BENTHAM ON DEMOCRACY, COURTS, AND CODIFICATION

Drawing upon original manuscripts and *The Collected Works of Jeremy Bentham*, this collection represents the latest scholarship on Bentham’s late and mature thought on constitutional law. The contributions cover a diverse range of major topics, from official aptitude or competency to the interests of women, and explore Bentham’s writings on courts, codification, and cosmopolitanism. Together, its chapters challenge the received notion, based on early jurisprudential writings, that Bentham’s constitutional thought is authoritarian and show that Bentham, as a constitutional theorist, offers a distinctive liberal perspective. Freeing Bentham’s theories from their long sentences and unfamiliar terminology, these chapters make accessible Bentham’s subtle and important ideas on liberal democracy. By shining a light on Bentham’s mature thought, this collection offers a refreshingly comprehensive, detailed, and authentic account of Bentham’s theory of democracy.


**Xiaobo Zhai** is Associate Professor, Faculty of Law, University of Macau. He is the co-editor of *Bentham’s Theory of Law and Public Opinion* (2014) and *Bentham Around the World* (2021). He also writes on legal philosophy, constitutional theory, and Chinese law.
BENTHAM ON DEMOCRACY, COURTS, AND CODIFICATION

Edited by

PHILIP SCHOFIELD
University College London

XIAOBO ZHAI
University of Macau
CONTENTS

List of Contributors vii

Introduction 1

PHILIP SCHOFIELD AND XIAOBO ZHAI

PART I Democracy

1 Intellectual Aptitude and the General Interest in Bentham’s Democratic Thought 21

PHILIP SCHOFIELD

2 Bentham, Democracy, Free Government, and the Relationship between Rulers and Ruled 44

MICHAEL QUINN

3 The Interests of Women in Bentham’s Late Constitutional Thought 68

EMMANUELLE DE CHAMPS

4 Religion and Judgement in Bentham’s Political Thought 88

TSIN YEN KOH

5 Organising the Utilitarian State: The Official Aptitude of Functionaries 110

MALIK BOZZO-REY

6 Bentham on the Corruption of Democracy 134

BRIAN CHIEN-KANG CHEN

7 The People’s ‘Greatest Misfortune’ and ‘All the Chance the People Have’: Bentham on the Separation of Powers 157

XIAOBO ZHAI
CONTENTS

PART II Law and the Courts

8 Between Constructivism and Immanentism: Bentham’s Unsettled Conception of Constitutional Law 195
Guillaume Tusseau

Francesco Ferraro

10 Indirect Legislation in Bentham’s Late Constitutional Writings 237
Anne Brunon-Ernst

11 Bentham, Courts, and Democracy 258
David Lieberman

PART III Codification

12 Ending at the Beginning: Law and Political Theory in ‘Pannomial Fragments’ 287
Stephen Engelmann

13 Bentham’s Constitutional Code and His Pannomion 315
Michihiro Kaino

14 Bentham’s Cosmopolitan Constitutionalism 337
Peter Niesen

Bibliography 364
Index 382
CONTRIBUTORS


XIAOBO ZHAI is Associate Professor at University of Macau. He has co-edited Bentham’s Theory of Law and Public Opinion (with Michael Quinn, 2014) and Bentham around the World (with Simon Palmer, 2021). His books include The People’s Constitution (2009) and China’s System of Constitutional Implementation (2009).

MALIK BOZZO-REY is Research Professor at Lille Catholic University. His publications include the edited volumes Bentham juriste: l’utilitarisme juridique en question (with Guillaume Tusseau, 2011) and Raisons politiques (with Pierre-Yves Néron, 2014).


EMMANUELLE DE CHAMPS is Professor of British History and Civilization at CY Cergy Paris Université. Her publications include Enlightenment and Utility: Bentham in France/Bentham in French
LIST OF CONTRIBUTORS


BRIAN CHEN is Associate Professor at National Chengchi University. His publications include journal articles on Hume’s and Bentham’s moral, legal, and political theory.

STEPHEN ENGELMANN is Associate Professor of Political Science at the University of Illinois at Chicago. He is author of Imagining Interest in Political Thought: Origins of Economic Rationality (2003) and editor of Selected Writings: Jeremy Bentham (2011).


TSIN YEN KOH is Assistant Professor of Political Science at Yale-NUS College. Her publications on Bentham have appeared in History of Political Thought, Revue d’études benthamiennes, and History of European Ideas.

DAVID LIEBERMAN is the James W. and Isabel Coffroth Professor of Jurisprudence at the University of California, Berkeley. He is the author of The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain (1989), and he edited Jean Louis De Lolme’s The Constitution of England; or, An Account of the English Government (2007).

PETER NIESEN is Professor of Political Theory at the University of Hamburg. His publications include Jeremy Bentham: Unsinn auf Stelzen. Schriften zur Französischen Revolution (2013), Immanuel Kant:
LIST OF CONTRIBUTORS


MICHAEL QUINN is an Honorary Research Fellow at Philipps Universität Marburg (Fachbereiche Gesellschaftswissenschaften und Philosophie, Institut für Politikwissenschaft), and at Lille Catholic University. He was previously Senior Research Associate at the Bentham Project. He has edited four volumes in the Collected Works on poor relief (2001, 2010) and political economy (2016, 2019); co-edited a fifth on sexual morality (2014); while a sixth is awaiting submission to the press. Pre-publication versions of two further volumes on political economy have been freely available via UCL digital depository since 2019. He has published widely on many aspects of Bentham’s thought, and his book on Bentham as a theorist of public policy (Bentham) appeared in 2021.
