

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

INDEX

- abundance, 200n, 226–7
- accountability
 - Bentham on, 51–5, 57
 - and fidelity, 20
 - and law's rule, 13–14, 25–9, 41
 - networks of, 29–32
 - and publicity, 53–5
 - and reason giving, 51, 53–4
- Accursius, 24
- Addison, Joseph, 95
- amusement, and utility, 92–4
- anarchy, natural rights and, 217
- antipathy, and desire to punish, 96
 - See also* principle of sympathy and antipathy
- approbation and disapprobation
 - censor and, 146
 - in naming, 95, 150
 - and principle of sympathy and antipathy, 176
- aptitude
 - active, 43
 - intellectual, 43
 - moral, 43–5
 - positive aspect of, 45
 - and dependence on public opinion, 46
 - official, components of, 43
 - goal of constitutional law, 136
 - quality of information and, 141
- Aquinas, Thomas, 25–6
 - Aquinas's thesis, 26
- archetypation
 - meaning, 159
 - of obligation, 166–7
- Aristotle, 13
- Armitage, David, 78, 208n
- arrangement, natural
 - and defects of ordinary language, 149–51
 - and principle of utility, 176
 - purposes of, 168–70
 - seeks useful truths, 178
 - v. technical arrangement, 147–8
 - and universal expository jurisprudence, 146–8, 167–74
- arts and sciences
 - of amusement v. of utility, 92–3
 - Bentham on taste and, 92
- asceticism
 - and calculation of optimum proportion of breeders, 103–4
 - enemy of utility, 73–4
 - Jesus v. Paul on, 91
 - origin of Paul's, 98–9
 - and public opinion, 84
 - See also* principle of asceticism
- Austin, John, 57, 61, 120–4, 126, 127
- authority, constitutive v. operative
 - authority in Constitutional Code, 129–30, 134
- axioms, of mental pathology, 71, 226
- Azo of Bologna, 28
- Bain, Alexander, 89
- Beccaria, Cesare, 4, 185–8, 191, 192, 193, 197, 199
- Belief
 - false beliefs produce real pain, 85
 - religious belief and asceticism, 103–4
 - and sensibilities, 71–2, 77–8
 - and universal expository jurisprudence, 171

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

244

INDEX

- beneficence, and principle of utility, 106
- benevolence, and principle of utility, 106
- Bentham, Jeremy
- on calculation, 63–71, 77–8
 - on codification, 132–42
 - collapse of censor–expositor distinction in, 171–4
 - Comment on the Commentaries*, 75n, 128, 149
 - Constitutional Code*, 3, 4, 61, 85, 96, 119, 129–32, 134–42, 194, 206
 - on definition, 156–8
 - on failure of codification in Europe, 191–2
 - First Principles Preparatory to Constitutional Code*, 132
 - Fragment on Government*, 51, 53, 54, 125, 127–8, 149, 173, 195, 201, 202–3, 205
 - Hart on, 119–27
 - and homosexuality, 72, 79–80, 90, 107–8, 109–15
 - influence of Helvétius and Beccaria on, 186–9
 - on interpretation by judges, 192–3
 - Introduction to the Principles of Morals and Legislation*, 3, 69, 125, 128, 131, 132–3, 184, 186–7, 195–6, 197
 - on language
 - defects of ordinary language, 149–51
 - v. Hart on ordinary language, 153–4
 - standards in language, 161–2
 - on law
 - exposition of law, 164–6
 - form and matter of law, 193–4
 - law's rule, 20, 33, 56–62
 - boundary between morals and legislation, 195–6
 - Of Laws in General*, 58, 120–1, 125, 132–3
 - 'Leading Principles of a Constitutional Code', 132
 - Of the Liberty of the Press*, 48–9
 - Of the Limits of the Penal Branch of Jurisprudence*, 41–2, 56–61, 120–1, 123, 125–6, 152–3, 184, 191, 192, 203
 - J.S. Mill on, 1–2, 116–17
 - on natural arrangement, 147–58, 163–74, 175–76, 178–80
 - on natural rights, 208, 215–20
 - 'Nonsense upon Stilts', 5, 208, 212–13
 - Not Paul, but Jesus*, 90
 - 'Papers Relative to Codification and public Instruction', 140
 - on paraphrasis, 158–60, 166–7
 - the people as agents of change in, 200–5
 - 'Place and Time', 81, 85–6, 201
 - priorities for reform, 198–200, 207
 - 'Projet d'un corps complet de droit', 125, 184, 189, 191–206
 - 'Projet matière', 83
 - publicity as solution to problem of public power, 40
 - Rationale of Reward*, 92
 - and Rawls's critique of utilitarianism, 224–9
 - on real v. fictitious entities, 151–3, 159–60
 - Rees on, 72–3
 - Securities Against Misrule*, 46, 228
 - 'Sextus', 90, 109
 - 'Of Sexual Irregularities', 90, 95–6
 - on sovereignty, 4, 56–60, 125–8, 129–32
 - on taste, 91–2
 - on truth, 174–5
 - on universal expository jurisprudence, 146–8, 167–74
 - universalism v. localism in, 76–8, 82–4, 208n
 - and votes for women, 79–80
 - writings for France, 206
- Bern, 188, 199
- bifurcation, and definition, 157–8
- Birmingham, Alabama, 35
- Blackstone, William, 125, 127–8, 145, 146, 149, 169, 190, 202–3
- Bracton, Henri de, 23–4

