflict with the paternal sentiments, without urgent necessity?

Beyond this, Torres noted that Bentham's principles of legislation had found no overwhelming response in England. He did not know whether Bentham's book had been adopted in the universities of the rest of Europe, but wrote, in a rather puzzling reference, that nothing had been done in France beyond the establishment of one chair of constitutional law. Bentham's moral arithmetic was, after all, ridiculous. Did anyone really try to estimate the sensibility of others according to his rules and temper the laws in this way? And his theory of human nature was strictly limited to animal sensations. Torres recommended using Bentham only for some of his useful classifications and those sound principles which were compatible with the nation's political institutions, the natural law, and Christianity.<sup>1</sup>

Two other distinguished members of the Popayán aristocracy, Joaquín and Manuel José Mosquera were soon drawn into the controversy as well. Joaquín Mosquera had returned to Popayán when his vice-presidential term expired, and had become rector of the university there. Now he told Santander

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<sup>1</sup>G. T., Observaciones, pp. 4-6, 11, 19, 21, 13.

that he had taken charge of the chair of legislation, since there was no one else to teach the course: "It has given me more to do than you can imagine, because the Bentham treatise contains such grave errors, and his commentator Salas has made it so much worse, that I haven't enough time to fill the vacancies left by the errors I have refuted."<sup>1</sup>

Don Joaquín's brother Manuel José had by this time taken possession of the archepiscopal see of Bogotá, having been nominated for this office by the Congress of 1834. When all ecclesiastical and civil requirements had been met, he had entered the capital as Archbishop on September 21, 1835, at the relatively young age of thirty-six. The protagonists in the Bentham matter did not delay long in implicating the new prelate in the affair. The November 15 issue of the Cáscara Amarga carried this piece of gossip:

Bentham's work is so full of heresies that the priests of La Candelaria have refused, during these days, to give absolution to the collegians of San Bartolomé who study it, and this after having discussed the case with the Archbishop, as everyone in the city knows.

This situation resulted at some point in a disagreeable confrontation between the two powers; the details are not perfectly clear, but Ezequiel Rojas, who was vice-rector of San Bartolomé at the time, later wrote this account:

[I] accompanied the community to the convent of la Candelaria so that they could hear the students' confessions; the fathers dismissed those who were studying legislation, according to the order of the Archbishop.

I informed the Government of this fact. General Santander was then exercising the Executive Power, and Señor Lino de Pombo was Secretary of Interior. As soon as my communication had been received the Council of Government was convoked, and it was resolved that the Secretary of Interior should require of the Archbishop privately that he retract the orders given to the fathers, and that in case he

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<sup>1</sup>Letter to Santander, Nov. 10, 1835, Correspondencia, VIII, 358.

refused, the fiscal of the Supreme Court should be ordered to formalize an accusation against him, because this deed was a true attempt against the national sovereignty. The Archbishop withdrew his orders . . .<sup>1</sup>

José Manuel Groot denied that the venerated Archbishop ever made any such capitulation: "Señor Mosquera testified with his death that he was not a man to fail in his duty through fear."<sup>2</sup> Yet if he did not make some sort of retraction he at least clarified, toward the end of the year in 1835, something he had said or written earlier, related to the question of utilitarian studies. There is evidence of this much in the archives, as will be shown.

Parts of the defense of Bentham which Vicente Azuero had included in his Representación contra Margallo of 1826 were reprinted in the Gaceta on November 22. The editors predicted, in the same number, that the government would not make a pusillanimous retreat on the Bentham issue, to the detriment of the national dignity, although it was always ready to hear sound and enlightened opinion.<sup>3</sup>

That same week someone in Bogotá wrote a letter to el mono de la pila, the sculptured monkey which adorned a public fountain there, because for centuries the bogotanos had addressed their complaints to him when no one else would listen. These laments were supposed to show the confusion of the average man in the midst of the excitement about Jeremy Bentham, and contain some interesting details. Lino de Pombo is described as a great champion of the Englishman, defending him "Gaceta in hand." Doctors Restrepo, [Miguel]

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<sup>1</sup>"Lógica: Artículo tomado del numero 174 de 'El Liberal,' Octubre de 1870," in Obras del Doctor Ezequiel Rojas, collected and published with a biography of the author by Anjel M. Galán (2 vols.; Bogotá: Imprenta Especial, 1881-82), pp. 128-29. Hereinafter cited as Obras.

<sup>2</sup>Historia, V, 217.

<sup>3</sup>Gaceta de la Nueva Granada, Nov. 22, 1835.

Tobar, and [Diego Fernando] Gómez--who must have been outvoted, unless his opinions had changed--are named as the "ignorant fanatics of the Direction of Studies," and Dr. Duque Gómez, rector of El Rosario, as the defender of Bentham whose remarks had been quoted in the Gazette. Rumors were not neglected:

A popular whisper says that our Pastor gave a resolution against those who follow the doctrines of Bentham and in just a few days retracted it. But the Gaceta says nothing of this. Later, the author of the paper Todo lo vence el tezón says that the Chief of State and the Chief of the Church are agreed that Bentham does not contain heresies . . .<sup>1</sup>

The Gaceta completed its contributions to this period of the discussion on November 29 with comments on the papal bull In coena Domini.<sup>2</sup> On the same day El Constitucional de Cundinamarca published the first of a number of articles on Bentham which continued until February 14, 1836, and were followed by two brief essays on the related subject of legislation during July. When a series of writings critical of the Bentham text began to appear in El Constitucional de Popayán in December, 1835, someone writing for the Cundinamarca paper--the articles were said to be "remitted"--undertook to refute the criticism, and a serious and important journalistic interchange developed. The Popayán articles, fewer in number, continued until March 15, 1835, and in April another related to the Bentham question was printed.

Jaime Jaramillo Uribe included a careful analysis of the content of El Constitucional de Cundinamarca's side of the polemic in his study of the Colombian Benthamites.<sup>3</sup> He called these writings the first systematic defense

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<sup>1</sup>Billiticos dulces al Mono de la Pila (Bogotá), Nov. 26, 1835, Biblioteca Nacional, Fondo Pineda, #368.

<sup>2</sup>Gaceta de la Nueva Granada, Nov. 29, 1835.

<sup>3</sup>"Bentham," pp. 14-18.

of Benthamism written in his nation, and their author one of New Granada's most lucid apologists for utilitarianism.<sup>1</sup> Although he praised the anonymous author for the order and clarity with which he presented his ideas, Jaramillo found nothing original in his thought; the same arguments which Bentham had used in his treatises were used again. He considered these articles the work of Ezequiel Rojas or Vicente Azuero, but believed that the polemicist might more likely have been the latter, because the style of his writings resembled Azuero's in some respects.<sup>2</sup> While this may be true, it does seem that Ezequiel Rojas's student Angel María Galán, who became his editor and biographer, claimed them for his master, as Rojas's published works include a section entitled "Jeremías Bentham: Artículos publicados en el 'Constitucional de Cundinamarca' en 1836, en contestación a otras del 'Constitucional' de Popayán."<sup>3</sup> Perhaps the articles had more than one author.

Everything seems to indicate that Joaquín Mosquera was the writer publishing in El Constitucional de Popayán, and, indeed, he is so identified in the Index to the Fondo Pineda of the Biblioteca Nacional.<sup>4</sup> The first of the Popayán articles, published December 1, 1835, was a commentary on the government's report and resolution of October 15, and included a review of the whole question at issue, written in a deliberately tolerant and dispassionate style. The author appreciated the motives of those who had created the education law

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<sup>1</sup>Ibid., pp. 14-15.

<sup>2</sup>Ibid., n. 6.

<sup>3</sup>Rojas, Obras, pp. 5-38.

<sup>4</sup>Catálogo del "Fondo Pineda," II, 54. Joaquín Mosquera is listed here as the author of El Benthamismo descubierto a la luz de la razón: Documentos importantes para los padres de familia, extractados del Constitucional de Popayán (Bogotá: Impr. por J. Ayarza, 1836).

and the plan of studies: "The legislators of Colombia tried to give to the study of jurisprudence all the extension necessary to form legislators and jurisconsults worthy of being oracles in the tribunals of justice." Yet he believed that in some ways they had erred:

We think: 1. that there should be no classes in universal legislation and administrative science; 2. that the works of Bentham and Bonin do not deserve to be considered classic works, are not complete, do not conform in their principles to natural morality, nor to the Catholic religion, nor to the political principles of New Granada. Consequently we believe that these works will not be beneficial in the instruction of our youth and that their study should be terminated.

The writer proposed a new course of studies, which included many elements considered liberal, such as constitutional jurisprudence, jurisprudencia sancional--or of penalties and recompenses, political economy, and international law, and even added the jurisprudence of jury trials.<sup>1</sup>

Within the week Joaquín Mosquera sent President Santander some advice on the matter of Bentham; not, as he said, because he presumed to counsel him, but only in response to something which Santander had written to him on the subject. He approved of the concessions which the government had granted in its resolutions of October 15, but felt that the administration had been seriously mistaken to allow the Gaceta to print "that untenable apology for Bentham"; that is, Azuero's of 1826, because it was "erroneous by all lights." "My opinion would be that the government and the editor of its Gaceta abandon the polemic to private writers, and, isolated in their circumspect resolution, show themselves indifferent."<sup>2</sup>

Mosquera's letter was respectfully critical of the government's tendency to presume that those who opposed Bentham were members of a hostile opposition.

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<sup>1</sup>Constitucional de Popayán, Dec. 1, 1835.

<sup>2</sup>Letter, Joaquín Mosquera to Santander, Dec. 8, 1835, Correspondencia, VIII, 358-59.

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An article in the Gaceta of December 13 showed something of the contentious style he thought unbecoming when it pointed out the depravity of certain enemies of the government, who now had no other weapon than calumny with which to impede the progress of the administration. These persons had spread the story, then circulating in the provinces, that the Archbishop had forbidden the reading of Bentham's works under pain of excommunication, and had persisted in this measure, despite the government's efforts to obtain its withdrawal. The Archbishop, wrote the editor, possessed sufficient enlightenment and patriotism to avoid such absurdities, "and if this were not so, the President of the Republic has all the firmness and energy needed to preserve the laws from insult, and to prevent any authority whatsoever from usurping the prerogatives of the supreme civil power . . ."<sup>1</sup>

Mosquera wrote again to the President on December 29, to answer a letter from him which he had just received. He suggested one way to expose the enemies of the government who, Santander, had told him, were seizing upon the opposition to Bentham as a pretext for embarrassing him. They might be challenged to imitate the administration's zeal by doing something to promote the cause of primary education: "He who has worked in accord with the government, can also refute Bentham, as provided by the government's own decrees . . ."<sup>2</sup>

At this time another Benthamite apology of the 1820's was reprinted in the official press. The report of the then-Associate Directors of Public Education, Vicente Azuero and Estanislao Vergara,<sup>3</sup> was published by El

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<sup>1</sup>Gaceta de la Nueva Granada, Dec. 13, 1835.

<sup>2</sup>Correspondencia, VIII, 361.

<sup>3</sup>See above, pp. 208-209.

Constitucional de Cundinamarca on December 27.

The year 1836, the last full year of the Santander administration, was initiated in Medellín, as Gustavo Arboleda observed, with "a noisy legal process which culminated in a death sentence for a minister of Christ."<sup>1</sup> The priest was Dr. J. M. Botero, who had challenged Santander the previous year on an issue related to toleration for non-Catholics, and had become involved with the courts when at least two press juries condemned his pamphlets. Botero had persisted in castigating the government for promoting atheism and materialism because its plan of studies ordered the study of ideology from the writings of Destutt de Tracy.<sup>2</sup> The priest was sentenced to six months of incarceration and the payment of a fine, but in February a mob rescued him from the Medellín jail, two persons losing their lives in the riot. Botero remained concealed for months, and managed to circulate handwritten statements of increasing violence. His more charitable critics judged that his well-known eccentricities had reached the point of madness when he advised his fellow-citizens to cooperate with the naval forces of Great Britain, involved in a dispute with New Granada, to overthrow the godless government. He was apprehended in September, 1837, after Santander was out of office, and condemned to death, but ultimately was ordered released to the custody of his family or some other caretaker.<sup>3</sup> Santander's government, with a certain amount of caution, used the affair as an object-lesson in fanaticism.

Another article on the use of Bentham's Treatises in education was published in Popayán on January 1. Though willing to concede, for the sake of

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<sup>1</sup>Historia, I, 266.

<sup>2</sup>Gaceta de la Nueva Granada, Jan. 31, 1836.

