
THE COLLECTED WORKS OF
JEREMY BENTHAM

PREPARATORY
PRINCIPLES

Edited by
DOUGLAS G. LONG
and PHILIP SCHOFIELD

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THE COLLECTED
WORKS OF
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PRINCIPLES OF LEGISLATION

'Preparatory Principles' is not a linear text in the conventional sense, but consists of a series of short passages on a variety of topics, whose themes are summarized in marginal headings. The material constitutes a philosophical commonplace book, compiled by Bentham in the mid-1770s, in which he worked out the foundational ideas for his new science of legislation. He then drew on this material when composing such works as *A Fragment on Government* and *An Introduction to the Principles of Morals and Legislation*. Inspired by such figures as John Locke and Claude Adrien Helvétius, Bentham developed an original ontological and epistemological basis for legal terminology, with the aim of replacing the traditional terminology of English law with that of universal jurisprudence. The work which dominates the text, in that Bentham returns to it time and time again in order to offer criticism of it, is William Blackstone's *Commentaries on the Laws of England*. While unorganized and fragmentary, the material in 'Preparatory Principles' constitutes a remarkable record of the evolving ideas of a major legal philosopher at a formative stage of his career.

The Collected Works of Jeremy Bentham

The new critical edition of the works and correspondence of Jeremy Bentham (1748–1832) is being prepared and published under the supervision of the Bentham Committee of University College London. In spite of his importance as jurist, philosopher, and social scientist, and leader of the utilitarian reformers, the only previous edition of his works was a poorly edited and incomplete one brought out within a decade or so of his death. The overall plan and principles of this edition are set out in the General Preface to *The Correspondence of Jeremy Bentham*, vol. 1 (Athlone Press), which was the first volume of the *Collected Works* to be published.

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PREFACE

The Bentham Committee wishes to thank the the British Academy and University College London for their continuing support of *The Collected Works of Jeremy Bentham*. Professor Long would like to thank the Social Sciences and Humanities Research Council of Canada, the Academic Development Fund of the University of Western Ontario, and the Office of the Dean of the Faculty of Social Science at the University of Western Ontario for financial assistance in support of the preparation of this volume

The initial transcription of the 'Preparatory Principles' manuscripts was undertaken by Professor Long, taking advantage of a bespoke computer program called 'Jeremy' developed by the Social Science Computing Laboratory at the University of Western Ontario. Professor Long is profoundly grateful to the Laboratory Director Douglas G. Link and staff members Les Flodrowski and Steven Rumas for their creativity and indefatigable assistance.

Professor Long would like to thank Katherine Fyfe and Paul Baxter, who provided excellent research assistance under the auspices of the Department of Political Science, University of Western Ontario, and the staff of the Bentham Project, in particular Claire Gobbi in the 1980s and Dr Michael Quinn more recently, who have given constant encouragement and scholarly support of the highest quality. The late Professor John R. Dinwiddy and Professor Frederick Rosen gave essential support as successive General Editors of *The Collected Works of Jeremy Bentham*.

Professor Schofield would like to thank Dr Louise Seaward for her expertise and assiduity in researching and checking much of the annotation in the volume; Mr Philip Baker for administrative assistance; Professor David Ibbetson and Dr Ian Williams for solving a Roman Law query; Mr Benjamin Bourcier and Professor Emmanuelle de Champs for assistance with the French material; and Mr Christopher Riley for solving the Horne query and for other assistance with the annotation, the preparation of the tables of marginal contents, and proofreading. His Bentham Project colleagues Dr Oliver Harris and Dr Michael Quinn have assisted in a variety of ways. Finally, and most importantly, he would like to pay tribute to Professor Douglas Long, without whose commitment, knowledge, and hard work over many years this volume would never have appeared. In essence, Professor Long provided an initial draft of the Editorial Introduction, text, and annotation,

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and Professor Schofield revised it. Professor Schofield is solely responsible for the indexes.

