



OF THE  
LIMITS  
OF THE  
PENAL BRANCH  
OF  
JURISPRUDENCE

edited by  
PHILIP SCHOFIELD



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## PREFACE

The Bentham Committee wishes to thank the British Academy, the Arts and Humanities Research Council, the Economic and Social Research Council, and University College London for their continuing support of *The Collected Works of Jeremy Bentham*.

Thanks are due to University College London Library for permission to publish material from its collection of Bentham Papers.

For reasons explained in detail in the Editorial Introduction, the Bentham Committee has decided that the present edition should supersede *Of Laws in General*, edited by H. L. A. Hart and published by the Athlone Press in 1970, as a volume in *The Collected Works of Jeremy Bentham*. This should not obscure the fact that a massive debt is owed to Professor Hart's pioneering work on these difficult manuscripts. His version of the text and his editorial footnotes are the foundation on which the present edition is constructed. Over the years, the Bentham Project has gained a much greater understanding of Bentham's working methods and of the categories of manuscript material which he generated. The present edition, which reconstructs the text as Bentham envisaged it at the time of its composition, draws on that improved understanding, and presents a text that is more faithful to Bentham's intentions, and much more coherent, than that which appeared in *Of Laws in General*. The transcription has been meticulously rechecked and a great many cross-references restored to the text, while the information provided in the editorial footnotes has been expanded. While the ordering of the sections of the work has remained largely unchanged, a significant number of important revisions have been made to the internal ordering of a number of those sections. The text is presented as a Chapter in continuation of the work published in 1789 as *An Introduction to the Principles of Morals and Legislation*, rather than as a work in its own right. The advantage of the present arrangement is that it reproduces as the central text the most complete version of the work which Bentham drafted, but also allows the reader, by reference to the material which appears in the Appendices, easily to reconstruct the versions through which the work progressed in the course of its composition.

The present volume owes its emergence to the decision taken by Professor Frederick Rosen to produce a second edition of *Of*

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*Laws in General*, incorporating the corrections to the text which had appeared in a 'Corrigenda' issued in 1976. When I offered to check the text against the manuscript in order to ensure that all the errors had been identified, I had no conception that a new volume would eventually result. In the course of editing the volume, I have drawn upon the talents and expertise of my colleagues at the Bentham Project—Mrs Katharine Barber, Ms Catherine Fuller, Dr Oliver Harris, Mrs Irena Nicoll, Mrs Catherine Pease-Watkin, and Mrs Anna Schüle—who have helped in a whole variety of ways, but most particularly in researching and checking the annotation, commenting on the Editorial Introduction, and proof-reading. As always, I am grateful to Ms Gillian Furlong, Ms Susan Stead, and their colleagues in the Special Collections department of UCL Library for their never-failing assistance and advice.

I gratefully acknowledge help from Dr Paola Rudan and Professor Richard Whatmore in elucidating certain allusions in the text, and from Dr George Letsas, who checked the Greek text.

P.S.

## SYMBOLS AND ABBREVIATIONS

### Symbols

	Space left in manuscript.
[to]	Word(s) editorially supplied.
<...>	Word(s) torn away.
<so>	Conjectural restoration of mutilated word.
[?]	Reading doubtful
[. . .?]	Word(s) proved illegible.

### Abbreviations

CW	This edition of <i>The Collected Works of Jeremy Bentham</i> .
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 edition of *Of the Limits of the Penal Branch of Jurisprudence* supersedes *Of Laws in General*, edited by H. L. A. Hart and published by the Athlone Press in 1970,<sup>1</sup> as a volume in *The Collected Works of Jeremy Bentham*. Not long after the publication of *Of Laws in General*, it was brought to the attention of the Bentham Committee that the text was marred by errors in the transcription of the manuscripts. A 'Corrigenda for *Of Laws in General*', containing over one thousand emendations, of which 'the vast majority' were said to be 'minor ones', was subsequently issued in 1976. With the exhaustion of the Athlone edition, Oxford University Press, the current publishers of *The Collected Works*, agreed to publish a second edition incorporating the emendations. A new study of the manuscript sources revealed not only a number of transcription errors which had not been incorporated into the 'Corrigenda', but also, and more fundamentally, serious problems with the internal ordering of parts of the text. A thorough revision of the text has, therefore, been undertaken, with a view to reflecting as accurately as possible Bentham's intentions at the time of composition.

