

# Publicity and Nomography: Bentham's School of Legislation<sup>1</sup>

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## Introduction

This paper originates from an unexpected quote in *Of Laws in General*, Bentham's masterpiece on Jurisprudence.<sup>2</sup> Studying this work, you can find at the very end, in the nineteenth chapter of the Hart edition entitled 'Uses of the eighteen preceding chapters', a clear reference to education in matters of legislation and to a unique school. Bentham speaks of 'the method of teaching the art of legislation';<sup>3</sup> that 'in time the labours of the legislator may make room for the judgment and industry of the professor'<sup>4</sup> and 'a school, of which the business should be to teach [...] the art of legislation for the benefit of empires'.<sup>5</sup> It may seem surprising to end a very theoretical and complicated book on Jurisprudence with a consideration of education, and the notion of a school where legislation is taught by means of grammar drills. Perhaps not so odd taking into account Bentham's project of Universal grammar on the one hand, and his work *Chrestomathia* on the other. Focusing on the question of education leads to a closer study of Bentham's project of the chrestomatic school. It will help to understand this reference to education in *Of Laws in General*.

In *Chrestomathia*, which in a sense is also a surprising work, Bentham presents some tables, the fifth of which, is entitled 'Eudemonics' (Table of Art and Science). Here we find the Nomotheticoscopic (concerning government by legislation), namely

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<sup>2</sup> A new edition of this text established by Philip Schofield is due to be published with a new title: *Of the Limits of the Penal Branch of Jurisprudence*. Nevertheless, I refer in this paper to the Hart edition: *Of Laws in General*, ed. H.L.A. Hart, London, 1970 (*The Collected Works of Jeremy Bentham*). Hereafter (CW).

<sup>3</sup> *Ibid.*, p. 233.

<sup>4</sup> *Ibid.*, p. 233.

<sup>5</sup> *Ibid.*, p. 244.

the art or science of legislation. But this science is excluded from the chrestomatic school because ‘time of life too early’<sup>6</sup> and ‘utility not sufficiently general’.<sup>7</sup> So does this imply the need for a specific school for legislators? Does being a legislator imply certain skills and competences? This might close the gap between *Of Laws in General* and *Chrestomathia*, between law and education. While on the one hand, Bentham speaks specifically of a ‘school of legislation’ in his writings on codification,<sup>8</sup> on the other, we can also find a definition of the word law which is very close to the definition at the start of *Of Laws in General*.<sup>9</sup> So the link between law and education, the legislator and a school as presented in *Of Laws in General* seems to be more complicated than at first sight. More precisely, it seems that other fields of investigation are involved in this relationship: classification, theory of knowledge, and grammar for example. Surprise must now give way to philosophical interrogation. At this point, several questions appear. The first line of questions deals with the school itself: What would constitute a school of legislation? What would be the aim of such a school? Indeed is the school of legislation *the* school referred to in *Of Laws in General*? Then, we could consider the modalities at play in this school: Who is the teacher and who is the pupil? What are the contents of the courses given in such a school? And more generally, its status in the whole of Bentham’s thought should be interrogated: what precisely is the place and status of such a school in Bentham’s general theory of law and of society? What are the benefits of this school for society?

Examining the details of a school of legislation as described by Bentham in *Legislator of the World* could provide some elements for answering these questions, thanks to the study of language and codification. Then it becomes possible to link the school in *Legislator of the World* to that in *Of Laws in General* through the ideas of publicity and improvement of the code in terms of writing and knowledge. And then obtaining a general view of what is really at stake in the relationship between law and education. It will be clear that the form of the law is one of the primary concerns of Bentham because it is the only way to ensure that people have knowledge of the law. But it cannot be thought of independently of its content, or as Bentham puts it, of its ‘matter’. So at the end of this examination, it will still be necessary to find what type of

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<sup>6</sup> *Ibid.*, p. 95.

<sup>7</sup> Jeremy Bentham, *Chrestomathia*, ed. M.J. Smith, & W.H. Burston, Oxford, 1983 (CW), p. 95.

<sup>8</sup> *Legislator of the World*(CW), ed. P. Schofield and J. Harris, Oxford, 1998, pp. 82–104 and pp. 261–79.

