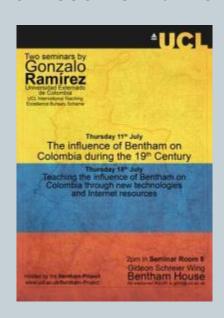
# The influence of Bentham on Colombia during the XIX Century

#### BY GONZALO RAMIREZ CLEVES PROFESSOR UNIVERSIDAD EXTERNADO DE COLOMBIA





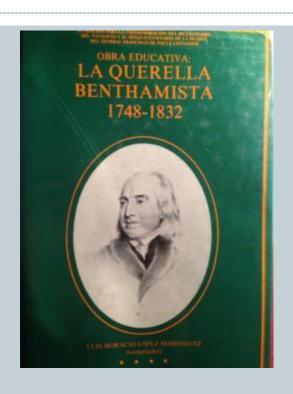
## Introduction

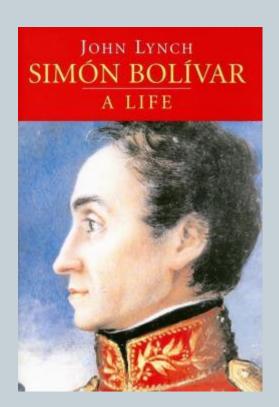
• 1. Bentham's Influence on Colombia during his lifetime (1748-1832)

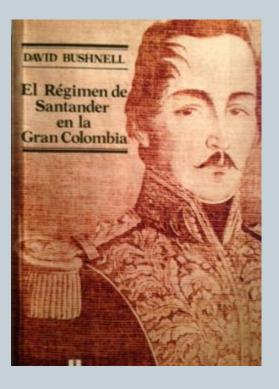
• 2. Bentham's influence on Colombia in the XIX Century after his death

• 3. Why was Bentham so important in Colombia?

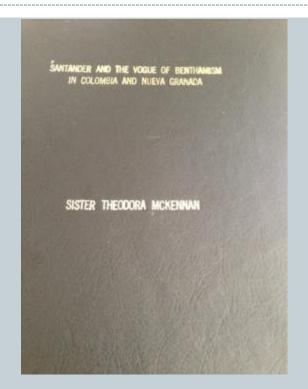
# Some Bibliography

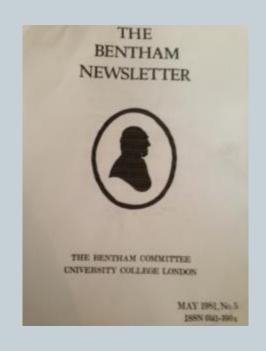


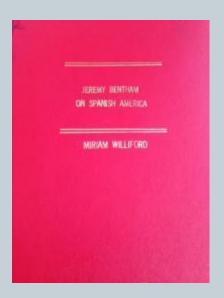




# Works in English



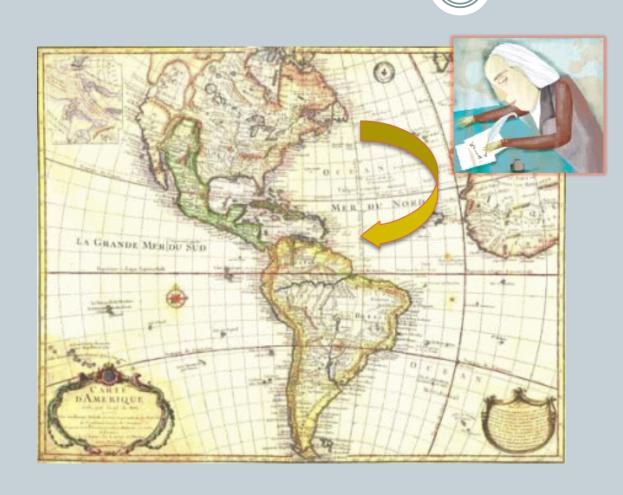




## Bibliography in English

- 1. Sister Theodora McKennan "Santander and the vogue of benthamism in Colombia and Nueva Granada" (Phd thesis, Loyola University, 1970) and "Benthamism in Santander's Colombia" (The Bentham Newsletter, 1981)
- 2. Miriam Williford "Jeremy Bentham on Spanish America" (Lousiana University Press, 1970)
- 3. John Lynch "Simon Bolívar a life"
- 4. David Bushnell "The Santander Regime in Gran Colombia" (University of Delaware Press, 1954)

