

Could Indirect Legislation Produce Legal Norms?

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The main aim of Bentham's *Principes du Code Pénal* is not only to describe every element which should belong to penal law, but also to focus on legal norm as one of the mainstays of his thought. This might seem strange since, if we follow the normative frame developed in *Of the Limits of the Penal Branch of Jurisprudence* and several interpretations of Bentham's legal theory especially concerning legal ontology, we might be inclined to think that only laws can be considered as legal norms. But, in his *Principes du Code Pénal*, Bentham establishes a strong distinction between direct and indirect legislation. The former relies on laws and punishment whereas the latter relies on... something else, which is actually as normative as laws. Bentham even writes that 'only indirect means are truly effective'. Still, even if they use different means, they both want to ensure adequacy to the norm and identify each inadequacy to this same norm - but what kind of norms are we even talking about? In this perspective, my question is the following: could indirect legislation produce legal norms? More specifically, could norms produced by indirect legislation belong to Law? If so, does this imply legal ontology that can be found in Bentham's *Of the Limits of the Penal Branch of Jurisprudence* should be reevaluated?

After defining the specificities of indirect legislation, how this legislation deals with punishment, and how it can influence people's conduct, I will focus on the place of temporality to apprehend relationships between indirect legislation, laws and norms. Having established that indirect legislation is as normative as direct legislation, I will try to understand what kind of normative structure could have indirect legislation's propositions. My main concern, finally, is linguistic, so that I can suggest a clear account of Bentham's theory of fictions applied to Law and legal propositions. In the end, the question boils down to this: what kind of legal ontology is elaborated by Bentham?