The Influence of Bentham in the Civil Codification History of Portugal via Cardoso da Costa

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Abstract

This article aims to examine how Jeremy Bentham played a role in the important historical turning point of Portuguese civil codification. In the late18th century, riding the wave of the Age of Enlightenment, the movement of 'de-romanization' in Portuguese law finally denied the absolute authority of Roman law. Therefore, the Portuguese codification movement promoted by the Portuguese Liberals was in urgent need of new rational support. At this time, the legislative theory of Jeremy Bentham, who had long been well-known among liberal jurists and had even recommended himself to the new Portuguese political power many times, became an option. Under the scrutiny of Cardoso da Costa, a Portuguese liberal jurist, Bentham's doctrine became the starting point for reflection. Some of Bentham's thoughts were accepted while some were abandoned. His reflection on Bentham's legislative theory touched on many fundamental ideas of his legislative system, including Utilitarianism, 'natural order', justice, basic categories of a code, shortcomings of the Roman legal system, and relationship between Civil Code and Criminal Code. This resulted in a Portuguese Civil Code so unique that any similar legislation could not be found among the first batch of codes in the European codification movement.

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1. Introduction

In the late 18th century, riding the wave of the Age of Enlightenment, the movement of 'de-romanization' in Portuguese law had finally denied the absolute authority of Roman law. As a result, the Portuguese codification movement promoted by the Portuguese Liberals was in urgent need of new rational support. At this time, the legislative theory of Jeremy Bentham, who had long been well-known among liberal jurists and had even recommended himself to the new Portuguese political power many times, became an option. Under the scrutiny of Cardoso da Costa, a Portuguese liberal jurist, Bentham's doctrine became the starting point for reflection. Some of Bentham's thoughts were accepted while others were abandoned. Cardoso da Costa's reflection on Bentham's legislative theory touched on many fundamental ideas of his legislative system, including Utilitarianism, 'natural order', justice, basic categories of a code, shortcomings of the Roman legal system, and relationship between Civil Code and Criminal Code. This resulted in a Portuguese Civil Code so unique that any similar legislation could not be found among the first batch of codes in the European codification movement.

This article aims to examine the ins and outs of this important turning point in Portuguese law. To this end, we will first briefly examine the background of the times, that is, why the Portuguese law was in urgent need of new legislative guidance, and then discuss why Bentham became associated with Portugal and became popular among liberal jurists. Then, we will examine how the above aspects of Bentham's theory were critically inherited and surpassed by Cardoso da Costa.

2. In Search of 'the Light of Reason': the De-romanization in Portuguese Law

In the Medieval Ages, Roman law was regarded as 'written reason' (*ratio scripta*), analogous to a bible for lawyers. People believed that **it contained the most rational solutions**. However, in the Age of Enlightenment, it became the object of criticism[1] because '**some people saw reason as the only source of law**'.[2] People began to question whether Roman law was qualified to 'stand for' reason. This movement was partly due to the awakening of lawyers, and partly due to its conformity with the kingdom's political aim of 'nationalizing' the sources of law. Under such a coalition of academia and politicians, Roman law became an anachronism rejected in the name of 'rationalization': Roman law is Roman law, and reason is reason; there is no longer necessary relationship between them.

In Portugal, there were heralds even before the Age of Enlightenment. The *Ordenações Filipinas* (1603) already stipulated that Roman law could only be applied in the absence of national law, and **only if it was based on 'good reason' (boa razão)**.[3] However, **Roman law was still being applied very often, because the judges always recognized in a tricky way that there were lacunae in national law. Moreover, when no solution appeared in Roman law, the judges had to resort to Accursian or Bartolian interpretation, a kind of 'indirect' application of Roman law.[4]**

These 'interpretative abuses' eventually led to the enactment of Law of Good Reason (Lei da Boa Razão; law of 18 August 1769). This law declared that its very purpose was to put an end to the 'abusive interpretations, which offend the majesty of laws'.[5] This 'Enlightenment law'[6] brought about a deep structural change,[7] modernizing Portuguese law.[8] It reaffirmed the absolute superiority of national law over Roman law.[9] Moreover, according to the law, the opinions of Accursius and Bartolus could no longer be invoked, losing the 'lights (luzes)' of reason.[10]

Therefore, these old sources of law lost their 'extrinsic authority' and became reliant on the 'intrinsic authority' (*i.e.*, reason).[11] So, what is 'good reason'? It is quite unclear, despite a long speech in this law (Article 9). Roughly speaking, human law is only reasonable when it has **'the value of conformity to natural law'.**[12] This law is therefore considered to be the manifestation of the **Rational Jusnaturalism** of that era.[13]

Of course, under the long-term Roman influence, even those Portuguese national laws retained a strong Roman tinge. Therefore, instead of 'de-romanization', it might be more appropriate to call it a 'purification of Roman law'.[14] Nevertheless, henceforth, it was not Roman law that counted, but reason. However, **having denied the absolute authority of Roman law in the name of 'reason', the Portuguese jurists immediately confronted a fundamental question: what is 'reason'?** 'Reason' is often just a pretext. For example, the Bartolian commentaries, which the *Ordenações Filipinas* recognize as 'the most rational', is criticized as being 'lacking in good reason, contrary to good reason' in the Law of Good Reason.[15] **What was once considered the most rational turned quickly to be deemed irrational.** If 'reason' is so important to the law (and therefore to the legal profession), isn't that a bit of child's play? Everything seems to be just a rhetorical game for a specific 'academic' or political purpose. So, what is 'reason'? The Naturalists would answer that reason is the natural law itself. However, this kind of answer does not seem to say anything. It was especially urgent to answer this question at this time because, with the rise of the nation-states, the movement of codification in European countries was preparing to break out. In the old days, the application of Roman law, even if it was blindly followed, had at least one advantage: it prevented the judges from being arbitrary.[16] However, having discarded Roman law, **what principles should the state then follow when enacting a Code?**

Surprisingly, when the Portuguese Liberals were pushing for legislation of the Portuguese Civil Code, Bentham, a pioneer of English codification from the North, made his appearance. More surprisingly, in that era of Naturalism, he who was famous for his opposition to natural law, was highly praised by Cardoso da Costa, the key promoter of Portuguese codification. Could the light of 'reason' only appear in the name of natural law? At that time, an alternative appeared in front of the Portuguese codificationists.