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

INDEX

245

- Brandeis, Louis, 13
 Brissot, J.-P. 188–9, 193, 198–9, 200, 205–6
 Burke, Edmund, 92, 212, 218
 Burns, J.H., 131
 calculation, 3, 63–4
 of abstract v. of net utility, 71–2, 77–8
 and lying, 178–9
 in rights theory v. in utilitarianism, 220
 Catherine II, Empress of Russia, 188, 193, 201, 202
 censor. *See* censor v. expositor
 censor v. expositor
 in Bentham, 144–5
 censor v. anarchist, 217
 and reasons v. facts, 171
 universal expositor metamorphoses into censor, 171–2
 See also universal expository jurisprudence
 Christianity, v. Paulism, 91
 Ciavarella, Mark, 8–10
 circumstances influencing sensibility, 69–70
 and axioms of mental pathology, 71
 need for table of, 70, 201
 civil law. *See* law
 clearness, and copiousness, 161–2
 codification
 Bentham on failure of, in Europe, 191–2
 Bentham's preoccupation with, 119, 191
 certainty as product of, 129
 and democracy in Bentham, 132–42
 European trend in favour of, 189–90
 instrument of communication and publicity, 138–42
 links Bentham's jurisprudence and political theory, 142
 Montesquieu v. Voltaire on, 190
 command
 v. rule, 122–3, 124–5
 and sovereignty, 125–8
 command model of law
 in Austin, 122, 124
 in Bentham, 57–8, 123–4, 130
 common law
 Bentham's rejection of, 128–9, 136, 138, 144, 176–8
 dog law, 55
 v. public opinion, 61
 rules for construction of Acts, 128
 communication, Constitutional Code instrument of, 138–42
 Connor, Bull, 35
 consent, evidence of absence of harm, 66
 Constitutional Code
 distributes public offices and powers, 136
 fully public resource, 139
 instrument of communication and publicity, 138–42
 constitutional law. *See* law
 contentment, v. happiness in Bentham and Mill, 116–17
 copiousness
 and clearness, 161–2
 v. simplicity, 161
 virtue of language, 150, 161
 Court
 in Constitutional Code, 134, 137, 141
 and determination of legal validity, 35–8, 123, 126–8
 in Luzerne County, 8–10
 quasi-jury and, 47
 role in public accountability, 30, 34
 See also judge, Supreme Court
 David, King of Israel, and Jonathan, 101
 Declaration of the Rights of Man and the Citizen, 208, 212, 215–20
 definition, and paraphrase, 156–60
 democracy
 Bentham's conversion to, 206–7
 Bentham's democracy legal code, 134
 Bentham's democracy and rights, 224–9

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

246

INDEX

- democracy (*cont.*)
 and codification, 132–42
 and rule of law, 10, 16
 description, morally neutral
 not morally inert, 179–82
 and truths, 174–5
 v. universal expository
 jurisprudence, 143–5, 167–76,
 179–83
 disapprobation. *See* approbation and
 disapprobation
 Dumont, Étienne, 73, 82n, 88n, 92n,
 212
 duty. *See* obligation
 Dworkin, Ronald, 121, 210, 220–1
- entities, real and fictitious
 contrasted, 151–3, 159–60, 216
 and natural rights, 216
- equality
 and rule of law, 16
 subordinate end of legislation, 200,
 226–7
- eudaemonics, and principle of utility,
 168
- Europe
 codification in, 189, 191–2
 debate on criminal law in, 186–9,
 198
- evidence, truth and, 175
- evil. *See* good and evil
- expectations
 centrality of, for Bentham, 60, 76–7
 constitute system of law, 60
 of property owners and equality, 200
 and security v. equality, 226–7
- expositor. *See* censor v. expositor
- facts
 v. grounds of antipathy, 79
 v. reasons, and expositor v. censor,
 146, 171
 and utilitarianism, 78, 144, 153,
 158–9, 170–1
- Ferguson, Adam, 20, 23
- fiction, 47, 144, 176, 177, 218
- fictitious entities. *See* entities, real and
 fictitious
- fidelity
 and disobedience, 38–9
 ethics of law's rule, 7–8, 32–4
 of judges, 32–3
 v. legality, 18–20
 and mutual responsibility, 20–1
- Ford Abbey, 5, 117
- Forster, John, 186–7
- Frankfurter, Felix, 35–6, 38n
- freedom. *See* liberty
- Fuller, Lon, 20
- Gardner, John, 174, 179
- God
 asceticism and, 103–4, 210
 and homosexual activity, 100–1
 and natural rights, 214, 216–17
- good and evil
 civil war greatest evil, 201
 definition of right in terms of good,
 221–3
 evil of female prostitution, 114
 evils of fornication, 88
 evil of loss greater than profit of
 gain, 200
 evils of moral restraint, 112
 evil of popular discontent, 79
 evil of punishment, 64, 66
 evil of stealing, 197
 and law, 138
 and pleasure and pain, 112, 209
 and publicity, 46
 security against evil, 227
 sources of evil, 227
- Gortyn, 7
- gratification, sexual
 regular v. irregular, 109–13
- Greensboro, North Carolina, 30–1
- Griffin, James, 208n
- habit of obedience. *See* obedience,
 habit of
- happiness
 codification and, 128, 138
 Constitutional Code and, 136
 v. contentment in Bentham and
 Mill, 116–17
 in Helvétius and Beccaria, 186–7