'Of the Limits of the Penal Branch of Jurisprudence' (usually referred to here by its short title 'Limits') is intimately related to the work which was printed, as Bentham himself tells us, by November 1780<sup>2</sup> and published in 1789 as *An Introduction to the Principles of Morals and Legislation*, and which formed the first part of an introduction to Bentham's projected penal code.<sup>3</sup> 'Limits' was originally conceived as the continuation of *An Introduction to the Principles of Morals and Legislation* and hence of the introduction to the penal code as a whole. The bulk of the text appears to have been written in 1780 before the completion of the printing of *An Introduction to the Principles of Morals and Legislation*,<sup>4</sup> though

<sup>1</sup> *Of Laws in General*, ed. H. L. A. Hart, London, 1970.

<sup>2</sup> See *An Introduction to the Principles of Morals and Legislation*, ed. J. H. Burns and H. L. A. Hart, London, 1970 (CW), p. 301.

<sup>3</sup> It was Bentham's intention that his 'Plan of a Penal Code' would be divided into two Books, the first dealing with the provisions of the code itself and the second with procedure: see 'Plan of a Penal Code—Prospectus', copied by Bentham's father Jeremiah Bentham (1712–92), at British Library Additional MS 33,556, fos. 139–42.

<sup>4</sup> Several cross-references to 'Limits' in *An Introduction to the Principles of Morals and Legislation*, Ch. XVI indicate that composition was well advanced by the time this material was being printed: see *An Introduction to the Principles of Morals and Legislation* (CW), pp. 206–7 n., 228 n., 237 n., 256 n., 263 n.

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some further material was written in 1782.<sup>1</sup> As well as 'Limits', Bentham planned, and wrote material for, several more chapters in continuance of the introduction to the penal code: 'Indirect Legislation' would deal with strategies which did not involve direct prohibition but which the legislator might adopt to prevent actions detrimental to the happiness of the community; 'Place and Time' with the way in which legislation might vary according to different circumstances; and 'Corpus Juris' with the question of what constituted a complete code of law and the ways in which its content might be conveniently divided. As with 'Limits', and the projected penal code, none of this material was printed or published by Bentham himself,<sup>2</sup> with the exception of the first two sections of 'Limits', which appeared as Ch. XVII, §§1–2 of *An Introduction to the Principles of Morals and Legislation*.

The present text has been previously published in two versions. The work was 'discovered' amongst the Bentham Papers deposited in University College London Library by Charles Warren Everett, who recognized it as the continuation of *An Introduction to the Principles of Morals and Legislation*, and published it for the first time in 1945 with the title *The Limits of Jurisprudence Defined: Being Part Two of An Introduction to the Principles of Morals and Legislation*. The second version, as noted above, was edited by H. L. A. Hart, and published in 1970 as part of *The Collected Works of Jeremy Bentham* with the title *Of Laws in General*. While Hart acknowledged its provenance as a Chapter in continuance of *An Introduction to the Principles of Morals and Legislation*, he chose to present it as a separate work, reflecting a decision which Bentham seems to have made in 1782. Hart went on to link 'Limits' with the work which Bentham, at the time of the publication of *An Introduction to the Principles of Morals and Legislation* in 1789, announced would form 'Part the 10th' of an expanded introduction to the penal code.<sup>3</sup> The structure of the Everett and Hart versions is very similar in that, of the twenty-one Chapters of Everett's edition, all but the first two correspond to the nineteen Chapters of the Hart edition. The first two Chapters of Everett's edition appear

<sup>1</sup> See §17, p. 188 n. and Appendix C, p. 261 n. below, where Bentham states explicitly that he is writing in 1782.

