Utilitarianism and literature – On the role of fiction in Bentham's penal thought

Ms. Claire Wrobel, PhD
Lecturer in legal English (Lille 2 university, France)
Member of the Centre Bentham (Paris, France)

The "Law and Literature" movement has shed light on the interconnections between the two realms, looking at law *in* literature – the way the literary world reflects the world of law and justice – and at law *as* literature – the literary dimension of legal discourse. This paper relies on a similar methodology, looking at the way Bentham's penal thought was reflected in late eighteenth-century and Victorian literary works, as well as the way his *Principles of Penal Law* and Panopticon letters rely on literary devices and the production of numerous scenarios. Confronting Bentham's penal writings with Gothic and sensational novels makes it possible to highlight the interconnectedness of penal theory and literary discourse.

This interdisciplinary study offers an exploration of the polysemy of the term "fiction". In his theory of fictions, Bentham defined literary fiction, or "the fictions of the poet", as fictions which were "pure of insincerity", devoted to amusement and therefore harmless, as opposed to the political, legal and religious fictions used to manipulate public opinion. He also acknowledged the necessity of "logical fictions" in philosophical thought. However, his use of fiction was not limited to what he called logical fictions or fictitious entities.

Bentham's desire to anticipate every situation and warn against all dangers led him to display a novelist's imagination. In order to serve theoretical and strategic ends, he produced scenarios which are fictional in two senses: first of all, they are hypotheses which allow him to develop his thought and argumentation; secondly, they were actually staged in literary fiction. For instance, by seeking to prevent any possible plot – in the sense of conspiracy – from being hatched in his Panopticon prison, Bentham ironically produced plots – in the sense of narratives – which could have been the basis of sensational prison novels. He also staged the return of the transported convict as well as the exploitation of cracks in the legal system by skilful criminals, scenarios which would provide the basis for Victorian novels such as Wilkie Collins' *Armadale* (1866).

Conversely, the realm of literary fiction may appear as a field of exploration for penal plans which were not implemented, such as the cursed Panopticon. Novels such as Radcliffe's *The Italian* (1796) or Maturin's *Melmoth the Wanderer* (1820) – both written at the time when penal reform was widely debated in England - stage Panopticon-like environments in which surveillance is always possible, hidden and omnipresent. They give fictional reality to panopticism – Foucault's dark extrapolation on Bentham's prison - in which surveillance has become generalized and invisible. This hypothesis opens up the possibility that literary fiction, studied in its cultural context, might have a heuristic function and not be limited to providing amusement, as Bentham had suggested it.