

DICIONÁRIO DE HISTORIADORES PORTUGUESES

DA ACADEMIA REAL DAS CIÊNCIAS AO FINAL DO ESTADO NOVO

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JORDÃO, Levy Maria (Lisbon, 9 January 1931 – 19 July 1975)

Levy Maria Jordão, First Viscount of Paiva Manso, was the eldest son of Abel Maria Jordão de Paiva Manso (the first baron of this title) and D. Catarina Angélica Dias Meneses. He married D. Maria Henriqueta de Araújo, as a result of which his title was not passed on to his descendants. He studied Law at Coimbra, and completed his doctorate in 1853, having received many prizes over the years of his university education. He became a member of the Lisbon City Council (1856–59), a member of the National Assembly, assistant auditor to the Navy Ministry (1859), a professor in the Higher School of Letters (from 1862), assistant to the Crown Attorney General (1866) and a member of His Majesty's Privy Council. He was in the third year of his Law degree, aged nineteen, when he published his first historical study – *Ensaio sobre a História do Direito Romano* [Essay on the History of Roman Law] (1850), the first volume of which would be followed by two others, published in the succeeding years. The importance given to historical aspects in the academic education of lawyers at that time was also extended to debates on doctrine and jurisprudence, while also playing an essential part in juridical exposition itself. From that time on LMJ would consolidate precisely that symbiosis between the fields of historiography and law, making use of his juridical knowledge as a method of argument, exposition and doctrine so as to extend the dimensions and complexity of his historical studies. In the dissertation he defended at the conclusion of his doctorate he focused on the more specific problem of the *Fundamento do Direito de Punir* [Basis of the Right to Punish] (1853), particularly with regard to the essential questions of the legitimacy and the effectiveness of penal sanctions applied within the criminal justice system. Fully integrating himself into what was at the time a European-wide debate, LMJ adopted an optimistic view on correction in the way that he defined penal law as an instrument for the juridical, social and moral recuperation of the criminal, arguing that the right to punish was a primary right of the state, committed to maintaining social order threatened by crime and by the social disintegration that it engendered. In this respect he was close to the thinking of Karl Krause (1781–1832), a German philosopher who regarded the law as having an essential role in the formation of humanity's moral conscience. He argued that the maintenance of social harmony, based on the close relationship of the ideas of “good” and “order”, was an integral part of the rational destiny that it was Man's duty to fulfil, inasmuch as “All men are people, all have an equal spiritual value, because in all humanity a free and intelligent will has the same value: for this reason all must respect the rights of all, recognizing in them the same goal, the same nature” (*O Fundamento do Direito de Punir*, p. 17). In this way, and taking a utilitarian view of Krause's philosophy,



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LMJ defines as a crime any act that could threaten that harmony. In Portugal, discussion of criminality had a special relevance and importance, given that the first Penal Code had been published the previous year, in 1852, and LMJ's discussion of the topic would distinguish him as one of the nineteenth century's most respected criminologists. Along with Francisco António Fernandes da Silva Ferrão (1798–1874) and António Ayres de Gouveia (1828–1916), LMJ was a leading figure in the evaluation and revision of the Portuguese penal system over the following decades, playing an integral part in the Penal Code Revisory Commission. Declining to enter the judiciary, LMJ settled himself in Lisbon, where he practised as a lawyer for many years, defending many *causes célèbres*, and where he published, as early as 1853–43, his four-volume *Comentário ao Código Penal Português* [Commentary on the Portuguese Penal Code]. The work emerged, according to LMJ, as a result of two fundamental outlooks. The first, of a general nature, was related to the fact that all and any legislative code requires complementary explanations (“The most perfect Code lacks commentaries. The law should establish only general principles: to think that it can avoid and resolve all the difficulties that in practice present themselves is to nurse an illusory expectation”; *Comentário do Código Penal Português*, p. v). The other, more specific aspect, related to the need for a revision of the Code, since, according to LMJ, it lacked a systematic unity and method, being based on a legal framework that was unclear and at times disproportionate, and was unduly restrictive towards the freedom of conscience and rights of association. As well as consolidating LMJ's position as a commentator on jurisprudence, the work was also crucial in systemizing his views as a historian, since he prefaced his Commentary with a brief history of Portuguese law, and complemented it with repeated references to the comparative history of European legislations, taken to be a powerful way of examining juridical topics. In LMJ's view, “all legislation has a historical and philosophical element; it was for this reason that to theoretical and philosophical development of doctrines we added ancient native and Roman law, as well as the provisions of modern codes, for the undeniable convenience of being able to compare their provisions with those of our own law” (*Comentário ao Código Penal Português*, p. vi). By going back to the Visigoths, the Lusitanians, and the Romans, LMJ argued that, as in Humanity, so in Law there could be applied the idea of a poetic age, of ignorance and barbarity, during which instinct outweighed reason and imagination outweighed intelligence. In these periods, justice was understood as a subjective practice, with the true foundation of its legitimacy, accompanied by a rehabilitation of human nature, being developed only in the eighteenth century, the historical stage for the total reform of penal justice. Claiming a clear link with an Enlightenment heritage, LMJ attributes the structuring of bases of the law of punishment and the defining of its boundaries to Voltaire (1694–1778), Rousseau (1712–1778), Beccaria (1738–1794) and Brissot (1754–1793), among others, crediting the French Revolution with the overthrow of the old institutions and the conclusion of the reform of philosophy. These thinkers and these events had triggered reform all across Europe. LMJ's work on the Penal Code also resulted in the publication of the important Report on the new project for it, delivered to the government in 1861, which turned it into a bill and presented it to the Cortes in January 1862. This project (which became known as the “Penal Code of D. Pedro V”) had a fundamental influence on the reform law of 1 July 1867, which abolished in Portugal the death penalty for civil crimes and forced labour, resulting in the