<sup>2</sup> The material was, however, extensively drawn upon by Bentham's Genevan editor Pierre Étienne Louis Dumont (1759–1829) for his French recension *Traité de législation civile et pénale*, 3 vols., Paris, 1802. For English versions of 'Indirect Legislation' and 'Place and Time' see Bowring, i. 533–80, 169–94 respectively.

<sup>3</sup> See *Of Laws in General*, Editorial Introduction, p. xxxii. The question of the identity between 'Limits' and the work described in *An Introduction to the Principles of Morals and Legislation* as 'Part the 10th' is discussed at pp. xxxv–xxxvi below.



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as Appendices in Hart's edition, which also contains several further Appendices. Both editors rely principally on a letter from Bentham to Baron Ashburton of 3 June 1782 in which Bentham lists and gives a brief description of the contents of the Chapters, and explains that the text is a continuation of *An Introduction to the Principles of Morals and Legislation*.<sup>1</sup> Neither Everett nor Hart published the two sections which Bentham himself printed and published in *An Introduction to the Principles of Morals and Legislation*.

In relation to the respective titles under which the two versions appear, there is, as Hart points out, no justification whatsoever for Everett's title, in that the phrase 'The Limits of Jurisprudence Defined' does not appear in Bentham's manuscripts. Hart justifies his choice of title from the fact that it appears at the head of a list of contents dating from the time when Bentham had 'determined that these chapters should form a separate work', and that the title itself was an entirely appropriate reflection of the substance of the work.<sup>2</sup> The title chosen by Hart is, however, equally open to objection. First, it may be doubted whether the title does adequately reflect the substance of the work, whose purpose was to distinguish between the civil and the penal law, and hence prepare the ground for a penal code. In order to achieve this object, Bentham realized that he needed to provide an exposition of the characteristics, or 'respects' as he termed them, of a single law, and this exposition is the focus of the bulk of the text. His concern, in other words, was with *a* law, rather than with *laws*. Second, when Bentham used the title 'Of Laws in general', he did so in relation to a wider body of material than that contained in 'Limits'. The list of contents to which Hart refers is headed 'Of Laws in general. Table of the Chapters', and was composed either in or before March 1782.<sup>3</sup> The ordering of the chapters corresponds exactly with that given in the letter to Ashburton of 3 June 1782. The crucial point, however, is that the list of Chapters for 'Of Laws in general' includes not only the material which had been written for 'Limits', but also the Chapters on 'Indirect Legislation', 'Place

<sup>1</sup> Bentham to Lord Ashburton, 3 June 1782 (the second letter of this date), *The Correspondence of Jeremy Bentham*, vol. iii, ed. I. R. Christie, London, 1971, pp. 123–6. John Dunning (1731–83), first Baron Ashburton, Solicitor General 1768–70, Chancellor of the Duchy of Lancaster 1782–3, was a political associate of Bentham's mentor William Petty (1737–1805), second Earl of Shelburne and first Marquis of Lansdowne, leader of the administration from July 1782 to April 1783.

<sup>2</sup> *Of Laws in General*, Editorial Introduction, pp. xxxiii–xxxiv. The list of contents is at UC xxix. 1, and is reproduced in *Of Laws in General*, Appendix F, pp. 312–13.

<sup>3</sup> For the dating of the 'Table of Chapters' see p. xv below.

