

# Some notes on Jeremy Bentham's involvement in Greek legal affairs in the early years of the formation of the Greek State (1821-1824)

## Introduction

“Regenerative Legislators of Greece,  
You enter upon your career under the most auspicious circumstances. Nothing to match them is to be found in history. Nothing to match them is to be found in present times. Obstacles which in other nations set up a bar to good government, and that bar an insuperable one, have no place in your case. You are not cursed by Kings. You are not cursed with Nobles. Your minds are not under the tyranny of Priests. Your minds are not under the tyranny of Lawyers.”

These enthusiastic words were uttered by none other than Jeremy Bentham in a letter he addressed to the Greek legislators in February 1823.<sup>1</sup> Two years before, in March 1821, the Greek War of Independence had been declared in the region of Peloponnese (also known as the Morea at that time). A new era was dawning for Greece, a state was being formed and its legal and political structure had to be established.<sup>2</sup> It is remarkable how Greek – and foreign jurists – responded to this demand. The Greek legal world at that period was studying all legal models and was discussing all options of how legal order could be established in the fledgeling state. Greeks realized the necessity of studying and adopting foreign legal texts, as well as of dialogue and exchange of ideas with eminent contemporary jurists. One of these jurists was Jeremy Bentham.

Many of Bentham's manuscripts and correspondence relating to Greek affairs have survived, kept today in the Library of University College London, in the General State Archives in Athens, in the Centre for Neohellenic Research at the National Hellenic Research

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<sup>1</sup> BENTHAM J., *Securities against misrule and other constitutional writings for Tripoli and Greece*, (ed. SCHOFIELD PH.) within the series *The collected works of JEREMY BENTHAM*, Oxford 1990, p. 193.

<sup>2</sup> The fact that the legal order was one of the main concerns during the war of independence, is proved by the first Greek constitutional charters drawn up in the years 1821 until 1822; there we find provisions referring to the law that will be applied from then on, as well as to matters of organization of justice, etc. For example, already in one of the first Greek constitutional texts, in the *Legal Charter of the Eastern Continental Greece*, we read that the applicable laws are those of the Christian emperors of everlasting memory. See on this TROIANOS SP., “Auf der Suche nach einem Zivilgesetzbuch. Das Abenteuer des Zivilrechts im Griechenland des 19. Jahrhunderts” in *Festschrift Rudolf Welser zum 65. Geburtstag*, Vienna 2004, pp. 1095-1109. See also idem, “Het koninkrijk Griekenland op zoek naar een burgerlijk wetboek; van de Hexabiblos naar de Basilica” in *Groninger opmerkingen en mededelingen*, 1990, pp. 63-77.

Foundation in Athens and in other libraries and archives. In recent years, important editions of Bentham's writings regarding Greece and of his correspondence during the years 1821-1824 have appeared, offering the possibility of investigating his influence on Greek legal affairs,<sup>3</sup> which is a rather unknown page of Greek legal history.<sup>4</sup> In the following overview, which is based on these recent editions, we shall try to answer the questions: Why was Bentham interested in the case of Greece and what were his ideas regarding the legal future of Greece? How did the Greeks respond to these ideas? With whom was he in contact to promote these ideas?

### 1. Greece in 1823: fertile soil for Bentham's ideas?

To the words of Bentham, quoted at the beginning of this paper, we could answer that Greece did indeed offer a rare – if not unique – example of a country which, after 400 years under foreign rule, had woken up and was in search of a new legal system. During the period of Ottoman rule (the so-called *Turkokratia*) justice was administered either by a Turkish official, the *kadi*, who was obliged to apply the law of the persons involved (*lex patriae*),<sup>5</sup> or by the local Christian authorities, namely the bishop, who was allowed by the Turks to judge cases involving Greeks.<sup>6</sup> In reality the bishop acted as an arbitrator in civil law cases; he tried

<sup>3</sup> See for example in the series *The collected works of JEREMY BENTHAM* the following corresponding works: 1) BENTHAM J., *Securities against misrule and other constitutional writings for Tripoli and Greece*, (ed. SCHOFIELD PH.), Oxford 1990; henceforth abbreviated as BENTHAM, *Securities*. 2) "*Legislator of the World*", *Writings on Codification, Law and Education* (ed. SCHOFIELD PH. / HARRIS. J.), Oxford 1998; for Greek matters see the editorial introduction, pp. xxx-xxxiii and pp. 337-369, which includes part of Bentham's correspondence with Greeks; henceforth referred to as BENTHAM, "*Legislator of the World*". 3) BENTHAM J., *The Correspondence of Jeremy Bentham*, vol. 11, January 1822 to June 1824 (ed. FULLER C.), Oxford 2000; henceforth abbreviated as BENTHAM, *Correspondence*. The *Bentham Project* is working on three new volumes of Bentham's correspondence, vols 12, 13 and 14 (years 1824-1832); vol. 12 will include information on Bentham's involvement with the Greek War of Independence.

<sup>4</sup> See the following works related to this subject: ROSEN F., *Bentham, Byron and Greece, Constitutionalism, Nationalism and Early Liberal Thought*, Oxford 1992 (henceforth abbreviated as ROSEN, *Bentham, Byron and Greece*) and the article by ΚΟΤΣΙΠΗΣ Α., "Προς τον Νομοδιδάσκαλον, Ιερεμίαν Βενθάμην" in *Αρμενόπουλος*, vol. 48, (1994) pp. 1013-1019. See also the older works by LIPSTEIN K., "Bentham, foreign law and foreign lawyers" in *Jeremy Bentham and the Law, A Symposium*, (ed. KEETON G.W. / SCHWARZENBERGER G.), London 1948, pp. 202-221 (about Greece see pp. 211-214), by ZEPOS P. J., "Jeremy Bentham and the Greek Independence" in *Proceedings of the British Academy*, vol. LXII (1976), London 1977, pp. 293-307; by Vallianatos E., "Jeremy Bentham's Constitutional reform proposals to the Greek provisional government, 1823-1825" in *Balkan Studies*, vol. 10 (1969), pp. 325-334; and within the series *The collected works of JEREMY BENTHAM, Constitutional Code*, vol. I, (ed. ROSEN F. / BURNS J.H.), Oxford 1983 (repr. 1984), see about Greece the editorial introduction, pp. xvi-xxxii; henceforth abbreviated as BENTHAM, *Constitutional Code*.

<sup>5</sup> In reality he applied Turkish Ottoman Law, as he did not know the Greek Law.

<sup>6</sup> ZEPOS P. J., *Greek Law, three lectures delivered at Cambridge and Oxford in 1946*, Athens 1949, p. 38. On how justice was dispensed by Greek priests during the period of Ottoman rule see also ΜΟΣΧΟΒΑΚΗΣ Ν. Γ., *Τὸ ἐν Ἑλλάδι Δημόσιον Δίκαιον ἐπὶ Τουρκοκρατίας*, Athens 1882, pp. 56-59.

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to find a solution between the parties so that they could avoid addressing the *kadi*. However, some legal acts, such as of sale, adoption, dowry and others, had to be made in the presence of the *kadi* or had to be ratified by him.<sup>7</sup> During the period of Ottoman rule the highest level of justice was always administered by a Turkish official. Appeals were addressed to the pasha of the area. Most of the Greek population preferred to bring their cases before the bishop. The reason for this was that, when Greeks brought their cases before the *kadi*, they had to pay him 10% of the value of the claim; moreover the Greeks did not trust the Turkish official.<sup>8</sup>

The bishop thus became the most important instrument of administering justice to the Greeks during the period of Ottoman rule. We should add that the episcopal courts already had experience in judging cases, since optional episcopal jurisdiction had been allowed by the Byzantine emperors and had gradually expanded in both civil and criminal cases.<sup>9</sup> The bishop mainly applied the law included in the *Hexabiblos* of Harmenopoulos, a collection of laws made in the 14<sup>th</sup> century by a judge in Thessalonica named Constantinos Harmenopoulos, as well as canon law.<sup>10</sup> Local customs also played a significant role, and in fact, in some cases they were so important that the Greek authorities decided to write them down.<sup>11</sup>

After the declaration of the Greek War of Independence in 1821, questions arose regarding the legal system of the free state about to be born. By 1823 the issue of adopting an appropriate legal system was one of the most important in Greece. The Greek constitutional charters of the years 1821 and 1822 decreed that Byzantine Law was applicable until new provisions had been made. In the constitution proclaimed by the first Greek National Assembly, at Epidaurus in January 1822, it was stipulated in paragraph 97, that the executive council had to appoint a committee of wise and respected men to draw up codes of civil, criminal and commercial law, which – as every law – had to be confirmed and ratified by the

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<sup>7</sup> See MAURER G. L., *Das Griechische Volk in Öffentlicher, Kirchlicher und Privatrechtlicher Beziehung vor und nach dem Freiheitskampfe bis zum 31. Juli 1834*, Heidelberg 1835, translated into Greek by ΠΟΜΠΑΚΗ Ο. under the title, *ΜΑΟΥΡΕΡ ΓΚ. Λ., 'Ο Έλληνικός λαός, Δημόσιο, Ιδιωτικό και Έκκλησιαστικό δίκαιο από την έναρξη του αγώνα για την ανεξαρτησία ως την 31 Ιουλίου 1834*, Athens 1976, p. 86. We use this translation of Maurer's work, henceforth abbreviated as MAURER.