Thanks are due to University College London Library for permission to publish material from its collection of Bentham Papers. The task of working on Bentham's manuscripts has been greatly facilitated by the digitization of the Bentham Papers being undertaken by Mr Tony Slade and his staff at UCL's Creative Media Services. Grateful acknowledgment is also made to the authors, editors, and translators of standard reference works such as the *Oxford Dictionary of National Biography* and the *Loeb Classical Library*, without whose scholarship the annotation of a volume such as this would hardly be feasible.

The late Professor James H. Burns first suggested this project to Professor Long in 1973, and supported it unwaveringly for the rest of his life. We greatly regret that he did not live to see its completion, but dedicate the volume to his memory.

P.S.
D.G.L.

SYMBOLS AND ABBREVIATIONS

Symbols

	Space left in manuscript.
[to]	Word(s) editorially supplied.
[?]	Reading doubtful
[...?]	Word(s) proved illegible.
<...>	Torn manuscript.
<so>	Conjectural restoration of missing words.

Bowring *The Works of Jeremy Bentham*, published under the superintendence of . . . John Bowring, 11 vols., Edinburgh, 1843 (initially issued in 22 parts 1838–43).

Comment/
Fragment *A Comment on the Commentaries and A Fragment on Government*, ed. J.H. Burns and H.L.A. Hart, London, 1977 (CW).

CW This edition of *The Collected Works of Jeremy Bentham*.

Dig. Digest.

Op. Mag. Opus Magnum.

'PP' 'Preparatory Principles'.

'PP: Law' 'Preparatory Principles: What a Law is'.

UC Bentham Papers in the Library of University College London. Roman numerals refer to boxes in which the papers are placed, Arabic to the folios within each box.

MS add. Text added to the original manuscript reading.

MS alt. Alternative manuscript reading, usually interlinear or marginal.

MS del. Word(s) deleted in manuscript.

MS orig. Original manuscript reading.

EDITORIAL INTRODUCTION

The present volume reproduces three related bodies of manuscripts, under the titles 'Preparatory Principles: Inserenda', 'Preparatory Principles: Introduction', and 'Preparatory Principles: What a Law is', written by Jeremy Bentham in the mid-1770s and dealing generally with the philosophy of law. The vast bulk of the volume is composed of 'Preparatory Principles: Inserenda', while the remaining two pieces are relatively short. The manuscripts are divided into sections, of which around two-thirds for 'Preparatory Principles: Inserenda' and the whole of 'Preparatory Principles: Introduction' and 'Preparatory Principles: What a Law is' have been numbered by Bentham, and which have been editorially denominated as 'paragraphs'.¹ While the two shorter pieces are relatively coherent, there is no continuous argumentative or narrative thread that gives shape to 'Preparatory Principles: Inserenda'. A paragraph or set of paragraphs on one subject-matter is followed by another paragraph or set of paragraphs on a different subject-matter, and so on until an earlier subject-matter is resumed, sometimes being rewritten, sometimes being approached from a different perspective, and sometimes being added to or exemplified. This material does not, therefore, constitute a conventional work: it is rather a philosophical commonplace book in which Bentham attempted to work out the foundational ideas for his new science of legislation. The 'Preparatory Principles' material was central to Bentham's wider jurisprudential endeavours that began in the early 1770s and continued into the 1780s, in which his overarching ambition was to draw up a complete penal code. It was a storehouse of ideas on which he drew while composing a number of related texts. The contents of the present volume constitute a mine of raw materials—working documents on which Bentham drew when executing a series of writing projects, some of which were printed and published in his lifetime, and some of which were not, and including 'A Comment on the Commentaries', *A Fragment on Government*,² *An Introduction to the Prin-*

¹ Paragraph numbers have been editorially supplied for the final third of 'PP: Inserenda'. It was Bentham's practice at this time to number each paragraph or group of paragraphs as a convenient means of organizing his text.