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and Time', and 'Corpus Juris', and a further Chapter entitled 'Plan of Book I [i.e. of the penal code]'. As a title for the whole of this material together, 'Of Laws in general' does seem entirely appropriate. When Bentham wrote to Ashburton on 3 June 1782, he made no mention of the overarching 'Of Laws in general', presumably because he had given up the idea of presenting the whole of the relevant material as a single work under that title.<sup>1</sup> Instead, he suggested that 'Indirect Legislation' and 'Place and Time' would be published as two separate works, as would another projected work entitled 'Essay on Reward'.<sup>2</sup> Since the first two sections of 'Limits' were destined to appear as Chs. 17–18 of *An Introduction to the Principles of Morals and Legislation* (simply a reflection of the fact that they had already been printed), this left the remaining nineteen chapters of 'Limits' and the single chapter 'Corpus Juris', forming together, as Bentham stated, 'a sort of anatomy of any entire body of the law whatsoever consider'd nakedly as a collection of expressions of will'.<sup>3</sup> While Bentham did not state explicitly that the remainder of 'Limits' and 'Corpus Juris' would appear as a separate work, that must be the implication, if the material was to appear at all.<sup>4</sup> In short, the title 'Of Laws in general' represents a particular combination of materials which Bentham on one occasion considered publishing together. 'Limits' would have formed one part of that larger work, but did not in itself constitute it.

In the Editorial Introduction to *Of Laws in General*, Hart argues that there was a transition in Bentham's conception of the text from a single Chapter (divided into sections) in continuation of *An Introduction to the Principles of Morals and Legislation*, to a series of separate Chapters (each section becoming a separate chapter) still in continuation of *An Introduction to the Principles of Morals and Legislation*, to a separate work entitled *Of Laws in General*.<sup>5</sup> With the exception of the claim that the separate work should be entitled *Of Laws in General*, this account is broadly correct. The 'Table of Chapters' gives two distinct enumerations of the chapters. The first and earlier, in Arabic numerals, presents them as a continuation of *An Introduction to the Principles of Morals and Legislation* (i.e. Chs. 17–37). The second and later, in Roman

<sup>1</sup> Comparing the 'Table of Chapters' with the letter to Ashburton, the latter shows that Bentham had decided that 'Corpus Juris' should precede, rather than follow, 'Indirect Legislation' and 'Place and Time', while in the latter 'Plan of Book I' is not mentioned.

<sup>2</sup> *Correspondence (CW)*, iii. 127–9.

<sup>3</sup> *Ibid.* 126–7.

<sup>4</sup> In the event, Bentham appears to have incorporated the small amount of material he had written for 'Corpus Juris' into 'Limits': see pp. xxviii–xxix below.

<sup>5</sup> *Of Laws in General*, Editorial Introduction, pp. xxxi–xxxiii.

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numerals, begins a new series (i.e. Chs. I–XXI), thus indicating that they represent chapters in a separate work. The dating of the ‘Table of Chapters’ is not straightforward in that the date of March 1782 which appears on the relevant folio relates to a separate ‘Ordo’ which reorders Chs. 23–8 (or VII–XII), and which, from its location, appears to have been added to the folio after the composition of the ‘Table of Chapters’. This means that the ‘Table of Chapters’ could not have been compiled any later than March 1782. Bentham, then, at some point in or possibly before March 1782, had come to the view that the material might be presented as a separate work, and, as noted above, still seems to have regarded this as a possibility, albeit with the addition of ‘Corpus Juris’, at the time he wrote to Ashburton on 3 June 1782. However, he always adhered to the idea that ‘Limits’, whether or not it was presented as a separate work, was a continuation of the introduction to the penal code. When writing to Ashburton, where both the provenance of the text as a continuation of *An Introduction to the Principles of Morals and Legislation* and the possibility of its appearing as a separate work are discussed, there is, as stated above, no mention of the title ‘Of Laws in general’. Given that the vast majority of the text sheets, as well as the related rudiments and marginal contents sheets,<sup>1</sup> carry the heading ‘Limits’, it seems appropriate, in terms of fidelity to the existing manuscripts, and to Bentham’s intentions at the time he composed the bulk of the material, to retain the original Chapter title as the title of the text, and to retain the division into sections. This arrangement has the additional advantages of minimizing editorial intervention with the form of Bentham’s numerous cross-references (many of which the Hart edition does not reproduce) and of allowing the reconstruction of both earlier and later versions of the text.