# Bentham on Spanish America



México – José Joaquín Mora

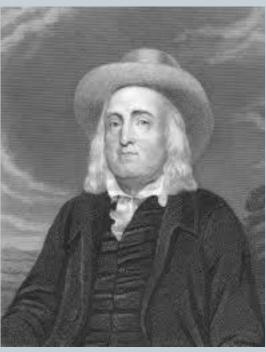
Guatemala- José Del Valle

Colombia – Simón Bolívar and Francisco de Paula Santander

Argentina – Bernardino Rivadavia "Bentham, interested in seeing his ideas put into practice, had to depend on local leaders to carry out his ideas when it became evident that he could not emigrate to Spanish America himself. Always an avid letter writer, he used his correspondance to guide and direct these leaders (...) The Spanish Americans — Rivadavia, Bolívar and Del Valle - for their part reacted warmly to Bentham's interest in their work and replied with enthusiasm and flattery"

# Bentham and Colombia





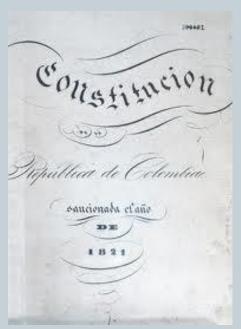
# Some aspects related Bentham and New Granada in his life time (1748 – 1832)

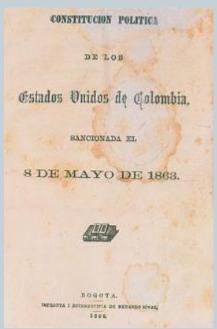
- 1. Translation of his *Traité de Législation Civile et Pénale* (1802 by Etienne Dumont)
- 2. Discussion about Nariño meeting Bentham in 1793
- 3. Visit of Bolívar and the Venezuela Committee (1810)
- 4. Translation of his treaties in Spanish by Ramón Salas (1821)

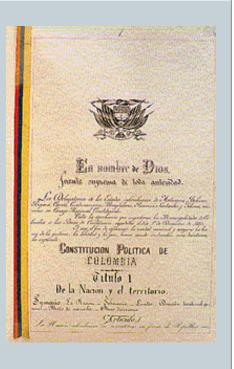
- 5. Correspondance Between Bolívar and Bentham (1820 to 1829)
- 6. The first dispute or "Querella" between 1825 (Decree November 8- 1825) to the prohibition of the study of the Treaties in March 12 1828 during Bolívar's dictatorship.
- 7. Visit of Santander in his exile (1830)

## Constitutions of Colombia during XIX









1810 - 1816

1821 - 1830

1863 - 1886

1886

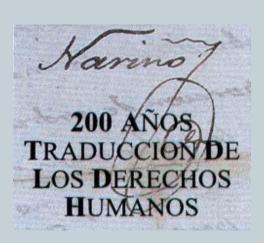
- Periods related with the Constitutions:
- 1. First constitutionalism ("Patria Boba" 1810 1816)
- Independence from Spain. Great Colombia (Venezuela, New Granada – Quito) (1819 to 1832)
   Constitution of Great Colombia – Constitution of Cúcuta

- 3. Constitution of New Granada 1832 to 1843 (First liberal Republic)
- 4. Constitution of New Granada 1843 to 1853 (First conservative Republic)
- 5. Federal and Radical Constitutionalism (Constitution of the United Provinces of New Granada (1853), Constitution of the Granadine Confederation (1858), Constitution of the United States of Colombia (1863 1886)
- 6. Constitution of Colombia 1886