<sup>3</sup>Arboleda, Historia, I, 266-68.



argument, that the principle of utility, well understood, might not be as pernicious as it appeared to the uninstructed, the writer--undoubtedly Joaquín Mosquera--testified: "We have already seen practical proofs, in allegations represented to the tribunals, and in other important documents published in the press, that these theories of pleasure and pain have been understood and are understood in their unacceptable sense."<sup>1</sup>

Certain communications received by the Secretary of Interior at this time provide more information about the encounter which the other Mosquera, the Archbishop, had sustained with the government over the Bentham issue. The most complete data is found in a letter sent from the colegio of Pamplona on January 6, signed by Emeterio Ospina, who presumably was the rector:

With your note of December 16 I have received the enclosed copy of the clarification which the Illustrious Señor Archbishop of that diocese gave concerning a resolution dictated earlier, in consequence of the Discalced Augustinian religious having used it as a justification for denying absolution to the students of the colegio of San Bartolomé, with scandal to Christian piety and troubling the sensibility of a Catholic youth, only because among them there were some who studied legislation from the work of Jeremías Bentham. I rejoice that the cited clarification manifests clearly to the fathers that the mind of His Illustrious Señoría has not been to condemn the possession of this work, nor much less to detract from the prestige of our institutions, but only [to condemn] the denial of dogmas and norms of morality established and accepted by the Catholic Church, to prevent the loss of certain youths who uncautiously accept with closed eyes whatever is contained in el Bentham, without discerning what is useful and what is dangerous.

The rector added that the gossip coming from Bogotá had, unfortunately, aroused many persons in Pamplona against Bentham's estimable work, to such an extent that the colegio had been forced to discontinue the class in legislation, and thus he was deprived of the satisfaction of fulfilling the order of the President of the Republic that the Archbishop's statement be read to the

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<sup>1</sup>Constitucional de Popayán, Jan. 1, 1836.

students of that branch.<sup>1</sup>

The "inhabitants and fathers of families of Cali" sent a representation to the President on January 10, declaring that the partial measures the executive power had taken to resolve the Bentham problem were insufficient. Every day his works acquired new credit, and new partisans dazzled by the brilliance of their style and the novelty of their doctrine. Then, too, many of the professors seemed to admire Bentham's doctrines so much that it seemed unlikely that they would ever refute any of them, especially as the government itself had said that there was nothing in the Tratados which, properly understood, could be prejudicial. The petition carried over 150 signatures, including the rector of the Colegio de Santa Librada and the catedrático of jurisprudence.<sup>2</sup>

An article on "The Regeneration of Spain" in El Constitucional of Cundinamarca repeated the old charge that opposition to Bentham was just another form of fanaticism. The writer complained that while Spain, now in another period of liberal ascendancy, was asking the suppression of the monastic orders, liberty of cults, and other enlightened reforms, granadinos were still forced to witness, in the capital of the Republic, demands that the bull In coena Domini be observed, denunciations of Bentham as sinful, defenses of convents as necessary in a republic, and scandal taken at the mention of freedom of worship:

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<sup>1</sup>A. N., Instrucción pública, CXII, 78. See also communications from the rector of the Colegio del Rosario (*ibid.*, sheet 5), and the Colegio de Boyacá (*ibid.*, sheet 74), which give slightly different impressions of the nature of the archbishop's statements. One of the letters attaches the date November 18 to the "clarification" he had issued.

<sup>2</sup>A. C., Cámara de Representantes, 1836, T. XVI, Vol. 75, 180-83. The reference to Bentham's brilliant style must confound those who have read his works. Yet Dumont's versions, at least as they have been rendered in Spanish, are simpler and more pleasing in style.

The minority which is discontented with the present system will continue its promptings so that some will seek advice as to what should be done with students of legislation in the sacrament of penance, will continue talking and writing seriously about the two powers . . . But we should be consoled by the knowledge that all this noise is caused in Bogotá by two or three dozen persons (and in the provinces by a somewhat smaller number) . . . Oh that the election of a President for the next four-year term may fall upon a granadino who, with his firmness and his prestige among the patriots, may preserve the country . . .<sup>1</sup>

Joaquín Mosquera wrote to Santander late in the month, to send him his opinion on a point of international law, as requested. He took advantage of this opportunity to assure him that he had never so much as imagined that he had been included among those whom the President had spoken of as attacking the government by means of the Bentham issue.<sup>2</sup> He returned to that issue a few weeks later:

You tell me that the polemic of El Constitucional of Bogotá against that of Popayán has pleased you. Although I am not entirely impartial, I will confess that it is well written, ingenious, and shows that the author is thoroughly conversant with the theory of utility . . .

He also commented on the news of Dr. Botero's deliverance from jail, and agreed explicitly with the government's position, calling Botero's condemned publications "truly atrocious."<sup>3</sup>

A memorial sent from the city of Popayán on February 18 asked that Congress pass a code of public instruction founded in its moral part on the Gospel of Jesus Christ, during the session of that year; the petitioners included Bishop Jiménez and a number of signers with such distinguished family names as Mosquera and Arboleda. The language of the document is respectful, but the Congressmen were reminded that "in popular governments those who are

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<sup>1</sup>Issue of Jan. 17, 1836.

<sup>2</sup>Letter of Jan. 26, 1836, Correspondencia, VIII, 363.

<sup>3</sup>Letter to Santander, Feb. 16, 1836, ibid., p. 367.

entrusted with political power do not have more authority than that which the omnipotent national opinion gives them."<sup>1</sup>

Santander asked for prompt congressional approval of the already-pending education code in his message to Congress on March 1, because it was "every day more necessary":

The executive power, convinced that the sacrifices made by the granadinos in favor of their independence and their liberties cannot have been limited to throwing off the natural dominion of Spain while conserving the system of education and instruction which the colonial regime had established, is sustaining a struggle against fierce fanaticism, and political passions decorated with the name of religion. I will not recede a line from the position which the government has taken, as long as the law, the co-operation of the legislative body, and sound public opinion give me their help and support.<sup>2</sup>

He wrote more about this warfare a little later when he published a defense of his administration to refute a hostile pamphleteer:

Can the writer I am challenging deny in good faith that the Government has had to fight against fanaticism? . . . What else has been signified by the efforts of the Executive Power in the matter of public instruction and over certain laws reforming the prejudices which Spain bequeathed to us? Have the certámenes of 1833 in canon law been forgotten? . . . the papers written about the padres hospitalarios, about Bentham, D'Tracy, la bula de la cena, etc., etc., etc.? . . . How can one confuse the true religious belief of a people with superstitious practices and the ideas of an insupportable fanaticism?<sup>3</sup>

In March the Popayán newspaper printed a letter which the rector of the Universidad del Cauca, Joaquín Moaquera, had sent to the rector at Cartagena's Universidad de Magdalena on December 13, 1835. It indicates that the governing body of that university had contacted the university junta in Popayán on

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<sup>1</sup>A. N., Instrucción pública, CXII, 496.

<sup>2</sup>Cartas y mensajes, IX, 345.

<sup>3</sup>"Apéndice al folleto 'La Nueva Granada al empezar el año de 1836' en refutación del cuaderno 'Al lector desapasionado,'" Bogotá, June 1, 1836, in Archivo Santander, XXII, 136-37.

October 2, 1835, to propose joint action to bring about certain changes in the education law of May 30, 1834. The Cauca group approved the proposal, and Mosquera went on to suggest, in its name, the desirability of dropping universal legislation and administrative science from the course in law, and added a number of objections to the study of Bentham. The Cauca junta agreed that the nation's third university, the Universidad central de Cundinamarca, should be approached for suggestions and invited to join in the project of seeking reform.<sup>1</sup>

Mosquera's letter, referring in one place to the science of morality, certainly owed something to contemporary thought on the matter. In the same way, a passage from El Constitucional de Popayán of March 15 seems to indicate that he had accepted, as Bentham did, the artificial identification of interests as the legislator's task:

The partisan of justice [as opposed to the utilitarian] establishes the following truth--the legislator who does all that he can, so that the individual interest of each one--without excluding anyone--is located in the public interest, and that these interests work in harmony, will have completely fulfilled his obligation.

This does not necessarily mean that he had learned the lesson from Bentham, because the theory was not Bentham's alone. It had been especially characteristic of Helvétius, but Helvétius had learned it from the Scottish philosopher David Hume,<sup>2</sup> and Helvétius had affected Beccaria, Bentham, and a number of French writers, and had been influential throughout Europe.<sup>3</sup> Although Joaquín Mosquera was exceptional for his wide reading, his casual proposal of the principle as a standard for the anti-Benthamites suggests that this kind of

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<sup>1</sup>Constitucional de Popayán, March 1, 1836.

<sup>2</sup>Halévy, Philosophic Radicalism, pp. 17-18.

<sup>3</sup>Ibid., pp. 18-22.

thinking might have been known in New Granada as well.

There is considerable evidence that the Benthamites of New Granada also tended to confound utilitarian and traditional thinking, notably in the fundamental matter of the natural law. A letter from Mosquera asserts explicitly that this was true of General Santander:

You tell me that you are a utilitarian without denying the fundamental principle of that which has been called the natural law. This is the way Benjamin Constant and all the friends of liberty think, and so do I. Therefore we are agreed. I am conducting the class of universal legislation in conformity with that knowledge, and in conformity with the provisions of the executive resolution; but for the same reasons I do not and cannot approve of Bentham, because his works do not contain isolated errors, as some pretend, but he has formed a system geometrically apt to destroy the fundamental principles of universal morality. I beg of you to look at the answer of El Constitucional of Popayán to the remitido of that of Bogotá when you have a free moment, and I hope you will be persuaded that the principle of utility which you profess is not Bentham's, and never can be.<sup>1</sup>

The point is really so essential that one is inclined to agree with Mosquera that Santander cannot be called a Benthamite. Santander's published letters and papers do contain certain declarations on the law which are irreproachably utilitarian in this regard, such as his statement, already quoted, that he would follow the laws and, lacking that secure guide, the public utility.<sup>2</sup> But it cannot be denied that he did cite the natural law on a few occasions during the period after 1824, when he must have been familiar with the Tratados de legislación.<sup>3</sup> Inconsistent as this does seem to be, some

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<sup>1</sup>Letter to Santander, March 22, 1836, Correspondencia, VIII, 373.

<sup>2</sup>See above, p. 245, and p. 247 for similar declarations. See also the administration's statement that the executive should take the laws for his guide and the public convenience for his object, above, p. 268.

<sup>3</sup>"Apuntes de Santander sobre el atentado del 25 de septiembre," Archivo Santander, XVIII, 53; Exposition to the representatives of the Colombian people, July 4, 1830, Cartas y mensajes, VIII, 67, 75.

of his countrymen, admirers of Bentham, showed the same reluctance to abandon the older concept. We have seen that a student orator at the certámenes of 1826 and a professor of legislation in 1835 both tried to maintain that the principle of utility and the natural law "came to the same thing."<sup>1</sup> The Colombian law of public instruction made a course in "morality and natural law" a prerequisite for the study of law, or theology,<sup>2</sup> following the Spanish reglamento in this regard.<sup>3</sup> The Plan of Studies devoted article 153 to a description of this course,<sup>4</sup> which could be taught from the treatise of Felice or any of the "classic authors" in the field. Article 168, describing "principles of universal legislation," required that the students become familiar with "the natural laws which regulate the obligations and rights of men,"<sup>5</sup> then went on to require the use of Bentham's work which denied the existence of the natural law. In October, 1835, Santander had explicitly ordered that Bentham's principles be explained in such a way that they would not "overpower" the laws which prescribed the teaching of the natural law.<sup>6</sup>

Santander also retained the liberal's belief that the powers of the government should be divided among the executive, legislative, and judicial branches, and that the authority of each branch should be limited by the constitution. Many statements in his letters and papers reflect this

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<sup>1</sup>See above, pp. 203-204.

<sup>2</sup>Article 50, Law of March 18, 1826, Codificación nacional, VII, 236.

<sup>3</sup>Article 48, Decree of June 29, 1821, Decretos de las cortes, VII, 369.

<sup>4</sup>Decree of Oct. 3, 1826, Codificación nacional, VII, 434.

<sup>5</sup>Ibid., p. 437, quoted above, p. 191.