3. A Brand New Light? – Bentham's Theory of Legislation in the Post-deromanization Era of Portugal

3.1 The Spread of Bentham's Theory of Legislation in Portugal

Both the person and the theories of Bentham are deeply related to Portuguese law in the Post-Enlightenment Period. After the anti-monarchical revolution in 1820, Bentham, who was already in his seventies, attempted to bring his theories to the attention of the newly formed Liberal Cortes in Lisbon, taking advantage of this political change to influence the Portuguese legislation. He hoped that in some countries the legislators would appoint

him to draft a code, so that his doctrine could be transformed into statutory law, fulfilling his lifelong dream. After contacting the United States, Russia, Poland, and Spain to offer to draft codes, **Bentham turned his attention to Portugal. In 1821, he sent a letter to João Baptista Felgueiras, Secretary of the Portuguese Cortes, offering to draft a civil code, a criminal code, and a constitutional code.[17] The codification project for Portugal was 'the most ambitious work of his life'.[18] On 26 November 1821, the Cortes resolved to accept Bentham's offer to draft those three codes for Portugal,[19] and replied to Bentham by letter in 1822.[20]** Bentham clearly attached so much importance to this job that in his portrait (drawn by a painter called Henry William Pickersgill in 1829), the Portuguese *Diarios das Cortes* of 1821-1823 containing the aforesaid resolution appears as one of the three books placed beside the 81-year-old Bentham, while the other two being his *An Introduction to the Principles of Morals and Legislation* and John Locke's *An Essay Concerning Human Understanding*.[21] After receiving a favourable response from the Cortes, Bentham immediately began drafting the constitutional code, rather than the civil code or criminal code that he had been working on for most of his life.[22] This order of priority is understandable, as what the constitutionalists urgently needed was a constitution to restrict the power of the king.

Bentham was eager for the flourishing of his works in Portugal. He made at least three attempts to send his works to Portugal from 1820 to 1821.[23] It was largely due to **Bentham's fame** that the Liberal Cortes accepted his offer, and it was thanks to **Étienne Dumont's French recensions** that Bentham's work was known throughout most of Europe, North America and South America. Dumont's versions were not really translations, but rather reworkings in French. Dumont's first reworking is ***Traités de Législation Civile et Pénale***, published in Paris in 1802, which is based on Bentham's early works on Utilitarianism, legislative principles, codification, criminal law and civil law. It soon became a **bestseller in Europe**. In 1822, Dumont published *Théorie des Peines et des Récompenses* and *Tactique des Assemblées Législatives* and *Tactique des Assemblées Législatives*.[24] José Joaquim Ferreira de Moura, one of the drafters of the Portuguese Constitution, also proposed to the Cortes that these works be translated into Portuguese, but in the end only one work was published by the Cortes, which was the two-volume Portuguese version of the Dumont's edition of *Théorie des Peines et des Récompenses*, titled *Theoria das Penas Legaes* and *Theoria das Premios Legaes*, published in 1822, with a subtitle stating that the translation was published 'by order of the sovereign congress of the Extraordinary General Constitutional Cortes of the nation [of Portugal]'. Although Bentham proposed to translate *Traités de Législation Civile et Pénale* first, the Cortes did not do so, probably because this work was already well known in Portugal.[25]

It is certain that many Portuguese jurists and politicians, and almost all Liberals read Dumont's edition of Bentham's works.[26] Bentham himself noticed that Dumont's editions were well known in Portugal. In a letter to a Spanish correspondent in May 1821, he wrote: 'In the University of Coimbra was Dumont's edition of my works almost as soon as edited, an object of attention to the Carvalhos, the Borges, Ferreira, and the Rochas!'.[27] **All these Liberals were graduates from the University of Coimbra and later dominated the new Cortes of Lisbon in 1821.[28]** Carvalho's letter to Bentham even reads as follows: '**The entire Congress loves you and the Liberals claim your authority to support their opinions, while the anti-constitutionalists do not dare to fight it and even less ignore it'.**[29]

Among these Liberals, it is especially worth mentioning Vicente José Cardozo Ferreira da Costa (1765 - 1834). Cardoso da Costa was a professor at the Faculty of Law of the University of Coimbra (in the late 1780s), then became a judge of the Intermediate Court of Justice of Porto (Desembargador da Relação do Porto) in 1799. He was also a member of the Royal Academy of Sciences of Lisbon (Correspondente da Academia Real das Sciencias de Lisboa), and members of various public service commissions. In 1810, during the so-called 'Septembrisada' incident, he was accused of being a Jacobin, that is, a supporter of the French revolutionaries, and therefore suffered political persecution, finding himself exiled to the Island of Terceira, and later to the Island of São Miguel, where **he completed a draft of the Portuguese Civil Code**. According to him, in contrast to some of the European codes at the time, which had various defects, his civil code represented a methodological innovation that deserved to be recorded in history. He completed and presented his draft within a very short time after he learnt that he had the opportunity to submit it to the National Congress (Congresso Nacional).[30] In 1822, the Cortes recommended that 'this jurisconsult who presented the best prospectus of the Civil Code' be honoured.[31]

Cardoso da Costa himself and his draft are worth examining not only because he is considered **'one of the greatest contributors to the codification movement in Portugal'**[32] but also because of **his admiration for Bentham's ideas on codification, which saw him deemed 'Bentham's Portuguese admirer'.[33] Cardoso da Costa's book, *What is Civil Code?* (*Que he o Codigo Civil?*), which was dedicated to explaining his ideas on civil codification, was very much inspired by Bentham.** The word 'Bentham' appears no less than 90 times in the book, and he is repeatedly referred to as 'the most distinguished Jeremias Bentham, to whom we have so much affection', 'the illustrious Jeremy Bentham', 'the wise English Jurist', etc.[34] **It is no exaggeration to say that Cardoso da Costa's name is closely associated with Bentham**:

> Above all, although he appreciated the works of the compilers of the Napoleonic code, and **the works of Jeremiah Bentham, but while noting their beauty, he still criticized them**; and in this part of his writings, the depth and clarity of his ideas, and the clear logic of his conclusions, show him to be a master.[35]

Therefore, we will discuss in detail Cardoso da Costa's commentaries on Bentham's theories.

3.2 The Reception of and Divergence from Bentham's Theories by the Codification Promoter Cardoso da Costa

3.2.1 Overview

Bentham's theories on codification,[36] riding on the wave of European codification movement,[37] were highly regarded in Portugal, but far from being accepted in their entirety. Cardoso da Costa, while genuinely appreciating Bentham's works, did not follow them completely, but rather tested them for their internal coherence and efficacy. Bentham's theory was often the starting point of his reflections, but was frequently surpassed as well.[38]

3.2.2 The Principle of Utility

The principle of utility as an anti-naturalist principle: Bentham argues that law, as 'an assemblage of words',[39] can only be created by legislators. Similarly, rights can only be created by law, which is in turn created by legislators.

Precisely because all rights are products of human law and not something 'extralegal',[40] talking about natural rights is like talking about 'cold heat', 'dry moisture' or 'splendent darkness'.[41] Therefore, he calls natural law a 'phantom' and a 'formidable non-entity'[42]: 'There is no such thing as an offence against the Law of Nature: because there is no such thing as any Law of Nature'[43]: 'Natural rights is simple nonsense.'[44]

Therefore, 'natural law' and 'natural right' are illusions, or at best, things that should become law or right. **Whether they should become law or right can only be judged by utilitarian criteria**. Thus, natural rights have no 'ontological basis', but at best reflect the personal desires of those propagating them.[45] Therefore, Bentham is seen as the founder of legal positivism.[46]