<sup>9</sup> *Chrestomathia* (CW), p. 205n.

instruction could be given in a school of legislation. Even if Bentham does not give us a clear answer, my hypothesis is that another of his texts, namely *Nomography* could resolve this issue.<sup>10</sup>

## 1. The specific aspects of a school of legislation

### (a) *Preamble: schools and laws*

Information concerning the contents of codes is a constant concern for Bentham. It follows from this that turning laws into codes should be linked to education and more precisely to instruction given in schools. In ‘Methods of Promulgating the Universal Code’.<sup>11</sup> The best way to ensure that a code will be communicated and known is to turn it into a topic of instruction in every school:

It ought to be made the chief book; one of the first objects of instruction in all schools [...] The most important parts might be committed to memory, and repeated as a catechism: that, for example, which contains the definition of offences, and the reasons for their being ranged into classes. In this manner, before sixteen years of age, without being hindered by any other studies, the pupils in public schools would become more conversant with the laws of their country, than those lawyers at present are, whose hair has grown grey in the contentions of the bar. The change would arise out of the nature of the laws themselves.<sup>12</sup>

We then have to understand the nature of these schools specialising in the art of legislation.

Bentham uses three terms throughout the texts gathered in the *Collected Works* volume entitled *Legislator of the World. Writings on Codification, Law and Education*:<sup>13</sup> ‘school of legislation’, ‘legislative school’, ‘legislation school’ and at one time ‘Legislation or Codification School’. More precisely, he uses them, in two texts: ‘a letter to the Russian Emperor’ and ‘Codification Proposal’.

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<sup>10</sup> ‘Nomography’, *The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols., Edinburgh, 1843, iii. pp. 231-83 (hereafter ‘Bowring’).

<sup>11</sup> ‘Essay on the Promulgation of Laws, and the Reasons thereof; with Specimen of A Penal Code’, Bowring, i. p. 158.

<sup>12</sup> *Ibid.*, p. 158.

<sup>13</sup> *Legislator of the World (CW)*.

At the outset, we should note that Bentham states, ‘in prose, or even in verse, of that part of the law which is of universal and constant and major concernment, the main-text might be got by heart in Schools. And to this might be added the correspondent part of the body of reasons’.<sup>14</sup> By schools, Bentham means every school. The aim being that every man shall ‘if so it please its appointed legislators, find, for most purposes of consultation, his own lawyer: a lawyer, by whom he can neither be plundered nor betrayed’.<sup>15</sup> So, if the law must be known by heart and taught in every school, what is the utility of a school of legislation?

First of all, we have to keep in mind that the idea of a ‘school of legislation’ appears in a particular context: Bentham wants to help sovereigns to create new codes, for which he offers his services, and for which he proposes a whole project of which this school is a part. So, it belongs to a strategy of persuading the emperor of the utility of his intervention. Therefore, three particulars linked to schools of legislation should be focused on: the necessity of the publicising the law, finding a way to improve the code, and the capacity for developing specific skills useful to legislation.

*(b) Publicising the law*

Remaining faithful to his well-known reputation as a critic, Bentham begins with a strong critique of the way to write a code for Russia. Bentham is opposed to the writing of a code by a multiplicity of drafters and commissioners for two reasons: firstly, number of additions is too voluminous and without a clear aim: members of the commission are subject to too numerous interests and have different qualities<sup>16</sup> Secondly, writing a code based on works by several commissioners and written by many drafters is time consuming and is hugely expensive.<sup>17</sup> Bentham refers to drafters of codes as ‘the unschooled Codification- Establishment’.

Bentham establishes a distinction between an open and a closed mode of writing codes with respect to publicity, which is the nodal point here:

Carried on in the close mode, it [the code] is carried on as in ordinary cases, by a single person, or some small number of persons, appointed by

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<sup>14</sup> *Ibid.*, p. 122.

<sup>15</sup> *Ibid.*, p. 123.

<sup>16</sup> *Ibid.*, p. 87.

<sup>17</sup> *Ibid.*, p. 96.

the sovereign; and not made public at all, till it comes out armed with the force of law.<sup>18</sup>

This mode is always chosen by commissions because it could cover their incompetence. This is clearly a way to hide the process of writing codes from the public. The people cannot have a say in the writing of laws; they are deprived of the possibility of entering the legal and political process of creating codes. This is the reason why Bentham proposes an alternative, the open mode:

Carried on in the open mode, the code, antecedently to its promulgation with the force of law, is made public, viz. in the way in which literary works in general are made public: and this, for the purpose—if not expressly declared, at least implied and generally understood—of its being taken for the subject of observations, such as any person (keeping his expressions of course within the bounds of respect and decency) may, in a manner alike public, feel disposed to communicate.<sup>19</sup>

It has three main purposes: ensuring competition between different draughts including those proposed by foreigners—then, it is totally justified that Bentham intervenes in the writing of codes for foreign countries. The participation of the people in the process of creating a new code is encouraged by the submission of draughts to the ‘Public at large’, thus ensuring the ‘best possible code’,<sup>20</sup> which satisfies the people and puts the sovereign’s conscience at ease. Requiring publicity through the open mode necessitates the school of legislation. It is interesting to note links to others of Bentham’s works on publicity<sup>21</sup> through the idea of ‘The Tribunal of free criticism’.<sup>22</sup>

(c) *A way to improve the code*

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<sup>18</sup> *Ibid.*, p. 85.