## HISTORY OF THE WORK

The basis of the present edition is a version of the text that is referred to here as the ‘principal draft’. This is not the first draft of the text, but rather appears to have constituted at one point a virtually complete and coherent draft, before Bentham began to rewrite parts of it. It seems likely that Bentham had completed the ‘principal draft’ by the end of 1780, and then composed the revisions to it in early 1782, but in the almost total absence of

<sup>1</sup> For Bentham’s working practice, and the relationship between the various categories of manuscript, see pp. xxxvii–xxxix below.

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any explicit dating of the manuscripts, it is difficult to offer any precise account of the order in which the material was written. The 'principal draft' was preceded by a draft which is referred to here as the 'primary draft', but which survives only partially.<sup>1</sup> This in turn was preceded by a first, much shorter draft.<sup>2</sup> The 'principal draft' has been reconstructed with the aid of Bentham's paragraph numbers<sup>3</sup> and, with more difficulty, from his pagination. Both paragraph numbers and pagination were revised, in many cases more than once, as the work developed. Many of the page numbers in particular have been struck through so firmly that they are illegible, making it impossible to recreate all the mutations through which the text progressed. Moreover, it appears that manuscripts written for the 'primary draft' were in places reused for the 'principal draft', and indeed for revisions of that draft, with some being cut up in the process, and some being discarded and presumably lost or destroyed. A very small proportion of the text sheets for the 'principal draft' itself have not been located. In these instances, the extent of the missing material is described in an editorial footnote. After the 'principal draft' had been completed, Bentham composed two further categories of material. The first consisted in additions to the 'principal draft', and these have been inserted in the text in their appropriate place. The second consisted in new versions of parts of the 'principal draft', and these generally appear in the text where the corresponding pages of the 'principal draft' are missing, or in Appendices where they are not.

As well as the page and paragraph numbers, other internal evidence taken from the text sheets, including headings, marginal subheadings, and cross-references, has helped in the reconstruction of the text. Further information has been gleaned from the marginal contents sheets, rudiments, and especially the surviving plans.<sup>4</sup> The earliest plan appears to be that contained in the final lines of Ch. XVII, §2 of *An Introduction to the Principles of Morals and Legislation*, and hence in §2 of the present edition, where Bentham states that the remainder of the Chapter will be divided into three sections. The third section will deal with the question of 'what a law is', the fourth with that of 'the parts into which a law, as such, is capable of being distinguished', and the fifth with that of

<sup>1</sup> The relevant material is described and presented in Appendix E. For further details see pp. xxxii–xxxiv below.

<sup>2</sup> The relevant material is described and presented in Appendix A. For further details see pp. xxix–xxx below.

<sup>3</sup> For the editorial policy respecting paragraph numbers see p. xxxix below.

<sup>4</sup> See UC xcix. 86–108, of which xcix. 101–4, 107 relate to the text as a whole. Those sheets associated with particular sections of the text are mentioned as appropriate below.

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‘the import of the word *criminal*’.<sup>1</sup> These three sections eventually grew into a total of sixteen sections (§§3–18 of the present edition). The process, then, was one of expansion of the text, and this is reflected in the plans, of which four survive. The third and fourth, chronologically speaking, are the ‘Table of Chapters’ of March 1782 and the letter to Ashburton of 3 June 1782, which both give the final and complete list of sections or chapters. The first and second plans appear to have been drawn up in 1780 as Bentham was composing the bulk of the text. The shorter of these two plans, which, given that Bentham expanded the text as he composed it, must be the earlier, and which represents the ‘primary draft’, lists the following six sections:

- §1. Distinction between Private Ethics and Jurisprudence.<sup>2</sup>
- §2. Jurisprudence—its branches.
- §3. Of a law and its parts.
- §4. Limits between civil and penal law shewn in detail.
- §5. Distinction between civil law and criminal.
- §6. Analysis of the matter of a body of laws.<sup>3</sup>

The longer, and later, plan, which represents the ‘principal draft’, lists the following eight sections:

- §1. Limits between ethics and Jurisprudence.
- §2. Jurisprudence, its branches.
- §3. A law, its parts.
- §4. Compleatness and unity of a law.
- §5. Customary law, what it consists of.
- §6. Separation of the civil branch from the penal.
- §7. The criminal branch not distinguishable from the civil.
- §8. Uses of this chapter.<sup>4</sup>