If a science is based on facts, its foundation must be measurable reality. Thus, according to Bentham, ethical phenomena should be **measurable**. Factors that are relevant to ethics, such as motives, are measurable in the same way as physical forces. Here, **according to the principle of utility, it is the consequence of action, *i.e.*, utility, that is measured**. The common desire of human beings is to seek happiness, and particular human action corresponds to a *quantum* of happiness or unhappiness. For individuals, the quantity of happiness or unhappiness depends on four circumstances: intensity, duration, certainty, and proximity. For the community, since it is composed of individuals, the key is the sum of the happiness or unhappiness of each member.[47] Thus, Bentham's utilitarianism is said to be a form of universalistic hedonism.[48] According to this principle, which he later called 'the greatest happiness of the greatest number', happiness and unhappiness are real entities. Everyone tries to minimize unhappiness and maximize happiness. It is the greatest happiness of the greatest number that is the measure of right and wrong.[49] The principle of utility is the only measure for determining right and wrong.[50]

Although this principle is not a legal norm, it represents a moral obligation in human feelings. Precisely because **this principle governs the whole of human activity, it also governs the law, or better said, the legislation.**[51] This principle needs not to be established by positive law. On the contrary, it is the only principle that makes legislation scientific. **To Bentham, the ultimate value which law aims to realize is happiness, not justice**. Justice is not so much an end as a means to happiness: only by just legislation can the legislator realize the happiness of the greatest number.[52] Bentham argues that '**Justice**, in the only sense in which the word has a meaning, is an imaginary personage, invented for the convenience of discourse, **whose dictates are those of utility, applied to certain particular cases**'.[53]

3.2.3 The Auxiliary Explanatory Function of the Principle of Utility

Anyone who wants to compile a code has to take into account the principle of utility[54] that legislation must produce the greatest happiness for the greatest number. There is no exception to this 'Benthamian metaprescriptive statement' for Cardoso da Costa as well. He is also influenced by this criterion for measuring the quality of norms, by this 'utilitarian teleological calculation guiding the legislator's action'.[55] Like Bentham, Cardoso da Costa believes that 'what does more bad than good is bad. What causes more good than bad is good. Bad is unjust. Good is fair. Good must be enacted. Bad must be prohibited'.[56] **The judgement of whether an action is just or not is only a matter of 'arithmetical operations'**: by subtracting the two quantities, the sum of the advantages (proveitos), *i.e.*, the goods (bens), and the sum of the disadvantages (desproveitos), *i.e.*, the bads (males), one arrives at a result which

corresponds either to a utilitarian (útil) or harmful (prejudicial) consequence.[57] Thus, like Bentham, **Cardoso da Costa believes that to be utilitarian is to be just**.

However, in Cardoso da Costa's view, rather than being a subversive or innovative new theory, the principle of utility simply reveals the concept of justice more clearly. Therefore, he saw no need to emphasize it. **He argues that the principle of utility has not replaced the old theory of justice; the principle of utility is merely explanatory or 'playing a subsidiary role'.**[58] 'Mr. Bentham's theory is good; we do not disagree with it',[59] but there is no reason to reject the traditional theory of justice. Cardoso da Costa did not disagree with the old theory of Justice, according to which only what is just is considered utilitarian (útil), and what is just is always utilitarian. In the same way, what would produce more bad than good, considering all its results, is never just, nor right. Because these two theories are not different from each other, or, simply because people are used to the earlier one, there is no reason to introduce the new one. And **it would be useless and unproductive to replace one algebra with another, when both express the same thing with equal clarity.** Also, the danger of abusing the principle of utility is undoubted.[60] According to Cardoso da Costa, the principle of general utility is the same as the principle of Justice. By carefully examining all cases in which the utility and the justice seem to be in contradiction, it will be demonstrated that the contradiction is only apparent, and that what is in fact unjust is never utilitarian, and on the contrary, what is in fact harmful is never really just.[61]

Furthermore, given that codes should be user friendly to the public, they should use the language of the public, so Cardoso da Costa argues that it **would be inconvenient to emphasize the principle of utility, either in legislative formulation or in promotion of the law. This is because Bentham uses the word 'utility' in a way different from everyday language**. Utility in the sense of common language is different from justice: what is convenient to someone particularly (convem particularmente a cada hum) is utilitarian, without bringing into the calculation the convenience in general, that is, the advantage or disadvantage of other people. When the common usage and conception links a word to a determined meaning, it is dangerous to change that meaning. 'Nor is it useful to try to explain what it wants to mean, for the word will continue to exist, but the meaning will be forgotten'.[62] The principle of utility is for the most brilliant wise people. But since the Draft of the Civil Code is for everyone, he did not consider it discreet to replace the useful with the just, or to deduce people's rights and obligations from the principle of utility.[63]

3.2.4 The System of Code

The Incarnation of the Natural Order: The 'Tree of Civil Law': There is a reason why the Englishman Bentham's theory of codification received attention in Portugal, a country within the Civil Law system. As Bentham said, 'a legal system (un corps de lois) is like a vast forest, the better it is penetrated, the more it is known'.[64] In other words, the norms must be predictable. For him, therefore, **the common law does not satisfy this requirement**, because it is based on judgement and thus is a judge made law: it is a group of *ex post facto* retrospective norms.[65] **Bentham's dissatisfaction with the common law of his own country coincided with the statutory law tradition in Continental Europe.**

It may be expected that Bentham would have first examined whether the existing codes of the Civil Law system could be used as models. However, he believed that the Continental European countries did not have any such model because their codes were lacking in methodology. This view was confirmed by Cardoso da Costa:

> Mr Jeremy Bentham has already pointed out somewhere that **none of the codes of the modern countries are methodological**, and elsewhere that none of them are complete [nota 21: *Vue generale d'un Corps Complet de Legislation*, Chap. 4. in fin. e Chap. 31. prope finem.]; and on this point he has stated the undeniable truth that they should not be modelled on. **Methodology is a very essential part of the Codes.**[66]

The two representatives of 'the codes of the modern countries' are the Prussian Code and the French Code. Both their systems are derived from the *Institutiones*, a Roman textbook. The *Institutiones* was 'not written to legislate, but to teach law',[67] but due to path dependence, this two codes dared not deviate from the old teaching system.[68] Thus, Cardoso da Costa put forward a proposal which some considered to be radical,[69] that since the existing system had gone astray because of books, it was **better to believe in no books**: 'Let's not try to copy, let's close the books, because it is those books that have made others go crazy'.[70]; 'Close the books, our fellow citizens!'[71]; 'Close the books, Portuguese people! Now!'[72] Instead of tinkering with the existing laws, it would be better to reconstruct a brand new system. If one chose to turn to the *Corpus Iuris Civilis*, one often ended up with an 'unfortunate shipwreck'.[73]

What he wanted is 'the most natural method'[74] that is 'easily understood by all citizens'.[75] Like the prevailing thought in Europe at the time,[76] Bentham believed that **method is nothing but order**: the most natural method was the most natural order. Bentham did not speak in esoteric terms, as many rational jusnaturalists did, but referred pragmatically to the application of law: the most natural order means **the easiest way to find the law**. According to Cardoso da Costa, what is the most convenient for the general public is the question that must be taken into account when organizing the law. People have no time to do in-depth research; they are incapable of bringing together a number of distant provisions; they do not understand the terminology of an arbitrary and artificial method. It is necessary, therefore, to assign subjects in the order which is easiest for the laymen, that is, in the order which most fits the importance of the subject, in short, in **'l'ordre le plus naturel'**.[77]

Here, Cardoso da Costa quoted a passage written by Bentham directly.[78] Moreover, **Cardoso da Costa further developed Bentham's idea. According to Cardoso da Costa, the most orderly, and therefore the easiest way to consult the law, is to organize the entire civil law system in a tree structure**. This method starts from 'the source of the water, from the point from which it originates, and then follows its many paths, and all its different branches, until the end'.[79] He himself called such an idea **'Tree of Civil Law' ('ávore do Direito Civil').**[80] This tree should be eternal in time and universal in space: 'This trunk is known and unique; it is always the same, either in the old world or in the new one; either in this century or in another; either in monarchies or in republics'.[81]

Of course, the inclusion of an 'alphabetical index' in the code would be a convenient way. This method, proposed by Bentham,[82] was indeed adopted by the Cardoso da Costa.[83] However, the 'alphabetical index' method is, after all, only auxiliary, especially for the laymen, *i.e.*, the general public. A more fundamental approach would be focusing on the internal organization of the code, rather than adding an 'alphabetical index' from outside.

3.2.5 The Trunk of the 'Tree of Civil Law': Giving Each Person What is His Own

Trees have their trunks. So does the 'Tree of Civil Law'.

The legislator must begin 'from the peak of the primary principles'.[84] Cardoso da Costa suggested that a good way to do this would be to establish the primary rules first, as in the Ten Commandments (as Taboas do Sinai), and then move on to the branches: 'first the grand view, and then everything'.[85] Thus, he was using the Ten Commandments as a paradigm.[86] Although the Ten Commandments are legislated from the point of view of obligation (obrigação), in Cardoso da Costa's view, obligation and right or property (direito ou propriedade) are closely interconnected: a right of one person necessarily corresponds to an obligation of another. Therefore, it is completely possible to legislate from the point of view of right.

Just as the Ten Commandments established by the 'Supreme Legislator',[87] that is, by God, human legislation should be based on **the most fundamental principle of justice**, *i.e.*, '**giving each person what is his own**' ('**dai a cada hum o que he seu**'),[88] which is the trunk of the 'Tree of Civil Law'. 'The most luminous principle of justice, that is, giving each person what is his own, must also invariably guide the organizers of civil codes (because the right of citizens can only designate what is theirs, what belongs to them, what is his property). It is the source from which all those Commandments derive'.[89] The draft of the civil code, therefore, should likewise begin with this principle. Here he was obviously referring to the famous dictum in *Corpus Iuris Civilis*, 'justice is the constant and perpetual will to give to each what is his own' (D.1.1.10 pr.: *Iustitia est constans et perpetua voluntas ius suum cuique tribuendi*), in short, *suum cuique*. **This is exactly why Cardoso da Costa used right (direito) and property (propriedade) as synonyms**, because according to his usage, property represents something that is someone's own (in Portuguese, próprio; in Latin, *suum*). The property of assets ('propriedade dos bens') is only a type of property. Thus, to avoid confusion, the property of assets should be called dominion (domínio).[90] So, the 'Tree of Civil Law' is the 'Tree of Civil Property' ('arvore da Propriedade Civil').[91]

The ultimate purpose of any law is to 'give each person what is his own'. Since a right of one correspond to an obligation of the other, it **is the relationship between the two that is governed**. 'If one has [something], the other must respect it'. Right or property, is a 'positive moral quality', while obligation is a 'negative moral quality'. Thus, 'these two words, Right and Obligation, are two branches of the same idea: they are correlative to each other; when there is one, it is always accompanied by the other'; 'If one wants to express the moral quality actively, one would say the parent has the right, or the property, to be respected by the child. But here the passive moral quality immediately appears. The child must respect the parent. — It is the same in all other cases that can be imagined and conceived'.[92] Civil relations, therefore, can be regulated by 'two different Algebras' ('duas differentes Algebras'), namely, the 'Algebra of obligations', and the 'Algebra of rights, or property'.[93]

Cardoso da Costa argued that the legislator should always use the same language. If the legislator speaks of rights in some chapters of the code and of obligations in others, there is a lack of methodological consistency in perspective. Here, Cardoso da Costa also developed Bentham's idea: 'Mr. Bentham had said very discreetly (Obra cit. (N. 2) Cap. 33.[94]) that 'same ideas, same words'. We add that the same Algebra should always be used throughout the code to express the moral and civil relations of people'.[95]

In Cardoso da Costa's opinion, the **fundamental principle of justice, 'giving each person what is his own' ('granting each person his due right')** focuses on juridical relations, *i.e.*, relations of right and obligation: 'The legislation of the Code of Mount Sinai (Codigo do Sinai) [= the Ten Commandments] **did not focus on the objects, but on the relations**, *i.e.*, the relations between the person who must give to another and the person to whom something must be given'.[96]; 'The completeness of the code depends on its having an overview of the full extent of the tree of justice, from its trunk to its end, **either in terms of rights or in terms of obligations**'.[97] The fundamental defect of the old systems, from the *Corpus Iuris Civilis*, to the Prussian Code and the French Code, is that they do not focus on juridical relations, but on objects, and therefore they are 'casuistic codes' incapable of dealing with the complexity of life. He gave the example of the alienation of property in the French Civil Code, which is not exclusively dealt with by the Civil Code (art. 1265 ff), but also by the Commercial Code (art. 566 ff) and the Code of Civil Procedure (art. 898 ff). Similarly, the principles of the contract of partnership in Book III, Title IX of the Civil Code renders all alike provisions in the Commercial Code as useless repetitions.[98]

I**n Cardoso da Costa's construction, juridical relation is the main axis that runs through the civil law**: the difficulty of finding the law, the correct interpretation of the law, *etc.*, all depend on the trunk of the 'Tree of Civil Law', on the 'systematic concatenation of the capital, secondary and derived branches of the tree of justice', in short, on the point of view of the interpersonal ethical-juridical relation, rather than the object.[99]

3.2.6 Simplification of the Algebras: Right and Obligation

Bentham argued that a 'complete legal system' must have a clear division. He held that there are **four fundamental categories**: 'In a legal system, everything revolves around **delicts, rights, obligations, and services (délits, droits, obligations, and services)**'.[100] What creates a delict is the prohibition of a particular behaviour; what confers a right is the protection of an interest; what imposes an obligation is the requirement to refrain from doing a particular act; and what creates a service is the requirement to do a particular act for a particular interest. All these concepts are interrelated and interchangeable: 'to create a delict is to create an obligation or a service; to create an obligation or a service is to confer a right'[101]; 'to create a positive delict is to create an obligation not to act; to create a negative delict is to create an obligation to act'[102]. Thus, these four categories are merely the law itself examined from different perspectives. **They are born and die with the law**[103]. For Bentham, these 'mathematical propositions' are necessary[104] for clear conception.