# "La Patria Boba – The Foolish Fatherland" (1810 – 1816)

 First Introduction of a Bentham writing by Antonio Nariño (1765 - 1823) in "La Bagatela"





"Perhaps the first time Jeremy Bentham was introduced into Colombia was in "La Bagatela" of Nariño (Numbers 23 and 24 December 1 1811), where he took the article published in London in "El Español" by Blanco White about Liberty of press (...)"

(RUFINO CUERVO, Vida de Rufino Cuervo, 1946)

#### La Bagatela "The Trifle" No 23. December 11, 1811

#### LA BAGATELA

Nam. 23.

Someli Derrings a. de Distentes de altas,

Tow. 1.

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Arthode escentiade de las massacritos ingleses de Bantions y publicade par el 5r. Riones en su fregulat.

Es quieza imposible decir const mejotes, y en menos palabras de lo que lo hace, el sabio Bentham hablaodo de la liberetad de la Impernas. En minguo tiempo se parden persentar com mas utilidad sus pensamientos que en el presente en que se trata de sever muestra Comutinacion. Si la libertad de la Impernas occaciona males particulares que la bacen abominable à los ojos del hombre timulato y pacífico, tambien trae bienes iocalculables para el publicos siendo el canal, de las luces, y el antenuntal del desportimo. El mismo cuchillo que me corta el pan me corta el dedo, y no por esto desterramos los cachillos de nuestras mesas. Reprendase el abora, como en todas las cosas, hasta las mas santas, y no se dedurca de el q. la cosa es mala.

El sistema del Sr. Benchun se dirije à asegurar la libertad de la Imprenta, y à impedir los inconvenientes que esta libertad punde producir.

I La mera proposera de establecer la fibertad de faisoprenta supone el convencimistato de que las ventajas de esta libertad son mas que suficiences para contrapesar los males à que pueden dar origen. A no est así, seria necesario prohibir abuoluramente la libertad de la imparensa, supuesto que el beneficio que resultaria de evitar sus males, seria mayor en este caso que el de gozar sus bienes.

II. Siendo el beneficio que resulta de la imprenta libre, mayor que el que retultaria de no tener que temer sus inconvenientes, el gozar de la libertad de la imprenta sería en tiltimo resultado un bien, aunque de el hubieran de seguirse sodos los males à que parde dar origen.

III. Al combinar los medios de disminuir los inconvenientes que puede esquar la libertad de la imprenta, se debe poner, el mayor cuidado, en no disminuir por ellos los bienes que debe producir no digo ya, en mayor grado, pero ni sun en el grado mismo que se disminuyan los maless porque à hicerlo así, dexatiames un mal menor por otro mayors o en otros términos, trocariamos un bien mayor por otro mas pequeño.

§ 1 Portular de la Diental de la Imprenta.

I. Lus ventajus de la libertad de la limpenta son iguales à las ventajus del sober. Siendo la libertad de la imprenta la causa mas poderous de la existencia, y de la difusion del sober, todo lo que disminuya las ventajus que nacen de la libertad de la imprenta, disminuye las que nacen de la existencia, y propugacion del sober. Las ventajus de la libertad de la imprenta son iguales à las de un burn gobierno, comparado con uno malo: supuesto que la libertad de la imprenta puede mitrarse como una senda recta é infalible que lleva al establecionicato de un buen gobierno.

# Blanco-White "El Español"



No. IV.

#### EL ESPAÑOL.

TREINTA DE JULIO DE 1810.

At trakers, atque maras tantis licet addere rebus.

VIRGIL.

Examen de la obra intitulada Essaí Politique sur le Royaume de la Nouvelle Espaene, par Alexandre de Humboldt. Paris 1808-9.