² Both texts appear in *A Comment on the Commentaries and A Fragment on Government*, ed. J.H. Burns and H.L.A. Hart, Oxford, 1977 (CW). 'A Comment on the Commentaries' and *A Fragment on Government*, which was extracted from the former work and published by Bentham in 1776, formed a critique of William Blackstone, *Commentaries on the Laws of England*, 4 vols., Oxford, 1765–9. Sir William Blackstone (1723–80) was first Vinerian

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ciples of Morals and Legislation,¹ and 'Of the Limits of the Penal Branch of Jurisprudence'.² The ideas worked out in the 'Preparatory Principles' manuscripts, therefore, had a profound and enduring value for Bentham's work not only in the 1770s and 1780s, but for the remainder of his career.

HISTORY OF THE WORKS

'Preparatory Principles: Inserenda' consists of over 600 pages of text.³ The title is taken from the heading which appears, in the hand of a copyist, on almost all of the component manuscript pages.⁴ None of the pages are dated. It seems quite likely that the text was added to over the course of many months, and that the bulk of it was written in and around 1775. The latest date that can be definitely assigned to any part of the text is 2 February 1775, the date of publication of the third edition of Edmund Burke's *Speech on American Taxation, April 19, 1774*, a reference to which appears in a note to paragraph 675.⁵ The allusion is to what Bentham took to be Burke's statement that he hated metaphysics. The same allusion

Professor of English Law at Oxford University 1758–66, Justice of Common Pleas 1770, 1770–80 and Justice of King's Bench 1770.

¹ *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns and H.L.A. Hart, London, 1970 (CW). This work was printed by Bentham in 1780, but not published until 1789, and was originally written as the first part of an introduction to his penal code.

² *Of the Limits of the Penal Branch of Jurisprudence*, ed. P. Schofield, Oxford, 2010 (CW). This work, which was written in 1780–2 but not printed or published by Bentham himself, was originally intended as a single chapter in continuation of *An Introduction to the Principles of Morals and Legislation*.

³ UC lxix. 87–8, 91–241, cxi. 21–2. The pages are consecutively numbered 1–614, though there are, in fact, 620 pages: four pages were interpolated and numbered 21*–24* (UC lxix. 95), and three pages were each numbered 609 (lxix. 240). A small number of pages contain no text, including the third page 609, 610, and 612–14. For a comparative list of 'PP: Inserenda' paragraph numbers, folio numbers, and page numbers see the Table of Manuscripts, pp. xxviii–xxxiii below.

⁴ Variant main headings are as follows: p. 1 (UC lxix. 86) carries the main heading 'Introd. Preparatory Principles'; pp. 21–6 (lxix. 95–6) 'Preparatory Principles. A Law when compleat'; p. 29 (lxix. 97) 'Preparatory Principles. A Law What'; p. 48 (lxix. 101) 'Preparatory Principles. A law, entirety of'; p. 49 (lxix. 102) 'Preparatory Principles. Law, entirety of'; p. 52 (lxix. 102) 'Preparatory Principles. No Command, no Law'; p. 60 (lxix. 104) 'Preparatory Principles. A Law'; pp. 250–2 (lxix. 151) 'Preparatory Principles. Common Law. Division of it into Customs and Maxims'; and pp. 267–72 (lxix. 155–6) 'Preparatory Principles. Powers in a State'.

In a related fragment at UC lxix. 85, headed 'Prepar. Principles. Legislation X Taxation. Inserenda', Bentham deals with the question much agitated in relation to the American War of Independence as to whether an act of taxation was an act of legislation. The point is taken up at 'PP: Inserenda', para. 688, pp. 220–1 below.

⁵ See p. 217 n. below. The date of publication of the third edition of this speech of Edmund Burke (1729–97), statesman and politician, is given in *The Writings and Speeches of Edmund Burke: Volume II. Party, Parliament, and the American Crisis 1766–1774*, ed. P. Langford and W.B. Todd, Oxford, 1981, p. 406.