<sup>8</sup> Obviously the Greeks did not want the *kadi* to know their actual property. Moreover in criminal cases between Turks and Greeks, the Turkish judge invariably found in favour of the Turks. See MAURER, pp. 87-88.

<sup>9</sup> From the time of Constantine the Great episcopal jurisdiction was recognized by the state (*audientia episcopalis*). On the establishment and the development of the Episcopal jurisdiction see PANTAZOPOULOS N. J., *Church and Law in the Balkan Peninsula during the Ottoman rule*, Thessalonica 1967, pp. 35ff.

<sup>10</sup> On the *Hexabiblos* see ΠΙΤΣΑΚΗΣ Κ. *Κωνσταντίνου Αρμενόπουλου, Πρόχειρον Νόμων ή Εξάβιβλος*, Athens 1971, in the introduction p. ζ' - ρια' and especially p. πθ' - ρια', where the author examines the role of the *Hexabiblos* during the period of Ottoman rule and in the Greek State.

<sup>11</sup> A characteristic example is the island Santorini, as Maurer describes it, where in the late 18th century customary law was written down as follows: both bishops of the island -the Orthodox and the Catholic- gathered with their notaries and the Greek and Latin authorities, as well as representatives of the island, and wrote down their customs. Then they all signed the document, sealed it and sent it to Constantinople, in order to be ratified by the high Turkish authority, see MAURER, p. 95.

legislative and the executive council.<sup>12</sup> In the next paragraph, it was ordered that until the codes were drafted, the laws of the Christian emperors would be applied in criminal and civil procedures, as well as the laws issued by the legislative and the executive council; it was added furthermore that in commercial cases the French Commercial Code would be applied in Greece.<sup>13</sup> There was nothing remarkable about the last provision, since this code had been translated into Greek and applied by Greek merchants already from 1804 onwards.<sup>14</sup>

Thus, the legal foundation of the new state was “under construction” right from the beginning of the Greek War of Independence and Jeremy Bentham was apparently particularly interested in the legal problems of Greece from that time. The reason for this was that he saw in Greece an opportunity to apply his ideas. His theory about a constitutional code could be put into practice in the case of Greece.<sup>15</sup> As has been said, the first constitutional charters provided that Byzantine Law would be binding until new laws had been drafted and adopted. So, all legal scenarios were open and in that respect Greece offered a virgin legal territory, as Bentham described it in the words quoted at the beginning of this paper. The 75 year-old British jurist saw in Greece an opportunity for the adoption of a constitutional charter according to his ideas. This is what led him to give advice to the Greek legislators and to draft legal texts for Greece, as we shall see below.

It has been suggested that Jeremy Bentham was in fact a true philhellene, since he devoted much of his time and energy to the legal problems of Greece and to offering his comments and advice to the Greek authorities, as is evident from his preserved manuscripts and other documentation.<sup>16</sup> However, Bentham’s correspondence and writings show that he was interested not only in Greece but also in many countries whose constitutional charters were being developed, as well as in countries fighting for their freedom.<sup>17</sup> Moreover, it is difficult to accept that the British jurist was interested in the Greek case solely because of his

<sup>12</sup> “Τὸ Ἐκτελεστικὸν σῶμα νὰ διορίσῃ ἐπιτροπὴν συγκειμένην ἀπὸ τὰ ἐλεκτότερα καὶ σοφώτερα μέλη τῆς Ἑλλάδος, τῶν ὁποίων ἡ ἀρετὴ νὰ ᾖ ἐγνωσμένη, διὰ νὰ συνθέσῃσι Κώδικας Νόμων, πολιτικῶν, ἐγκληματικῶν, καὶ ἐμπορικῶν, οἱ ὅποιοι, καθὼς καὶ ἅπας νόμος, καθυποβάλλονται εἰς τοῦ Βουλευτικοῦ καὶ Ἐκτελεστικοῦ σώματος τὴν ἐπίκρισιν καὶ ἐπικύρωσιν.” in ΣΒΩΛΟΣ Α., *Τὰ Ἑλληνικὰ Συντάγματα 1822-1975/1986, Ἡ Συνταγματικὴ Ἱστορία τῆς Ἑλλάδος*, (commented and supervised by ΑΞΕΛΟΣ Α.), (1<sup>st</sup> ed. 1972), 1998, p. 118; henceforth abbreviated as ΣΒΩΛΟΣ.

<sup>13</sup> “Ἀχρι τῆς κοινοποιήσεως τῶν εἰρημένων Κωδίκων αἱ πολιτικαὶ καὶ ἐγκληματικαὶ διαδικασίαι βᾶσιν ἔχουσι τοὺς Νόμους τῶν ἀειμνήστων Χριστιανῶν ἡμῶν Ἀυτοκρατόρων, καὶ τοὺς παρὰ τοῦ Βουλευτικοῦ καὶ Ἐκτελεστικοῦ σώματος ἐκιδιομένους Νόμους· διὰ δὲ τὰ ἐμπορικά, ὁ ἐμπορικὸς τῆς Γαλλίας Κώδιξ μόνος ἰσχύει εἰς τὴν Ἑλλάδα.” in ΣΒΩΛΟΣ, p. 119.

<sup>14</sup> See ZEPOS P., “Jeremy Bentham and the Greek Independence” in *Proceedings of the British Academy*, vol. LXII (1976), London 1977, p. 297.

<sup>15</sup> See ΣΙΜΟΠΟΥΛΟΣ Κ., *Πὼς εἶδαν οἱ ξένοι τὴν Ἑλλάδα τοῦ '21*, 3<sup>rd</sup> Vol.: 1823-1824, Athens 1981, p. 200.

<sup>16</sup> See the article by DIMARAS Α., “The Other British Philhellenes” in *The Struggle for Independence, Essays to mark the 150th anniversary of the Greek War of Independence*, (ed. CLOGG R.), 1973, pp. 200-223, especially p. 205.

<sup>17</sup> In the works of Bentham used in this paper see, for example, the correspondence of Bentham regarding the drawing up of a code of laws for Portugal in 1822, in BENTHAM, *Correspondence*, or the writings regarding Tripoli, in BENTHAM, *Securities*. See also the BENTHAM, “*Legislator of the World*”.

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philhellenism, given the fact that, at the same time, he was also in contact with and giving advice to the Pasha of Egypt, Mehmet Ali, a sworn enemy of the Greeks.<sup>18</sup>

### 2. A Constitutional Code made by Bentham for Greece

In 1823 the London Greek Committee was established to support the Greeks in their struggle for independence and in particular to assist them in the formation of their new state; most of its members were admirers of Jeremy Bentham and were interested in helping the Greeks in the development of education.<sup>19</sup> As the war of independence continued, the need for money became crucial and the provisional Greek government sent a deputy to London, Andreas Louriotis, whose mission was to raise funds for the needs of the Greek Struggle. Through the members of the London Greek Committee, Louriotis made contact with Jeremy Bentham.<sup>20</sup> Already from 1821 the British jurist had shown interest in Greek affairs, as is evident from his contacts with Nicolaos Piccolos<sup>21</sup> and Adamantios Korais, the eminent classicist who worked for the education of his countrymen, for example by publishing classical texts with introductions in Modern Greek.<sup>22</sup> Korais had also written a commentary on the Greek constitution of 1822;<sup>23</sup> there and in other writings he referred to Bentham's works.<sup>24</sup> On 14 February 1823 Andreas Louriotis sent a letter to Bentham asking him officially, among other things, to give his comments on the Greek constitution that had been proclaimed at Epidaurus in January 1822.<sup>25</sup> This constitution was mainly the work of

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<sup>18</sup> See ΣΙΜΟΠΟΥΛΟΣ Κ., *Πώς είδαν οι ξένοι την Ελλάδα τοῦ '21*, 3<sup>rd</sup> Vol.: 1823-1824, Athens 1981, p. 204-205, WOODHOUSE C. M., *The Philhellenes*, London 1969, pp. 90-91 and CRAWLEY C.W., *The Question of Greek Independence, A study of British Policy in the Near East, 1821-1833*, New York 1973 (1<sup>st</sup> edn 1930), p. 15. See however the arguments by Dimaras in "The Other British Philhellenes" in *The Struggle for Independence, Essays to mark the 150th anniversary of the Greek War of Independence*, (ed. CLOGG R.), 1973, pp. 205-206.