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

INDEX

247

- and universal interest, 224–5
- and utility, 104–5
- value and, 94
- harm
 - consent evidence of absence of, 66
 - and pain, 63, 65, 83, 85, 118
- harm principle, Benthamic origins of, 64–9, 73, 88–9
- Harris, James, 105
- Harrison, Ross, 163–4, 169
- Hart, H.L.A.
 - v. Bentham on ordinary language, 153–4
 - on Bentham's jurisprudence, 4, 119–28
 - on command theory of law, 123–7
 - Concept of Law*, 121–5, 143
 - equates universal expository jurisprudence with morally neutral description, 143–4, 167–82
 - Essays on Bentham*, 119–20, 132, 143
 - on expositor v. censor, 172
 - v. Harrison on paraphrase, 163–4
 - on morally neutral v. morally inert, 179–81
 - non-cognitivism in, 182–3
 - strained readings of Bentham, 127–32
 - on theory of law, 122–3
- Helvétius, C.-A., 169, 185–8, 194, 202
- Heraclitus, 21
- Hobbes, Thomas 21, 200
- Hobbes's thesis, 25–9, 61
- homosexuality
 - Bentham on, 72, 79–80, 90, 107–13
 - crime against nature, 110
 - and population, 111–12
 - and seduction by teachers, 114
 - and status of women, 112–13
- Hong Kong, 7
- human rights. *See* rights
- Hume, David, 95
- impurity
 - and asceticism, 109
 - and homosexuality, 110–11
 - of pleasures and pains, 107
- indirect legislation. *See* legislation
- individuation, 133, 155–56
- infanticide, Bentham on, 196
- infidelity, and law's rule, 8–10
- intellectual aptitude. *See* aptitude, intellectual
- interest
 - legal rights and vital interests in Bentham, 226–8
 - and pain and pleasure, 209
 - and principle of utility v. principle of sympathy and antipathy, 210
 - private v. universal interest, 44–5, 49–50, 71–2n, 208–9, 217, 224–5
 - and rationality, 223
 - of ruling few v. subject many, 97, 153
 - See also* sinister interest
- intuitionism, v. natural law, 220
- irregularity, sexual
 - modes of, 109–11
- Jesus
 - v. Paul on asceticism, 91, 99–100, 118
 - sexuality of, 100–2
- John, Saint, 101
- John the Baptist, 99
- judge
 - fidelity and, 32–3
 - law's rule v. rule of judges, 34–9
 - legislator to guide judicial interpretation, 192–3, 197
 - obliged to explain decisions, 52–3
 - source of misrule for Bentham, 129
- judgment, accompanies perception, 151–2
- judicial review, Hart on Bentham on, 126–8
- jurisprudence
 - codification links Bentham's jurisprudence and political theory, 142
 - Hart on utilitarian tradition of, 121–7
 - legislation branch of, 168–9
 - universal v. local. *See* universal expository jurisprudence