Cardoso da Costa, however, considered these four categories of Bentham to be less than fundamental, even partly redundant. As mentioned earlier, in his view, the systematic base is the right-obligation dichotomy. Delicts and services are merely derivatives of rights and obligations, and are not worthy of being placed on a par with rights and obligations. Thus, Bentham's construction is 'useless' and 'defective':

> The same thing will happen with this terminology of Mr. Bentham, which, instead of consisting of only two single entities, consists of four, two of which are related to the other two, and therefore become not only useless, because no new idea is added, but also defective, because, not being able to be conceived separately, they only make the algebras more complicated, which should be as clear and simple as possible, so as to be suitable for the intelligence of all citizens, including those who are better educated, those who are less educated, and those who are uneducated.[105]

He questioned the examples given by Bentham:[106] Suppose there is a law that orders me to support you. Bentham said that the law imposes an obligation on me to support you, and that it also subjects me to provide you with the service of supporting you. Who would find these two things different? Is providing the service of supporting not the same thing as having the obligation to support? Suppose there is a law that imposes on me an obligation not to kill you, and Bentham said that this law imposes on me an obligation not to kill you, and also demands from me the negative act, which consists of refraining from killing you. Who would find these two things different? For isn't the obligation not to kill you the same as the requirement of the negative act, which consists in refraining from killing you?[107] If so, why do we complicate simple logic?

3.2.7 Establishment of General Title and Special Title

Bentham used 'general titles' ('titres généraux') in his draft of civil code.[108] However, Cardoso da Costa argued that the general principles are dispensable, by using Bentham's own argument that since the code is the will of the legislator, and does not need **to be composed of doctrinal elements,**[109] 'general titles' are simply unnecessary. Otherwise, it would be a functional confusion between legislation and doctrine. The author of a code is a 'legislator', not a 'doctor'; a code is for regulation, not for teaching[110]:

> Just as he himself teaches us in the aforementioned work, the code should contain law, should be purely an expression of the will of the legislator, so that our readers will understand that it is not necessary to have such a series of general titles in our draft of the code to make the Portuguese people all Doctors of School, when what matters to them is knowing their mutual rights and obligations.[111]

However, **Cardoso da Costa's opinion is questionable too**, because the primary intention of including 'general titles' in a code is to facilitate the application of law, and the pedagogical function, if any, is a secondary consideration.

With regard to the special titles, Bentham, in his chapter on 'the special titles of the civil code' ('des titres particuliers du Code civil'), established three objectives for the organization of the code: firstly, it should be written in an intelligible style (dans un stile intelligible); secondly, it should be easily accessible for consulting and finding the law (consulter et trouver la loi) with the least possible time; thirdly, the contents should be separated from each other (soient degagées les unes des autres) so that people with different conditions could easily find the law that governs them.[112] 'The legislator says, citizens, what is your condition? Are you a parent? Check the title governing parents. Are you a farmer? Consult the title governing farmers'.[113] According to Bentham, 'a list of all these statuses' ('L'inventaire de tous ces états') can be found in two ways: for lawyers, it can be found 'analytically and systematically', 'under the general titles of civil status or condition'[114]; for citizens, 'in the index', 'by alphabetical order'.[115] However, Cardoso da Costa criticized this approach. He pointed out that **if each status has a specialized title, this would lead to redundancy**: 'There would then be a special title for parents, and another for children, and another for servants, and another for masters, and so on'.[116] He argued that this redundancy could be avoided. All we need is some provisions governing the 'bonds' ('vínculos'), *i.e.*, the relations between the parties: 'These general rules cover the peculiar obligations and rights of these people, due to their different statuses and conditions'.[117] Here again, **Cardoso da Costa's point of view is questionable, and even smacks of the double standard of 'being strict with**

others and lenient with oneself': why must Bentham's 'general titles' be pedagogical, while Cardoso da Costa's abstract rules on relation is not?

3.2.8 The 'Superficial' Rejection of the Roman Law System

In Bentham's conception, after the title of **'**Persons', there is the title of 'material beings' (êtres matériels), and then the title of **'**Contracts'.[118] Cardoso da Costa criticized this as a replication of the '*personae-res-actiones*' system of the *Institutiones*, which consists of two *tituli* of general nature, namely, *De iustitiae et iure* (Justice and Law) and *De iure naturali et gentium et civili* (Natural Law, Law of Nations, Civil Law). It is then divided into three parts according to Gaius' system, namely 'persons' (*personae*: *liber* I, *titulus* III *et seq*.), 'things' (*res*: *liber* II, III, and IV, *tituli* I-V), 'actions' (*actiones*: *liber* IV, tituli VI *et seq*.).

Cardoso da Costa accurately pointed out the inconsistency of Bentham's thinking, who himself criticized the Roman division of the law into *iura personarum* and *iura rerum*, which he regarded as merely an attempt to achieve 'a kind of grammatical correspondence or symmetry'. Even where law had a thing as its subject, its subject would still be men and services to be rendered by men. It is because what the law creates is rights. That is something that the compliers of the Roman Code did not understand. They began with an unintelligible division into two parts which are not opposed to each other, which are not exclusive to each other: *Jura personarum* and *Jura rerum*. There is no correspondence between the two appellatives, but only a formal correspondence.[119] In fact, throughout the Middle Ages, it was common for lawyers to 'mechanically copy' the Roman system,[120] almost blindly. Cardoso da Costa pointed out that although Bentham seemed to have modified the Roman system, the only modification was to divide 'things' into 'material beings' and 'contracts', excluding 'actions'.[121] Thus, **in the end, Bentham himself adopted the system he denounced.**

Cardoso da Costa also cited Leibniz to criticize the illogicality of the Roman system. Leibniz, who devoted himself to reforming Roman law from his young age,[122] pointed out two major defects of the 'persons-things-actions' system. Firstly, this approach was based on a factual (*facti*) distinction rather than a legal (*iuris*) distinction of 'subject-object', resulting in awkward intermediate situations, such as the fact that slaves, who are categorized as objects, are in fact human beings: 'This is a method taken not from law, but from fact; for persons and things are factual terms, while power and obligation *etc.* are legal terms'.[123] Secondly, an action may be derived from both the law of persons, *i.e.*, *actio in personam*, and the law of things, *i.e.*, *actio in rem*, and therefore actions should not be juxtaposed with persons and things.[124] Unfortunately, Bentham, who lived a century later than Leibniz, still ended up committing this mistake: 'Mr. Bentham's plan for a civil code was carried out in exactly the same way as that condemned by Baron de Leibniz; and they [= Our readers] will see that **his plan for a civil code led to confusion and endless duplication**'.[125]

The old-world distinction adopted by Bentham also led to dilemmas: **firstly, regarding the distinction between persons and contracts**, he proposed to replace the abstract names of contracts such as purchase, sale, borrowing, loan (achat, vente, emprunt, prêt) with specific names of parties such as buyer, seller, borrower, lender (aheteur, vendeur, emprunteur, prêteur), because 'contracts are acts of people, and there is no contract that does not give a particular name to its party'.[126] In this way, however, the distinction between person and contract becomes very

blurred. Is the title of person an autonomous one, or partially absorbed into the title of contract? Cardoso da Costa held that Bentham was entangled within his own fetters: 'Here we see that Mr. Bentham has been embarrassingly unable to break free from the net he has set himself!'[127] **Secondly, regarding the distinction between things and contracts**, there are so many contracts related to thing, so should they be placed in the title of contract, or in the title of thing?