<sup>6</sup>See above, p. 268.

conviction.<sup>1</sup> Bentham, on the other hand, had exposed the division of powers as a fiction in his early A Fragment on Government,<sup>2</sup> an English work which Santander acquired for his library,<sup>3</sup> and continued to oppose the theory, except for a brief digression in 1783.<sup>4</sup> Bentham was also convinced that no limit should be imposed upon the power of the legislature;<sup>5</sup> in his last great work he described the Supreme Legislature as "omnicompetent," and declared that its logical field of service was coextensive with the field of human activity.<sup>6</sup>

When Mosquera wrote again to the President, a week later, his mood had changed. In a deeply offended tone he spoke of calumnies concerning him which the editors of the Constitutional of Cundinamarca had published, and named Florentino González as one of these men. He did not intend to answer the insults, and "as for the inconvenience of teaching from Bentham, I submit it to the opinion of the public, as every man who speaks through the press." He referred to the part he had played in obtaining Santander's release from prison in 1829: "I did justice to you when you were in disgrace: when I was vice president of the State I showed you a decent and benevolent deference, and

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<sup>1</sup>See especially his messages to the President of the Senate, Jan. 3, 1825, Cartas y mensajes, V, 51-52; to the President of the Senate, July 28, 1827, ibid., VII, 284-85; to the President of the Cámara de Representantes, March 28, 1833, ibid., VIII, 272; to the President of the Cámara de Representantes, Jan. 27, 1836, ibid., IX, 311.

<sup>2</sup>Cited in Halévy, Philosophic Radicalism, p. 143.

<sup>3</sup>Hernández de Alba and Martínez Briceño, "Santander íntimo."

<sup>4</sup>Halévy, Philosophic Radicalism, p. 145.

<sup>5</sup>See above, p. 166.

<sup>6</sup>Constitutional Code, in Works of Bentham, IX, 160. The part of the work which includes this material was printed in 1827 (ibid., p. iii), but the writer has seen no evidence that it was well known in New Granada.



you can count upon it always."<sup>1</sup>

Restrepo's History gives an explanation of what must have occurred:

General Santander's obstinacy in the question [of Bentham] arrived at such a point that he called Señor Joaquín Mosquera a fanatic who encouraged the treacherous designs of Doctor Botero and corrupted customs, because he had discussed and refuted the doctrines of Bentham in the Constitucional de Popayán. He said also that he was writing in this way to attract public opinion to himself so that he would be named President of New Granada. Although these imputations were made under the veil of anonymity, it was very well known where they had originated and to whom they were directed.<sup>2</sup>

Mosquera said that he believed the President when he told him that he had not written the calumnies, but Santander tried to repair the injury by publishing an (or another) anonymous article, with the title "Homage to Friendship," which denied the report concerning the authorship of the earlier article "Fanaticism." Mosquera declared himself satisfied and asked nothing more, even though Santander had pledged himself to publish this denial in any terms which his friend might require.<sup>3</sup>

The Bentham affair was not the administration's only problem at the moment, but it was undoubtedly reaching a climax in Bogotá during these days, with petitions arriving in surprising numbers to demand the attention of the Congress. Ezequiel Rojas was president of the lower house, where the liberal representatives tended to be younger and to favor the Bentham text. He quoted Dumont's introduction to the Táctica de las Asambleas legislativas in his first discourse to the cámara.<sup>4</sup> Meanwhile seventeen members of the other chamber, including Senator Antonio Malo, were preparing a proyecto which they signed and

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<sup>1</sup>Letter of March 29, 1836, Correspondencia, VIII, 375-77.

<sup>2</sup>Nueva Granada, I, 89.

<sup>3</sup>Letters, Joaquín Mosquera to Santander, Correspondencia, VIII, 375, 379-80, 381. The letters are dated from March 29 to July 19, 1836.

<sup>4</sup>Gaceta de la Nueva Granada, March 13, 1836.

presented on March 23. It would have specifically prohibited the study of Bentham's works in the colegios and universities of the nation, and would have required the Executive to name a commission to prepare and print a course in legislation.<sup>1</sup>

A comfortable majority of the senators seemed to favor dropping the much-criticized textbook, but during the second debate on Malo's bill, which took place on March 28, some members declared themselves in favor of altering the measure so that it would be "more decorous," which apparently meant that they favored suppressing the work in some less explicit fashion. One senator criticized the exordium of the projected law because it declared that Bentham's principles conflicted with the beliefs of the Catholic religion; he said he did not believe that this kind of censorship was a proper function of the Senate. Senator Canabal reminded the members of the great reputation Bentham enjoyed in the Republic and in the world, representing, with more enthusiasm than accuracy, the civilized nations as constructing their legislation according to his principles and following his system of judicial procedure, with jury trials or without them. New Granada was benefiting, too, from the revolution he had brought about, and, although the demands of the petitioners should be met, Canabal suggested that this be done without using expressions which would perhaps damage the reputation of the Congress before the civilized world. Another speaker agreed that Bentham's contributions had caused a revolution up to a certain time, but said that his works were presently receiving much criticism from distinguished authors. He pointed out that the proyecto did not

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<sup>1</sup>A. C., Cámara de Representantes, T. XVI, Vol. 75, 175; published as Prohibición de la Enseñanza por Bentham, Bogotá, April, 1836, Biblioteca Nacional (Bogotá), Fondo Pineda, #470. Hereinafter cited as Prohibición de Bentham.

outlaw the book but only forbade its use as a text.<sup>1</sup>

Senator Valencia of the Cauca predicted, during this second debate, that the bill would pass easily in the Senate, but said that its future in the lower house was more uncertain, because the "greater part of the members of that honorable chamber have studied from el Bentham, and . . . there is no doubt that they esteem that author very much."<sup>2</sup>

Another anti-Bentham petition reached the Congress on March 30, sent by a small group of bogotanos who had missed signing the earlier document.<sup>3</sup> On that same day Malo's proyecto was approved "almost unanimously" after the third debate;<sup>4</sup> it was passed to the cámara de representantes on April 2--still in the form of a specific prohibition of the study of Bentham's works in the schools.<sup>5</sup>

A pamphlet entitled "Prohibition of the Teaching of Bentham,"<sup>6</sup> containing the proposed law, was printed in the capital on April 8. The author, discussing the controversy, mentioned among the petitions received by the national government two which the writer has not seen--from the provincial cámara of Cartagena<sup>7</sup> and from the citizens of Honda. He urged the representatives to approve the Senate's proyecto de ley and the President to sign it, because "in our system the law is the expression of the general will." But a

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<sup>1</sup>Diario de Debates (Bogotá), Senado, March 28, 1836, pp. 232-41.

<sup>2</sup>Ibid., p. 240.

<sup>3</sup>A. C., Cámara de Representantes, 1836, T. XVI, Vol. 75, 187.

<sup>4</sup>Prohibición de Bentham.

<sup>5</sup>A. C., Cámara de Representantes, 1836, T. XVI, Vol. 75, 167.

<sup>6</sup>Cited above, p. 289.

<sup>7</sup>The Cartagena petition is also mentioned in the Gaceta de la Nueva Granada, Sept. 11, 1836.

note at the end of the pamphlet announced that word had just come that the House had defeated the bill in its night session of April 8.

The annals of that session in the House record that the Senate's projecto was read, and the petitions which had prompted it were mentioned; as no one wished to speak a vote was taken at once. Twenty-four black counters and nineteen white were cast; the project, therefore, was not passed to a second debate.<sup>1</sup>

Yet the matter did not die. Fifty-seven residents of the town of Chaparral, in the present Department of Tolima, including the alcalde, pastor, two district judges, and the schoolmaster, directed a petition against the Tratados to the House of Representatives on April 29. Those who drafted the document had obviously seen the Bogotá pamphlet Prohibición, and made liberal use of its expressions, as well as arguments drawn from Jerónimo Torres's Observaciones of November, 1835.<sup>2</sup>

A similar group of petitioners in the town of Paipa, province of Tunja, wrote to the Representatives in an emotional style, resolving that their sons would never cross the threshold of the national colegios as long as the Bentham treatise was retained. Even if Bentham's luces were necessary to make New Granada a cultured nation, which they were not, these citizens said they would prefer to remain ignorant rather than endure the pain of seeing the religion of their fathers persecuted. If the legislators persisted in the design of some day entrusting the Republic to those who had been educated in the maxims of Bentham, they would be betraying the confidence that had been placed in them and setting themselves up as so many sultans over the people.<sup>3</sup> Still another

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<sup>1</sup>A. C., Cámara de Representantes, 1836, T. IV, Vol. 63, 117.

<sup>2</sup>Ibid., T. XVI, Vol. 75, 170-71.

<sup>3</sup>Ibid., sheets 189-90.

solicitud was sent from nearby Sogamoso on the same day, May 2.<sup>1</sup>

A group of approximately ninety bogotanos memorialized the cámara de representantes on May 6, pointing out that the press law, which dated from 1821 prohibited the publication or reprinting of works which were contrary to the dogmas of the Catholic religion, styling them subversive. Were Bentham's works less poisonous because they had been printed in Europe? The petitioners wrote that they dared to give as their opinion that the law imposing Bentham should never have been observed. Never had the nation manifested its opinion, by legal means, more clearly than in asking for its repeal. All who had published anything on the subject were in agreement, excepting only the editors of the Gaceta and the Constitucional de Cundinamarca. To deny these reclamations would be a "monstrous irregularity in a popular representative system." The signers included "Gerónimo Torres," "Francisco Margallo"--Azuelo's old adversary who, in these later years, had received affectionate tributes even from the exaltados,<sup>2</sup> and "Nicolás Leyva"--presumably the same Nicolás Leiva or Leyva who was the leading figure in the Industria bogotana, a company which had set up a china factory in the capital.<sup>3</sup>

The Senate had already made further attempts to obtain satisfaction for the petitioners, sending to the House on April 18 another proyecto de ley which would have been less specific, prohibiting the use in public education of any work which was subversive of morality and Catholic dogma. Then on May 2 the President of the Senate directed a letter to the other chamber, expressing the concern of his colleagues, since the remaining days of the session were few

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<sup>1</sup>Ibid., sheet 193.

<sup>2</sup>See El Cachaco de Bogotá, Sept. 1, 1833.

<sup>3</sup>A. C., Cámara de Representantes, 1836, T. XVI, Vol. 75, 166-67.

that the legitimate desires of so many citizens might remain unfulfilled for lack of time. Finally on May 27 the officers of the Senate sent all of this material, and the earlier draft which the House had rejected, to the Secretary of Interior, with a request that it be published in the Gaceta, and the request was honored.<sup>1</sup>

Bentham himself would have approved of the publicity which was given the congressional proceedings, and the government's moderation in allowing its critics free rein. A publication Aviso al Publico, Número 2, appearing late in May, informed readers that during the night session of the 20th in the cámara de representantes the Senate's new proyecto had been passed to the second debate by a vote of twenty to eighteen. The writer even included the names of those who were said to have voted in the affirmative, and expressed hope that the measure would be approved finally, after the third debate.<sup>2</sup>

His optimism had vanished when he reported in the next number that the House had substituted a proposal of its own for the wise disposition of the Senate. This "monstrous resolution," it was said, would give to each catedrático the faculty of selecting his own text. The excited pamphleteer could hardly bear to think of every Benthamite professor left free to choose any sort of book--down to "the horrible commentary of Salas in its totality." Since he was certain that the Senate would never agree to such an outrage, he could only suppose that the hopes of so many petitioners--he gave the count as 253,000--would, after all, be ultimately mocked.<sup>3</sup> Contrary to his

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<sup>1</sup>"Proyectos legislativos," Gaceta de la Nueva Granada, May 29, 1836.

<sup>2</sup>Aviso al publico, Número 2, Bogotá, 1836, Biblioteca Nacional (Bogotá), Fondo Pineda, #198.

<sup>3</sup>Aviso al publico, Número 3, ibid.

expectations, however, this measure was approved by both chambers before the end of the legislative session.

Joaquín Mosquera, writing to Santander at the end of June, ventured once more into the sensitive area of the Bentham question:

I beg of you that you approve the decree of congress authorizing the catedráticos to elect their texts, for in this way new quarrels can be avoided, and such an authorization is conformable to the practice of the universities of France, England, and the United States in the sciences, excepting only the constitutional and civil law of each country.

The most liberal statesmen, partisans of free discussion, are of the same opinion, consistent with the principle of not using force with the thought of another. In Europe only the partisans of the past subject instruction to determined authors.<sup>1</sup>

In his next letter Mosquera said he had been surprised to learn that Santander did not wish to sign the Congress's decree on texts:

My opinion is that a legislative act proscribing an author would really not be fitting, but neither does it appear conformable to the principles of liberty and tolerance to oblige professors to teach moral and philosophic principles which they do not profess, or use a text which they do not consider consonant with their convictions.

He told Santander that he would accept the honorable charge of preparing a course in legislation, just offered to him, if illness did not prevent him. But he added that he was sure that even if he did prepare something passable, he would receive nothing but insults for his trouble, as "the number of philosophers who think with the heart and not with the head is very great in our country."<sup>2</sup>

During the public certámenes which closed the school year in July the offerings of the classes in legislation were heard with more than usual

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<sup>1</sup>Letter of June 28, 1836, Correspondencia, VIII, 379.