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appears on two other occasions in the text, the earlier of which is at paragraph 518.¹ Assuming that Bentham had not read this remark until the publication of the third edition of the speech, this dates the bulk of the text to the period after 2 February 1775.²

The text is divided into 1313 numbered paragraphs, of which the enumeration up to paragraph 747 is supplied by Bentham, and thereafter editorially.³ The enumeration of the paragraphs and sequences of paragraphs does not, however, always follow the strict page order, in that Bentham on occasion resumes a discussion, together with the appropriate paragraph enumeration, after a gap of several paragraphs. The order of the text in the present volume follows the enumeration of the paragraphs, rather than the pagination, since this appears to reflect Bentham's intention. Apart from these relatively rare instances, the order in which the text of 'Preparatory Principles: Inserenda' appears in the present volume may be assumed to reflect the chronological order in which the material was written. In addition to the manuscripts that constitute the text of 'Preparatory Principles: Inserenda', there survive three tables of contents, which list the marginal headings on the text sheets, but none of which are complete.⁴ Numerous minor

¹ See p. 165 below.

² The first edition of the speech had been published on 10 January 1775 (see *Writings and Speeches of Burke: II*, p. 406), and so it would make little practical difference if Bentham had seen the remark immediately on publication of the first edition.

There are, however, two possible indications that the compilation of the text went on into 1776, and perhaps even beyond. There is a possible allusion, at para. 1246, p. 393 below, to Richard Price, *Observations on the Nature of Civil Liberty, the Principles of Government, and the Justice and Policy of the War with America*, published at London on 10 February 1776. The date of the publication of the first edition of this pamphlet by Richard Price (1723–91), philosopher, demographer, and political radical, is given in D.O. Thomas, J. Stephens, and P.A.L. Jones, *A Bibliography of the Works of Richard Price*, Aldershot, 1993, p. 54. Other references to the American controversy may also as well have been written before as after the American Declaration of Independence on 4 July 1776. It seems quite plausible that composition of the 'Inserenda' continued into 1776, but more problematic is a possible allusion at para. 872, p. 268 below, to a comment made by Burke in a speech in the House of Commons on 23 March 1778. It is possible, of course, that Bentham and Burke were both alluding to a view expressed by an earlier writer or speaker.

³ For further details see pp. xxvii–xxviii below.

⁴ Bentham has listed the marginal headings of 'PP: Inserenda', paras. 1–97, 211–664 and corresponding page numbers, in some cases providing brief summaries of main text contents that do not replicate the marginal headings on the text sheets, at UC lxix. 77–80, headed 'Contents of Prep. Princ.' He has listed the marginal headings for 'PP: Inserenda', paras. 367–747 and corresponding page numbers at UC lxix. 83–4. In both these lists, 'PP: Inserenda', para. 393 is noted as 'enter'd P.P.', while a number of marginal headings are marked with a small cross in red ink. Bentham has listed the marginal headings for 'PP: Inserenda', paras. 1–228 at UC lxix. 82, where some of the headings have been crossed through and others cancelled. The exact significance of the annotations on these lists is unclear, though they probably indicate that Bentham had consulted and used the material in other works and projects.

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alterations and annotations indicate that Bentham revisited these tables, which he presumably used as a guide to the contents of the main text.

It is impossible to know at what point in the process of drafting 'Preparatory Principles: Inserenda' it was that 'Preparatory Principles: Introduction' and 'Preparatory Principles: What a Law is' were written, though the latter appears to be a redrafting of the former.¹ It is possible that they represent a second, more advanced stage in the process of composition than the 'Inserenda'. The essay presented first, 'Preparatory Principles: Introduction', consists of twelve pages divided into forty-two consecutively numbered paragraphs written on three bifolia.² The first page, from which the title is taken, is headed 'Introduction. Preparatory Principles', while the remainder are headed 'Preparatory Principles'. The essay presented second, 'Preparatory Principles: What a Law is', consists of twenty-one pages divided into fifty-three consecutively numbered paragraphs written on six bifolia.³ Most of the pages carry the full heading.⁴ An ancillary body of 'Preparatory Principles' manuscripts headed 'Inserenda Permanent' consists of nine consecutively numbered passages on four pages written on one bifolium,⁵ each passage one or two paragraphs in length. In the text of 'Preparatory Principles: What a Law is', Bentham has indicated the specific location where each passage should be inserted, and his instructions have been followed in the present volume.