Bentham argued that 'if it concern things in general and general provisions, the matters will be placed under the title of Contracts. If it concerns a particular species of things and a provision which applies only to this species and not to another, the matters will be under the title of Things'.[128] This embarrassing and baffling treatment led Cardoso da Costa to write again that 'Mr. Bentham did not even try to resolve this issue, but still jumping through it. He ended up falling into the other mesh of his net'.[129] Therefore, Bentham's claim that the advantage of his system was that of 'introducing a uniform principle which governs the entire arrangement'[130] seemed to be an overstatement, because there was no uniformity within his system.

3.2.9 The Relationship Between Civil Code and Criminal Code

Cardoso da Costa criticized Bentham's treatment of the relationship between civil code and criminal code in Chapter III of '*Vue generale d'un Corps Complet de Legislation*' in *Traités de Législation Civile et Pénale*. According to Bentham, 'each civil law forms **a particular title (un titre particulier)** which must finally lead to a criminal law. Each criminal law is the sequel, continuation, and termination of a civil law'.[131] However, Cardoso da Costa pointed out that Bentham's opinion was logically inconsistent[132]:

Firstly, if Bentham wanted to be consistent with his own proposal, he would have suggested 'a single code containing both the civil code and the criminal code'. In other words, the civil code and the criminal code would be just two titles of the code.[133] However, 'surprisingly',[134] Bentham did not do so, but separated them from each other.

Secondly, Bentham argued that the criminal code is a sequel or continuation of the civil code. Therefore, the criminal code should **follow after the civil code**. When analyzing the 'methodological rules' ('Règles de Méthode'),[135] Bentham himself wrote that, 'if there are two objects, and we can speak of the first without speaking of the second, and if the knowledge of the second supposes that of the first, it is to the first that we must give priority'.[136] Therefore, the civil code should take precedence. Thus, Bentham himself clearly asserted that 'no criminal code can be drafted without first determining the plan of a civil code'.[137] However, this assertion contradicts Bentham's own earlier statement, because he had clearly based his system on conducts that were condemned by 'the most powerful' ('les plus forts') and therefore turned into delicts. 'This unfortunate idea consists of wanting the penal code to precede the civil code, and wanting the legislation to begin with the former'.[138]

4. Conclusion

Cardoso da Costa was of the opinion that none of the extant legislation and legislative proposals (especially many of Bentham's views) were worthy of adoption, so the **Portuguese Civil Code should therefore be original. This idea was eventually 'passed on to Viscount Seabra',[139] making the Portuguese Civil Code of 1867, which Seabra was responsible for drafting, unique and without parallel among the first codes in**

Europe. Therefore, Bentham did influence the Portuguese Civil Code, albeit in a negative way. In Cardoso da Costa's opinion, even Bentham, whom he quoted most often and who inspired him the most, was not entirely appropriate. Just as he wrote on the first page of his *What is Civil Code?*, 'Should the Portuguese Civil Code be original? Yes. Is there any civil code that can serve as a model? No. Not even the learned works and writings of the illustrious Jeremy Bentham on the plan of civil code? Neither do these'.[140]

Cardoso da Costa's criticism of Bentham's views prevented the Portuguese Civil Code from going down what he considered to be a crooked path. **In the Civil Code of 1867, we can see the embodiment of Cardoso da Costa's reflection on Bentham's doctrine**. Firstly, this code has no general part. Secondly, it completely abandons the Roman system of 'persons-things', 'persons-things-actions' or 'persons-things-contracts'. Thirdly, it is centred on right, taking the principle of 'giving each person what is his own' as the backbone of the 'Tree of Civil Law', because the four parts of this Civil Code are 'Civil Capacity' (prerequisite for acquisition of rights), 'Acquisition of Rights', 'Right of Property', and 'Offense against Rights, and its Reparation'. Fourthly, it had a strong natural law flavour,[141] especially because it maintains that certain rights 'derive from the human nature itself'[142]. This is why his reflection on Bentham's doctrine is considered highly important in the Portuguese codification.[143]

Furthermore, Cardoso da Costa's methodology placing rights and obligations at the core of the Civil Code was the precursor of the theory of juridical relations that constitutes the groundwork for Portugal's second codification in 1966 – the work of Manuel de Andrade regarded as 'the cornerstone of modern Portuguese civil law'[144] is exactly titled 'juridical relations'. However, the birth of the Civil Code of 1966 is another story.

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Notes

[1] Mário Júlio de Almeida Costa, *História do Direito Português* (Coimbra: Almedina, 1996), 59–60 (Chinese translation titled '葡萄牙法律史' by Tong Io Cheng, Macau: Faculty of Law of University of Macau, 2004); Gomes da Silva, *História do Direito Português: Fontes de Direito*, 5th ed. (Lisbon: Calouste Gulbenkian, 2011), 437.

[2] da Silva, *História do Direito*, 442.

[3] *Ordenações Filipinas*, Livro III, Titulo LXIV, preâmbulo, in *Ordenações Filipinas, Livros II e III* (Lisbon: Fundação Calouste Gulbenkian, 1985).

[4] *Ordenações Filipinas*, Livro III, Titulo LXIV, 1.

[5] Cfr. Parágrafo 9**.**

[6] Mário Reis Marques, *Codificação e Paradigmas da Modernidade* (Coimbra: Coimbra Editora, 2003), 576.

[7] For *Law of Good Reason*, see: Gustavo de Revorê do Pugsley, 'Consolidação (ou Criação?) das Leis Civis por Teixeira De Freitas: Reflexões sobre a Lei da Boa Razão', *Revista Jurídica Luso-Brasileira* 9, no. 1 (2023): 575–91; António Menezes Cordeiro, 'A Lei da Boa Razão (1769): A Globalização Atlântica', *Revista de Direito do Consumidor* 127, (January/February 2020): 101–39; Eduardo Teixeira de Carvalho Junior, 'A Boa Razão e o Iluminismo Português', *Antíteses* 13, no. 25 (2020): 722–46; José Subtil, 'A Lei da 'Boa Razão' como Inevitabilidade Pombalina (1756-1768) e a Consagração do Protoliberalismo (1769-1807)', in *A Função Modernizadora do Direito Comparado: 250 Anos da Lei da Boa Razão, Homenagem à Memória de António Manuel Hespanha e Ruy Rosado de Aguiar Júnior*, ed. Claudia Lima Marques and Gustavo Cerqueira (São Paulo: YK Editora, 2020): 25–40; João Victor Pollig, 'A Transformação do Direito no Mundo Moderno: Um Estudo Analítico sobre a Lei da Boa Razão (1769)', *Fronteiras & Debates* 4, no. 1 (2017): 129–54; Gustavo César Machado Cabral, 'A Lei da Boa Razão e As Fontes do Direito: Investigações sobre as Mudanças no Direito Português do Final do Antigo Regime', in *Anais do XIX Encontro Nacional do CONPEDI* (Fortaleza, June 9–12, 2010): 6114–26.

[8] de Revorê do Pugsley, 'Consolidação (ou Criação?)', 575–91 (579).

[9] José Correia Telles, *Commentario Critico à Lei da Boa Razão em data e 18 de Agosto de 1769* (Lisbon: Typographia de Maria de Madre de Deus, 1865), 30.

[10] Parágrafo 13.

[11] Telles, Commentario Critico, 85; de Revorêdo Pugsley, 'Consolidação (ou Criação?)', 575–91 (582).