<sup>19</sup> *Ibid.*, p. 85.

<sup>20</sup> *Ibid.*, p. 89.

<sup>21</sup> *Political Tactics*, ed. M. James, C. Blamires, & C. Pease-Watkin, Oxford, 1999 (CW), and *Constitutional Code: vol. I*, ed. F. Rosen & J.H. Burns, Oxford, 1983 (CW).

<sup>22</sup> ‘From my work, including *School of Legislation*, built on the *Tribunal of free criticism*, which, as above, I consider as an *accompaniment* to it, or as one *fruit* of it’. *Legislator of the World* (CW), p. 98. Which reminds us of the famous ‘Public Opinion Tribunal’.

If publicity is necessary, we can distinguish two levels of competition: the first one allows the competition between different draughts of codes emanating not only from parliamentary commissions inside the country but also from foreign individuals. The second one ensures that citizens of the world and of the country involved have access to the [writing of] draughts. Then this is the main aim of the school of legislation. As Bentham puts it:

Now then, Sir, comes the grand use—the immediate practical use—of Your Majesty’s Legislative School, formed as above [...] I have said filling up; aware at the same time, that, to put the work in a state fit for use, not only addition, but subtraction and substitution may occasionally be necessary.<sup>23</sup>

The school of legislation is a facility afforded to the public at large by government so they may amend and criticize draughts of code:

To whom then shall the facility be afforded? To every offerer, without distinction. But an essential precaution, without which, mischievous deception instead of useful information will be the result, is—that this facility be afforded indiscriminately to every one that offers.<sup>24</sup>

This is a necessary step to produce the final version of the code: the best version. So Publicity is inextricably linked to the aim of the school of legislation:

Of any such publicity given to the work, the object or end in view can be no other, than the receiving from the thinking part of the public, indication of any such imperfections, as it may be in the power of any person to point out in it,—with or without the indication of correspondent remedies, or supposed remedies: unless for a distinct object be to be taken the enabling and encouraging them, to give indications of the like nature, in relation to whatsoever body of law may have been the final

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<sup>23</sup> *Ibid.*, p. 94.

<sup>24</sup> *Ibid.*, p. 92.

result.<sup>25</sup>

When Bentham speaks of the notoriety of law, he not only understands an *a posteriori* knowledge, of established laws, but also an *a priori* knowledge when there are only draughts. The point is that people can influence their own codes. Law can be criticized and amended, rather than the whole process residing in the hands of an elite from which the rest of the people are excluded.

*(d) Developing specific skills*

Bentham insists on the fact that special qualities and skills are needed for the writing of a complete body of law. And lack of these are frequent among members of drafting commissions. The School of legislation is there to provide these skills. In the future codes will be drafted by writers from among the members of the public, instead of the exclusive contribution of members of legislative body as heretofore. The process in this school could be as follows: identifying writers, developing their skills by exercises, then writing codes:

*School of legislation* formed, out of which, for filling offices belonging to this department, individuals may be chosen, distinguished by the most conclusive proofs of that aptitude, of the deficiency of which the recorded confessions lie before me: proofs, such as the nature of things will not suffer to be afforded by any other means.<sup>26</sup>

[...]

Here then, Sir, is your *School of Legislation*: and presently I shall have to shew you, that,—among the Scholars, thus performing their exercises in this School,—persons will be to be found, better qualified than any others could be for doing that for you, which, in my situation, the most consummate wisdom would not qualify a man for doing for you.<sup>27</sup>

[...]

By whom then shall this business be performed?—I answer—by some scholar or scholars, by whom proof of qualification for the function has

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<sup>25</sup> *Ibid.*, p. 91.

<sup>26</sup> *Ibid.*, p. 92.

<sup>27</sup> *Ibid.*, p. 93.

been exhibited, exhibited by exercises, performed as above, in that School, by him or them, in preference, by whom,—according to the best grounded judgment that can be formed,—the proofs of greatest aptitude have thus been furnished.<sup>28</sup>

Two things need to be investigated here: who is the teacher and who is the student? There seem to be several possibilities and combinations,<sup>29</sup> and Bentham is not always clear about them. We should also query whether this school is a school of legislation or a school of codification. This, in turn leads to the question: what is legislation and what is codification? Is there a difference between them? In one instance, Bentham speaks of ‘Legislation or Codification School’ but does this mean that legislation could be reduced to codification, or that in the case of this school, the only legislative issue being dealt with is codification?

## 2. Law and language

Publicising the law ensures communication between legislators and the people. It is of significance that this is precisely the first point Bentham develops in the school in *Of Laws in General*.

### (a) *The School as a means of communication*

If publicity is a strict requirement, then Bentham establishes a direct link between publicity and education in *Of Laws in General* when he explains the use of this work and more precisely the social use of a book of jurisprudence:

That the method of teaching the art of legislation may be improved, or rather that such a method may be invented, and thereby an acquaintance with the principles of this art may be diffused and rendered common among the body of people.<sup>30</sup>

Therefore a book of jurisprudence or general theory of law is not aimed to be of use solely to lawyers or specialists in law. This is perfectly coherent with his writings in

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<sup>28</sup> *Ibid.*, p. 94.

<sup>29</sup> *Ibid.*, pp. 93-94, 262 and 339. See also UC cviiia, 31–36.

<sup>30</sup> *Of Laws in General* (CW), p. 233.

*Legislator of the World*. The circulation of information is only possible thanks to communication:

It [*Of Laws in General*] may be made to facilitate the communication and thereby the gradual improvement of science for beginners. [...] the next care is to facilitate the communication of it to the rising generation.<sup>31</sup>

So a school has a clear aim: improvement for beginners through communication of the knowledge that language plays a key role in the transmission of information:

As an instrument employed in and for the interchange, or say, communication of ideas between man and man; and without distinction as between [different societies among men] or regard had to the particular occasion on which, or the particular purpose for which it is employed,—call this the information-regarding sense.<sup>32</sup>

What is of importance here is the link between education and language on the one hand, and on the other, law and language. Bentham turns next to establish a comparison between grammar and legislation and this may be viewed as a way to bridge the gap between the theory of language and the art of legislation.

*(b) Grammar and Legislation*

First of all, Bentham's point is to insist on the fact that legislation is after all a discourse like any other and that it operates with some rules:

[...] qualities, upon the degree of which so essentially depend, whatsoever beneficial effects can be looked for from a discourse of any kind, and in particular from any discourse designed to produce the effect of law.<sup>33</sup>

The method is clear:

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<sup>31</sup> *Ibid.*, p. 243.

<sup>32</sup> 'Essay on Language', Bowring, viii. p. 298.

<sup>33</sup> *Legislator of the World (CW)*, p. 59.

A word being proposed to a scholar, he is required to point out the classes to which it is conformable. Each word and combination of words is thus referred to a particular class invented and named for the purposes of discourse in general. This process is equally applicable to every other branch of logic as to the elementary branch which is called grammar.

As words of any sort may be parsed by referring them to the classes entitled by the words a verb, a

noun, a verb in the infinitive mood, a noun in the accusative case and so forth, so words of a particular stamp considered in a particular point of view may be parsed by referring them to the classes entitled by the words genus, species, subject, predicate, and the like: as may also entire propositions of the argumentative stamp by referring them to the classes entitled by the words Barbara, celarent, darii, and so on. In the same manner may propositions of the legislative stamp be parsed by referring them to the classes entitled Law against simple personal injuries, law against semi-public offences, law against exceptive, justificative; substantive law, adjective law, remedial law, punitive law; and so on through all the variety of appellatives above exhibited, as well as of such others as upon a maturer and more particular examination it might be found advisable to add or substitute to the foregoing.<sup>34</sup>

Below are some specificities of Bentham's theory of language:

1. As Bentham insists throughout his theory of fictions<sup>35</sup> — or noun of fictitious entities following Bentham's own words —, declension of words changes their meaning.
2. The first unity of meaning is the proposition and not the word; the entire

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<sup>34</sup> *Of Laws in General*, (CW), pp. 243–44.

<sup>35</sup> Expression coined by C. K. Ogden in his famous book C.K. Ogden, *Bentham's Theory of Fictions*, Patterson, 1959.

proposition refers to a class.