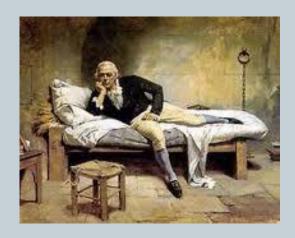
## Proposal of Liberty of Press

- December 1st 1811 (Article excerpted from "El Español of Blanco White"
- "It is perhaps impossible to say things better and in fewer words than it does the wise Bentham talking about freedom of the press (...) If the freedom of the press causes particular evils that make abominable in the eyes of timid and peaceful man, also brings incalculable benefits for the public to be the channel of the lights and a preventative measure to despotism. The same knife that cuts bread might cut my finger, and we don't banish the knives of our tables".

# Proposals of Liberty of Press



Francisco de Miranda (Caracas 1750- Cádiz 1816)

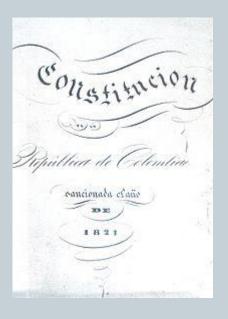


- There were two proposals related with the Liberty of Press:
- 1. The project made to Venezuela for Miranda (8 pages)
- "Proposed Law for the establishment of Liberty of the Press in Venezuela"
- 2. The Particular Codes. (Published by Nariño and Blanco White): The concept of liberty of press. It is a summary of the big proposal. The paradox was that the Project was never established in Spain, Venezuela or Colombia.

## Constitution of 1821

1.







- 1. "Legislative Tatics" in the creation of the Constitution
- 2. Nariño's Project (related with Bentham's *Constitutional Code*) was not approved by the Constitutional Assembly
- 3. Some articles are related to Bentham's ideas. For example article 156 that prescribed:

"All Colombians have the right to write, print and publish their thoughts and opinions freely, without consideration, review or censorship prior to publication. But those who abuse this precious faculty must suffer the punishments and become accountable by law"

## The mandatory Introduction of the Treaties (1825)

• In a Decree of November 8, 1825 it was established that:

"The public law professors should teach the principles of law by Bentham, the principles of constitutional political rights by the works of Constant or Lepage, and the international law by the works of Wattel"

# Curriculum (Study Plan) of 1826

• Article 168:

• "The Treaties of Civil and Criminal law from Bentham will serve **for now** for lessons in the various branches to be taught in this lecture [Universal Principles of law and Constitutional law]...".

Article 229 of the Study Plan established:

"The authors of this decree designated for public education should not be **blindly adopted** by **teachers in all its parts**. If any or some had doctrines contrary to religion, morals and public tranquility or mistaken for some other reason, the professors **should omit the teaching of such doctrines**, **deleting chapters containing them and showing students the mistakes of the author...**"

#### Curriculum of Studies from Vicente Azuero at San Bartolomé

#### LATTASE

#### DE DERECHO PUBLICO

es el Colejio de S. Bartolomé, bajo la direccion de su catedrático, Doctor Vicente Aznero, esplicara i sostende en certamen público las siguientes proposiciones de sencia constitucional i administrativa.

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He de my considere per les erreiters à Benthe les revenue de depuiso maior à le cinera

⊗Biblioteca Nacional de Colombia

- 1. "The best of all governments is that which produces the greatest amount of happiness to all the individuals that make up a nation
- 2. Attended the natural condition of the human species, the system of government best suited to produce the greatest level of happiness, is the popular, representative, responsible and alternative power..."

#### First Dispute between Margallo and Vicente Azuero

#### Prebyster Francisco Margallo



#### Vicente Azuero



## Parish of "Las Nieves"



Margallo said in his homily:

"The College of San Bartolome is a hotbed of impiety and heresy. Bentham's doctrines are ungodly and all who adopt them will be excommunicated"

• In March 18, 1826 he entered the San Bartolome at night explaining to the students that the study of Bentham was against the "Bula in Coena Domini" and to excommunicate those who taught his principles

(Rojas, Armando, The Battle of Bentham in Colombia)





• Vicente Azuero sent a Representation to the Executive branch against Margallo, telling them that the ministry of preaching must not overstep its mandate and can not fault the decrees and laws of the Republic. It also said that it cannot impute the citizens of heresy or threat of being excommunicated for following the laws.

#### Representacion

DIRIJIDA AL

#### SUPREMO PODER EJECUTIV

CONTRA EL PRESBITERO

DB. PRANCISCO MARGALLO.

POR EL

#### DR. VICENTE AZUERO.

Escelentisimo Señor:

ME es bien molesto y desagradable tener que dar cuenta à V. E. de un acontecimiento, que si à la primera vista parece pequeño, basta un poco de meditacion para descubrir la influencia funesta que puede ejercer sobre la suerte del país. Puede ser que logre manifestar esta importante verdad, y l'amar sobre ella toda la atención del supremo gobierno. Entònces, es seguro que se dictarán aquellas medidas que sujiera el bien de la patria, y que atajando el daño cuando todavia no es muy profundo, son mas benéficas y saludables, que las que ocurriendo cuando ya se ha inveterado, suelen ser ya in-

eficaces y siempre mas dolorosas.

En las últimas semanas de la pròxima cuaresma, he sido yo el objeto de las criminales difamaciones de un eclesiàstico faccioso y rebelde à las leyes de la República; ó mas bien, no lo he sido tanto yo, cuanto el juicioso sistema de educacion de la juventud colombiana establecido por el gobierno. El dr. Francisco Margallo, sacristan de la parroquial de las Nieves de esta ciudad, ha atacado en dichos dias la enseñanza de los principios del derecho civil y penal por el célebre jurisconsulto ingles Jeremias. Bentham. En la iglesia de la órden tercera ha dirijido ejercicios espírituales à cosa de cuarenta personas, en que dijo con el mayor acaloramiento, que "el colejio de San Bartolomé era un semillero

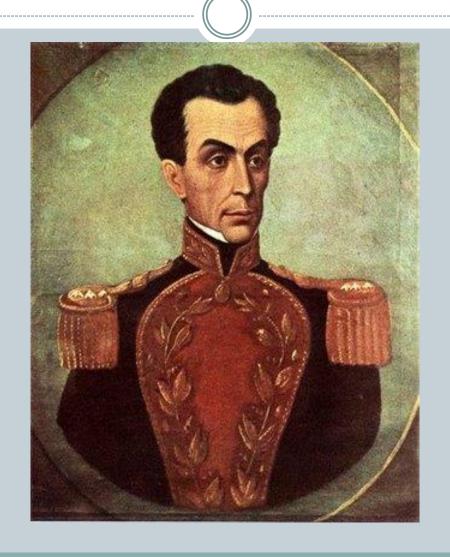
# José Felix Restrepo (1760 – 1832) Director of General of Studies



## First Prohibition Decree March 12, 1828

• "Article 1º In none of the Universities of Colombia will be taught the Treaties of Bentham, thus being reformed Article 168 of the General Curriculum"

# Bolívar returns from the South Campaign



# Bolívar's Room (San Carlos Palace)



# Attempt on the life of Bolívar (September 25 1828)



Letter from Minister of Interior José Manuel Restrepo to All Governors. October 20 1828

• "The scandalous occurrences which have taken place in this city as a result of the conspiracy of the 25th of September (...) have persuaded the President that without doubt the general plan of studies contains defects which require a prompt remedy to cure the roots of the evils, the vices and the immorality of the young (...)"

"(...) 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**, whose ideas and maxims are opposed to religion, morality, and the tranquility of the peoples (...)"