In this latter plan, Bentham has added sections on the completeness of a law and on customary law (this material, as we shall see, was initially drafted as part of §3, separated to form a new section, and then itself divided into two sections) and a final section on uses, while discarding the section dealing with the analysis of a body of laws. The expansion of the ‘principal draft’, however, did not in the main arise from the immediate addition of new sections to the text, but rather in the addition of ‘respects’ to the section dealing with the parts of a law, and then the transformation of these discussions into discrete sections. In the final version of the text, this section was divided into thirteen separate sections. When this is taken into account, the structure of the work as listed in the

<sup>1</sup> See pp. 22–3 below.

<sup>3</sup> UC xcix. 99.

<sup>2</sup> MS orig. ‘Legislation’.

<sup>4</sup> UC xcix. 107.

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plan for the 'principal draft' corresponds with the structure of the work as conceived in the 'Table of Chapters' and the letter to Ashburton, with the exception of the addition of the section dealing with the distinction between civil and criminal procedure (§20 of the present edition). There was no major rearrangement or re-ordering of sections or chapters once Bentham had settled the outline of the 'principal draft'.

As noted above, the first two sections of the present edition were originally printed in 1780 as the first two sections of Chapter XVII of *An Introduction to the Principles of Morals and Legislation*.<sup>1</sup> It seems likely that, by November 1780 when the printing had advanced to this point, Bentham was still drafting and reworking the rest of the Chapter, and so postponed any further printing. When he eventually published *An Introduction to the Principles of Morals and Legislation* in 1789, he did not print any of the additional material he had composed for 'Limits', but added a 'concluding note' in which he explained that 'Limits' had grown to such a length that it constituted a book in its own right.<sup>2</sup> Nevertheless, the fact remains that throughout the bulk of the time in which he was drafting it (and, as noted above, most of the text appears to have been written before the printing of *An Introduction to the Principles of Morals and Legislation* had been completed in November 1780), Bentham conceived of 'Limits' as a single chapter and as a continuation of the introduction to his projected penal code. The first two sections, as printed in *An Introduction to the Principles of Morals and Legislation*, are, therefore, integral to the text, and, indeed, explain the purpose and scope of it. To exclude these two sections, as both the Everett and Hart editions do, is to obscure Bentham's intentions and to contradict his instructions. Each and every plan for the text includes these two sections, the only possible exception being the letter to Ashburton of 3 June 1782, where Bentham states: 'The chapters then which contain the remaining part of the matter designed for the introduction stand at present as follows: Chap. 18 (dismembered from Chap. 17) Jurisprudence its branches.'<sup>3</sup> This may be taken to suggest that Chapter 17 no longer belonged with the remainder of 'Limits'. Bentham, however, was simply explaining that, now that he had come to regard the proposed sections of Chapter 17 as

<sup>1</sup> The text sheets no longer survive, though the corresponding marginal contents sheet for §1 is at UC xcix. 25. An early draft of the beginning of §1 is at UC c. 24.

<sup>2</sup> See *An Introduction to the Principles of Morals and Legislation* (CW), pp. 301–11. The title is taken from the marginal content for the first paragraph: 'Occasion and purpose of this concluding note.'

<sup>3</sup> *Correspondence* (CW), iii. 124.

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chapters in their own right, Chapter 17 would be formed of what had been printed as Ch. XVII, §1, and that Ch. 18 would be formed of what had been printed as Ch. XVII, §2. In other words, his purpose was to outline how he intended to continue the introduction to the penal code in relation to the material already printed and sent to Ashburton, and not to divorce the proposed Chapter 17 (i.e. Ch. XVII, §1) from the remainder of 'Limits'. The first two sections of Chapter XVII, which would become Chapters 17 and 18 respectively, formed part of a continuous whole, preceded by what had been printed and would later be published as Chs. I–XVI of *An Introduction to the Principles of Morals and Legislation* and succeeded by the remainder of 'Limits'.<sup>1</sup>