Since there survive neither rudiments, plans, nor text sheets for any work entitled 'Preparatory Principles', it seems unlikely that Bentham had in mind a work with that title into which 'Preparatory Principles: Inserenda' would eventually be incorporated. At first glance, it might appear that the title 'Preparatory Principles: Introduction' suggests that this material was intended as the draft of an introduction to a work entitled 'Preparatory Principles'. Moreover, in a marginal note in 'Preparatory Principles: Inserenda', in relation to a discussion of the 'Origin of the Ideas Law is

¹ The content of the two pieces is very similar, but the much neater presentation of 'What a Law is' suggests that it is the later version.

² UC lxix. 86, 89–90. For a comparative list of 'PP Introduction' paragraph numbers, folio numbers, and page numbers see the Table of Manuscripts, p. xxxiii below.

³ UC lxix. 70–5. For a comparative list of 'PP: Law' paragraph numbers, folio numbers, and page numbers see the Table of Manuscripts, p. xxxiv below.

⁴ The exceptions are pp. 2–5 (UC lxix. 70–1), which carry the marginal sub-heading 'B. I. Ch. I', which may refer to Book I, Chapter 1 of 'A Comment on the Commentaries', where Blackstone's definition of a law is discussed (see *Comment/Fragment (CW)*, pp. 3–10). Of the three unused pages at UC lxix. 75, pp. 22–3 are blank, while p. 24 has been headed and numbered. For the relationship of the 'PP' materials to 'A Comment on the Commentaries' see pp. xv–xvii below.

⁵ UC lxix. 76.

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conversant with', Bentham wrote 'BEGINNING *for* PREP. PRINC.'¹ Yet it should be noted the 'Introduction' and the 'Beginning' deal with different subject-matters, and so even these indications, given the difficulty in reconciling the content of the two bodies of material, militate against the view that Bentham ever seriously intended to produce a work with this title. It seems more likely that he viewed the 'Preparatory Principles' material as a possible starting point for a whole range of works and projects, given the foundational character of much of its content. It should also be noted in this context that around one third of the pages of 'Preparatory Principles: Inserenda' have been crossed through, or cancelled, by Bentham: sometimes he crossed through an entire page of text, and sometimes particular paragraphs or shorter passages. This does not mean that he was dissatisfied with this material: cancellation was not deletion. Deleted words and sentences in 'Preparatory Principles' are usually struck through with heavy horizontal strokes.² Cancelled passages often state views that Bentham is known to have endorsed consistently. Indeed, the cancellation of passages usually indicates that the relevant material had been used in some way: for instance, that Bentham had consulted it at some point and copied or adapted it for use elsewhere in his writings. Hence, the 'Preparatory Principles: Inserenda' manuscripts are best seen as a storehouse of definitions, explanations, and critical comments, to which Bentham would add as and when some point occurred to him, and on which he would draw when composing his more sustained and coherent texts.

The works to which the 'Preparatory Principles' material is linked most closely, both chronologically and thematically, are 'A Comment on the Commentaries' and its offshoot *A Fragment on Government*. 'A Comment on the Commentaries' has its own inserenda,³ but at one point in the process of its composition Bentham considered drawing on 'Preparatory Principles: Inserenda', as he noted on a text-sheet headed 'Comment on the Comm.^y Conduct of the work':

In every Section of the Comment, refer to that part which belongs to it of the Preparatory Principles: and vice versâ, divide the Preparatory Principles into Sections correspondent to the Sections of the Comment.

¹ See 'PP: Inserenda', para. 628, p. 200 n. below.

² Bentham often used the term 'Qu.', i.e. 'Quere', in order to indicate his uncertainty in relation to a point. On occasion he was more explicit: see, for instance, his comment below the marginal heading of 'PP: Inserenda' para. 963, p. 294 n. below, '*non place'*', which was to say that he regarded this passage as unsatisfactory.