<sup>2</sup>Letter of July 5, 1836, ibid., p. 380.

attention. The Constitucional of Popayán reported that a numerous concourse, whose interest had been aroused by the controversy of the past months, remained fascinated for three hours as Bentham's theories were discussed at the university in that city. The editor did not spare his praise for the aristocratic professor of the class in legislation or for his young scholars, who showed that "without adopting Bentham's harmful principles of morality . . . they were able to follow him in the luminous doctrines which his tratados de legislación contain . . ." <sup>1</sup>

At Bogotá the student José Eusebio Caro distinguished himself by presenting a brilliant discourse, written by himself, defending the principle of utility. <sup>2</sup> Notice was taken of his achievement as far away as Popayán, where the Constitucional maliciously excerpted his speech: "The youth José Caro of Bogotá has seated Bentham on the peak of a pyramid. The dear (caro) young man does not bestow his honors according to the theory of pleasure and pain." <sup>3</sup> Part of a defense of Bentham delivered during these certámenes by "a student of the class in political economy" was printed in the Constitucional de Cundinamarca, and contains this analysis of Bentham's principle of utility:

After the profound meditations of Locke had relegated innate ideas to the land of the chimeras, Bentham deduced as a necessary consequence that the goodness and badness of actions and institutions could only be known by the influence which they exercised over the happiness of men; and that this influence could only be seen by carefully examining the good and evil of which they are the cause. This principle has been scorned and persecuted by fanaticism, and by those

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<sup>1</sup>Constitucional de Popayán, Aug. 1, 1836.

<sup>2</sup>Miguel Antonio Caro, "José Eusebio Caro," in Obras completas de Miguel Antonio Caro, ed. by Victor E. Caro and Antonio Gómez Restrepo (6 vols.; Bogotá: Imprenta Nacional, 1918-32), II, 65. Hereinafter cited as "José E. Caro." According to this source the speech was printed in El Amigo del Pueblo, a newspaper of the time.

<sup>3</sup>Constitucional de Popayán, Aug. 1, 1836.



men who have made it a duty of conscience to believe without examination everything they learned in the first years of their lives; but it will triumph without fail, because as many as prefer to base their reasoning upon facts rather than on inventions of the imagination will realize its exactitude.<sup>1</sup>

Not long afterwards José Eusebio Caro changed his opinions radically and became a determined opponent of Benthamism. Jaramillo Uribe considered his "Letter to Don Joaquín Mosquera concerning the Principle of Utility" "the most vigorous allegation against the utilitarian system presented in New Granada during the nineteenth century."<sup>2</sup>

The first steps in the indirect presidential elections were initiated in the same month of July; men in public life had, of course, occupied themselves with the question of the presidency for some time. By July three names had emerged: Vicente Azuero and General José María Obando were favored by the advanced liberals, and José Ignacio Márquez was the candidate of the moderates. Azuero's wife, who was General Santander's godchild, told him in June that her husband was offended because he had heard that the President considered him unsuitable as a candidate because of his religious opinions.<sup>3</sup>

Santander wrote the lawyer a reassuring letter, but admitted that he

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<sup>1</sup>Issue of July 3, 1836. A comparison of texts might show that this discourse was Caro's, even though his biographer wrote that he gave his presentation as a member of the class in legislation. See M. A. Caro, "José E. Caro," p. 65. Dumont had pointed out in the Tratados de legislación, I, 203, that "Bentham has proved that the natural law, the original pact, the moral sense, and the notion of justice and injustice . . . were in reality nothing else but those innate ideas whose falsity Locke has demonstrated."

<sup>2</sup>Pensamiento colombiano, p. 181. Caro began his letter by addressing Mosquera as his country's first defender of sound theory and the moral law of Christianity, "as professor in the colegios, writer in the newspapers, and deputy in the congresses." See his letter in José Eusebio Caro, Antología: Verso y prosa (Bogotá: Ministerio de Educación nacional, 1951), p. 214.

<sup>3</sup>Letter, Santander to Azuero, June 13, 1836, Cartas y mensajes, IX, 441-42.

felt that Azuero would meet strong opposition from the clergy and from pious laymen, "because of the opinions they have of you, of me, and of Soto." He said that firmness and legitimate vigor would be needed in the President if the country were to be spared new outbreaks of violence, and that he favored Obando, Azuero, or Soto for the coming term--in that order.<sup>1</sup> In a subsequent letter he told Azuero that if the liberals were to present him as their sole candidate, the fanatics would be irritated and reanimated.<sup>2</sup>

By November it was known that no one had received an absolute majority in the electoral assemblies, and that the election would have to be completed by the next Congress. A month later Santander wrote to Rufino Cuervo that he had not supported Azuero "because with his theories he could carry us at a gallop to the abyss," but added that, because of changes which had occurred since June, he would, at the date of that writing, vote for Azuero if he were a member of the Congress.<sup>3</sup>

Santander wrote his veto message on the subject of the selection of texts for public instruction on February 6, 1837:

The pure zeal which always has animated me in favor of good public education, and the intimate conviction of the damage which this would receive, if sanction were given to the projected decree which the legislative chambers approved in their last meeting, by which all the dispositions concerning texts which are in force would be repealed, leaving the election to the choice of the catedráticos, made me decide to return . . . the projecto, objecting to it in its totality.

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<sup>1</sup>Ibid.

<sup>2</sup>Letter of July 4, 1836, ibid., p. 444.

<sup>3</sup>Fragment, letter of Dec. 30, 1836, Cartas y mensajes, IX, 465. Dr. Cortázar has included this fragment with Santander's letters, noting that its source is the Vida de Rufino Cuervo, where it is presented as a letter from Santander to Cuervo.

Public education is a matter too important and too delicate to allow that the choice of texts, which is its essential part, be left to the arbitrary, and perhaps capricious, choice of each one of the preceptors and professors. It exercises an influence too constant and efficacious in the destinies of the country . . .

To permit such liberty, without any other restriction than article 229 of the plan of studies . . . would be to introduce a dreadful anarchy into the halls of the universities and colegios; it could give to the system of public education the death stroke that still is lacking, after so many wounds have been received . . .

[Because of the restrictions of article 229] the professors of canon law, for example, will not teach doctrines contrary to the religion which we profess, that is, to Catholic dogma, but they will be able to teach the infallibility of the Pope, his supremacy in temporal matters, and all the principles of ultramontanism, as alarming as they are discredited: none of these principles is in direct conflict with morality, or directly attacks the public tranquility; none will be erroneous in the eyes of the one who is teaching it. Young men imbued with these ideas leave the university halls to occupy the benches of congress or fill public offices, or to begin to take some other part and to influence the affairs of the nation: could they be counted on for support in favor of the liberal institutions to the full enjoyment of which we aspire, and which are still, we may say, in embryo form?

. . . In general, each professor . . . will choose to give his lessons the same book from which he received them, which is more familiar and convenient; and is not such a presumption in itself unfavorable in the present century . . .?

Let us not forget that the education we are speaking of is paid for by the nation, or [authorized by the nation] . . . its efficacy should be assured in the dispositions of the law . . .

I am not aware that there is a country in the civilized world in which a disposition analogous to the project I am returning exists . . . In all parts there are established rules for the designation and variation [of texts] . . . If it is thought that this and other particulars in the branch of public instruction are still not well systematized in New Granada . . . by the existing laws, the defects noted can be corrected or the omissions rectified by passing the new code . . .<sup>1</sup>

On March 1 Santander manifested the state of the Republic to the Congress which would elect his successor. In suggesting consideration of the

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<sup>1</sup>Santander to the President of the Senate, Cartas y mensajes, IX, 337-39.

still-pending code of public instruction he specifically recommended that the system it provided should tend to establish the religious and moral ideas "which should dominate at the same time the understanding and the heart of those who are called to conserve in their purity the religion of our fathers, the national independence, and liberty under the laws (la libertad legal)":

In the struggle of the materialist ideas of the century and of the fanaticism which is contrary to the gospel, to morality, and to the political principles which constitute the representative system, we should make efforts to preserve the new generation of granadinos from falling into either of the two extremes . . .<sup>1</sup>

José Manuel Restrepo seemed to consider these pronouncements sincere, and quoted them in his History to prove how greatly the sentiments of the procer differed from the anti-religious spirit of the liberals of a slightly later period.<sup>2</sup>

Three days later the Congress proceeded to choose the President from the slate which had resulted from the indecisive national elections. On the fourth vote Márquez was chosen over Azuero by a count of sixty-four to thirty-two, and was immediately declared the President-elect.<sup>3</sup>

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<sup>1</sup>Cartas y mensajes, X, 31-32. For a detailed declaration by Santander of his reverence for the Catholic faith, and his opinion on the true limits of the Church's authority, see his letter to J. M. Botero, Aug. 9, 1835, Cartas y mensajes, IX, 281-84.

<sup>2</sup>Nueva Granada, I, 118.

<sup>3</sup>Ibid.

## CHAPTER VI

### SANTANDER IN OPPOSITION 1837-1840

Although he held no official position at the moment, Santander did not intend to abandon public life. As early as April and May, when he had just left the presidency, he attended the sessions of Congress daily, met with his friends and political allies among the deputies, and, it appears, discussed plans for embarrassing the government of President Márquez.<sup>1</sup> During the next three years, which were the last years of his life, he was active head of the opposition party, which began to style itself "progressive," imitating one of the parties of Spain.<sup>2</sup> He was a member of the Congress officially from 1838 until his death, collaborated in the production of a newspaper, and served in such capacities as municipal councilor, vice president of the Society of Primary Instruction, and member of the governing board of Bogotá's casa de refugio, instrucción, y beneficencia.<sup>3</sup>

Before the presidential elections Santander had judged that the former bolivianos and the partisans of religious fanaticism made up much of Márquez's support,<sup>4</sup> but if fanatics or anyone else had hoped that the new government would lift the burden of unwelcome controls from the Church, or restore

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<sup>1</sup>Cuervo and Cuervo, Vida de Cuervo, I, 225.

<sup>2</sup>Ibid., II, 115; Arboleda, Historia, I, 311.

<sup>3</sup>Roberto Cortázar, "Santander, de 1837 a 1840," in Cartas y mensajes, X, 6.

<sup>4</sup>Fragment of a letter, Santander to Cuervo, Dec. 30, 1836, ibid., IX, 465.

orthodoxy to public education, they were soon undeceived. In some measure, perhaps, to disprove charges that his party was illiberal, Márquez took pride in adhering strictly to the programs which had been established by the laws, ordered rigid enforcement of the anti-monastic reforms, and refused to take any action when the Bentham question was reopened.<sup>1</sup>

Evidence of Bentham's importance continued to accumulate in the congressional Diario de Debates; perhaps his works, with those other publicists and the example of the modern legislatures, had influenced the decision to hire a stenographer and publish the Diario.<sup>2</sup> Bentham considered "publicity of the sessions" one of the essential requisites of a representative government, along with liberty of the press and the right of petition, and wrote at length on its benefits in his book on parliamentary tactics.<sup>3</sup> The Englishman is not named in the record of the House session for April 13, but his principles were certainly invoked when Representative Mallarino, discussing a proposed law of presidential succession, observed that "every law is an evil," and that "the principle of utility, which the legislator should propose to himself when forming laws, is to avoid a greater evil, comparing the sum of the evils which would result without the law."<sup>4</sup>

A group of about seventy residents of the capital sent a memorial to

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<sup>1</sup>Cuervo and Cuervo, Vida de Cuervo, I, 146-47; Arboleda, Historia, I, 302, 305.

<sup>2</sup>The taquígrafo divided his time between the two houses, recording the debates which promised to be more significant. The Diario de Debates began publication in 1836. See Arboleda, I, 276.

<sup>3</sup>Jeremy Bentham, Táctica de las asambleas legislativas (Paris: Imprinta de J. Smith, 1824), p. 19, n. 1; pp. 30-54.

<sup>4</sup>Diario de Debates de la Honorable Cámara de Representantes, Sesión del día 13 de abril de 1837, p. 98.

the new President on April 14, asking that he occupy himself personally with the grave question of the use of Bentham, Destutt de Tracy, and similar authors in the schools.<sup>1</sup> On May 5 the Secretary of Interior ordered, for the President, that the petition be passed to the Dirección de estudios for evaluation, and that the opinion of the junta de inspección y gobierno of each university be solicited relative to the same matter.<sup>2</sup>

Fulfilling these instructions, the Director General sent copies of the memorial to the three universities on May 12; the University of the Cauca was the first institution to respond, on the 6th of June. Joaquín Mosquera had by this time resigned the rectorate, but the governing junta was not more favorable to Bentham and Destutt de Tracy. The opinions which the university and the city of Popayán had already manifested in the matter, the body declared, were each day more certainly confirmed "by the light which experience itself has supplied."<sup>3</sup>

The junta of the University of Magdalena and the Isthmus, on the other hand, responding on June 23, believed that there was "no reason to vary the authors indicated." The junta did not deny that the errors described in the Bogotá memorial did exist in the works, but could not "do less than observe, that if others exempt from these errors were sought, it would perhaps be necessary to teach nothing at all, because it can almost be said that there is not a book which does not have them." Nowhere could these books, which circulated freely and were constantly consulted because of their undeniable merits, be less dangerous than in the lecture rooms, presented by capable

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<sup>1</sup>A. N., Instrucción Pública, CXII, 488.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid., sheets 494-97.

instructors who would teach the students to distinguish truth from falsehood.