Hence, the present text begins with the first two sections which Bentham inserted into *An Introduction to the Principles of Morals and Legislation*, and thereby restores them to the text which was written to answer the questions which are posed there.<sup>2</sup> The text of these two sections follows the version of *An Introduction to the Principles of Morals and Legislation* printed in 1780,<sup>3</sup> and so excludes the 'concluding note' which Bentham added for the first published edition of 1789, and some material added to the second published edition of 1823.<sup>4</sup> In the printed version of *An Introduction to the Principles of Morals and Legislation*, Bentham adopted a particular format for the chapter titles and corresponding running headings. Within each chapter title, a single word or short phrase was capitalized and placed within square brackets (Bentham's square brackets appear in the present text as braces): for instance 'Of the Principle of {UTILITY}' and 'Of the {PRINCIPLES ADVERSE} to that of Utility'. The style adopted for the present text was 'Of the {LIMITS} of the penal branch of

<sup>1</sup> That they might be presented in two separate works, possibly divided after Ch. 18 (see p. xiv above), does not mean that the material was not continuous.

<sup>2</sup> The omission of the first two chapters from *Of Laws in General* means that Chs. I–XIX of that edition correspond to §§ 3–21 of the present edition, with the exception of Chs. XII and XIII, which correspond to §§ 15 and 14 respectively.

<sup>3</sup> This statement may not be strictly accurate. When Bentham sent a copy of the printed text to Ashburton on 3 June 1782, he included what he described as the only copy of the proofs of pages 313 to 320 (i.e. pages cccxiii to cccxx as printed), which may have constituted the final proof sheet printed at this time (the work was printed as a quarto, and hence each sheet contained eight pages). (See Bentham to Lord Ashburton, 3 June 1782 (the first letter of this date), *Correspondence* (CW), iii. 121–2.) Bentham later complained that the proof sheets had not been returned to him. (See Bowring, x. 124.) In other words, while the sheets printed in 1780 constituted the bulk of the published text of 1789, the final part of that text, namely from p. cccxiii (i.e. from part way through paragraph 12 of Ch. 17, §1) may have consisted of sheets printed in 1789.

<sup>4</sup> i.e. the footnote on the subject of constitutional law and the paragraph at the end of the footnote dealing with the term 'international': see *An Introduction to the Principles of Morals and Legislation* (CW), pp. 281 n. and 297 n. respectively.

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jurisprudence'. The capitalized word or phrase constituted Bentham's short title for the chapter, and, together with the surrounding square brackets, was the form in which he presented his cross-references (albeit not capitalized, with the exception of the first letter of the word or phrase).<sup>1</sup>

One part of §2, namely the footnote which appears in the final paragraph, is based on a manuscript source.<sup>2</sup> This footnote introduces the main themes to be addressed in the remainder of the chapter. It seems likely that Bentham decided to exclude it from the printed version of 1780 because it referred to discussions which, at that time, he had decided not to print, or rather because he had not decided on the final format in which they were to appear. By the time that *An Introduction to the Principles of Morals and Legislation* was published in 1789, the footnote had been superseded by the 'concluding note'. The footnote as reproduced here is based directly on the manuscript source, and shows a number of variations, most of which are minor, from that which was inserted in the *Collected Works* edition of *An Introduction to the Principles of Morals and Legislation*.<sup>3</sup>

The first two printed sections carry paragraph numbers 1–29. The third section of the work (Ch. I in the Hart edition), and the first based on manuscript sources, introducing the parts of a law, consists, in its original form, in paragraph numbers 30–1.<sup>4</sup> The paragraph numbers, therefore, confirm that Bentham intended this latter section to form a direct continuation from the two printed sections, and confirm that these two sections can be properly regarded as belonging to the 'principal draft' (all three sections may also have belonged to the 'primary draft').<sup>5</sup> From §3 onwards, the text is based exclusively on manuscript sources. The first of the two paragraphs which originally constituted the whole of this section (i.e. paragraph 30) contains Bentham's definition of a law, and the second (i.e. paragraph 31) a list of eight 'respects' in which a law might be considered. These eight 'respects' represent the scope of the discussion at a certain point in the development of the 'principal draft'. According to the plans for both the 'primary

<sup>1</sup> For the presentation of the printed text see pp. xxxvi–xxxvii below.