³ See *Comment/Fragment (CW)*, Editorial Introduction, p. xxxvii.

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Go on with the Prep. Principles till there is enough for one Chapter of the Comment. After that Chapter, entitle the next Preparatory Principles resumed, and so *toties quoties*.¹

In the event Bentham does not seem to have 'conducted' the work in this way, nor did he divide 'Preparatory Principles: Inserirda' according to the sections of 'A Comment on the Commentaries'. Nevertheless, in 'A Comment on the Commentaries' and *A Fragment on Government*, as well as later works such as *An Introduction to the Principles of Morals and Legislation* and 'Of the Limits of the Penal Branch of Jurisprudence', Bentham explicitly pursued themes and expounded ideas which were also discussed in the 'Preparatory Principles' manuscripts. For example, the distinction outlined in 'Preparatory Principles: Inserirda' between law as it is and law as it ought to be appears in *A Fragment on Government*.² More specifically, the criticism made in 'Preparatory Principles: Inserirda' that Blackstone, in relation to the desirable qualities in rulers, had turned for an answer to theology, and hence 'to the old orthodox method of explanation, *ignotum per ignotius*', is reiterated in *A Fragment on Government*.³ In 'Preparatory Principles: Inserirda', Bentham states that, 'The obedience paid to any particular Law rests ultimately on . . . a general habit of obedience. A habit of executing, upon all occasions and in all points, commands of some one person at least, or body of persons, in the state.'⁴ The notion that the habit of obedience was the foundation of political society was taken up in *A Fragment on Government*.⁵ The first six chapters of *An Introduction to the Principles of Morals and Legislation* deal with the principle of utility and its basis in human psychology,⁶ reflecting themes addressed in 'Preparatory Principles: Inserirda'.⁷ In the seventh chapter of *An Introduction to the Principles of Morals and Legislation*, Bentham deals with aspects of human action,⁸ again reflecting themes addressed in 'Preparatory Principles: Inserirda'.⁹ In *An Introduction to the Principles of Morals and Legislation*,

¹ UC xxviii. 1.

² Cf. 'PP: Inserirda', paras. 1023-8, pp. 321-2 below, and *Comment/Fragment (CW)*, p. 397, and see pp. xxiv-xxv below.

³ Cf. 'PP: Inserirda', para. 867, p. 266 below, and *Comment/Fragment (CW)*, p. 450.

⁴ 'PP: Inserirda', para. 1088, p. 343 below.

⁵ See, for instance, *Comment/Fragment (CW)*, pp. 429-31 n.

⁶ *An Introduction to the Principles of Morals and Legislation (CW)*, pp. 11-73.

⁷ See, for instance, 'PP: Inserirda', paras. 184-5, 383-4, 395, and 500, pp. 88, 130-1, 133, and 161 below respectively.

⁸ *An Introduction to the Principles of Morals and Legislation (CW)*, pp. 74-83.

⁹ See, for instance, 'PP: Inserirda', paras. 205-6, 327, 510-14, 923-37, 950, 1077, and 1252-5, pp. 91-2, 119, 163-4, 286-8, 290, 341, and 395 below respectively.

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Bentham describes punishment as 'an *artificial* consequence, annexed by political authority to an offensive act, in one instance; in the view of putting a stop to the production of events similar to the obnoxious part of its natural consequences, in other instances.'¹ In 'Preparatory Principles: Inserenda', in similar language, Bentham notes that 'Punishment is pain connected with an act or a forbearance, as an effect is with a cause. . . . Now, whatever it be that is done by Law is but punishment connected with some act or some forbearance.'² The link between the 'Preparatory Principles' materials and Bentham's wider jurisprudential writings is strikingly clear in relation to the definition of a law. 'Preparatory Principles: Inserenda', 'Preparatory Principles: Introduction', and 'Preparatory Principles: What a Law is' all deal with this theme, and in particular the question of distinguishing a law from other forms of command or imperation.³ The investigation of the question 'What is a law', Bentham wrote in 'Preparatory Principles: Inserenda', was one of the subjects that Blackstone had, or should have, attempted to answer in *Commentaries on the Laws of England*, but had failed to do so satisfactorily.⁴ It was a question that Bentham took up in 'A Comment on the Commentaries',⁵ and again in 'Of the Limits of the Penal Branch of Jurisprudence'.⁶ Such connections, of which these are a sample, reflect the fact that 'A Comment on the Commentaries', *A Fragment on Government*, *An Introduction to the Principles of Morals and Legislation*, and 'Of the Limits of the Penal Branch of Jurisprudence' drew on the ideas that had been outlined in the 'Preparatory Principles' material.