The authors in question enjoyed great prestige in the literary world. Bentham was considered the leading modern jurisconsult, and Destutt de Tracy a wise and profound author who had analyzed the understanding. "Would it not be a disgrace for New Granada to exclude the classic works in these two important branches of human knowledge . . .?"<sup>1</sup> The junta concluded by stating that it made its recommendation "only for the benefit of education, which, in its opinion, would be prejudiced by the suppression of these so justly celebrated works." The report was signed by Bernardo José de Garaya.<sup>2</sup>

The Central University responded on July 7, 1837; the report of the junta was signed by the new rector, Dr. Rufino Cuervo, who had also composed it. Cuervo had been a friend of Santander and an ally against the policy of the Liberator in the last days of Great Colombia, and had taught principles of universal legislation during a sojourn in Popayán (he was born in the present Department of Boyacá). He was now a supporter of Márquez, and had been elected rector of the Universidad Central earlier in the year.

Cuervo reported that the university's governing body had unanimously agreed upon a proposition, which he himself had introduced, to the effect that professors should construct their own daily lectures by extracting them from the best authors available, avoiding harmful principles. He wrote that

Bentham's Tratados de legislación

sparkles with sublime principles and new ideas, a spirit of analysis, and a logic as exact and precise as that of the mathematical sciences. Nevertheless it is not given to all talents to understand it, nor to all peoples to blindly adopt it for the formation of their [legal] codes. When for the first time the work appeared in this city in the

<sup>1</sup>Ibid., sheet 498.

<sup>2</sup>Ibid.



French language, it caused the public no alarm, and it was received with appreciation by the same persons who afterwards have opposed it. Then immediately it appeared translated to Spanish, and with the commentary of the Spaniard Ramón Salas, and a great majority of citizens declared themselves opposed to it, because the impious commentator went farther than the author, interpreted some of his principles in a disgraceful manner, and combated others . . .

Dr. Cuervo believed, and expressed the opinion of the junta in this regard, that Bentham's works were "eminently dangerous" if they were not well explained and well understood, and that, with Salas's commentary, they would deprave the hearts of youth, no matter how much interest the professors took in annotating the works and refuting their errors. He recalled that the decree of August 16, 1827, had instructed the Dirección general de estudios to obtain a suitable work from Europe to replace Bentham's Tratados, and pointed out that this had not been done. The result was that the criticism and murmuring had grown stronger--party spirit, now in favor of Bentham, or now against him, having taken no little part in the controversy.

The report argued that the student would not acquire the sum of knowledge which would be necessary to him as a legislator unless he were shown the relation between the principles he was learning and the political and social state of the country. Skillful instructors could make these applications as they prepared their lessons, consulting the best sources. In this way, in Europe, the sciences progressed as each professor sought to make some new advance, to discover some new principle, or make some new application in the material he was teaching. The catedráticos of New Granada could do the same, but the junta understood that this plan would require that they receive a recompense which would make it possible for them to dedicate themselves exclusively to teaching. Eight hundred to one thousand pesos should be adequate, and perhaps these funds could be obtained through reducing the

number of chairs.<sup>1</sup> If offensive doctrines were taught to the students under the system proposed, each professor could be held positively responsible.<sup>2</sup>

The Dirección general apparently did not forward these reports to the Executive until late in September, when its own report was submitted. Meanwhile the penal code which had been under consideration for so many years received final sanction in June, 1837, after changes suggested by President Márquez had been made. Insofar as it departed from the Spanish laws inherited from colonial times, it has been thought that this code was chiefly inspired by the French penal code of 1810.<sup>3</sup> Restrepo, who had an opportunity to observe its effects, judged that it proved to be of value to the nation, even though he considered it severe.<sup>4</sup>

The code was to become effective on June 1, 1838, but before that time a problem arose which illustrates the Spanish origin of the law. Under its provisions the death penalty was to be inflicted by means of the garrote, an iron instrument which killed by strangulation, evidently unknown in New Granada for some time. This form of execution was traditionally Spanish, and had been used in Spain during the reign of Charles IV for certain classes of condemned

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<sup>1</sup>According to Bushnell, the value of the peso during the period 1821-1827 was approximately the same as that of the United States dollar. See his Santander Regime, p. 14, n.

<sup>2</sup>A. N., Instrucción Pública, CXIII, 489-92.

<sup>3</sup>Arboleda, Historia, I, 294-95; Fernando Vélez, Datos para la historia del derecho nacional (Medellín: Imprenta del Departamento, 1891), p. 199; Luis Carlos Pérez, Derecho penal colombiano: Parte especial (4 vols.; Bogotá: Editorial Temis, 1956), I, viii; Antonio Vicente Arenas, Derecho penal colombiano: Parte general (Bogotá: Universidad Nacional de Colombia, 1964), p. 20; Phanor Eder, "Introduction," The Colombian Penal Code, trans. and with an introduction by Phanor Eder (South Hackensack, N. J.: Fred B. Rothman & Co. 1967), p. 1. For information on the Spanish liberal influence, however, see above, pp. 253-56.

<sup>4</sup>Restrepo, Nueva Granada, I, 130.

persons; apparently it was considered less shameful than hanging. Then the Cortes of 1821 abolished execution by hanging altogether and substituted garroting for all condemned prisoners, "attending to the provision already sanctioned in the political Constitution of the monarchy, that no penalty shall extend its effects to the family of the one who suffers it [and so that] the punishment of the guilty may not offer a spectacle excessively repugnant to humanity and to the generous character of the Spanish nation . . ."<sup>1</sup> According to the Bandera Nacional, President Márquez had to report to the Congress of 1838 that it would be necessary to make some disposition regarding the execution of the death penalty, as the instrument required by the penal code was not available. The Secretary of Interior added in his report "that an ironsmith who was willing to construct the instrument of the garrote had not been found, which was a credit to the humanity of our people."<sup>2</sup>

During June, 1837, as the time of the general elections approached, Santander exerted considerable efforts to win the nomination as senator for the capital, but his hopes were frustrated.<sup>3</sup> Nevertheless, he was elected a member of the cámara de representantes by his native province of Pamplona, and wrote that the election made him recall "that the celebrated statesman John Quincy Adams is at present a deputy in the federal congress of the United States of the North."<sup>4</sup>

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<sup>1</sup>Decree of Jan. 24, 1812, Decretos de las Cortes, II, 64.

<sup>2</sup>La Bandera Nacional (Bogotá), May 6, 1838.

<sup>3</sup>Restrepo, Nueva Granada, I, 131.

<sup>4</sup>Santander, "A los señores electores de la provincia de Bogotá, que me han favorecido con sus votos para senador, y a los de la provincia de Pamplona, que me han nombrado representante," Sept. 20, 1837, Cartas y mensajes, X, 69.

On September 30, 1837, José Manuel Restrepo forwarded the communications received from the universities on the question of texts, together with the recommendations of the Direction of Studies which he still headed. His report referred to the government's resolution of October 15, 1835, that the Dirección should examine the works on universal legislation, other than Bentham's, mentioned in the plan of studies, to consider their suitability for use in education. Restrepo admitted that this order had not been carried out; the examination could not be made in the future either, because the members lacked the necessary time. One was chronically ill and the other two held offices whose business was considered more urgent. He recommended that the government name a commission to be paid from public funds (the Director and adjutants were unpaid) to prepare a work on universal legislation which would not contradict the precepts of the gospel, the principles of Christian morality and the system of government established in New Granada, and would be appropriate for use as a text. In the meantime the strict observance of article 229 of the plan of studies, so firmly ordered by the resolution of October, 1836, should be continued. This order, in the opinion of the Dirección, had reduced the evils which might otherwise have been expected from the study of Bentham's works.<sup>1</sup>

The body had adopted none of the university reports in its entirety, but considered the opinions expressed by the junta of the Central University to be in agreement with its own up to a certain point. The Dirección believed, however, that it would be impractical to order each professor to form his own course of lessons. His lectures might contain errors which would be all the

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<sup>1</sup>A. N., Instrucción pública, CXII, 487, 499-500. The report is signed by José Manuel Restrepo.

more dangerous because they would not be exposed to public inspection through publication, and, in any case, the reform in the endowment of chairs and the remuneration of catedráticos which would be required exceeded the constitutional powers of the Executive.

During the final weeks of October, 1837, the first issues of La Bandera Nacional, a weekly newspaper organized by Santander, Florentino González, and Lorenzo María Lleras, were published in Bogotá. The second issue carried lengthy notices of the religious reforms and other enactments of the Spanish cortes of that year;<sup>1</sup> the space given these affairs, however, was not greater than that allowed in the official press, which had carried the text of the Spanish Constitution of 1837 on October 15, and printed the law ordering the dissolution of convents and monasteries during the next month.<sup>2</sup> The Bandera expressed its disapproval of the leniency shown the presumed psychotic Doctor Botero in the issue of October 29, punctuating its report of the final absolution which had been pronounced in his case with six exclamation points.<sup>3</sup>

In December the paper accused the administration supporters of making use of the sophistry which Bentham had identified as "To attack us is to attack government [itself]," and quoted from the appropriate chapter of his Tratado de los sofismas políticos. The editors admitted that the authority they were citing would be suspect to some readers, but affirmed at the same time that "some of our numerous subscribers, and youth, which advances to replace the generation of 1810, respect his doctrines, not because he teaches them, but

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<sup>1</sup>Issue of Oct. 29, 1837.

<sup>2</sup>Gaceta de la Nueva Granada, Oct. 15, Nov. 26, 1837.

<sup>3</sup>La Bandera Nacional, Oct. 29, 1837.

because of the solid base in which he substantiates them."<sup>1</sup> On December 24 the Bandera charged that the Márquez government was giving proofs of energetic administration chiefly by interrupting the action which justice exercises over criminals legally condemned to the presidios, and by proscribing the philosophical works used for the instruction of youth.<sup>2</sup> If the editors were referring here to the works of Bentham and Destutt de Tracy the charge was unfounded, because the government had done nothing to alter the plan of studies.

Mr. George Burghall Watts, a representative of the British and Foreign Bible Society, arrived at Cartagena late in 1837 to continue the work, begun in the 1820's, of making Spanish translations of the scriptures available in New Granada at reasonable cost. Archbishop Mosquera, who believed that the real purpose of the mission was to "de-Catholicize" the country,<sup>3</sup> wrote frank but courteous replies to the invitation of this group that he assist them in the promotion of Bible reading, and included a section denouncing the proselytizing of the Biblical Society in his pastoral on canonical studies.<sup>4</sup> The Bandera Nacional supported the Archbishop's position,<sup>5</sup> which is surprising, as Santander and his party had given the Society their unqualified support a decade earlier.

The interesting book by George Borrow, a confrère of Mr. Watts in the Bible Society, who went to Spain in 1837 "in the humble hope of being able to

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<sup>1</sup>Ibid., Dec. 17, 1837.

<sup>2</sup>Ibid., Dec. 24, 1837.

<sup>3</sup>Letter, José Manuel Mosquera to Joaquín Miguel Araujo, Dec. 5, 1837, in José María Arboleda Llorente, Vida del illmo. Señor Manuel José Mosquera, Arzo. de Santa Fe de Bogotá (2 vols.; Bogotá: Editorial A. B. C., 1956), II, 28.

<sup>4</sup>Restrepo Posada, Arquidiócesis, II, 109-111.

<sup>5</sup>Issue of Jan. 21, 1838.

cleanse some of the foul stains of Popery from the minds of its children,"<sup>1</sup> seems to provide support for Mosquera's opinion of the aims of the Society, and supplies a curious indication that Bentham was still admired in the Peninsula. The author wrote of meeting the alcalde of the town of Corcievi6n, who was delighted to know a "countryman of the grand Baintham" who had invented laws for all the world, and said that he hoped to see Bentham's laws adopted soon in Spain. The devout Borrow was probably embarrassed, and recorded the conversation in this way:

Myself--Yes, a very remarkable man in his way.