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introduction of a model of cellular imprisonment, on the penitentiary system, and in a wider sense of corrective penal law. The influence of LMJ's views also led to the further penal reform of 1884 and the promulgation of the Penal Code of 1886, which was remained in force until 1982, corrected, reformed and complemented many times. The 1850s, in fact, marked the start of a prolific output of historiographical studies which would also structure the principal trajectories of his historical thought and the conceptual maturity related to the those reflections. He participated in the *Revue Historique de Droit Français et Étranger* (1857), and also published in Paris an *Étude Historique sur la Quotité Disponible en Portugal* (1857), which was followed by the *História da Real Casa de Santo António* (1857), the *Memória Histórica sobre os Bispados de Ceuta e de Tânger* (1858), and the publication of sources, which he greatly valued, with the works *Portugalliae inscriptions romans* (1859) and *Bullarium patronatus Portugalliae regum* (1868–79). Even in the last decade of his life he remained committed to historiographical production, working on a *História Eclesiástica Ultramarina* (1872) and *História do Congo* (which would be published posthumously, in 1877). Giving a clear priority to the areas of the history of Law and of the Church, with special emphasis on Europe and Africa, LMJ based himself on the notions of development, progress and the principle of harmony, notions that would characterize the evolution of humanity, based on the reciprocal dependency of human beings, which is a reflection of nature itself (where no living being can survive in isolation). From this there results the fundamental perspective of an innate relationship between Man and Society, with special emphasis on questions related to the social status of Man, intrinsic to his own existence and resulting from his very nature. According to LMJ, Man only fulfils his potential through association, seen as a way of regenerating the human race, since individuality is regarded as merely a transitional state between abstraction and inorganicity, on the one hand, and concrete liberty and organicity on the other. In these processes the author also values the role of Christianity as a motor of civilization. Counterposing the concepts of ignorance and barbarity to those of intelligence and reason, LMJ writes the history of man's evolution within society by way of reform, regeneration and moral rehabilitation, very largely attributed chronologically to the eighteenth century, and based on the deepening of notions of justice and duty. In the course of those decades, LMJ also published various pamphlets on different themes, not always strictly historiographical. These included juridical topics in both civil and ecclesiastical history, financial and budgetary problems in Portugal and its colonies, the exercise of the functions as councillor on the Lisbon City Council, the results of various public speeches, such as his *Oração Inaugural da Abertura do Curso Superior de Letras em 1862* (published in 1863), and finally themes of personal interest, such as specific biographical appreciations, such as that of António Pereira de Figueiredo (published in 1859), or the promotion of cultural questions, exemplified in the discussion of literary property (begun in 1860). He also wrote for various publications, such as *Instituto*, *Semana* and *Revolução de Setembro*. Despite his leading role in a number of parliamentary interventions, he did not develop his political activity significantly, although he had positive influence in defending the rights of religious associations (a principle that was dear to him, given his New Christian background). In 1863 he joined the Masonic lodge, Liberty, in Coimbra, adopting the name of Fabrício. In the following year, in Lisbon, he joined another lodge with the same name and took part

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in the initiative that resulted in the creation of the Portuguese Progressive Masonic Confederation. He was a member of the Lisbon Municipal Council, the Associação dos Advogados [Association of Lawyers], the Académie de Législation de Toulouse, the Instituto de Coimbra, the Instituto de África, the Société Havraise d'Études Diverses, the Sociedade dos Amigos das Letras e das Artes da Ilha de S. Miguel, the Sociedade de Agricultura de Ponto Delgada, the Société des Antiquaires de Picardie (Amiens) and was a permanent member of the Academia Real das Ciências.

Works by the author: *Commentario ao Codigo Penal Portuguez*. Lisboa: Tipografia de José Baptista, 1853; *O Fundamento do Direito de Punir. Dissertação inaugural para o acto de conclusões magnas*. Coimbra: Imprensa da Universidade, 1853; *História da Real Casa de Santo António*. Lisboa: Imprensa União Tipográfica, 1857; *Étude historique sur la quotité disponible en Portugal*. Paris: Auguste Durand Libraire, 1857; *Cours de Droit Pénal*. Lisboa: Typographie de Lallemand & C.^a, 1858; *Memoria historica sobre os bispados de Ceuta e Tanger*. Lisboa: Academia Real das Ciências, 1858; *Portugalliae inscriptiones romans*. Lisboa: Tipografia da Academia, 1859; *Bullarium Patronatus Portugalliae Regum in ecclesiis Africae, Asiae atque*. Lisboa: Ex-Tipografia Nacional, 1868-1879, 5 vols.; *Memoria sobre Lourenço Marques (Delagoa Bay) pelo visconde de Paiva Manso*. Lisboa: Imprensa Nacional, 1870; *Historia Ecclesiastica Ultramarina*. Lisboa: Imprensa Nacional, 1872; *História do Congo: obra póstuma*. Lisboa: Tipografia da Academia Real das Ciências, 1877.

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Rita Mendonça Leite



APOIOS:

