Abstract: The paper addresses the following question: What is the relationship between Bentham’s theory of law and his mature theory of democratic politics?

The first section of the paper considers the several perspectives in terms of which the question might meaningfully be explored. In biographical terms, Bentham came to democratic theory after his philosophy of law had been formulated. His democratic program provided the setting for further reflection on and elaboration of basic elements of his jurisprudence, such as the concept of sovereignty. In political terms, Bentham came to see “democratic ascendency” as politically required to secure implementation of his larger law reform program. This suggested an essentially instrumental relationship between democracy (on the one hand) and his jurisprudence (on the other). In ethically terms, Bentham’s theory of the democratic state and his theory of law were guided by the greatest happiness principle (as, indeed, was all his philosophy). Thus, the political theory and the legal theory were unified by a single master principle.

The main section of the paper then further pursues the posed question in terms of Bentham’s codification ideal. Bentham’s utilitarian jurisprudence supplied a general account of the nature of law and a specific account of codification as the sole legal form able fully to realize law’s capacity to promote general happiness. While codification, for Bentham, comprised a variety of leading elements, among the most important were: cognoscibility (the quality of being known by the community); publicity (the quality of being effectively communicated to the community); and explicit purpose (the Code’s “perpetual commentary of reasons”). These qualities enhanced the efficacy of the law and thereby its ethical legitimacy. And they served a regulative function by forcing the law-maker to explain and justify his legal handiwork and expose this handiwork to public scrutiny.

Bentham’s program for transparency and publicity within the democratic state extended these features of the codification ideal to the political state. Like the legislative codifier, all those who exercised power in Bentham’s democracy operated under structures designed to insure cognoscibility, publicity, and explicit purpose. These features again simultaneously served the effectiveness of the state and the regulative functions of democratic accountability. Given the shaping force of Bentham’s codification project, it is absolutely fitting that his plan for a democratic state took the form of a Constitutional Code.
Please note: I greatly regret that family obligations in California will force me to miss the opening of the conference. In order to present a paper, I need to be placed on the conference program for Friday or Saturday (August 10-11). If it is impossible to accommodate this request, I shall more than understand. I hate to miss any of the conference and hope to participate fully once I reach New York. I’m sorry to have to submit this special request. Many thanks!