[12] F. C. Pontes de Miranda, *Fontes e Evolução do Direito Civil Brasileiro*, 2nd ed. (Rio de Janeiro: Forense, 1981), 46; *apud* de Revorêdo Pugsley, 'Consolidação (ou Criação?)', 582.

[13] Marques, *Codificação e Paradigmas*, 580.

[14] Ibid., 577.

[15] This is also noted by da Silva, *História do Direito Português*, 472; de Revorê do Pugsley, 'Consolidação (ou Criação?)', 583; Venceslau Tavares Costa Filho, *Um Código 'Social' e 'Impopular': Uma História do Processo de Codificação Civil no Brasil (1822–1916)* (PhD diss., Recife, 2013), 136.

[16] Marques, *Codificação e Paradigmas*, 577.

[17] Catherine Fuller, "Primeiro e Mais Antigo Constitucional da Europa': Bentham's Contact with Portuguese Liberals 1820–23', *Journal of Bentham Studies* 3, no. 1 (2000): 1–13, 1.

[18] Ibid., 10.

[19] Ibid., 12.

[20] Ibid., 2.

[21] Ibid., 10–2.

[22] Ibid., 2.

[23] Ibid., 3–6.

[24] Ibid., 8.

[25] Ibid., 9–10.

[26] Ibid., 8.

[27] Letter 2770, Bentham to Nuñez, 9? May 1821, Correspondence (CW), x. 329–37, *apud* Ibid., 8.

[28] Ibid., 9.

[29] Letter 2855, Carvalho to Bentham, 1 March 1822, Correspondence (CW), xi. 40–1; *apud* Ibid., 9.

[30] For a biography of Cardoso da Costa, see Guilherme Camargo Massaú, 'O Que é o Código Civil para Vicente José Ferreira Cardozo da Costa: os Portugueses e o Código', *Revista de Direito Civil Contemporâneo* 15 (2018): 319–42; Inocêncio Francisco da Silva, *Diccionario Bibliographico Portuguez* (Lisbon: Imprensa Nacional, 1858–1959), bio-bibliographical note on Vicente José Ferreira Cardoso da Costa; Lúcia Maria Bastos P. Neves, 'Um Baiano na Setembrizada: Vicente José Cardoso da Costa (1765–1834)', in *O Atlântico Revolucionário: Circulação de Ideias e de Elites no Final do Antigo Regime*, ed. José Damião Rodrigues (Ponta Delgada: Centro de História de Além-Mar, 2012): 119–36; Antonio Moliner Prada, 'Experiencia y Memoria de la Revolución de 1808: Blanco White y Vicente José Cardoso da Costa', in *O Atlântico Revolucionário: Circulação de Ideias e de Elites no Final do Antigo Regime*, ed. José Damião Rodrigues (Ponta Delgada: Centro de História de Além-Mar, 2012): 385–406.

[31] Cfr. da Silva, *Diccionario Bibliographico*.

[32] Marques, *Codificação e Paradigmas*, 628.

[33] Ibid., 619.

[34] José Ferreira Cardozo da Costa, *Que He O Código Civil?* (Lisbon: Typografia de Antonio Rodrigues Galhardo, 1822), IV, 64, 95.

[35] Antonio do Amaral Machado, *Noticia ácerca do Dr. Vicente José Ferreira Cardoso e das suas obras*, in *Gazeta dos Tribunaes*, no. 701, (Lisbon: Typ. da Gazeta dos Tribunais, 18 April 1846); *apud* da Silva, *Diccionario Bibliographico*.

[36] Philip Schofield and Xiaobo Zhai, eds., *Bentham on Democracy, Courts, and Codification* (Cambridge: Cambridge University Press, 2022).

[37] Tong Io Cheng, 'Codification of Civil Code and the Background, Crisis and Perspective of Legal Fragmentation', *Journal of CUPL* 1 (2013): 67–75.

[38] Marques, *Codificação e Paradigmas*, 628 – 629.

[39] Jeremy Bentham, *A Comment on the Commentaries: A Criticism of William Blackstone's Commentaries on the Laws of England* (Oxford: Clarendon Press, 1928), 245.

[40] Marques, *Codificação e Paradigmas*, 575.

[41] Jeremy Bentham, *Supply without Burthen* (1795), in *Jeremy Bentham's Economic Writings*, ed. W. Stark (Location: Publisher, 1952), 283, 335; *apud* Dan Priel, 'Toward Classical Legal Positivism', *Virginia Law Review* 101, no. 4 (June 2015): 987–1022, 997, note 41.

[42] Jeremy Bentham, *A Comment on the Commentaries and a Fragment on Government*, ed. J. H. Burns and H. L. A. Hart (London: Athlone Press, 1977), 17, 20; *apud* Priel, 'Toward Classical Legal Positivism', 997, note 42.

[43] Jeremy Bentham, *Preparatory Principles: Inserenda 3*, at 122 (unpublished manuscripts, on file with the University College London Bentham Project), available at http://www.ucl.ac.uk/Bentham-Project/tools/bentham_online_texts/ppi/summ_contents); *apud* Priel, 'Toward Classical Legal Positivism', 997, note 42.

[44] Jeremy Bentham, 'Anarchical Fallacies; Anarchical Fallacies; being an examination of the. Declaration of Rights issued during the French Revolution', in *The Works of Jeremy Bentham*, vol. 2, ed. John Bowring (Edinburgh: William Tait; London: Simpkin, Marshall, & Co., 1843): 488–534, 501; Philip Schofield, Catherine Pease-Watkin, and Cyprian Blamires, eds., *Rights, Representation, and Reform: Nonsense upon Stilts and Other Writings on the French Revolution* (Oxford: Oxford University Press, 2002), 317ff.

[45] Philip Schofield, 'Jeremy Bentham's "Nonsense upon Stilts,"' *Utilitas* 15, no. 1 (March 2003): 1–26.

[46] H. L. A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon Press, 1982), 53; Dan Priel, 'Toward Classical Legal Positivism', 987–1022; Philip Schofield, 'Jeremy Bentham and the Origins of Legal Positivism', in *The Cambridge Companion to Legal Positivism*, ed. Torben Spaak and Patricia Mindus (Cambridge: Cambridge University Press, 2021), 203–24, 203.

[47] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. J. H. Burns and H. L. A. Hart (Oxford: Clarendon Press, 1996), 12, 38.

[48] Marques, *Codificação e Paradigmas*, 626.

[49] Jeremy Bentham, *A Fragment on Government* (Cambridge: Cambridge University Press, 1988), 3.

[50] Bentham, *Introduction to the Principles*, 11.

[51] For Bentham's theory of law, see Xiaobo Zhai and Michael Quinn, eds., *Bentham's Theory of Law and Public Opinion* (Cambridge: Cambridge University Press, 2014).

[52] Marques, *Codificação e Paradigmas*, 627.

[53] Bentham, *Introduction to the Principles*, 120.

[54] Marques, *Codificação e Paradigmas*, 575.

[55] Ibid., p. 627.

[56] Cardoso da Costa, *Que He o Código Civil?* (Lisbon: Typografia de Antonio Rodrigues Galmardo, 1822), 128.

[57] Ibid., 127–8.