3. The work of classification expresses the link between law and language. They both structure reality through words. Then the great challenge for Bentham is to create a theory of language and more precisely a theory of fictions that could provide a strong basis for his theory of law. In other terms, what is at stake is the possibility of using nouns or fictitious entities in a positive theory of law.<sup>36</sup>
4. Legal discourse has logical rules, as does grammar; therefore exercises in a classroom environment could teach these rules and then permit beginners to improve their knowledge.

*(c) Comparison between systems of law*

Speaking of grammar and legislation goes beyond mere comparison. The idea is to show that legislation works just as any other discourse so that law can be constructed, through language, as a science. And scientific language, because it is organised around a general classification, can be universal. This is Bentham's point: a 'real', i.e. a scientific one, that legal discourse allows comparison between nations:

When these rules and exercises were prepared and brought into order, a sort of school might be established: a school, of which the business should be to teach, not the art of forensic disputation for the emolument of individuals, but the art of legislation for the benefit of empires.<sup>37</sup>

The underlying idea is that a complete code of laws could be universalized. By taking this code as a model and by adapting it to different nations every nation could have a better code:

This being accomplished the next and finishing achievement would be to frame for each nation a complete code new in point of substance as well as form, copied from the general model above mentioned with such

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<sup>36</sup> See M. Bozzo-Rey, *Le principe d'utilité dans la philosophie politique et juridique de Jeremy Bentham*, Paris, 2010, for a further analysis.

<sup>37</sup> *Of Laws in General* (CW), p. 244.

alterations as shall be deemed requisite to adapt it to the particular manners, sentiments, and exterior circumstances of each respective state.<sup>38</sup>

The entire work of a school of legislation, if we wish to use the phrase coined by Jeremy Bentham, is to teach how to transform linguistic legal rules and to render laws conformable to the model of a complete body of law by putting each law to the right place and ‘putting together again after the manner of the model’.<sup>39</sup>

This is exactly the idea developed by Bentham; that a complete body of law is based on the individuation of laws, and that it is the right combination of them that results in a complete body of law. Law is thus like clockwork:

A body of laws is a vast and complicated piece of mechanism, of which no part can be fully explained without the rest. To understand the functions of a balance-wheel you must take to pieces the whole watch: to understand the nature of a law you must take to pieces the whole code.<sup>40</sup> In a body of laws as in every other complex piece of mechanism a great part of its perfection depends upon the facility with which the several parts of it may be altered and repaired, taken to pieces, and put together.<sup>41</sup>

Despite the fact that we are able to understand the particularities and the key points of a school of legislation, especially in identifying relationships between law and language, we cannot know yet the content of the education delivered in such a school. Simply copying codes cannot be the whole content of this education. Even if it were the case, an unpublished manuscript<sup>42</sup> insists on the necessity of passing on the knowledge acquired through years of investigation to new generations, and this would be the only means to improve the code and thereby to establish a complete Digest. I will now try to propose an answer to this issue by reference to a text which aims to define the rules concerning the writing of law, i.e. the *Nomography*.

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<sup>38</sup> *Ibid.*, p. 244.

<sup>39</sup> *Ibid.*, p. 245.

<sup>40</sup> *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns, & H.L.A. Hart, Oxford, 1996 (CW), p. 299.

<sup>41</sup> *Of Laws in General* (CW), p. 236.

<sup>42</sup> UC cviii, 31–36.

### 3. From form to content: The Nomography or the instruction given in the school of legislation?

#### (a) Clarity of the law

Nomography and fictions reinterpreted Bentham defines nomography as the art of writing laws;<sup>43</sup> we can clearly see here that, by definition, nomography could have a place within schools of legislation. If form and matter are the only two parts of a law,<sup>44</sup> nomography deals with both but form is essential.<sup>45</sup> Bentham focuses on form because he thinks that matter can only be adequately expressed by law if and only if form matches matter as perfectly as possible. However this perfection is not always possible. Bentham identifies three defects of the first order to be avoided: ambiguity, obscurity and overbulkiness.<sup>46</sup> In addition, there are also seven defects of the second order: unsteadiness in respect of expression, unsteadiness in respect of import, redundancy, longwindedness, entanglement, nakedness in respect of help to intellection and disorderliness.<sup>47</sup> To these several defects correspond several remedies also enumerated by Bentham. Vocabulary used in the writings of laws should be purged of legal and technical terms. Every terms difficult to understand or ambiguous should be strictly and precisely defined.<sup>48</sup> For the sake of clarity and understanding, repetitions should be avoided; singular masculine should be favoured; naming, enumerating, classifying and using abbreviations also.<sup>49</sup>

Remedies concerning overbulkiness are probably the most interesting because they are directly linked to his theory of language. Indeed, Bentham proposes a new way of classifying<sup>50</sup> and indexing laws.<sup>51</sup> This is first based on a requirement of shortness.<sup>52</sup> It follows then that it is easier to provide an accurate hierarchy of the different heads and titles.<sup>53</sup>

This new method of classification is also a new way of defining terms and

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<sup>43</sup> 'Nomography', Bowring, iii. p. 233.