<sup>2</sup> UC lxxxviii. 344–6, reproduced at pp. 21–3 n. below. The sheets carry Bentham's instruction that the text is to form a 'Note to p. cccxxvii', that is the relevant page in the printed version of Ch. 17, §2.

<sup>3</sup> See *An Introduction to the Principles of Morals and Legislation* (CW), pp. 299–300 n.

<sup>4</sup> UC lxxxviii. 102–3. The page containing paragraph 30 carries the marginal subheading 'Definition', and those containing paragraph 31 'Particulars'. Related rudiments on the subject of 'parts in general' are at UC xcix. 93–6, 108. For the relationship between folios and pages see p. xxiii n. below.

<sup>5</sup> See pp. xxxii–xxxiv below.



## EDITORIAL INTRODUCTION

draft' and the 'principal draft' reproduced above, Bentham originally intended the consideration of these 'respects' to form a continuation of, and thus be part of, the third section. In due course, he expanded the discussion to include a further four 'respects', which were inserted at various points into the 'principal draft'.<sup>1</sup> He then decided to detach the material containing the definition of a law and to dedicate a separate section to each of the twelve 'respects', and so what had been intended as one long section eventually became thirteen separate sections.<sup>2</sup>

Bentham composed an insertion for §3,<sup>3</sup> consisting of an extended discussion of the definition of the term 'law' given in paragraph 30. The first folio of this insertion contains paragraph numbers 2–3. Bentham may have regarded paragraph 30 of the 'principal draft' as paragraph 1 of the inserted sequence. Certainly, the insertion is best placed after paragraph 30, on which it forms a commentary, and before paragraph 31, which itself forms an introduction to the following twelve sections.<sup>4</sup> Bentham abandons his enumeration of the paragraphs after paragraph 3, with the exception of paragraph 11.<sup>5</sup> It is possible that Bentham would have eventually given a separate paragraph number to each of the discussions of the seven intervening terms for a law, and they would thereby have constituted paragraphs 4–10. However, given Bentham's failure to insert the bulk of the paragraph numbers, the existing paragraph numbers (i.e. 2, 3, and 11) have been suppressed.

This insertion contains an account of sovereignty which is superseded by a further account presented in material which was added to §8. In the account given in §3, Bentham argues that constitutional law is not properly understood as law, but rather

<sup>1</sup> The four additional 'respects' were Ends (§5), Parties affected (§8), Duration (§10), and Generality (§11).

<sup>2</sup> An alternative, but abandoned, draft of paragraph 31, which refers to the final total of twelve 'respects', at UC lxxxviii. 88, is reproduced at p. 40 n. below.

<sup>3</sup> UC lxxxviii. 90–1, 89, 92–100b. The sheets carry the marginal subheading 'Distinctions', with the exception of UC lxxxviii. 89 and 96 which carry the marginal sub-heading 'Definition'. The pagination indicates that UC lxxxviii. 89 may have been a later insertion into the sequence. A superseded draft, which represents the beginning of an alternative commentary on the definition of a law in paragraph 30, at UC lxxxviii. 101 is reproduced at p. 25 n. below. Related fragments are at UC lxxxviii. 237a, 237b<sup>v</sup>.

<sup>4</sup> In the Hart edition, this insertion is placed at the conclusion of the corresponding Chapter, in other words after paragraph 31 (see *Of Laws in General*, pp. 3–17). The first problem with this arrangement is that it divorces the insertion from the definition of a law which appears in paragraph 30. The second problem is that it obscures the connection between paragraph 31 and the discussion of the 'respects' of a law contained in §§ 4–15, to which that paragraph forms an introduction.

<sup>5</sup> See UC lxxxvii. 94.