Alcalde--In his way! in all ways. The most universal genius which the world ever produced;--a Solon, a Plato, and a Lope de Vega.

Myself--I have never read his writings.

Alcalde--How surprising! I see, indeed, that you know nothing of his writings, though an Englishman. Now, here am I, a simple alcalde of Galicia, yet I possess all the writings of Baintham on that shelf, and I study them day and night. I think I see a book in your hand.

Myself--The New Testament.

Alcalde--What book is that?

Myself--A portion of the sacred writings, the Bible . . .

Alcalde--Ha! Ha! How very singular that the countryman of the grand Baintham should set any store by that old monkish book.<sup>2</sup>

When Congress met in March, 1838, the supporters of the government enjoyed large majorities in both houses. Santander, as president of the commission of public instruction in the c6mara de representantes and then as

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<sup>1</sup>George Borrow, The Bible in Spain: Or, the Journeys, Adventures, and Imprisonments of an Englishman in an Attempt to Circulate the Scriptures in the Peninsula (3 vols., 3d ed.; London: John Murray, 1843), I, 148.

<sup>2</sup>Ibid., II, 275-76. A number of Bentham scholars have cited this anecdote.

president of the chamber during the last part of the session, urged favorable action on the code of public instruction which had been submitted to the Congress in 1834.<sup>1</sup> It was at last approved by both houses during the session of this year and sent to the Executive, but as events were played out, it was never to receive final sanction.

During May, before the congressional session ended, the leaders of the progresistas decided to unite in support of Vicente Azuero for the vice presidency in the July election; Santander headed the electioneering in his behalf. A new organization, the Catholic Society, took part in the political agitation, opposing both the santanderistas and the supporters of Márquez, who, the Society charged, had shown their hatred of religion by upholding the anti-clerical laws. The new group did not hesitate to attack Archbishop Mosquera as well because he had cooperated with the government.

During the excitement of these times Santander published a long letter in the Bandera, answering a publication of Dr. Vicente Bernal which evidently had criticized him as an enemy of the church. Written less than two years before his death, the letter reveals no turning back on the question of educational reforms, and this would certainly include the utilitarian studies which he had introduced. He wrote that he dared to say that the evils which Dr. Bernal accused him of bringing upon religion, the church, and the Republic were

really goods, because they have tended to dispel the chaos bequeathed to us by the Spanish colonial government, and to tear off the blindfold, not of the faith . . . but the blindfold which our former masters

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<sup>1</sup>La Bandera Nacional, April 15, 1838; Gaceta de la Nueva Granada, May 13, 1838. See also Santander's communications to the President of the Senate, in Cartas y mensajes, X, 128-29, 140.



bound to us by force, obliging us to be ignorant of that which it was most important for us to know.

He quoted from a Spanish librito on the evil effects of the education offered in the traditional Spanish colegios, and wrote in another part of the letter:

If because of the small part I have had in driving the Catholic Spaniards from this country, together with the inquisition and its torments, their system of education, their privileges, errors, and prejudices, I am responsible for the ills of the Republic, I regret that I could not have caused more ills of this kind.<sup>1</sup>

The results of the July elections showed clearly that the voters favored neither the santanderistas nor the Sociedad católica, as the electors supported by the party in power generally won by large majorities. The disappointed progressives could only renew the "virulent exaltation" of the attack upon their rivals.<sup>2</sup>

In August the Bandera Nacional reviewed the certámenes just presented in the schools, in pursuit of its announced policy of fighting reaction by every possible means. A presentation on "tolerance" at El Rosario was commended for its evident freedom from the influence of the Catholic Society, and the editor observed: "These are some of the evils which Santander has caused the country: . . . to procure that youth should be educated in important doctrines, and that this knowledge should become general in all the vast extension of the republic."<sup>3</sup>

A study of the Márquez administration in the same issue of the paper recalled that it would have seemed ridiculous to predict, in 1837, that New Granada was about to suffer a regression in ideas and in the science of

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<sup>1</sup>La Bandera Nacional, July 8, 1838.

<sup>2</sup>Restrepo, Nueva Granada, I, 140.

<sup>3</sup>Issue of Aug. 19, 1838.

representative government. Then it had seemed that the influence of the regular and secular clergy was a nullity, and that nothing could threaten the dominion of the political principles being taught in the colegios. Márquez's own background and experience, including his opportunities for observing the conduct of General Santander in slaying religious intolerance, and in diffusing among youth sound principles which would act as a barrier against the pretensions of the clergy, promised a continuance of this happy state. But Márquez decided to flatter the fanatics, the aristocrats, and the enemies of Santander, and in this way to become their candidate. One of the means he used, the paper charged, was to attack the cardinal principles of the works of Bentham and Tracy at the public certámenes.<sup>1</sup>

These charges were answered in El Argos, whose editors replied that it was well known that many fathers of families and other respectable persons had renewed the earlier efforts to obtain the suppression of these authors "without any result whatsoever."<sup>2</sup> But during Santander's administration, the Bandera countered in September, fanaticism had never dared so much as to raise its head to organize the shameful anachronism of Catholic societies, neither because the plan of studies had designated D'Tracy, Bentham, Constant, Lackis, Van Espen, Cavalario, and others as elemental authors, nor because the schools presented certámenes to conform with their doctrines.<sup>3</sup>

Bentham's books had been advertised for sale during 1838, in an aviso in the Bandera Nacional which indicates that the Treatises on Legislation was not the only Bentham title available in Bogotá. Seven works, all in Spanish

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<sup>1</sup>Ibid.

<sup>2</sup>El Argos (Bogotá), Aug. 26, 1838.

<sup>3</sup>La Bandera Nacional, Sept. 16, 1838.

translation, were listed as follows: Tratados de legislación--8 tomos, Organización judicial--3 tomos, Pruebas judiciales--4 tomos, Teoría de las penas--4 tomos, Sofismas--1 tomo, Táctica de las asambleas legislativas--1 tomo, Defensa de la usura--1 tomo.<sup>1</sup>

One of Santander's occupations during the year had been the composition of a military code, a responsibility which the Márquez government had asked him to accept in 1837. In August, 1838, he forwarded the first part of his proyecto to the Secretary of War, and described the sources he had used. These show Santander's interest in North American institutions, and also a continued reliance on Spanish models, for he told the Secretary that he had "worked on the base of the Spanish ordinance of 1768, the ordinance of the United States of America, our own military laws now in force, and that which experience has taught me."<sup>2</sup> If he made any use of the "military code" which Bentham had given him during their personal meeting in 1830,<sup>3</sup> which was undoubtedly the chapter of the Constitutional Code on the "defensive force," he did not mention it.

Some time during the year Santander terminated his association with the Bandera Nacional because of other occupations and poor health, and during the last months of the year he often sought rest in Tena, La Mesa, and other locations outside the capital.<sup>4</sup>

The paper ceased publication in March, 1839, but another progresista

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<sup>1</sup>Ibid., June 24, 1838.

<sup>2</sup>Letter, Santander to the Secretary of War and Navy, Aug. 28, 1838, Cartas y mensajes, X, 159.

<sup>3</sup>See above, p. 236.

<sup>4</sup>Cortázar, "Santander, de 1837 a 1840," in Cartas y mensajes, X, 6.

organ took its place. The Bandera had not been the only paper which contained an occasional notice of Bentham. An editorial in El Amigo del Pueblo in January, 1839, argued that the progresistas did not deserve that name, but maintained that "the only Bentham" really had been a progressive, because he had exerted every effort to advance the cause of civilization, and had labored to give a solid base to legislation.<sup>1</sup> The Gaceta de la Nueva Granada carried an advertisement of the works of Bentham and Destutt de Tracy, for sale in the store of Ulpiano González, on February 24, and the notice was run again on March 17, April 7, and April 14. The titles and numbers of volumes of Bentham's works are the same as those of the books advertised in the Bandera in June, 1838, except that the title Sofismas políticos has replaced the earlier listing Sofismas.<sup>2</sup> Bentham was also mentioned occasionally in the Diario of Debates of the Congress, even outside the major debates on the use of his works in public education. His Tratados de los sofismas políticos was cited in the Senate on March 16, and a general reference to his teachings was heard on March 18.<sup>3</sup>

In April, 1839, Congress began to discuss the possibility of suppressing the conventos menores of Pasto, which had formerly been exempted from the general law. The decree was given final sanction on June 5.<sup>4</sup> During these same months various santanderistas, displeased with the tone of sermons delivered in the capital, proposed that the government assume the right of granting licenses for preaching and hearing confessions, traditionally

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<sup>1</sup>El Amigo del Pueblo (Bogotá), Jan. 6, 1839.

<sup>2</sup>Issue of Feb. 24, 1839.

<sup>3</sup>Diario de Debates, Senado, 1839, pp. 7, 11.

<sup>4</sup>Arboleda, Historia, I, 332-33.

exercised by the bishops. It appears that Azuero was one of the authors of the proyecto, which was voted down by a large majority.<sup>1</sup> When news of the decree on convents and rumors of the proposed usurpation of ecclesiastical faculties would reach Pasto, they were to precipitate an armed revolt, but meanwhile still another congressional battle was fought over the Bentham issue.

On April 13 more than 160 bogotanos signed a petition asking the Senate to banish Bentham's Tratados, and the works of Wattel and Destutt de Tracy, from the official plan of studies.<sup>2</sup> On the next day Archbishop Mosquera and over one hundred other signers sent a memorial to all the members of Congress protesting against public instruction in the doctrines of Bentham and Destutt de Tracy, which were described as founded in materialism and destructive of belief in the principles of divine revelation.<sup>3</sup>

The Senate's commission on police and public instruction proposed that these two documents be sent to the Lower House, as the code of public instruction, which had been returned by the Executive with his objections, was in the possession of that chamber.<sup>4</sup> This proposal was considered by the Senate on April 18, and the debate was published in the Diario.

During the discussion Senator Mantilla warned that the Congress was under attack by an army composed of three strong divisions: first, the vanguard of preachers; next, the public papers; and, finally, two thousand

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<sup>1</sup>Ibid.

<sup>2</sup>A. C., Cámara de Representantes, 1839, T. IX, Vol. 119, 219.

<sup>3</sup>Ibid., sheets 212-218; also printed as Manifestación dirigida a los H. H. Senadores y Representantes, a fin de que se supriman los textos de Bentham y Destutt de Tracy, Bogotá, April 14, 1839, Biblioteca Nacional (Bogotá) Fondo Pineda, #470.

<sup>4</sup>A. C., Cámara de Representantes, 1839, T. IX, Vol. 211, 119.

men--the petitioners, apparently--led by the Archbishop. They were trying to turn back the centuries by prohibiting authors who were not Catholics, yet they would approve of Saint Thomas who favored tyrannicide, an opinion which Bentham himself had never professed. Senator Mota objected to the analogy of the three divisions. Did not the citizens have a right to represent their ideas? Why did the national sovereignty not extend to this matter? If the Archbishop saw evil spreading in his diocese, what could be more correct than to represent his opinion to the sovereign body of the nation in the respectful terms he had employed? Señor Mantilla replied that the Senate would have to decide whether the nation should exist shut off from the world in the manner of Dr. Francia's Paraguay, whether a republic existed or did not exist, and whether the granadinos could or could not hope to inhabit a free country in which fanaticism would not destroy that which had cost them their blood to establish. When the vote was taken, the commission's proposal was supported, and the petitions were forwarded to the Senate.<sup>1</sup>

At this time José Manuel Groot founded Las Tardes de Tunjuelo as a vehicle for his thought on the Bentham issue. Written in popular style, the paper came out in thirteen issues between April 28 and May 5, 1839. Groot complained that neither the mono de la pila nor the Congress would listen to the people--their representations had been passed to a commission, probably the same commission to which all the others had been passed since 1832, and probably with just as much effect.<sup>2</sup>

The House comisión de la mesa voided Groot's prophecy by presenting, on May 20, a bill designed to meet the specific problem described by the

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<sup>1</sup>Diario de Debates, Senado, 1839, p. 53.

<sup>2</sup>Las Tardes de Tunjuelo (Bogotá). May 19, 1839.

memorialists, because the general education code would not be sanctioned that year.<sup>1</sup> The proposed law would have allowed each professor to select his own texts, but would have left some supervision of course content in the hands of the direcciones de estudios. Nevertheless Groot continued to criticize the cámara, and wrote that the disciples of Bentham formed almost a majority of the chamber.<sup>2</sup> The proyecto was listed as still pending in the House when the session closed.<sup>3</sup>

Groot made an interesting allegation in the issue of July 19, writing that among the deeds for which the Congress of 1839 would be remembered was the ley de unitarios, which subjected the lives, honor, and property of the citizens to the discretion of a single judge. He claimed that in approving this arrangement, the Congress had had no other object but to follow Bentham.<sup>4</sup>

The law in question had been drawn up by the Council of State in 1838 under the presidency of Diego Fernando Gómez, who signed the proyecto, passed by the Congress of 1839, and approved by the Executive on June 26. It introduced a number of reforms in the area of justice. The unitary feature cited by Groot affected the judges of each of the nation's four district tribunals, superior courts which ranked just below the supreme court in dignity. They were now to hear individually, by a predetermined system of dividing the cases among themselves, all matters in litigation in the second instance which previous legislation had assigned to them to hear as a body of appeal from the decisions of the cantonal judges and the jueces de hacienda. All other

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<sup>1</sup> A. C., Cámara de Representantes, 1839, T. IX, Vol. 119, 209.