<sup>19</sup> See DIMARAS A., op. cit., pp. 204-205 and ROSEN, *Bentham, Byron and Greece*, pp. 223-228.

<sup>20</sup> See BENTHAM, *Securities*, p. xxxvi.

<sup>21</sup> See for example letters of Piccolos to Bentham on 27 January and 30 June 1822, in BENTHAM, *Correspondence*, pp. 21-22 and pp. 119-120 respectively.

<sup>22</sup> See BENTHAM, *Correspondence*, pp. xxvi-xxvii. For the relation and the correspondence between Bentham and Korais see KITROMILIDES P., "Jeremy Bentham and Adamantios Korais", in *The Bentham Newsletter*, no 9 (1985), pp. 34-48; this article is also included in *Enlightenment, Nationalism, Orthodoxy*, Variorum 1994, number VIII.

<sup>23</sup> Korais mentions there that, just as the Romans asked for Greek help to draw up the Twelve Tables, so should the Greeks at his time, ask distinguished European jurists to assist them in forming their legislation, see ΑΔΑΜΑΝΤΙΟΥ ΚΟΡΑΗ, *Σημειώσεις εις τὸ προσωρινὸν πολίτευμα τῆς Ἑλλάδος τοῦ 1822 ἔτους*, (ed. ΒΟΛΙΔΗΣ Θ. Π.), Athens 1933, pp. 115-6.

<sup>24</sup> See KITROMILIDES P., "Jeremy Bentham and Adamantios Korais", in *The Bentham Newsletter*, no 9 (1985), [repr. Variorum 1994], p. 4, n. 8.

<sup>25</sup> "En vous priant à donner à mon gouvernement les observations que vous jugerez à propos sur notre Loi Organique, et sur moyens de contribuer par notre Code Generale au bonheur du Peuple Grec, je fais un service à ma Patrie et un veritable plaisir à moi. Mon gouvernement recueillera avec reconnaissance tout ce que vos lumieres pourront suggerer: il sera bien flatté qu' un homme aussi distingué que vous daigne s'

Mavrokordatos<sup>26</sup> and Negris,<sup>27</sup> assisted by the Italian philhellene Vincenzo Gallina, who had brought with him to Greece texts of European constitutions;<sup>28</sup> it was inspired by the principles of the French Revolution and included democratic provisions.<sup>29</sup> Bentham responded to the request of the Greek authorities, despite the short deadline given him, because Louriotis had to return soon to Greece. On his journey home, the deputy was accompanied by Edward Blaquier, who had been appointed by the London Greek Committee to write a report on the state of the country. Within three weeks Bentham made his observations on the Greek constitution of 1822 and wrote a covering letter addressed to the Greek legislators.

Bentham's writings relating to Greece have been edited by Philip Schofield in the series *The Collected Works of Jeremy Bentham* (1990) under the title *Securities against misrule and other constitutional writings for Tripoli and Greece*. There we find five texts pertaining to his observations on the constitution of Greece, as well as some notes on a possible constitutional code.<sup>30</sup> These are titled as follows: i) *Greece: Principles of Legislation as to constitutional law*, ii) *a letter of Jeremy Bentham to the Greek Legislators*, iii) *observations by an Englishman on a passage in Raffanel's Histoire des événements de la Grèce, Paris 1822*, iv) *Constitutional Code: matter occasioned by Greece* and v) *Constitutional Code*. A comprehensive study of Jeremy Bentham's works regarding Greece is beyond the scope of this paper.<sup>31</sup> However, we would like to make a few notes on each of these texts.

First of all we should note that at the time that Bentham was writing his observations for Greece, he was also working on a constitutional code for Portugal; therefore there is a connection between the two.<sup>32</sup> The first text referring to Greece, included in the edition by Schofield, is a brief one, where Bentham describes – as its title implies – some general

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*occuper de ses interets, et de son bonheur...*” from the letter by Louriotis published in BENTHAM, *Correspondence*, pp. 204-205.

<sup>26</sup> Alexandros Mavrokordatos (1791-1865) was a highly-educated polyglot Greek who had served as a secretary to his uncle Ioannes Karatzas, the Prince of Wallachia. By the year 1818 we find Mavrokordatos living in Pisa, where he met the poet Shelley, who dedicated to him the poem *Hellas*. Mavrokordatos arrived in Greece when the war of independence broke out and was associated with the Anglophile party there. Later, he served several times as Prime Minister of Greece.

<sup>27</sup> Theodoros Negris (1790-1824) was also well educated and had lived in Wallachia and in Constantinople. He also came to Greece when the Greek War of Independence began.

<sup>28</sup> See *Ιστορία του Έλληνικού Έθνους, Η Ελληνική Επανάσταση και η ίδρυση του Έλληνικού κράτους (1821-1832)*, vol. 12, Athens 1975, p. 212.

<sup>29</sup> See ΣΒΩΛΟΣ, pp. 64-65 and ZEPOS P. J., *Greek Law, three lectures delivered at Cambridge and Oxford in 1946*, Athens 1949, pp. 48-49.

<sup>30</sup> For a detailed analysis of the preserved manuscripts and the original order of Bentham's texts used in this edition, see the editorial introduction in BENTHAM, *Securities*, pp. xxxvi-xlv and pp. xlix-li. For information on the works of Bentham regarding Greece see also BENTHAM, *Constitutional Code*, pp. xvi-xxxi.

<sup>31</sup> See for this issue ROSEN, *Bentham, Byron and Greece*, especially pp. 77ff.

<sup>32</sup> See on this ROSEN, *Bentham, Byron and Greece*, especially pp. 92-95.

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principles regarding the drafting of a constitutional text. He refers there, for example, to issues of self-regard (meaning "one's desire for his own happiness"), to self-sacrifice and its limitations, etc. Bentham points out, for example, that when the state is in danger every individual is more prepared to sacrifice his own interest, since under these difficult circumstances every individual realises that his situation depends directly on the whole. Here is a characteristic passage from that text:

"No new State has ever yet been formed but at a time of general danger and proportionate excitation. The time during which this danger is at the highest is the time at which the felicity of each individual member, whether in the situation of ruling functionary or only in that of subject citizen, is in the highest degree dependant on that of the whole: his property, his power, his personal liberty, his very life, he feels to be [in] a state of constant and immediate dependence upon the existence and power of the whole. In this state of things it is, if in any, that he feels really disposed to make sacrifices to any amount over and above those which he can not help making at the expense of his own particular interest to the universal interest...."<sup>33</sup>

The second text is a little-known and vividly-written letter of 1823, in which Bentham addresses the Greek legislators and tries to convince them of his ideas. This document, which was to serve as a covering letter to his observations on the Greek constitution, is interesting for two reasons. The first reason is directly related to Bentham and Greece, since in this text we see what the British jurist thinks of the political situation of Greece and explains his methods in making his observations. The second reason is connected with Bentham's theory on how any legislator should act, since he gives general guidelines to the Greek legislators: what a legislator should avoid, what he should keep in mind and what his goals should be. At the beginning of the letter he tries to convince the Greeks of his honest advice; he emphasizes that his opinions will be objective, since he has no particular connection with any Greek:

"With no one of you have I ever, either by word of mouth or by letter, directly or through the medium of any common friend or acquaintance, had any sort of intercourse: to me not one of you is or ever has been a source either of fear or hope."<sup>34</sup>

That the British jurist wanted to convince the Greek side of his objective advice is also proven by the fact that he did not want the Greek government to pay for the translation and the publication of his comments. From his correspondence we see that he gave a specific order to Blaquiére that the Greek government should not be burdened with the cost of translating his texts.<sup>35</sup> He goes on to say that the observations he submits can be distinguished into two categories: those that are general and refer to human nature, and those that refer to men who rule. After making some general remarks on human nature, he refers to the political

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<sup>33</sup> BENTHAM, *Securities*, p. 185.