<sup>44</sup> *Ibid.*, p. 234.

<sup>45</sup> On this question, see also A. Brunon-Ernst, 'Le droit civil selon Jeremy Bentham ou comment écrire un dictionnaire juridique', *Bentham juriste*, which identifies the relations between nomography and civil law.

<sup>46</sup> Nomography, Bowring, iii. p. 239.

<sup>47</sup> *Ibid.*, p. 240.

<sup>48</sup> *Ibid.*, p. 255.

<sup>49</sup> *Ibid.*, p. 265.

<sup>50</sup> *Ibid.*, p. 264.

<sup>51</sup> *Ibid.*, p. 265.

<sup>52</sup> *Ibid.*, p. 269.

<sup>53</sup> *Ibid.*, p. 267.

Bentham relies on it to avoid misinterpretations and mistakes due to false understanding. Strict indexing should result in the fixing of meaning of legal terms: once fixed, at least for the time being, and under defined circumstances, clarity of the law would become an accessible goal.<sup>54</sup> But, the cornerstone of his reform still rests on his conception of language. Indeed the whole edifice depends on the relations established by his theory of fictions between law and substantive nouns: substantiation is the corner stone of it.<sup>55</sup> New terms could be created which were based on existing ones; these terms could easily be formed by prefixes or suffixes.<sup>56</sup> Here is another direct link to the theory of language as clearly stated by Bentham:

It allows also the combining two words into one. When thus united, if one of them be a substantive employed as substantive, it becomes the representative of an object capable of being made the subject of predication – a fictitious entity, to which, for the purpose of discourse, any action or quality may be ascribed.<sup>57</sup>

We can now see two things: first, the nomography cannot be created in the absence of Bentham's theory of language, i.e. his theory of fictitious entities. Secondly, a reform of legal vocabulary relies on the creation of a new method of classification and indexation. These are the practical consequences of a theory of language. Foundations for a deep reform of English legal language are then laid down.

But, this is what may be termed the technical aspect of Bentham's reform. A more theoretical one could be added focusing on the concept of demystification. We will then clearly see a second way to link Bentham's aim to his theory of fictions in a more theoretical view.

As Hart puts it, demystification:

[is] used to express that unjust, anachronistic, inefficient or otherwise harmful social institutions, including laws, are frequently protected from

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<sup>54</sup> *Ibid.*, p. 261.

<sup>55</sup> *Ibid.*, p. 267.

<sup>56</sup> *Ibid.*, p. 275.

<sup>57</sup> *Ibid.*, p. 275.

criticism by a veil of mystery thrown over them.<sup>58</sup>

Therefore, demystification reveals true nature of institutions and laws. According to radical thought, they are illusion, if not a fraud; according to Bentham, they are fictions and more precisely fictitious entities. Therefore, Bentham's aim is to show that there is no link between word and reality: words don't refer to things in themselves. This is the exact meaning of Bentham's criticism of technical legal language.<sup>59</sup> Language could be used as a way to mystify people and to ensure the control of power and institutions in the hands a small elite, namely the jurists. Since a law – as the foundational concept of legal theory—s defined by Bentham as an expression of the will of the sovereign, demystification as a guide for writing laws reveals also the exact place it should occupy and the accurate form a law should have, i.e. a command.<sup>60</sup>

Since a law is the expression of the will of the sovereign, the form of a law must show its obligatory nature. It is absolutely necessary if we consider, as Bentham does, law as a system of social control, i.e. a way to influence people's behaviours. It is indeed by addressing the will of the subjects, which is according to Bentham an active faculty, that the will of the sovereign could impinge upon their actions.<sup>61</sup> The requirement of clarity of the law corresponds to this obligatory form invested by a law: it is the only way to reveal its obligatoriness.