<sup>2</sup> Tardes de Tunjuelo, June 2, 1839.

<sup>3</sup> Gaceta de la Nueva Granada, Sept. 8, 1839.

<sup>4</sup> Tardes de Tunjuelo, July 19, 1839.

litigious matters which previously existing laws had assigned to the three judges of this tribunal in sala, without designation of instance, were also to be heard individually in the same way.<sup>1</sup>

These provisions were not absolutely without precedent, as the Colombian organic law of the judicial power, approved in 1825, had stipulated that the judges of the superior courts of justice, analogous to the district courts of New Granada, would be competent to hear individually, in the second instance, "all those matters which the judges of the first instance remit on appeal to the superior courts, in which case the third instance corresponds to the tribunal composed of three individuals, ministers, or conjueces."<sup>2</sup> Yet they were sufficiently innovative for Restrepo to give them special notice when he mentioned the reform law of 1839:

It created unitary tribunals, or tribunals of one single judge, to judge and sentence in the second instance, an arrangement which to many seemed detrimental to the good administration of justice . . . . Almost every year some new experiment was tried in the different systems of dispensing justice to the citizens, but real improvement was very slow, in spite of the universal opinion that without the prompt and impartial administration of justice there could be no liberty and no guarantees.<sup>3</sup>

The idea of the single judge was Bentham's fundamental doctrine regarding the organization of justice,<sup>4</sup> and it had been fully explained in his De la organización judicial y de la codificación, advertised for sale in the Bogotá press in 1838 and 1839, but probably known a good deal earlier, since it had

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<sup>1</sup> Proyecto de Lei sobre la administración de Justicia que el Consejo de Estado presenta al Congreso en su sesión de 1838 (Bogotá: Imprenta de Lleras y Comp., 1838), Biblioteca Nacional (Bogotá), Fondo Pineda, #205; Law of June 26, 1839, Codificación nacional, VIII, 412.

<sup>2</sup> Law of May 11, 1825, Codificación nacional, II, 127.

<sup>3</sup> Nueva Granada, I, 145.

<sup>4</sup> Halévy, Philosophic Radicalism, p. 397.



been available in French and Spanish since 1828. The doctrine was not widely held when Bentham had proposed it in the 1790's; Dumont copied the following quotation from M. Berenger's De la justice criminelle en France in a footnote to Bentham's work on judicial organization: "All the publicists have considered it a primary rule in legislation that tribunals should be composed of many judges, as this collectivity increases knowledge, contributes effectively to dissipate prejudices, and is the best guarantee of the excellence of the judgment." But Dumont added, "Today we observe that all the French publicists are not of the same opinion, it being formally refuted by M. Comte in the learned and well-considered introduction which serves as a complement to his translation of Philips on the jury."<sup>1</sup>

It should be added that Blanco White had also endorsed the idea of the single judge in the pages of El Español in 1812, arguing that: "When things are done by many persons together, no one is sufficiently responsible by himself, so that public opinion may have over them the salutary effect that it should . . . ,"<sup>2</sup> which was, in essence, the most important of the arguments Bentham had used in favor of a single-seated judge since 1790 when he printed his Draught of a New Plan for the Organization of the Judicial Establishment in France.<sup>3</sup> Blanco, however, presented the long experience of England as proof of the success of the single judge, whereas Bentham, acidly critical of the English judicial system, did not use this example. He considered the members of the English jury so many co-judges to whom blame could be shifted, and

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<sup>1</sup>Organización judicial, I, 81, n. 1.

<sup>2</sup>Issue of Nov. 30, 1812, p. 481.

<sup>3</sup>See "Of Numbers in Judicature--Single Judges Preferable to Many," in this tract, in Works of Bentham, IV, 325.

argued for a solitary judge, deciding all cases without the intervention of jurors, as Dumont explained clearly in the work of 1828.<sup>1</sup>

The laws of Colombia and New Granada had generally provided for an increase in the number of judges in proportion to the importance of the jurisdiction, a tendency favored by Montesquieu and followed also by the French Constituent Assembly<sup>2</sup> and the Spanish cortes of 1812.<sup>3</sup> Thus it is entirely possible that the study of Bentham's works had encouraged the experiment, in 1839, with a greater reliance on the single judge in the courts of appeal. The reform was probably recommended also by the practical necessity of expediting the business of the higher courts, especially since the same law created new circuit courts in the provinces to hear cases in the first instance.<sup>4</sup>

In September Groot complained of the profusion of new laws, blaming "our Benthamist legislators" who passed laws because "they are smitten with certain books, which vary with the fashions," and for other unsubstantial reasons.<sup>5</sup>

The seriousness of the revolt in Pasto began to be known in Bogotá beginning in July; Santander and his followers, and all important groups except the Catholic Society, denounced the uprising. Archbishop Mosquera issued a pastoral letter urging obedience to the civil power: "We would have thought it

<sup>1</sup>Organización judicial, II, 167.

<sup>2</sup>Halévy, Philosophic Radicalism, p. 398.

<sup>3</sup>Decree of Oct. 9, 1812, Decretos de las Cortes, III, 112.

<sup>4</sup>This very English, or English-American, reform could not have been inspired by Bentham, who consistently opposed the institution and favored local judicatures. The law of June 29, 1839, also suppressed the office of juez de paz, another institution with a British sound, established by the law of May 10, 1834. See Codificación nacional, V, 202-203.

<sup>5</sup>Tardes de Tunjuelo, Sept. 1, 1839.

nothing strange if [the rebels] had invoked the perverse utilitarian philosophy of Bentham," he wrote, but he considered their attempts to justify in the name of religion that which religion reproves a sacrilegious mockery.<sup>1</sup> Yet as the situation became more grave and other disorders occurred, the santanderistas' criticisms of the government's attempts at pacification grew more sharp, and implied that the Executive's harshness and intransigence was bringing on a war which would be disastrous for the Republic.<sup>2</sup> This was the situation in which Juan José Flores wrote to Santander in November, 1839: "I should not hide from you that from New Granada letters have been received assuring us that the party in opposition to Señor Márquez has made common cause with the fanatics."<sup>3</sup>

During 1839 two new works, both by American authors, had been adopted for the study of law. On May 18 the Direction of Studies ordered that Andrés Bello's Principios de derecho de gentes should replace Wattel's treatises, in use since 1826,<sup>4</sup> and in September the brief Tratado de ciencia constitucional, by the law professor Dr. Cerbeleon Pinzon, printed in Bogotá on paper manufactured in the city, was designated for the use of the class in constitutional law, which would also continue to consult the work of Benjamin Constant.<sup>5</sup> A six-volume collection of works by Lackis, Calvario, and Fleury, the Curso de Derecho Canónico para los alumnos del Colegio Mayor de Nuestra Señora del

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<sup>1</sup>"Pastoral sobre la sumisión y obediencia a la potestad civil," Feb. 23 in Documentos para la biografía e historia del Ilustrísimo Señor D. Manuel José Mosquera, Arzobispo de Santafé de Bogotá (3 vols.; Paris: Tipografía de Adriano Le Clere, 1858), I, 78.

<sup>2</sup>Arboleda, Historia, I, 344.

<sup>3</sup>Letter of Nov. 28, 1839, Correspondencia, VI, 37.

<sup>4</sup>Gaceta de la Nueva Granada, June 2, 1839.

<sup>5</sup>Ibid., Sept. 22, 1839.

Rosario, compiled and translated by Doctors Estanislao Vergara and José Duque Gómez, had been published in 1837 and was probably in use for the study of canon law. It carried Archbishop Mosquera's endorsement, which must indicate the wide acceptance of the theories of the European regalists in New Granada.<sup>1</sup> Cerbeleon Pinzon's treatise had been prepared specifically as a textbook in the principles of constitutional science, "placed in relation with the social and political state of New Granada."<sup>2</sup>

Santander was a congressman again in 1840, and still recognized as the figure whose leadership gave some unity to the various factions now in opposition.<sup>3</sup> President Márquez's message to Congress treated the matter of education at some length, and emphasized the care which the legislators should take to avoid propagating "dangerous doctrines which can lead to atheism or immorality among incautious and inexperienced youth";<sup>4</sup> his remarks presaged the action which this legislature would take.

On April 6 the House of Representatives heard the report prepared by the commission on public education after examining the presidential objections to the projected code of public instruction. The commission, headed by Rafael José Mosquera, informed the House that in order to bring the code into harmony "with the ideas now current," it would be necessary to abandon the project of 1838 entirely and to write a completely new draft. Until this could be done some immediate short-term measures were needed to remedy the most pressing

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<sup>1</sup>Gaceta de la Nueva Granada, Nov. 13, 1836; Restrepo Posada, Arquidiócesis, II, 103-105.

<sup>2</sup>El Argos, April 21, 1839.

<sup>3</sup>Arboleda, Historia, I, 365.

<sup>4</sup>Gaceta de la Nueva Granada, March 8, 1840.

evils. Mosquera mentioned specifically the designation of texts, which had the defect, inherent in all such attempts, of depriving the students of new advances in the sciences made from day to day. In addition to this, the books were really not elemental works suitable for instruction. And public opinion had been aroused against the use of texts which were opposed to the morality and dogma of the gospel, "for it is also certain that in many ways they are openly materialistic." Since these maxims, taught in the public schools, were contrary to the religion which the taxpayers professed, "it would be a horrible tyranny to oblige them to contribute to a purpose which their consciences condemn." The commission, therefore, presented a bill which was designed to correct this situation.<sup>1</sup>

The proyecto was similar to the bill which had been presented in the House the previous year.<sup>2</sup> It would have required professors of philosophy, theology, and jurisprudence in publicly supported institutions to submit a "program of doctrines" to the local subdirección of studies one month in advance of the beginning of the school term. The pase could be denied only if the prospectus included doctrines contrary to the dogma and morality of the gospel or to the loyalty which the citizens owed to the state, as defined in article 7 of the Constitution. If a professor believed that his course had been judged unfairly he could appeal to the Dirección general for the necessary approval. Programs in theology would require in addition the approbation of the diocesan authorities. Propositions to be defended in the public certámenes would no longer require official sanction.

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<sup>1</sup>José Rafael Mosquera and Francisco Javier Zaldua, Informe de la comisión de Instrucción Pública a la Cámara de Representantes, Bogotá, April 6, 1840, Biblioteca Nacional (Bogotá), Fondo Pineda, #470. The informe includes the commission's proyecto de ley.

<sup>2</sup>See above, pp. 317-18.

The second debate on this proyecto de ley, which took place on April 14, was reported in the Diario de Debates. Santander was absent from the House, gravely ill from an attack of a chronic ailment which he had suffered two weeks earlier. Ezequiel Rojas objected to prior censorship of course syllabi, which might be an obstacle to progress. Would not each catedrático be a more competent judge of his materials than the subdirector of studies? Florentino González remarked that the project only moved the professor's duty of submitting his propositions from the end of the year to the beginning, and that either arrangement was harmful to education. Defending the bill, José Rafael Mosquera claimed that it was more liberal than the existing plan of studies. Rojas declared that the propositions he had submitted had never been censured, and that he had never taught materialism. González testified further that he had no knowledge that doctrines tending toward materialism had ever been taught in Bogotá. In his own classes he had considered man as he really is, examining the motives which move his will, and the means the legislator might utilize so that his behavior would be useful to society.

Señor Rafael Alvarez Lozano of Bogotá protested that the speakers were assuming that the bill would restrict public education, when actually it would free it from the barbarous disposition of the plan of 1826, by virtue of which the sciences were still being taught from the same texts after fourteen years had passed. In view of the clearly expressed wishes of the people, he planned to introduce a modification which would designate penalties which a professor would suffer if he were convicted of teaching doctrines contrary to the gospel. During further discussion Joaquín Acosta predicted that if it were true, as one deputy had said, that the ignorant masses might be moved in favor of their prejudices, it was not less true that the class which had been formed since the revolution would not allow them to return the nation to the middle ages. "On

one side numbers, on the other the influence of the luces, of wealth, and of reason." Antonio Herrán of Bogotá said that he could not understand why liberty would be endangered if the Congress acted on the petitions which asked that dangerous and immoral doctrines not be taught to youth. "It has been said that between materialism and ultramontaniam there is a middle way to follow." He could not believe that if the commission's plan were passed New Granada would become a colony of the Pope.