<sup>34</sup> BENTHAM, *Securities*, p. 193.

<sup>35</sup> "Now as to my humble advice to the Greek Nation: my wish is, that it may not be printed at the order or expense of the Constituted Authorities, but at my expense in English and the proper sort of Greek, column-wise the English corrected by you, if you will be kind enough to take the trouble", from the letter that Bentham addressed to Blaquiére on 2 March 1823, BENTHAM, *Correspondence*, p. 215. See also Bentham's letter to Samuel Parr, on 17 February 1823, asking him to translate his observations into Greek, BENTHAM, *Correspondence*, pp. 210-211.

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situation of Greece, noting that in comparison with other countries Greece has an advantage, since it is not ruled by a monarch:

"You have not for your affliction any such unpunishable Depredator General, Oppressor General, Corrupter General, Deluder General, God upon earth, as that to which we cringe under by the name of Monarch -as in Germany, Italy, Russia, France, Denmark, the Netherlands, Sweden, Spain, Portugal and England."<sup>36</sup>

What Bentham points out here is that the Greek legislators have the opportunity to work under extraordinarily favourable conditions, since on the one hand no monarch is above them and no aristocrats can influence them, and on the other they are not "afflicted with the plague of priests and lawyers".<sup>37</sup> In the following excerpt Bentham emphasizes the need to have good judges and advocates and written law, and he gives advice to the Greek legislators, advice which any legislator should keep in mind:

"Legislators! All men in your situation have five trials to undergo; five temptations to contend against, five insatiable and corruptive appetites to hold in subjection if they are able: appetite for money, appetite for power, appetite for factitious honour and dignity, appetite for revenge, appetite for ease."<sup>38</sup>

He stresses the advantage of having a government consisting of as few people as possible and ends the letter with practical advice, namely that it is better to have a small number of offices.<sup>39</sup>

The third text consists of the actual observations that Bentham made on the Greek constitution of 1822, based on a French translation of that text.<sup>40</sup> Here he compares the Greek and the Spanish constitution. The text is divided into three parts and before proceeding to examine each of them, he clarifies that:

"By aptitude and inaptitude, what is here, on each occasion, meant -is aptitude or inaptitude with reference to the purpose of producing such great happiness, or say *maximum* of felicity."<sup>41</sup>

In the first part Bentham refers to the good points (the "apt arrangements", he names them) in both the Spanish and the Greek constitution. He cites two examples: aims of both constitutions, as expressed in their provisions, is "the greatest happiness of the greatest number", and to grant the right to vote to all citizens. However, Bentham notes that in both constitutions – and especially in the Greek one – the corresponding provisions are not so clear at this point. In the second part, which is the biggest and most important, and which he entitles "In the Grecian Constitution, Articles in which features of supposed inaptitude have been observed", he emphasizes those points of the Greek constitution that could be problematic. Here he cites as examples the articles referring to the legislative senate and the executive council. One of his comments is that the executive council is far too big. Article 18 of the Greek constitution provides that this council has five members and article 20 that this council will appoint another eight, for the offices of ministers; it, therefore comprises 13

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<sup>36</sup> BENTHAM, *Securities*, p. 196; see also p. 195.

<sup>37</sup> BENTHAM, *Securities*, p. 196.

<sup>38</sup> BENTHAM, *Securities*, p. 198.

<sup>39</sup> BENTHAM, *Securities*, p. 205.

<sup>40</sup> It is very useful that the editor of Bentham's writings regarding Greece has included the corresponding French text before Bentham's comments; see BENTHAM, *Securities*, pp. 209-216.

<sup>41</sup> BENTHAM, *Securities*, p. 217.



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members in all. Bentham considers the existence of so many members pointless and refers to the American constitution, which appoints only one person at the head of the executive power:

"Now of these thirteen [Bentham means here the thirteen members of the executive council provided by the Greek Constitution], eight at least are I say altogether useless. For proof I appeal as above to *particular experience*: the experience afforded by the only Constitution that ever really had for its object or end in view the greatest happiness of the greatest number: I mean the Constitution of the Anglo-American United States. Here at the head of the Executive Department you have a single person, *the President of the United States*. To him alone belongs the direction of the whole business of that Department."<sup>42</sup>

He adds that the President of the United States appoints four ministers who, together with the president and the legislative assembly (the congress), "exercise the whole civil power of the confederacy" consisting of the secretaries of State, of War, of the Navy and of Finance. Bentham advises the Greeks to follow the example of the United States and to appoint one person at the head of the executive council and four ministers or secretaries, all five with the powers and functions corresponding to those of the United States. He goes so far as to say that as the population and territory of Greece are far smaller than those of any one of the Anglo-American United States, even less than four secretaries will be sufficient for Greece. Bentham goes on to discuss extensively issues arising in a representative democracy, such as the division of power, as well as the balance and dependence of the executive and the legislative department.<sup>43</sup> After these thoughts – the text here is more in the form of an essay than of a short commentary on specific points of the Greek constitution – he focuses on the organization of justice. One of his suggestions is that the judicial districts should be divided only on a territorial basis and not, for example, on the legal nature of the suit, whether it is civil or criminal. The two practical reasons he gives reflect his ideas on the necessity of simplicity and clarity in the organisation of the state:

"For these Judicial districts, the only source of division I should employ is -the territorial; [...] no such division, for example, as that between civil and penal suits, or causes, between commercial and non-commercial suits or causes: no such division as that under English law, and thence under the English-bred Law of some of the Anglo-American United States, between Law cases and Equity cases. Reason. From any such principle of division spring two great evils: one is, needless and useless addition to the number of Judicatories: the other is, in the case of this and that suit or cause, doubt and contestation [as] to the cognizance of which of two ore more Judicatories it appertains."<sup>44</sup>

As to the number of judges in every court, Bentham is strict: "one Judge and no more". The reasons for this, he explains, are that on the one hand the judge alone has full responsibility, and on the other the expenses are less. He refers to the procedure of location and appointment of judges, to preventive measures in order to avoid delay of the trial and to issues regarding the composition of the jury and witnesses; he ends this part with some remarks on judicial procedure. When referring to the appointment of judges Bentham points

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<sup>42</sup> BENTHAM, *Securities*, p. 221.

<sup>43</sup> For Bentham's comments and his ideas about popular sovereignty, division of power and the principle of the greatest happiness see ROSEN, *Bentham, Byron and Greece*, pp. 80-89.

<sup>44</sup> BENTHAM, *Securities*, p. 244.

out that judges "should not be chosen from the class of hireling advocates" and passes harsh criticism on lawyers and priests. Here is a characteristic passage:

"Bonaparte, being a Despot, was, by the vigor of his mind, enabled to add to his vulgar triumphs two transcendental ones: triumphs over the two bitterest and most mischievous enemies of the human race - established priests and lawyers. Over the lawyer tribe, the main cause and token of his triumph was the establishment of a really-existing body of law, having for it's object not indeed the greatest happiness of the greatest number, but of the one, Napoleon Bonaparte..[...] The Citizens of the Anglo-American United States have thrown off the yoke of a Monarchy, have thrown off the yoke of an Aristocracy, have many of them thrown off the yoke on an established priesthood. But the yoke of the hireling advocate still presses upon their necks: their courage has been sufficient to free them from the yoke of the English Monarch: but their wisdom has not yet been sufficient to liberate them from the yoke imposed upon them by the most corrupt and profligate of his tools."<sup>45</sup>

The third part of his comments on the Greek constitution of 1822 concentrates on the bad provisions ("unapt arrangements" is the term Bentham uses) that are inserted in the Spanish constitution but not in the Greek one. There he refers to "all those articles by which power is lodged in the hands of a single individual in the situation of Monarch" and levels strong criticism against monarchy.<sup>46</sup> At the end of his observations he makes a note about the "Mahometan and Jewish Natives". He notes that inevitably some Muslims will remain in Greek territories and he advises the Greeks to treat them "with as much kindness as the indispensable regard for your own safety will permit".<sup>47</sup> He suggests that they should not be allowed to hold a seat in the legislative assembly, and that if they are allowed, that their number of seats be limited. With regard to family law and the issue of polygamy, he remarks that it is best to allow a man only one wife, adding that since the Koran does not oblige men to have more than one wife this will not violate any religious liberty. For the law of inheritance, he states that for practical reasons it would be better that the distribution of the estate of the deceased to be made in the same way for Muslims and Christians, provided that the content of the Muslim's will and testament could be made according to Muslim Law.