But, and this is my third and last point, demystification permits the consideration of an essential element without which we cannot understand the schools of legislation: precisely that laws are not a natural creation of an extra or supra-human entity. Laws may be criticized, amended and improved; they are not unchanging. With demystification, laws are put back in the domain of human activities. However, one should note that this process supposes and implies the law to be known. Nomography could now be understood as a part of the process leading to the clarification of the law. Linking nomography and Bentham's theory of language teaches us one more thing: mastering language (as defined and understood by Bentham) is required to write laws. It should then necessarily be a part of the instruction given in a school of legislation. If the link between nomography and

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<sup>58</sup> H.L.A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory*, Oxford, 1982, p.21.

<sup>59</sup> 'Nomography', Bowring, iii. pp. 231–83.

<sup>60</sup> *Ibid.*, p. 277, and *Of Laws in General (CW)*.

<sup>61</sup> For a complete analysis see M. Bozzo-Rey, *Le principe d'utilité*.

language is now clear, it should also be clear that it deals with Bentham's own conception of a law, and how this definition implies a particular legal language, and puts communication at the heart of his work. What is at stake is the deep relation between law and language in which nomography could be considered as a medium.

*(b) A new way of communication between legislators and subjects*

Bentham defines a law as the expression of the will of the sovereign<sup>62</sup> and he thinks that the habit of obedience lies at the root of political society.<sup>63</sup> Therefore, if Bentham wants on the one hand his project of demystification to succeed, and to make law clear and understandable by subjects, and on the other hand to ensure that the will of the sovereign will be obeyed; then he needs to analyse the communication between sovereign and his subjects, between legislator and people. In other words, analysing relations between signs expressing the will of the sovereign and obedience is required:

3. An act of obedience is any act done in pursuance of an expression of will on the part of some superior. 4. An act of POLITICAL obedience (which is what is here meant) is any act done in pursuance of an expression of will on the part of a person governing. 5. An expression of will is either parole or tacit. 6. A parole expression of will is that which is conveyed by the signs called words.<sup>64</sup>

It is clear that Bentham focuses on the analysis of the signs that should be used to elaborate the form of legislative discourse, expressing matter of the laws and their several parts. The nomography appears then as a totally coherent project within Bentham's thought. It is the application of the outcome of his theory of language to the art of writing laws and of the project of demystification applied to legal language. The structure of this work encourages us to think this way. Bentham starts by establishing how nomography is related to other domains of his thought: government, logic, Pannomion, proposal and petition, and private deontology.<sup>65</sup>

The true aim of studying and working on the form of the laws, even if the

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<sup>62</sup> *Of Laws in General (CW)*, p. 1.

<sup>63</sup> *Fragment on Government*, ed. J.H. Burns and H.L.A. Hart, London, 1977, (CW), p. 429.

<sup>64</sup> *Ibid.*, p. 429.

<sup>65</sup> 'Nomography', Bowring, iii. p. 232.

apparent aim is to improve laws themselves, is to ensure a transparent communication between subjects and the legislator, between the governors and the governed. It goes hand in hand with the necessary publicity referred to above. Transparency<sup>66</sup> is the only way to ensure that the will of the sovereign is really expressed, transmitted by laws and then understood by people. But the point is the strong possibility that it will be followed by effects. In other words that subjects will obey the will expressed by laws. This is the very reason for the clarity and non-ambiguity of the law: nothing should disturb or cloud the communications between the legislator and his subjects. Language is of course key in this concern but to be understood, laws must at first be known. Therefore there are intrinsic and extrinsic requirements for laws to be transparent with one and only end in view: that of controlling actions of the governed, i.e. ensuring that they will act in the way desired by the legislator. So issues analysed in the nomography are first the communication of the expression of the will of the sovereign to his subjects, and secondly the obedience to this will, which means that it is always necessary to check that transmission of a command will be followed by the appropriate action.

*(c) Particular forms of the necessary publicity of laws*

This is the sense that the notoriety of the law as the general end of nomography. Knowledge of the law is directly linked to the punishment inflicted in case of disobedience: you can only obey the law if it is known and certain.<sup>67</sup> Action in accordance with a will implies an understanding and a knowledge of it Notoriety of the law implies publicity. So the law has to take on particular forms. Before defining the positive forms it should take, Bentham identifies a whole set of imperfections which can be linked, by opposition, to his theory of language and more particularly to 'the qualities desirable for the style of language', i.e. simplicity, understandingness, clarity, remarkability and harmony. Therefore, imperfections of the first order are, as already noticed, ambiguity, obscurity and overbulkiness.<sup>68</sup>

Nomography can be purged of its defaults and remedies can be applied successfully to nomography only by modelling the structure of discourse on the

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<sup>66</sup> In this context, publicity implies transparency: transparency is another modality of publicity. For a further study of the relations between publicity and transparency in Bentham's thought, See M. Bozzo-Rey, 'La transparence chez Jeremy Bentham : de l'invisibilité d'un concept à sa publicité', forthcoming.