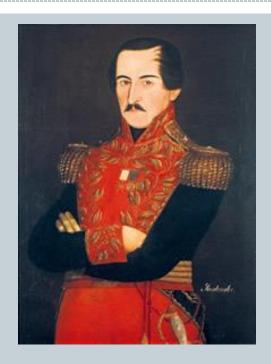
# José Manuel Restrepo



# Circular October 20 1828. Prohibit the teaching of Bentham treaties and the study of Constitutional law

- "Art 2. That the second year students should study morality and natural law as these are more profitable to society
- Art 3. That from now most be suspend the classes of the Principles of Universal law, public law, political, constitutional law and administrative sciences, and therefore that no salaries will be paid to their professors"

# Santander in Exile (1828 – 1832)



#### PROCESO



SEGUIDO AL JENERAL

#### FRANCISCO DE PAULA SANTANDER,

POR CONCECUENCIA DEL ACONTECIMIENTO DE LA NOCHE

DEL 25 DE SETIEMBRE DE 1828

#### ENBOGOTA,

PERMENTE COPIADO DEL ORIJINAL QUE EXISTE EN EL ARCRIVO DE LA COMANDASCIA JENERAL DE CUNDENARARCE: I ALGUNAS RE-PRESENTACIONES DEL MISMO JENERAL SUGRE LA PROPIA MATERIA.

BOGOTA

Just de 96. Lora- So. de 1584

BANCO DE LA REPUBLICA

# Queens Square Place – Bentham House

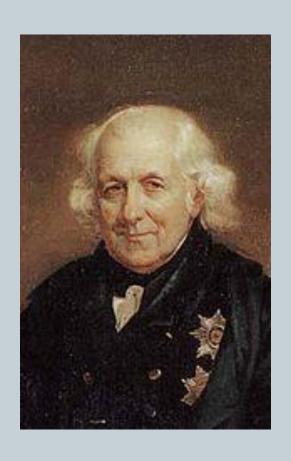


## Visit of July 5. 1830 (Santander's Diary)

"(...) I dine today with J. 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 simply style (...) 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 hoped that Bolívar would not be the exception to this rule so consoling for liberty"

• (...) 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 Spain and others not yet published in English, he made me a gift of three notebooks of the former. Among the latter is a project of a Military Code for the land army and for the navy (...) 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 to Russia".

# Anecdote with Admiral Nikolay Mordvinof

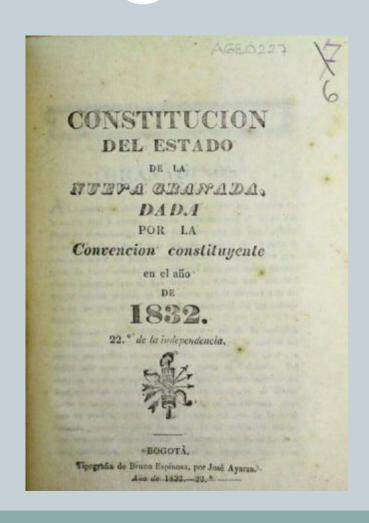


#### Letter from Bentham to admiral Nicolay Mordvinov

- Queen's Place, Westmister, July 9 1830
- "My dear Admiral, I am alive: though turned of eighty two, still in good health and spirits codifying like any dragon (...) I recommend you General Santander, who help me to reproduce and spread my writings when he was Vice-president of Colombia. He told me that Bolívar had been spoiled by the power and became a tyrant (...) It appears that he has issued a Decree that ban the readings of my Treaties. Nevertheless I am happy to know that the Decree must not be implemented because I have news from Bosange Brothers that more than 40.000 volumes of my Treaties were sold to Spanish America and it would be very difficult to impose their prohibition (...)

• "Although you would not have said in your letter of July 9 that you are at the age of 82 is easy to known that you are senile (...) Santander's fame has come to my ears and is a big mistake from you to recommend me a cheat, thief and a murderer. This injury against General Bolívar is aggravated by you becoming the tool of the slander against him (...) Santander tried to destroy the Christian religion and other pious men of Santa Fe in his regime. The reason of his hate against Bolívar proves the docility of the 'Libertador' in his desire to dispel the heresy of his country..."