The fourth text included in Schofield's edition consists of some general remarks by Bentham with regard to a Greek constitutional code. As stated in the editorial introduction, this text could have been used either as an introductory text for Bentham's observations, which he decided not to include after all, or it could have been an explanatory text by which he noted the principles on which a future Greek constitutional code could be based.<sup>48</sup> Here Bentham is occupied *inter alia* with questions of the government's aim, which is the happiness of the greatest number, and the means to achieve it, with female suffrage (he is in favour of women voting, provided – as for men – they have reached a mature age), with suffrage, capacity and incapacity in regard to juveniles, illiterates and Muslims. He also deals here with issues relating to the system of representation, such as the function of delegates and their powers.

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<sup>45</sup> BENTHAM, *Securities*, pp. 249-50.

<sup>46</sup> BENTHAM, *Securities*, pp. 252-4.

<sup>47</sup> BENTHAM, *Securities*, p. 254.

<sup>48</sup> See editorial introduction to BENTHAM, *Securities*, p. xlii.

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Before proceeding to our comments on the fifth text, we should add that it is evident from the preserved manuscripts and correspondence of Bentham, that he was not only interested in giving his observations on the Greek constitution of 1822, but also considered the possibility of writing himself a constitutional code for Greece. In a letter dated 17 February 1823, Bentham asks Samuel Parr to translate his observations on the Greek constitution and expresses his wish to draw up a constitutional code for Greece:

“If I go on as I have already begun, I shall, in no long time, and no large space, give them, in addition to observations on this their Constitutional code, or proposed code, another of my own, with reasons for every article, and distinguishable part of an article; the whole as much compressed as possible.”<sup>49</sup>

Bentham's fifth and final text relating to Greece, published by Schofield, is actually part of the constitutional code that Bentham drew up for Greece. There we observe that Bentham not only includes the draft of the corresponding articles of the code, but also adds an explanatory note, where he justifies his propositions, something that corresponds to his original plan, as we saw above in his letter to Parr. Specifically, this part of the draft of the constitutional code for Greece, Bentham gives a version of §5 of Chapter VIII, which refers to the term of service of the prime minister. First, he quotes the corresponding five articles, and then, in the form of questions and answers, he gives his reasoning for each article.<sup>50</sup>

In the following months the British jurist made drafts for a Greek constitutional code, which were presented in Greece by Colonel Leicester Stanhope, who was an agent of the London Greek Committee. Stanhope was a great admirer of the political ideas of Jeremy Bentham and believed that priority should be given to the education of the Greeks. His goal was mainly to promote education in Greece by establishing schools, newspapers, postal-services and museums. One of his first actions when he arrived in Greece was to launch a newspaper called "*Ellinika Chronika*", in December 1823 in Missolonghi.<sup>51</sup> Lord Byron, who was also an agent of the London Greek Committee, dubbed Stanhope “the Typographical Colonel”, because he was rigorously promoting the publication of newspapers in Greece. The poet, on the other hand, believed that emphasis should be put on the military field at this point of the Greek War of Independence. Lord Byron pointed out moreover, that in a society that is still developing, the Press could cause problems, especially if it is controlled by foreigners, because it will present only the opinions of the Greeks who are supported by the editors, thus causing internal conflicts in the Greek political world.<sup>52</sup> Stanhope was the main advocate of Bentham's ideas in Greece. He, together with Blaquiere, presented parts of Bentham's writings to Greek representatives.

Part of the material that Bentham sent to Greece as a draft for a constitutional code has been recovered and published.<sup>53</sup> For example, in Schofield's edition of Bentham's writings regarding Greece, the last part, under the title Constitutional Code, is a draft that

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<sup>49</sup> BENTHAM, *Correspondence*, p. 207.

<sup>50</sup> BENTHAM, *Securities*, p. 279.

<sup>51</sup> ΣΙΜΟΠΟΥΛΟΣ Κ., *Πώς είδαν οι ξένοι την Ελλάδα του '21*, 3<sup>rd</sup> vol.: 1823-1824, Athens 1981, p. 208.

<sup>52</sup> ΣΙΜΟΠΟΥΛΟΣ Κ., *Πώς είδαν οι ξένοι την Ελλάδα του '21*, 3<sup>rd</sup> vol.: 1823-1824, Athens 1981, p. 211.

<sup>53</sup> BENTHAM, *Securities*, p. xliiii.

Stanhope received. Bentham's correspondence reveals that in his plans for a constitutional code for Greece, he was considering Mavrokordatos for the seat of Prime Minister and Orlandos for Minister of Justice. In a letter to Stanhope, Bentham mentions:

“By all accounts, Mavrokordato is well affected to the National interest and capable of making the necessary sacrifices of personal interest, if any one is. Him I have pitched upon for Prime Minister... [...] Orlando—Could he I wonder be made to serve and to like to serve, and to be fit to serve, for the Minister of Justice. I hear just now that his project as well as Luriottis's is, to stay here in their present situation two years longer. I think of sounding him, when my Code is in a readable state.”<sup>54</sup>

The correspondence of Bentham that has been edited so far includes a letter written by him on the 24 of November 1823, addressed to the Greeks in general, in which he advises them not to accept any kind of kingship for Greece.<sup>55</sup> According to Bentham, there is no such thing as “a limited monarch”; even if there is an intention of drawing up limits for the monarch, in the end he will prevail and seek to rule on his own. He refers, amongst others, to the examples of Spain and Portugal, which included in their constitutions provisions limiting the power of the monarch, but after a while these provisions were ignored and their kings were restored as absolute monarchs.<sup>56</sup> Towards the end of this text Bentham gives a definition of the Holy Alliance: “And what is the Holy Alliance, but an alliance of all kings, against all those who are not kings”.<sup>57</sup> Throughout this letter Bentham's abhorrence of any kind of monarchy is apparent.

### 3. Greek reactions to Bentham's writings relating to Greece

Bentham's observations reached the Greek provisional government in May 1823. On 10 May 1823 Louriottis sent a letter to Bentham informing him that his comments had been received by the Greek legislative council with respect and admiration but unfortunately had arrived too late, since the national assembly<sup>58</sup> had already finished its meetings and had proceeded with the revision of the former constitution.<sup>59</sup> Bentham received two letters, one on behalf of the

<sup>54</sup> Letters of Bentham to Stanhope, 19, 21 February and 16 March 1824, in BENTHAM, *Correspondence*, pp. 390-392. See also the letter of Bentham to Mavrokordatos, dated 27 February and 1 March 1824, where he addresses him as his son, Bentham writes to Mavrokordatos: “Or c' est en vous que je crois voir le chef destiné de la République. Dans mon Code le chef ne s' appelle que Premier Ministre, soumis entièrement au corps Législatif, comme celui-ci est au peuple en sa qualité de corps Constitutif...” in BENTHAM, *Correspondence*, pp. 353-354.

<sup>55</sup> BENTHAM, *Correspondence*, pp. 320-322; see p. 320, n. 1, the observation that Bowring has included this letter, with the heading “Extracts of a Letter from Bentham to the Greeks”, in his work *The works of Jeremy Bentham*, 11 vols, Edinburgh, 1843.

<sup>56</sup> BENTHAM, *Correspondence*, pp. 320-321; see in particular n. 2 on p. 320.

<sup>57</sup> BENTHAM, *Correspondence*, p. 322.

<sup>58</sup> This was the second national assembly at Astros in 1823. The first national assembly was held at Epidaurus in 1822.

<sup>59</sup> “Vos savantes observations sur la loi organique de la grèce, ont été accueillies avec respect & reconnaissance. Seulement il est triste qu' elles lui soient parvenus trop tard, et que l' assemblée nationale composée de tous les députés de la grèce et qui vient de terminer les travaux a Astros, n' ait pas pu s' en servir pour la réorganisation du nouveau gouvernement. Il va vous écrire eux incessamment pour vous remercier d' un present

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legislative council and the other on behalf of the executive council, by which the Greek authorities expressed their gratitude to him. The first one, dated 12 May 1823 and signed by both Ioannis Orlandos and Ioannis Skandalides, the president and the secretary of the legislative council respectively, also mentions that a translation of Bentham's observations, delivered by Louriottis and Blanquiere, has been ordered for the benefit of the nation.