<sup>67</sup> 'Nomography', Bowring, iii. p. 237.

<sup>68</sup> *Ibid.*, p. 239.

structure of the law. We could then clearly see how the logic of the will is of use in structuring the law and how relationships between logic, language and law are important in Bentham's thought.<sup>69</sup> The nomography extends the process of demystification: it renders visible different parts of a law, and also, crucially, reveals the structure of the law.<sup>70</sup> Classification and divisions of the law should also be made clear and obvious. Transparency of the structure of a law is vital. Bentham also insists that preference should be given to the use of substantive form rather than the verbal form. He can then state, in a very practical way, different rules of writing. This is totally consistent with the remarks he made on the use of the verb 'shall' in an expression of will,<sup>71</sup> which demonstrates once again that the structure of the language in use in the nomography as a general code of writing laws is deeply linked to the structure of the law of the legal discourse as envisaged by Bentham. So the form of the publicity is a means by which the structure of the language used in writing laws may be made to conform with the structure of the law. We could also speak of a necessary transparency.

But publicity can also take the form of a particular mode of notification of laws. Even if Bentham distinguishes two modes—*in terminis* and simple indication or reference<sup>72</sup>—asserts that with every kind of law whatsoever, it is necessary that it be exposed completely. This exposition is moreover a way to correct imperfections which may have occurred during the writing of laws.<sup>73</sup> Beyond these two modes of notification, publicity is also required during the whole process of the writing of laws: while laws are in draught form, during the writing process (since Bentham defines very strict rules for the deliberative procedures within assemblies) and, of course, once they are passed and promulgated. Therefore, publicity becomes the main aim that every nomograph should have in view. But it has also a crucial role to play in Bentham's thought: publicity is the practical expression of the idea expressed by Bentham that laws belong to human activities. This last point fits perfectly with his project of a school of legislation and completely legitimates it.

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<sup>69</sup> For more details, see M. Bozzo-Rey, *Le principe d'utilité*.

<sup>70</sup> 'Nomography', Bowring, iii. p. 256.

<sup>71</sup> *Ibid.*, p. 263.

<sup>72</sup> *Ibid.*, p. 259.

<sup>73</sup> See the whole process described in *Political Tactics* (CW).

At the end of this analysis, it seems clear to me that the Nomography provides possible contents of the instruction to be given in a school of legislation.

### **Conclusion**

We may have now a clearer idea of Bentham's school of legislation, and that the study of the texts is enlightening. Indeed, relations between Nomography and schools of legislation seem to be clearer and to legitimate the idea that it could be at least a part of the instruction given in them. I have argued that their relations could be structured around three issues: the requirement of clarity for every law which makes clear the link between language and law; this link is also apparent in the specific form that should be taken by the communication between legislator and subjects; lastly the necessary publicity and the will to improve the codes leading to the establishment of a complete code of laws. The coherence of Bentham's project then becomes clear and the nomography constitutes the heart of the instruction given in the schools of legislation. It establishes rules for improving the code and then has its completeness in view.

But there are still issues unresolved: Who is the teacher and who is the student? Is a school of legislation only a school of codification? Then is the legislator only a codifier? One might also formulate an hypothesis such as: perhaps what Bentham calls a 'school of legislation' means two things. First, by the publicity given to laws, it aims to improve people's knowledge of them and above all, it improves the communication between the sovereign and his subjects by taking them into account in their draughting. Here, schools of legislation are fictitious entities in the same manner as the Tribunal of Public Opinion. Secondly, it could imply the rigorous standards applied to the writing of codes dictated by the learning of specific rules, and that schools of legislation teach only the form that laws should take. *A contrario*, and as seen in some unpublished manuscripts, it is really thought of as a real school.

The difference between legislator and codifier could be understood by two distinctions: between theoretical and practical fields or in a formulation closer to Bentham, between fictitious and real entities. The legislator deals with laws and codifiers with provisions; the distinction established in *Of Laws in General*.

The question is how to influence legislators? The answer is to open the school to the public at large and to make publicity key. And this could be totally consistent with Bentham's defence of democracy.



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