[58] Marques, *Codificação e Paradigmas*, 624, 696.

[59] da Costa, *Que he o Codigo Civil?*, 128.

[60] Ibid., 128.

[61] Ibid., 128–9.

[62] Ibid., 129.

[63] Ibid., 129.

[64] Jeremy Bentham, *Traités de Législation Civile et Pénale*, vol. 1 (Paris: Bossange, Masson et Besson, 1802), 146.

[65] Martín Laclau, 'Os Pressupostos do Pensamento Jurídico Inglês', *Nomos: Revista Portuguesa de Filosofia do Direito e do Estado* 3–4 (1987): 105; apud Marques, *Codificação e Paradigmas*, 619, nota 1969.

[66] da Costa, *Que he o Codigo Civil?*, 94.

[67] Ibid., 106.

[68] Ibid., 106–7.

[69] Marques, *Codificação e Paradigmas*, 607.

[70] da Costa, *Que he o Codigo Civil?*, 92.

[71] Ibid., notas, 20, 59.

[72] Ibid., notas, 20, 59.

[73] Ibid., notas, 20, 59.

[74] Ibid., 94.

[75] Ibid., 94.

[76] Ng Kei Kei, 'Der Ordnungsgedanke in Pütters Rechtsmethodik: Ein neuer Versuch der deutschen Rechtswissenschaft des 18. Jahrhunderts', *Archiv für chinesisch-deutsches Privatrecht* 20 (Beijing: Peking University Press, 2021): 177–203.

[77] Bentham, *Traités de Législation*, 164.

[78] Although it is only an excerpt, and he translated the original French words into Portuguese. See da Costa, *Que he o Codigo Civil?*, 94.

[79] Ibid., 95.

[80] Ibid., 98.

[81] Ibid., 95.

[82] E.g. Bentham, *Traités de Législation*, 299.

[83] da Costa, *Que he o Codigo Civil?*, 94–5.

[84] Ibid., 91.

[85] Ibid., 98, e notas, 63.

[86] Marques, *Codificação e Paradigmas*, 607.

[87] da Costa, *Que he o Codigo Civil?*, 103.

[88] Ibid., 96.

[89] Ibid., notas, 63.

[90] Ibid., notas, 107.

[91] Ibid., 98.

[92] Ibid., 99.

[93] Ibid., 105.

[94] Bentham, *Traités de Législation*, Cap. XXXIII. 'Du style des Lois,' 361; 368.

[95] da Costa, *Que he o Codigo Civil?*, 105.

[96] Ibid., 107.

[97] Ibid., 108.

[98] Ibid., notas, 107.

[99] Marques, *Codificação e Paradigmas*, 618–9.

[100] Bentham, *Traités de Législation*, 153.

[101] Ibid., 156.

[102] Ibid., 155.

[103] Marques, *Codificação e Paradigmas*, 621.

[104] Ibid., 621.

[105] da Costa, *Que he o Codigo Civil?*, 125–6.

[106] Bentham, *Traités de Législation*, 154.

[107] da Costa, *Que he o Codigo Civil?*, 126.

[108] Bentham, *Traités de Législation*, 225.

[109] Ibid., 358.

[110] da Costa, *Que he o Codigo Civil?*, notas, 61.

[111] Ibid., 132.

[112] Bentham, *Traités de Législation*, 298–9.

[113] Ibid., 299.

[114] Ibid., 299.

[115] Ibid., 299.

[116] da Costa, *Que he o Codigo Civil?*, 134.

[117] Ibid., 134.

[118] Bentham, *Traités de Législation*, 300.

[119] Ibid., 258–9.

[120] Marques, *Codificação e Paradigmas*, 633.

[121] da Costa, *Que he o Codigo Civil?*, 137.

[122] Gottfried Wilhelm Leibniz, *Nova Methodus Docendae Discendaeque Jurisprudentiae* (Pisa: Sumptibus Aug. Pizzorno s.p., 1771).

[123] Leibniz, *Nova Methodus Docendae*, Pars II, § 10, 41.

[124] Ibid., Pars II, § 10, 41; Ng Kei Kei, 'The Early Modern Juristic-Philosophical Paradigm Shift from "Person-Thing Dualism" to "Subject-Object Dualism,"' in *Roman Law and Modern Civil Law*, vol. 11 (Xiamen: Xiamen University Press and Soochow University, forthcoming); Ng Kei Kei, 'The Development, Difficulties and Solution of the 'Subject-Object Dualism' in Modern Law: Law Lost Its Way While Philosophy Had a New Way?', *Macau Law Review* 42, no. 1 (2020).

[125] da Costa, *Que he o Codigo Civil?*, 138.

[126] Bentham, *Traités de Législation*, 300.

[127] da Costa, *Que he o Codigo Civil?*, 139.

[128] Bentham, *Traités de Législation*, 301.

[129] da Costa, *Que he o Codigo Civil?*, 139.

[130] Bentham, *Traités de Législation*, 307.

[131] Ibid., 161–2.

[132] da Costa, *Que he o Codigo Civil?*, 131; Marques, *Codificação e Paradigmas*, 629–30.

[133] da Costa, *Que he o Codigo Civil?*, 130.

[134] Ibid., 130: 'o que se não podia esperar'.

[135] Bentham, *Traités de Législation*, 164.

[136] Ibid., 165.

[137] Ibid., 298.

[138] da Costa, *Que he o Codigo Civil?*, 131.

[139] Marques, *Codificação e Paradigmas*, 696.

[140] da Costa, *Que he o Codigo Civil?*, 1.

[141] Tong Io Cheng, Chou Kam Chon, Kuan Kun Hong, Tang Chi Keong, and Ai Lin Zhi, eds., *Portuguese Civil Code* (Chinese version) (Beijing: Peking University Press, 2009), 1.

[142] Ng Kei Kei, *Macau Personality Rights Law*, vol. 1, forthcoming (Beijing: Social Sciences Academic Press, 1.2.1.2. Cfr. Art. 359.º of this Portuguese Civil Code: 'Original rights are those that **result from human's own nature**, and that civil law recognizes and protects as the source and origin of all others. These rights are: 1º — the right of existence; 2.º — the right of freedom; 3.º — the right of association; 4º — the right of appropriation; 5.º — the right of defense' (our translation).

[143] Marques, *Codificação e Paradigmas*, 575.

[144] Manuel de Andrade, *Teoria Geral da Relação Jurídica*, vol. 1, 8th reprint (Coimbra: Coimbra, 1997) (Chinese translation titled '法律關係總論．第一卷' by Ng Kei Kei, Beijing: Social Science Academic Press China, 2015); Manuel de Andrade, *Teoria Geral da Relação Jurídica*, vol. 2, 9th reprint (Coimbra: Coimbra, 2003) (Chinese translation titled '法律關係總論．第二卷' by Ng Kei Kei, Beijing: Social Science Academic Press China, 2018); Tong Io Cheng, 'Legal Science, Legal Education, and the Cultivation of Macau Legal Professionals', in *Cross-Strait (Mainland China, Taiwan, Hong Kong and Macau) Legal Development in 2010*, ed. Tang Te-chung and Chung Chi (Taipei: Institute of Legal Studies, Academia Sinica, 2011): 231–326, 303.