Vicente Azuero rose at this time to speak in favor of an amendment introduced by Pastor Ospina to the effect that official control should be limited to the specific prohibition of certain doctrines. Liberty of teaching had been guaranteed by article 195 of the Constitution, he said, and the dispositions imposing certain authors should have been considered null since the day the Constitution took effect.<sup>1</sup> The proposal of the commission was not less unconstitutional. Azuero reminded the House that some of the most sound doctrines, such as the Copernican theory, had been considered irreligious by the ignorance of those who had judged them. Teachings opposed to the gospel should not be allowed, but the bishops should attend to this, according to the law of 1821 concerning cases of faith, using the divine faculties which they have in these matters. González added that the evil of the plan in force lay not in the works of Bentham and Tracy but in the fact that the government had invested them with the prestige of its authority and had excluded other works. Bentham, if questions of ideology could be omitted, was an admirable work.

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<sup>1</sup>This article, as translated by William Marion Gibson, reads: "No kind of work, trade, or commerce which is not contrary to good morals shall be forbidden to the Granadines, and all shall be able to employ themselves as they will, except in such occupations as may be necessary for the support of the state; consequently, they shall not be able to establish any body or corporation of trade, art, or business which may be an obstacle to the freedom of invention, instruction, or industry." See Gibson, trans., The Constitutions of Colombia (Durham, N. C.: Duke University Press, 1958), p. 147.

Discussion and education should be free in every sense, because out of such a situation the truth was likely to emerge.

A number of speakers defended the bill's provisions regarding the inspection of subject matter. Señor Rafael Alvarez Lozano said that he recalled one occasion when neither the disapproval of the rector nor the intervention of President Santander had proved sufficient to impede a certain professor at El Rosario from presenting scandalous propositions in public certámenes. He proposed that a professor who taught doctrines which violated the norms mentioned in the law should lose his position and be subjected to the penalties mentioned in article 53<sup>4</sup> of the penal code.

Rojas responded that this would be a mortal blow to education. He said that he taught political economy and the means of acquiring wealth, but an ignorant judge might consider this to be opposed to the gospel dictum that a man should renounce wealth and take up his cross. Azuero insisted that the Inquisition had been abolished, and that the bishops should apply spiritual penalties for this kind of infraction--a cantonal judge should not judge cases of faith. Representative Mosquera, however, believed that civil sanctions would be appropriate because spiritual penalties would be ineffective in the case. The law was not concerned with what a man believed but only with what he taught in a public place on a public salary. The judgment of the offense could be confided to a jury, similar to the juries which judged press offenses. Azuero declared that if the amendment passed he would support judgment by a jury in preference to a cantonal judge or bishop. Alvarez Lozano's amendment, however, was voted down, and the second debate on the proyecto was ended.<sup>1</sup>

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<sup>1</sup>Diario de las Sesiones, Cámara de Representantes, 1840, session of April 24.



The Diario de las Sesiones for this year shows that in 1840 Bentham was still cited by progressives and traditionalists alike--in favor of prohibiting cockfights, in one case<sup>1</sup>--and to support a proposal to remove the minimum age requirements for entering religious life in another: "Bentham is of the opinion that the Nation should not attempt to govern the citizens' private affairs . . . because a madman knows more in his own house than a wise man in the house of another."<sup>2</sup>

The law reforming the plan of studies was signed by President Márquez on May 14. It still contained many of the elements proposed by the House commission, but there had been important modifications. Professors could select their own books, but only those who taught theology would be required to submit the course programs in advance--to the Ordinary of the diocese for his approval. Teachers in public institutions were forbidden to teach doctrines opposed to the duties of the citizen toward the state, or to the morals or doctrines of the gospel, and were forbidden to defend such doctrines in public presentations. Those who violated these rules would be censured by the governing junta of the university or its equivalent in other schools, and would be deprived of their teaching office for a second offense; either action, however, would require a two-thirds vote of the junta or council. A number of miscellaneous reforms had been added to the law, including still another reorganization of the course of studies in jurisprudence. Principles of universal legislation and civil and penal legislation was retained, to be studied during the fifth-year course.<sup>3</sup>

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<sup>1</sup>Ibid., session of April 17.

<sup>2</sup>Ibid., session of April 25.

<sup>3</sup>Law of May 14, 1840, Codificación nacional, VIII, 566-69.

Santander had died eight days before the law was sanctioned, "as a Christian, in the arms of the Señor Archbishop Mosquera." Restrepo recorded that all persons of notoriety had visited him during his last illness, and that he had been reconciled with all his political enemies, from President Márquez down to the least important of them.<sup>1</sup>

According to the inventory of Santander's possessions drawn up by three executors on May 21, his library at the time of his death contained the following works of Bentham, as well as the eight bound volumes of El Español and other interesting titles:

Codificación judicial [ <u>sic</u> ] de Bentham	--1 tomo, inglés
Un fragmento sobre el gobierno por Bentham	--1 tomo, inglés
Código constitucional	--1 tomo, inglés
Cartas al Conde de Toreno por Bentham	--1 tomo, inglés
Codificación de Bentham	--1 tomo, inglés
Asambleas legislativas de Bentham	--2 tomos
Seis tomos de la Legislación civil y penal de Bentham	
Panóptico de Bentham	--2 tomos
Plan de reverencia parlamentaria [ <u>sic</u> ] por Bentham	--2 tomos
Codificación de Bentham	--1 tomo <sup>2</sup>

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<sup>1</sup>Nueva Granada, I, 167-68.

<sup>2</sup>Quoted in Hernández de Alba and Martínez Briceño, "Santander íntimo."

## CONCLUSION

The records of Colombia and New Granada during the lifetime of Santander suggest certain conclusions, and reasoned conjectures, concerning the vogue of Benthamism. Bentham's writings originally reached Colombia through the congenial channels of the Spanish and expatriate-Spanish liberalism. Arriving during the last years of the war of independence, they were received with interest by the hard-pressed republican leaders, continually menaced by the dangers of anarchy and annihilation, who felt constrained to place national survival above liberty.

During the years which followed, utilitarianism proved to be a valuable formula, highly regarded by cultivated world opinion, for the small but enlightened group which sought to create a modern nation in Colombia. With great masses of the population educationally disadvantaged, and understanding the new national goals imperfectly, the republican leaders feared the implications of the sovereignty of the people. Bentham's early treatises, written during a period when he was indifferent to constitutional questions, but not opposed to enlightened despotism, were safe on this point, and suitably firm in condemning any anarchical tendency. During these same years conservative leaders, including spokesmen of the propertied classes and even the religious orders, learned to cite the defenses of security and property which were a part of Bentham's Traité de législation.

In 1825 Santander's government ordered the study of this work as a part of the course in law, probably, as the administration once explained, because

it would "cause the bases of the legislation of a free people to be sought in reason and nature, the only sources of that which is just and sure, and not in the spirit of emulation and routine."<sup>1</sup> This motive can be related, as Jaramillo Uribe wrote, to the tendency of the modern spirit to seek the bases of the social sciences in empirical reality and through contact with the concrete.<sup>2</sup>

Surely the Colombian leaders would have been glad to avoid the limitations which any "transcendent law"<sup>3</sup> would impose upon them. Their writings leave no doubt about their feeling that the idea of natural rights, which men were ready to claim on any occasion, could easily get out of hand. Santander declared that once a people has formed its government, they may exercise no other rights than those which the law confers.<sup>4</sup> But the literature of the period seems to show that the santanderistas were not overly concerned, or at least were not very vocal, about denying the closely related concept of the natural law. If Joaquín Mosquera's letter of 1836 was accurate, Santander personally retained a preference for this idea,<sup>5</sup> and there is evidence that this was not uncommon in his group. The confusion on the point in the Colombian education law and plan of studies is obvious. Perhaps it arose because the Colombians had adapted Spanish legislation which did not assign the study of Bentham, and could prescribe the study of natural law without

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<sup>1</sup>See above, p. 268.

<sup>2</sup>Pensamiento colombiano, p. 150.

<sup>3</sup>Ibid., p. 151.

<sup>4</sup>See above, p. 187.

<sup>5</sup>See above, p. 285.

embarrassment. Both studies were deliberately retained, nevertheless, by subsequent official directives.<sup>1</sup>

In contrast, the documents testify vividly to the liberals' continual preoccupation with freeing themselves and their fellow countrymen from the influence which the Church had exercised for so many years. They sustained open warfare with fanaticism, and on repeated occasions seemed ready to equate this evil with ultramontaniam and traditional interpretations of church law, in a manner which they probably learned from the Spanish reformers. It seems likely that Bentham's irreverent utilitarian approach to the claims of the churches, and even his materialistic treatment of every question whatsoever did not actually represent, as Armando Rojas seemed to suggest,<sup>2</sup> a facet of his thought which the liberals were willing to overlook although it did not precisely attract them. These features very likely gave Benthamism an added value in their eyes, but they also brought on protest and resistance, and undoubtedly embittered the party divisions which afflicted the patriots.

No doubt the government's efforts to free Colombian society from outdated traditional restraints worked in the interest of the group which Jaramillo described as the "nascent bourgeoisie,"<sup>3</sup> but surviving documents show that two distinguished leaders of this group, at least, were either unaware of this, or rejected Benthamism anyway. Don Rufino Cuervo, who is said to have represented "the bourgeois mentality in its most pure form,"<sup>4</sup> wrote a long report recommending that the Bentham treatises be dropped from the list of

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<sup>1</sup>See above, pp. 262-63, 268.

<sup>2</sup>See above, p. 7.

<sup>3</sup>Jaramillo Uribe, Pensamiento colombiano, p. 153.

<sup>4</sup>Ibid., n. 4.

required texts,<sup>1</sup> and the antioqueño Nicolás Leiva, remembered as one of Bogotá's pioneer industrialists, seems to have signed an anti-Bentham petition.<sup>2</sup>

Santander and the administration must have taken whatever action they thought necessary to govern well; if justification were needed they could find it in the principle of utility, but they could also cite other principles. Santander's response to the public protest against the teaching of Bentham could easily be called utilitarian. He was willing to sacrifice the popular will to the public utility, as he and his enlightened group understood it. More than once he offered to replace the Bentham text with some equally suitable work, if it could be written or imported, and perhaps he was sincere. But his intransigence in the face of protest, and his intemperate response to opposition, notable in the case of Joaquín Mosquera, support the older writers' assertion that the Bentham question was not only a philosophic and religious question, but an emotional party issue as well.

The record of Santander's career appears to be reasonably consistent with his own view of liberalism, but this view was definitely conditioned by the outlook of his time and situation, and probably influenced by the Spanish liberals and their predecessors more than by any other group. It would contain some surprises for an outsider who was unacquainted with its special components. Santander could assert, for example, that the government would reject the popular petitions and continue to enforce the compulsory study of Bentham in the interest of providing an education which would conduct the Republic in

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<sup>1</sup>See above, pp. 303-305.

<sup>2</sup>See above, p. 292. There is apparently some confusion regarding the place of Leiva's origin, as Frank Safford has described him as a "Bogotá aristocrat" who was a member of the "elite entrepreneurial leadership" ("Individual enterprise", pp. 125, 123), while Gustavo Arboleda referred to him as an "indefatigable antioqueño" (Historia, I, 137).

harmony with "the liberty which has been proclaimed for thought."<sup>1</sup> Later, vetoing the action of the Congress, he refused to permit college professors to select their own textbooks because this might prejudice "the liberal institutions to the full enjoyment of which we aspire"--and then explained that the professors might teach the infallibility of the pope and the principles of ultramontaniam.<sup>2</sup>

This writer has been unable to prove that any of the important legislation of the period was modeled after Bentham, but there is evidence that a number of granadinos were reasoning in utilitarian formulas--in the executive department, the legislature, and the courts of law--whether they cited Bentham or not. By 1840 many of the young, according to contemporaries, were partisans of the Englishman. His writings certainly added to the pain of the nation's religious controversies, and damaged the popularity of Santander and his party. Yet they had also furnished an ideology which the liberals considered suitable for training up a new generation of leaders to continue the work they had begun--that of founding a modern state.

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<sup>1</sup>See above, p. 267.

<sup>2</sup>See above, pp. 297-98.

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The dissertation submitted by Sister Theodora McKennan, O.P. has been read and approved by members of the Department of History.

The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

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Date

Paul S. Lietz per J.A. Hylkain  
Signature of Adviser