“Ο φιλελληνικώτατος Κύριος Βλακιάδης, και φίλτατος συμπολίτης μας Κύριος Ά. Λουριώτης έπρόσφεραν, έξ όνόματος Σας, εις την Βουλήν τής Έλευθέρας Έλλάδος, έπι κοινής Συνεδριάσεως, τας εις τὸ Πολίτευμά μας παρατηρήσεις Σας και ή βουλή τας ένεπιστεύθη εύθως εις Άνδρα, ειδήμονα τής Άγγλικής Γλώσσης, δια να τας έξελληνιση όσον τάχιον εις κοινήν χρῆσιν και ώφέλειαν...”<sup>60</sup>

It is clear from the above passage that the legislative council had already entrusted someone with excellent knowledge of English –no name is mentioned – to translate the British jurist's observations into Greek.<sup>61</sup> The two deputies, who refer to Bentham as the law-teacher (Νομοδιδάσκαλος) of the 19<sup>th</sup> century, thank him on behalf of Greece for finding the time to look into Greek affairs.<sup>62</sup> The second letter sent by the Greek authorities to thank Bentham for his observations on the Greek constitution was written on 4 July 1823, in French, by Alexandros Mavrokordatos, who functioned as secretary of the Greek provisional government. The latter expresses to Bentham his gratitude on behalf of the Greek government for the observations he submitted to the Greek authorities:

“Monsieur,  
Je m'estime heureux d' être chargé de vous faire connaitre les sentimens de gratitude & de reconnaissance de Mon Gouvernement, pour les observations que vous nous avez envoyées sur notre loi organique. Il était digne d' un ami de l' humanité, d' un des plus respectables philosophes de notre temps d' apporter l' attention de son genie au bonheur d' une nation, en qui quatre cents ans d' esclavage et de misère n' avaient pù parvenir à effacer le sentiment de ses Droits & de ses devoirs...”<sup>63</sup>

In the months that follow Bentham was kept abreast of Greek affairs by Stanhope. From late January until early May 1824 numerous letters were exchanged between Bentham and the Greek deputies Ioannis Orlandos and Andreas Louriottis, who had arrived in London in January 1824 to arrange a loan for Greece;<sup>64</sup> there are also some letters to or from Alexandros

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*aussi précieux, et de tant de zèle que vous portez à notre liberté naissante et à notre régénération politique...”*, Letter of Louriottis on 10 May 1823, published in BENTHAM, *Correspondence*, p. 233.

<sup>60</sup> [Translation: “*Mr. Blaquier, that distinguished friend of the Greeks, in conjunction with our beloved fellow countryman, Mr. A. Luriottis, has delivered, in your name, to the Legislative Council of Liberated Greece, in general convocation assembled, your Observations on the subject of our form of Government: the Council has thereupon committed them to the care of a person skilled in English language, with directions to translate them with as much despatch as may be, into Greek, for the common use and benefit of the nation.*” Both the Greek text and its translation that we have quoted are included in BENTHAM, *Correspondence*, p. 234].

<sup>61</sup> This was actually contrary to Bentham's original intention because, as we saw above, he had given precise instructions not to burden the Greek authorities with the translation and the publication of his observations.

<sup>62</sup> BENTHAM, *Correspondence*, p. 234. The British jurist responded to this letter with a letter on 13-20 February 1824 addressed to the Greek Legislature, which was also published in the newspaper *Telegrafo Greco* on 12<sup>h</sup> June 1824.

<sup>63</sup> Published in BENTHAM, *Correspondence*, p. 268. Bentham responded with a letter on 6 March 1824.

<sup>64</sup> For Bentham's role in the negotiations for the Greek loan see ROSEN, *Bentham, Byron and Greece*, pp. 103ff. Bentham's correspondence reveals that he was also involved in the education of Greek boys, who were to travel from Greece to Great Britain.

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Mavrokordatos and one letter sent by Theodoros Negris.<sup>65</sup> Bentham received some more letters of thanks from other Greek authorities.<sup>66</sup> Most interesting is a comment by Theodoros Negris regarding a possible code for Greece. As we learn from a letter of Stanhope to Bentham, dated 4 May 1824, Negris was working on a civil code for Greece and had pointed out to Stanhope that this should appear to be based on Byzantine Law, in order to be accepted more readily by the Greeks. Stanhope reports Negris's opinion to Bentham as follows:

“Monsieur Negra, who is the ablest man in Greece and professes wise principles of government, is labouring at a Code. He says to make it palatable to the people he must make them believe that it was framed after the model of the Byzantine code. I condemned this quackery and told him to read Dumont's works. He then desired me to put him in correspondence with yourself. I promised to take this liberty, provided he would act up to your advice.”<sup>67</sup>

In the correspondence of Bentham that has been edited, we observe that he received a letter from Negris, dated 6 May 1824, in which the latter informs him that he is working on a draft for a civil code for Greece based on the French Civil Code and asking for Bentham's guidance; Negris adds that a civil code has a direct influence on the society and therefore is highly important for the regeneration of Greece:

“Monsieur,  
Dans l'intention de travailler à la formation d'un Code civil pour ma Nation, je sens le besoin d'être guidé à ce travail; [...] Monsieur, pour vous dire en peu de mots que je me propose de travailler sur le Code Civil de Français, en y substituant toutefois tout ce que je croirais plus conforme à notre régime constitutionnel. quant à l'ordre des matières je ne crois pas pouvoir trouver un meilleur Code que celui-ci. C'est là, Monsieur, le plan du travail que je me propose d'embrasser. Je me fais un devoir de le mettre sous vos yeux, afin de savoir votre opinion à cet égard, et profiter de vos lumières pour tout le détail de l'ouvrage. Le Code Civil étant de nature à influencer indirectement au moral des hommes, comme il influe directement au sort de la société, il est essentiel pour la régénération qu'il ne s'éloigne point, s'il est possible, des principes immuables de la raison, le seul moyen d'y parvenir est d'obtenir encore votre assistance et votre direction...”<sup>68</sup>

Bentham replied to Negris that he was willing to help in the drafting of a civil code<sup>69</sup> and added wryly that he hoped that he would still be alive when Negris's draft came, given that he was already rather old (he was in his mid seventies at that time). Ironically, the co-operation between the two men was cut short by the sudden death of Negris at Nauplion, not long after

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<sup>65</sup> As stated in the introduction of this paper, our research, includes Bentham's correspondence that has been published in the series *The collected works of JEREMY BENTHAM*, which ends in June 1824. A new volume is being prepared in the said series, which refers to his correspondence in the following years, and there we will find further information on Bentham's involvement in Greek affairs. We should add that part of Bentham's correspondence in later months has been included in BENTHAM, *Legislator of the World*, pp. 343-449 and pp. 352-59.

<sup>66</sup> These letters have been published in BENTHAM, *Legislator of the World*, pp. 343-345. In this edition we find some more letters by Bentham to Greek authorities, in which he sends them some more of his work and other useful texts; see pp. 346-49 and pp. 354-56.

<sup>67</sup> Letter of Stanhope to Bentham, 4 May 1824 in BENTHAM, *Correspondence*, pp. 442-443.

<sup>68</sup> Letter of Negris to Bentham, 6 May 1824, BENTHAM, *Correspondence*, pp. 446-7.

<sup>69</sup> In that letter he also mentioned that he had been working on a constitutional code for two years and that his intention was to send the text to Korais in Paris, who had promise to translate it into Modern Greek. See letter of Bentham to Negris, 12-13 July 1824, BENTHAM, *Legislator of the World*, pp. 352-354.

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his correspondence with Bentham. That educated Greeks admired Bentham's works is also expressed by Colonel Stanhope in his correspondence with the British jurist. For example, in Stanhope's letter to Bentham, mentioned above, the Colonel is very optimistic about the possibility of the Greeks adopting Bentham's works, declaring that if Bentham's codes were ready, the Greeks would adopt them immediately.<sup>70</sup> Despite his efforts, Bentham did not manage to finish his constitutional code for Greece. However, parts have been recovered and edited, as mentioned above.