#### Constitution 1832 – Santander's Regime (1832 – 1837)



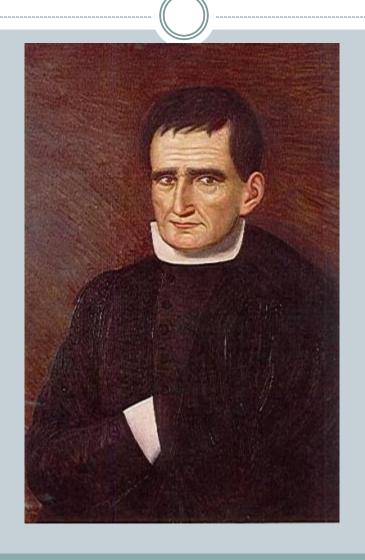
# Mandatory Reintroduction of the Treaties. Law of May 3 of 1835 (Conciliation and prevention)

• Order: "Reset fully in force and effect the Organic Decree related with the Plan General of Studies of 1826 ... The teaching of the text related in the Curriculum [Including the Study of Bentham Treaties] must be the entire responsibility of the teachers, explaining the mistakes against religion, moral or natural law"

#### Dispute in Newspapers Constitutional of Cundinamarca vs. Constitutional of Popayan



# Constitution of Popayan – Joaquin Mosquera



## Controversy

- 1. No penalization for the killing of new borns (Infanticide)
- 2. No criminalization of abortion
- 3. No criminalization for attempted suicide
- 4. The permitting of Divorce in the Civil treaties

# Constitucional de Popayán (1835)

#### • Criticisms pertaining to Infanticide:

"In chapter 12 Bentham also incurs in another monstrous mistake, separate law with the principle of justice. Strictly states that infanticide committed with the consent of the father and mother is not a crime, because it does not produce harm to anybody. The foundation of this gross mistake is that the parents are the only ones who could have alarmed"

### Influence in Laws

315

INDIOE JENERAL

DE LAS

DISPOSICIONES LEJISLATIVAS QUE SE HALLAN VIJENTES

ENTRE LAS SANCIONADAS

DESDE 1821 HASTA EL PRESENTA

Y

CUREGLADO POR EL ORDEN DE LAS MATERIAS

DE QUE SE OCUPAN

PARA EL USO DE LOS CURSANTES

MAGGAMANNO NAOL DE

Jurisprudencia.

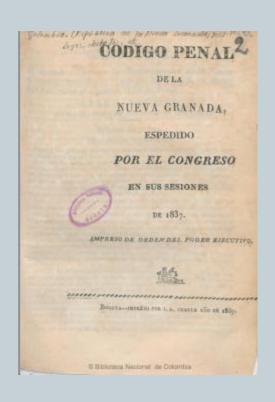
BOGOTA.

IMPRESO POR NICOLAS GOMEZ,

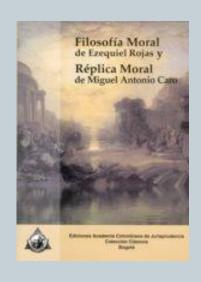
Año de 1841.

- 1. Liberty of slaves (Manumission Law for new born) Law of July 21 1821.
- 2. Liberty of Press (Conformation of a jury). Law of September 17 of 1821
- 3. Publication of law. Law September 25 1821
- 4. Legal system organization. Law May 10 1837
- 5. Usury law- Law of May 26 1835
- 6. Criminal Code June 27 1837
- 7. Jails and Punishment laws. Law May 30 1838