Bentham also drew on the 'Preparatory Principles' material for other more inchoate projects in the late 1770s. In a series of text sheets headed 'Crit. Jur. Crim.' (Critical Jurisprudence Criminal),⁷ which focus on crimes, offences, and punishments, Bentham proposed to include a 'Chapter called Key' dealing with the 'Exposition of certain fundamental terms of Universal Jurisprudence'.⁸ Bentham wrote an 'ordo' for this chapter on a text

¹ *An Introduction to the Principles of Morals and Legislation* (CW), p. 157.

² 'PP: Inserenda', para. 417, p. 139 below.

³ See, for instance, 'PP: Inserenda', paras. 3–30 and 141–65, pp. 61–5 and 80–5 below respectively; 'PP: Introduction', paras 17–42, pp. 431–7 below; and 'PP: Law', paras. 25–53, pp. 447–54 below.

⁴ 'PP: Inserenda', para. 214, p. 93 below.

⁵ See 'A Comment on the Commentaries', I. Of the Nature of Laws in General, in *Comment/Fragment* (CW), pp. 3–117.

⁶ See *Of the Limits of the Penal Branch of Jurisprudence* (CW), pp. 24–41.

⁷ See UC lxix. 1–42, cxvii. 1–2, cxi. 1–20, and clix. 262–70.

⁸ See UC clix. 269. At UC lxix. 44–51 there are thirty-one consecutively numbered pages of draft material for 'Key', while at lxix. 52–3 there are five consecutively numbered pages

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sheet whose original heading had been 'Preparatory Principles'.¹ Beside the first of the twelve headings listed on this sheet, 'Punishment is Pain', Bentham has noted: '1. Right. 2. Power v. p. 373'. This reference is to 'Preparatory Principles: Inserenda', paragraph 913, on page 373, which is headed 'All Power is over persons.'² At the side of the sixth heading, 'Commands before State', Bentham has noted: 'v. 462 for the reason.' This reference is to 'Preparatory Principles: Inserenda', paragraph 1078, on page 462, which is headed 'Right &c. from Command or habit of Punishment, before the definition of a Law.'³ On the same bifolium, Bentham produced a list headed 'Key—Ordo of Heads'. Beside several of these 'Heads' Bentham has written numbers referring to paragraphs of 'Preparatory Principles: Inserenda' where the same subjects are discussed.⁴ Furthermore, the first sentence of the first 'Key' text sheet—"The whole system of Jurisprudence displays itself in the coercing of one party for the benefit of another"—repeats verbatim a sentence from 'Preparatory Principles: Inserenda',⁵ and the five sheets headed 'Chap. I. Key. What things exist' echo a marginal heading that was, as has already been noted, used in 'Preparatory Principles: Inserenda'.⁶

There were other projects for which Bentham drew on the 'Preparatory Principles: Inserenda' manuscripts. One of these was entitled 'Opus Magnum', often abbreviated to 'Op. Magn.' or 'Op. Mag.', but the nature of it remains obscure. The title, if that is what it is, occurs on about a dozen occasions in the marginal headings to 'Preparatory Principles: Inserenda', always in reference to aspects of crime or punishment.⁷ It may, therefore, have referred to the penal code to which Bentham's efforts were being ultimately directed at this time. Possibly related to 'Opus Magnum' was an 'ordo' of headings for a preface to a work identified only as 'O',

headed 'Chap. I. Key. What things exist' and at lxi. 54–6 twelve consecutively numbered pages headed 'Key. Inserenda'.