The domestic political situation in Greece was not favourable for the acceptance of Bentham's constitutional code for the country. In the first half of 1824 the continuous political crisis led to civil war between the military leaders of the Peloponnese, under the leadership of Theodoros Kolokotronis, and the political leaders of the Peloponnese, under Alexandros Mavrokordatos, together with the residents of the islands.<sup>71</sup> On 8 April 1824 an assembly in Salona began its meetings, under the presidency of Negris, which lasted 20 days; this was not a national assembly since not all sectors of the Greek political world attended it.<sup>72</sup> There, Stanhope presented parts of Bentham's manuscripts of the constitutional code for Greece, which the representatives received with gratitude and "promised to consult them as their wisest oracle and act."<sup>73</sup> However, due to internal political problems, the assembly failed. Meanwhile, Lord Byron had died and the granting of the loan by the London Greek Committee to the Greek government was not running smoothly. The political crisis in Greece, the problematical situation of the loan, the death of Byron in April 1824, as well as the death of Negris and the recall of Stanhope to Great Britain in May 1824 made conditions difficult for Bentham's plans for a constitutional code for Greece; and hence, despite the good relations that had developed between the British jurist and members of the Greek provisional government, in the end Bentham's constitutional proposals were not accepted in Greece.<sup>74</sup>

It is difficult to decide whether the Greeks actually intended to apply Bentham's ideas. Learned Greeks, such as Korais, Mavrokordatos and Negris, knew and admired his work. In his writings, Korais referred to Bentham's works and insisted on the urgent need to translate them into Greek and to apply his ideas in Greece. However, Korais was living abroad and was not a politician, so he could not have had a crucial role in the actual application of

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<sup>70</sup> Letter of Stanhope, 4 May 1824, BENTHAM, *Correspondence*, p. 443.

<sup>71</sup> See *Ιστορία του Έλληνικού Έθνους, Η Ελληνική Επανάσταση και η ίδρυση του Έλληνικού κράτους (1821-1832)*, vol. 12, Athens 1975, p. 324.

<sup>72</sup> See *Ιστορία του Έλληνικού Έθνους, Η Ελληνική Επανάσταση και η ίδρυση του Έλληνικού κράτους (1821-1832)*, vol. 12, Athens 1975, p. 337.

<sup>73</sup> Letter of Stanhope to Bentham from Salona, 4 May 1824, in BENTHAM, *Correspondence*, p. 442.

<sup>74</sup> See also the observation by Vallianatos, that Bentham's regent character and way of thinking were the reasons why his suggestions were not adopted by the Greek legislators; the author claims that the British jurist was autocratic in his advice and he did not adjust his ideas to the local conditions; for example, he ignored the comment by Negris about the influence of Byzantine Law, that we mentioned some lines above, Vallianatos E., "Jeremy *Bentham's* Constitutional reform proposals to the Greek provisional government, 1823-1825", *Balkan Studies*, vol. 10 (1969), pp. 333-334.

Bentham's ideas in Greece. Negris, as we saw earlier, addressed the British jurist and explicitly asked for his help in drafting a civil code for Greece. In that letter he is brief and to the point, stating that he will use the French Civil Code as a base text and that he would like Bentham's help. We think that this action of Negris reflects his intention of actually accepting Bentham's assistance in practice, at least, that is, in drawing up a civil code. Mavrokordatos in a letter to the executive council in 1824, mentions amongst other things that he is sending them some documents of the philosopher Bentham, in English, and advises the government to send a thanking note to this wise man, who is occupied with drafting a code for Greece; he adds that Bentham is an old man and has decided to dedicate his last work to Greece.<sup>75</sup> Mavrokordatos was undoubtedly very learned and wanted to serve his country, but he was also very ambitious. It is characteristic that Stanhope was most cautious with Mavrokordatos and in the end he did not trust him. In Mavrokordatos's correspondence with Bentham – at least in that published so far – the former did not inquire after actual juridical ideas of the latter. In the letters that we have examined Mavrokordatos thanks Bentham for his interest and makes general remarks on Bentham's work,<sup>76</sup> but he does not, for example, make a specific comment on Bentham's observations on the Greek constitution of 1822, nor does he pose any question regarding Bentham's proposals for a Greek constitutional code. He says nothing, moreover, on how Bentham's suggestions could be included in the Greek constitution. For safer conclusions about this speculation we have to wait for the new edition of Bentham's correspondence.<sup>77</sup>

We should note however that after examination of the archive of Alexandros Mavrokordatos, which is a valuable collection of private and official documents that belonged to Mavrokordatos<sup>78</sup> and has been published by Emmanuel Protopsaltis under the auspices by the Academy of Athens,<sup>79</sup> in the entire correspondence between Mavrokordatos and Negris in Greek, we found not a single reference to Bentham's ideas and work regarding Greece.<sup>80</sup>

<sup>75</sup> “Πέμπω διὰ τοῦ κυρίου Αἰνιάνου καὶ διάφορα ἔγγραφα τοῦ φιλοσόφου Βενθάμου εἰς τὸ ἀγγλικόν. Πρὸς αὐτὸν τὸν σοφὸν καὶ ζηλωτὴν ἄνδρα εἶναι δίκαιον νὰ κάμῃ ἡ Διοίκησις εὐχαριστήριον ἀπάντησιν διὰ τὸν ὁποῖον καταγίνεται νὰ συνθέσῃ κώδικα πρὸς ὄφελος τῆς Ἑλλάδος. Εἶναι γέρον καὶ ἀπεφάσισε τὸ σύγγραμμά του τοῦτο, τὸ ὁποῖον ἀφιερώνει εἰς τὴν Ἑλλάδα, νὰ εἶναι τὸ τελευταῖον του.”; in *Archives of Mavrokordatos*, (ed. ΠΡΩΤΟΨΑΛΤΗΣ Ε.), vol. IV, Athens 1974, p. 475, no. 1495.

<sup>76</sup> See letter of 6 June 1824 from Mavrokordatos to Bentham, in BENTHAM, *Correspondence*, pp. 455-456. There the Greek expresses his admiration of a part of Bentham's work that he has received.

<sup>77</sup> See above nn. 3 and 65.

<sup>78</sup> These documents are for example, decisions of the provisional government of Greece, letters of important political and military Greek leaders, private documents of Mavrokordatos etc.

<sup>79</sup> This work consists of six volumes, as follows: ΠΡΩΤΟΨΑΛΤΗΣ ΕΜ., *Ἱστορικὸν Ἀρχεῖον Ἀλεξάνδρου Μαυροκορδάτου, Μνημεῖα τῆς Ἑλληνικῆς Ἱστορίας*, Ἐκδοσις Ἀκαδημίας Ἀθηνῶν, vol. I, Athens 1963 (documents of years 1803-1822); vol. II, Athens 1965 (protocols of correspondence of years 1821-1823); vol. III, Athens 1968 (documents of 1823); vol. IV, Athens 1974 (documents of 1824); vol. V Athens 1978 (documents of 1825); and vol. VI Athens 1986 (documents of 1826); henceforth abbreviated as *Archives of Mavrokordatos*.

<sup>80</sup> See for example *Archives of Mavrokordatos*, in vol. IV, documents under the following numbers: 1121, 1125, 1189, 1201, 1225, 1251, 1256, 1284, 1351, 1352, 1368, 1380, 1395, and 1539.



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The politicians who, as mentioned earlier, were mostly responsible for the first Greek constitutional charters were more concerned in their correspondence with the internal political problems and the organisation of national assemblies than with the democratic ideas of Jeremy Bentham.

To cut a long story short, it seems likely that for the majority of Greeks the application of Bentham's ideas was not important; what was more important for them was the fact that the famous Jeremy Bentham, a jurist of such status and with a world-wide recognition, had not only answered them but had also expressed his intention of helping them in drafting their constitution. We should not forget that the Greeks were at the beginning of their war of independence and that it was of crucial importance for them that the other European countries recognized their struggle for freedom. In many documents of Greeks at that time we observe their anxiety that the Greek War of Independence will be taken seriously by the European powers. In a letter sent by Mavrokordatos to Negris in 1823, he refers to the electoral law being drafted, stating that it is important for the government to explain sufficiently in the prolegomena to it why it has not yet issued an electoral law and to make clear that this is in preparation. He also expresses the hope that the text will be satisfactory, so that Europe will have nothing to say about it.<sup>81</sup> In this respect, the first constitutional charters promulgated in the early years of the Greek War of Independence were to serve not only to prevent a recurrence of the anarchy that had occurred after the outbreak of the war, but also to prove to the Europeans that a State was being formed, a State that wanted to be ruled on the basis of constitutional principles.<sup>82</sup> Taking these thoughts into account, we may conclude that Bentham's positive response to the Greeks undoubtedly had a significant political importance for them.