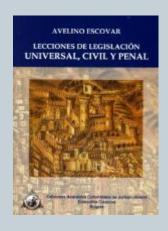
# Criminal Code 1837



## Influence in Philosophy of Law

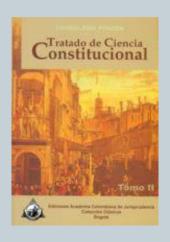


Ezequiel Rojas "Filosofía Moral"



Avelino Escovar Lecciones de Legislación Universal, Civil y Penal

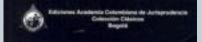
### Constitutional Law Theory (Constitutional Code)



Cerbeleón Pinzón Tratado de Ciencia Constitucional

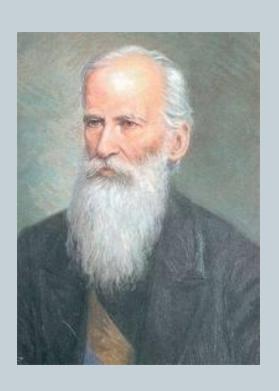






José Felix Restrepo Lecciones de Ciencia Constitucional

# Constitution of 1843



Mariano Ospina Rodríguez:

Prohibition of the Study of Bentham.

And replaced with:

- Natural law
- Roman Law
- Moral and ethics

## José María Samper (Historia de un Alma) 1843



"The youth realized that the conservative government wanted to mould its spirits and thoughts. It was very good the study of Roman Law, for the necessary knowledge of jurisprudence, but it was no reasonable to suppress the study of the constitutional and administrative science, as well as the doctrines from Bentham and the others liberal thinkers. For this reason the spirit of curiosity and research of the students became stronger and many of us studied the Treaties in secret, applying ourselves to study outside classrooms. The books were smuggled and each of us formed the utilitarian ideas without method and direction..."

# Constitution of 1863 (Radical)

#### CONSTITUCION POLITICA

DE LOS

Estados Unidos de Colombia,

SANCIONADA EL

8 DE MAYO DE 1863.



NOGOTA: NERESTA I ESTERIOTINA DE MESAUDO MEMA 1849,

#### Foundation of Universidad Nacional de Colombia 1870

- Manuel Ancizar. The Mandatory Study of the Treaties in the Universidad Nacional.
- The third dispute.



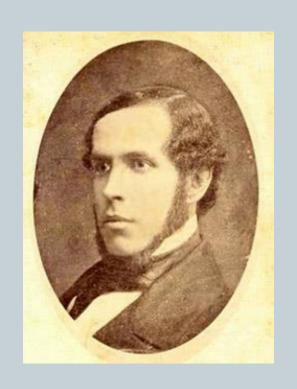
# Panoptico (1874)



The Bogotá Panoptico was designed by Thomas Reed in 1850 and construction began in October 1874



# José Eusebio Caro – Against Utilitarianism



### 1886 Constitution (Conservative)



#### Miguel Antonio Caro Renovation of the tradition



Why was Bentham important in Colombia in the 19th Century?

• 1. Liberalism: after the break with the Monarchy and the old regime, a new theory is needed. Codification related with these ideas

• 2. Marx's criticism. Bentham's ideas was only the superstructure of the Imperalism imported from Britain, and the liberalization of the economy for Spanish American countries

• 3. Jaramillo Uribe. Bentham was not a Philosopher. The Colombian of the first Republic adopted a "soft" philosophy. Kant and others were much more important thinkers.

### Conclusions

• Bentham was used by the new elite (the liberal Creoles) to enforce their power and influence against the old regime. The Church and landowners were opposed to the introduction of Bentham's ideas because they threatened their power. Bentham's thought was used as a tool of legislation for the economic needs of the imperalism of the 19th Century.

#### Conclusions

- Nevertheless, the introduction of Bentham's thought on Colombia during the 19th Century was important for legislators, lawyers and public servants because it introduced a new ideology that rennovated the old legal system.
- Bentham's thought was adapted for Colombian needs and his works helped to make new legal solutions.

# La Guaneña – War Song in Bolívar's Time