¹ UC lxix. 43.

² See pp. 281–2 below.

³ See p. 341 below.

⁴ After the heading 'What Things exist' Bentham has inserted '512'. 'PP: Inserenda', para. 1168 on p. 512 is headed 'Entities classed', but MS del. is 'What things exist' (see p. 368 & n. below). After the next 'Key' heading, 'Rights and wrongs do not exist', he has inserted '521–4'. At 'PP: Inserenda', para. 1196, on p. 521, Bentham notes that, 'The terms right and wrong are not fit to stand as the names of classes' (see p. 379 below). After the final heading, 'Power, To give a. Development of the figure', he has noted: 'p. 524'. 'PP: Inserenda', para. 1201, on p. 524, carries the marginal heading "'Power" not definable, only expoundable' (see p. 380 below).

⁵ See UC lxix. 44 and 'PP: Inserenda', para. 1195, p. 378 below.

⁶ i.e. 'PP: Inserenda', para. 1168, on p. 512, at p. 368 n. below.

⁷ The first occurrence is at para. 581, p. 188 below, and the last at para. 1015, p. 319 below.

which may have stood for 'Opus'.¹ Bentham devoted a column on one marginal contents sheet to identifying seven paragraphs from 'Preparatory Principles: Inserenda' dealing with 'metaphysical' topics. He presumably intended to draw on these sources in constructing the arguments of 'O'. Another title that appears about a dozen times in the marginal headings of 'Preparatory Principles: Inserenda' is 'Digest', or more commonly its abbreviation 'Dig.', which relates to Bentham's plan to turn the Common Law into statute.² At some point in the mid-to-late 1770s or early 1780s, Bentham compiled a list entitled 'PROJECTS, List of. Works projected for the improvement of the Law', and listed thirty-one such projects. 'Of almost all of these', he noted, 'the leading principles are fixed upon. In several of them some progress has been made.'³ One project in the list is 'An Utopian proposal for a new compact between the Crown and the subject: the subject to give up the right of appeal; and the Crown to consent to some conditions & restrictions to the power of pardoning.' It is followed by a note in Bentham's hand: 'v. P.P.I. 366.'⁴ A passage in 'Preparatory Principles: Inserenda', at page 366, carries the marginal heading 'Pardon—proposal for modifying', and a main text which reads in part: 'The subject gives up the right of punishing his injurer when it appears that his punishment is not for the good of the community. The King gives up his power of exempting the injurer from punishment in cases where it appears that it is for the good of the community.'⁵ Another item in this list, one which was closely linked in subject-matter to 'Preparatory Principles: Inserenda', was 'A Vocabulary of terms of Universal Jurisprudence with their Definitions: the Definitions disposed in an uninterrupted chain, commencing at words importing simple ideas.' This was immediately followed in the list by 'A Vocabulary of terms purely Technical used in English Jurisprudence—viz: 1. Technical Terms; terms appropriated to the Science. 2^{dly}. Terms expressive of the several classes of things, persons and modes of conduct at large, that are liable to be render'd objects of the Science.'⁶ These two items share with the 'Preparatory Principles' materials the theme of the reform of the language of jurisprudence.

This emphasis on the clarity of language remained a constant concern of Bentham, as indicated by the 'Preface' written in 1789

¹ The headings that Bentham drew up for 'O' indicate that it would have been concerned partly with penal law and partly with law in general.

² The first occurrence is at para. 305, p. 114 below, and the last at para. 1272, p. 401 below. Cf. 'A Fragment on Government', Ch. V, para. 11, in *Comment/Fragment (CW)*, p. 499.

³ UC clxix. 1–2.

⁵ See 'PP: Inserenda', para. 885, pp. 275–6 below.

⁴ See UC clxix. 2.

⁶ See UC clxix. 1.