### Epilogue

Looking back at the legal history of the Greek State, we observe from its first constitutional charters that the Greeks had opted for a constitutional government.<sup>83</sup> We should note that at some point the Greeks were considering having a king in Greece. Mavrokordatos and Negris had in the past interfered with attempts to introduce a monarch in Greece, probably because at that time, they believed – together with some other learned Greeks – that a king could unite all Greeks under his power.<sup>84</sup> However, and this should be stressed particularly, in all cases in which the Greeks were thinking of a monarch – also a foreign one – for Greece, they

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<sup>81</sup> “Πρώτον, εἶναι ἀνάγκη νὰ δικαιολογῆται ἡ Διοίκησις ἰκανῶς εἰς τὰ προλεγόμενα διὰ τὸ ὅτι δὲν ἐξέδωκε τὸν περὶ ἐκλογῆς νόμον, εἰς τοῦ ὁποίου τὴν σύνθεσιν ἐνασχολούμενη, καὶ ἐλπίζω ὅτι ἤθελεν εἶσθαι τοιοῦτος, ὥστε νὰ μὴν ἔχη νὰ εἶπῃ τι ἢ Εὐρώπῃ.” in *Archives of Mavrokordatos*, vol. II, p. 284, no. 1562.

<sup>82</sup> See also ROSEN, *Bentham, Byron and Greece*, p. 80 and pp.97-102.

<sup>83</sup> See on this ROSEN, *Bentham, Byron and Greece*, pp. 97ff.

<sup>84</sup> See ΠΡΩΤΟΨΑΛΤΗ ΕΜ., *Ἀλέξανδρος Μαυροκορδάτος, Ὁ βίος καὶ τὸ ἔργον του μέχρι καὶ τῆς Καποδιστριακῆς περιόδου*, Athens 1982, pp. 114-17. See for example also the documents in *Archives of Mavrokordatos*, vol. III, nos 397, 400, 401 and 595.

had in mind a constitutional monarchy, and Mavrokordatos was very clear about this. When the Greeks were considering the option of the French prince Nemour for the position of the King of Greece, Mavrokordatos wrote that the Greeks themselves will have to provide the most suitable legislation, which the prince will be obliged to accept.<sup>85</sup> At some point the Greek provisional government was also considering the idea of offering the kingship of Greece to the youngest brother of Napoleon, Prince Jerome Bonaparte, who had ruled as King of Westphalia from 1807 until 1813. We have evidence in the Archives of Mavrokordatos of this suggestion, where it is clear that the Greeks had in mind a constitutional monarchy; a text is included which describes the conditions under which Jerome Bonaparte would have ruled as King in Greece, where it is stated among other things that he will have to respect the constitutional charters.<sup>86</sup> Nevertheless, despite these Greek flirtations with monarchy, the Greek constitution of Epidaurus, of the year 1822, clearly establishes a representative democracy with a constitutional government without a monarch, and this was surely closer to Bentham's ideas.

The British jurist admits that he is surprised by the level of sophistication of the Greek constitution of 1822.<sup>87</sup> At the beginning of this paper we quoted the words Bentham addressed to the Greek legislators in 1823, where he stressed their unique opportunity to work for the legal foundation of the new-born Greek State. According to Bentham, the Greek legislators were not "cursed by Kings and Nobles and their minds were not under the tyranny of Priests and Lawyers". What an irony that just ten years later Greece has a Bavarian prince for a king, appointed by order of foreign powers, while the country is worn out by continuous conflicts between various Greek political parties favoured by different European powers, and between military and political powers. Greece became a battle-ground for the Great Powers of Europe of that time because of its strategic position as a crossroads between East and West. Characteristic of how the European powers influenced the Greek political situation was the fact that of the three first main political parties in Greece, one was favoured by Great Britain, one by Russia and one by France. Naturally the Greeks also had their share of being manipulated. It seems rather strange that after the struggle against Ottoman rule, the Greeks were so keen to accept another kind of foreign domination.

In May 1832 a treaty was signed by France, Great Britain, Russia and Bavaria, by which the Kingdom of Greece was established under the rule of Prince Otto of Bavaria; because Otto was still a minor, a triumvirate regency was appointed by the King of Bavaria in order to rule Greece until Otto came of age.<sup>88</sup> By this convention the important European

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<sup>85</sup> "Εἰς ἡμᾶς κεῖται, ἔγραφε, νὰ θεσπίσωμεν τὴν πλέον κατάλληλον νομοθεσίαν, τὴν ὁποίαν οὗτος ὑποχρεοῦται νὰ δεχθῆι.", in *Archives of Mavrokordatos*, vol. IV, p. 385, no. 1424.

<sup>86</sup> *Archives of Mavrokordatos*, vol. III, nos 400 and 401, pp. 48-51.

<sup>87</sup> "To find the provisional Grecian Constitution is so high a degree conformable to the principle of the great happiness of the greatest number has been matter of considerable and no less agreeable surprise to me", BENTHAM, *Securities*, p. 183.

<sup>88</sup> The regency consisted of Count Joseph Ludwig von Armanberg, Professor Georg Ludwig von Maurer and General Karl Wilhelm von Heideck.

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powers of that time were allowed to interfere in Greek affairs. How direct this interference was can be seen by the simple fact that the convention was not even signed by any Greek authority, nor did the Greek side take part in the negotiations.<sup>89</sup> Nine years before, Stanhope had written to Bentham the following prophetic lines:

“The Spirit of Monarchy or rather of aristocracy seems to predominate Greece and I think the Governments of Europe will endeavour to put one of their Legitimates on the throne of this Country. It must be our care forthwith therefore to engraft on the public mind those principles which contribute to the greatest good of the greatest many.”<sup>90</sup>

The first King of Greece, King Otto from Bavaria, was to rule as an absolute monarch under the “protection” of the European powers and had no intention of being limited by a constitution.<sup>91</sup> In 1832 promises were made to the Greeks by the European powers and the Minister of Foreign Affairs of Bavaria that a constitution would be provided; these promises were not kept.<sup>92</sup> Immediately after King Otto's arrival in Greece, the triumvirate regency published a declaration addressed to the Greeks, which made clear that Otto was to rule “as the King of Greece by the grace of God” (“Οθων, ἐλέω Θεοῦ βασιλεὺς τῆς Ἑλλάδος) and no reference was made to any constitution.<sup>93</sup> Thus, the plans for a constitutional government that had been expressed in the first Greek constitutional charters were abandoned, and instead an absolute monarchy was established in Greece under the “guarantee” of the great powers of Europe. It seems that Bentham had not foreseen another “curse” in his judgement quoted at the beginning of this paper: the influence of foreign powers, which, as the Ottoman Empire was gradually breaking up, saw in the case of Greece a new opportunity to practise their political influence and policy of colonisation.

One night in September 1843, eleven years after his appointment as King of Greece by the European powers, King Otto was awoken by a strange noise: hundreds of people, including parts of the military forces, were gathered around the palace shouting the word “constitution”; the crowd demanded, through representatives, that the King provide a constitution at once, something he was forced to do in the end. King Otto's granting of a constitution, after the events of September 1843, did not solve the political problems in Greece, but it was surely a first step towards abolishing the absolute monarchy that had been installed there and it also showed the rest of Europe that the Greeks desired to be ruled by constitutional principles. It is a pity that Bentham did not live to see these developments.

Daphne Penna

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<sup>89</sup> *Ιστορία τοῦ Ἑλληνικοῦ Ἔθνους, Νεώτερος Ἑλληνισμός ἀπὸ 1833 ὡς 1881*, vol. 13, Athens 1977, p. 31.

<sup>90</sup> Letter of Stanhope to Bentham, 1 December 1823, in BENTHAM, *Correspondence*, p. 327.

<sup>91</sup> See DAKIN D., *The Greek Struggle for Independence, 1821-1833*, London 1973, pp. 315-316.

<sup>92</sup> See ΣΒΩΛΟΣ, pp. 74-75.

<sup>93</sup> *Otto* arrived in Nauplion in January 1833 and this first declaration of the regency was published in the Government Gazette in February 1833, see ΣΒΩΛΟΣ, p. 75 and ΠΑΝΤΑΖΟΠΟΥΛΟΣ Ν. Ι., *Georg Ludwig von Maurer, Ἡ πρὸς Εὐρωπαϊκὰ πρότυπα ολοκληρωτικὴ στρόφι τῆς Νεοελληνικῆς Νομοθεσίας*, Thessalonica 1968, p. 1351; see also *ibidem* table 4, the first page of the first issue of the Government Gazette of the Kingdom of Greece, which includes this declaration in German and in Greek.