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

248

INDEX

- justice
 - 'justice as fairness', 222–4, 229
 - perfect v. imperfect obligations and, 106
 - school of, 49, 54
- Juvenal, 22
- Kaino, Michihiro, 78
- Kant, Immanuel, 18, 27
 - Kant's thesis, 27, 28
- language
 - Bentham on defects of ordinary, 149–51
 - Bentham v. Hart on ordinary, 153–4
 - Bentham's standards for good, 161–2
 - instrument of communication and thought, 148
 - ruling few exploit defects of ordinary, 153
- law
 - Beccaria on reform of criminal, 186
 - Bentham's capacious definition of, 133, 166
 - Bentham's exposition of, 164–6, 177
 - Bentham on form v. matter of, 193–4
 - Bentham's theory of, 56–62
- civil law
 - Bentham on, 200 & n
 - penal law provides model for, 199–200
- constitutional law
 - goals of, 136
 - penal law model for, 199–200
 - in *Projet*, 203–5
- fundamental law v. separation of powers in rule of law tradition, 42–3
- governs by conjoining expression of will with public reasons, 55
- v. mores in Montesquieu, 195
- natural law
 - and intuitionism, 220
 - name for principle of sympathy and antipathy, 210
 - and pleasure and pain, 176–7
 - and utility in Beccaria, 197
- penal law
 - provides model for civil and constitutional law, 199–200
 - right child of, 216
 - standard of perfection in, differs in different countries, 74
 - as union of primary and secondary rules, 123
 - See also* legislation, rule of law
- law's rule. *See* rule of law
- lawyers
 - fidelity and, 32, 34
 - source of misrule for Bentham, 129
 - and technical arrangement, 147, 161
- legality
 - v. fidelity, 18–20
 - element of rule of law, 7
 - standards of, widely accepted, 15–16
- leges in principem*, 58–61, 126
- legislation
 - Bentham on boundary between morals and, 195–6
 - indirect, 81–2, 89
- legislation minister, responsibilities of, 137–8
- legislator
 - and axioms of mental pathology v. circumstances influencing sensibility, 71–8
 - business of, to cure prejudices, 85
 - embodiment of principle of utility, 85
 - v. impartial spectator, 222, 224–5
 - and judicial interpretation, 192–3, 197
 - strategies for reform on part of, 79–88
- liberty
 - Bentham's commitment to, 6, 230
 - liberty of opinion
 - Bentham on, 48, 54, 80–1, 202, 228
 - liberty of the press
 - essential to good government, 48–9, 54, 203–5, 228
 - liberty of religion
 - Bentham on, 80–1, 135
 - rights created at expense of, 218–19

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

INDEX

249

- sexual liberty
 - benefits of, 113–15
 - Bentham's advocacy of, 80, 118
 - effects of, on wife v. prostitute, 113
- Lieberman, David, 148
- Locke, John, 11, 21
- logic of the will, 123
- Lolme, J.-L. de, 204–5
- Madison, James, 22
- Malthus, T.R., 111–12
- Mandeville, Bernard, 187
- Marat, J.-P., 199
- masturbation, diversion from, benefit of sexual liberty, 114
- Mill, J.S.
 - 'Bentham', 116
 - on Bentham, 1–2
 - v. Bentham on higher and lower pleasures, 115–18
 - and Bentham on sexual irregularities, 5–6
 - harm principle in, 63
 - On Liberty*, 6, 63, 88–9, 229
 - Pitts on, 77
 - Rees on, 72–3
 - Utilitarianism*, 116
- mischief
 - and juncture of resistance, 201
 - pain, or loss of pleasure, 64, 69, 74
 - of sexual activity, 115
- misrule. *See* securities against misrule
- Montesquieu, 4, 43, 185, 188, 190, 193, 195, 198, 200, 201
- moral aptitude. *See* aptitude, moral
- morality
 - Hart's, 180, 182–3
 - of legal provision v. status as law, 122
 - positive, in Austin, 57
 - sexual, and religion, 97–8, 118
 - Sidgwick's attitude to popular, 87
- moral sanction. *See* sanction, moral
- morally neutral description. *See* description, morally neutral
- Morellet, André, 185
- Moses, 101–2
- Motive
 - of officials, 44–5
 - pains and pleasures sole, 208
- Muslims, 80–1
- natural arrangement. *See* arrangement, natural
- natural law. *See* law
- natural rights. *See* rights
- nature, human
 - and pleasure and pain, 71, 147
 - principle of utility founded on, 211
 - and self-interest, 44
- neutrality, standard of good language for Bentham, 162
- obedience, habit of
 - and *leges in principem*, 60–1
 - and mores, 195
 - and political society, 125
- obligation
 - Bentham's exposition of, 166–7
 - as liability to sanction, 51–3, 123
 - name of fictitious entity, 160, 216
 - perfect v. imperfect, and utility, 106
 - presupposes norms, 14
 - publicity and self-imposed, 59–60
- offence
 - Bentham on arrangement of, 171–2, 197
 - direct v. indirect legislation and, 82
 - of fornication, 88
 - injury to security in Bentham, 65
 - justification for denominating, 64
 - self-regarding, 65n, 72
 - simple mental injuries as, 69
- official aptitude. *See* aptitude, official
- opinion. *See* public opinion
- oppression
 - defined, 219
 - natural right of resistance to, 215, 219–20
 - sexual gratification and, 96, 118
 - utilitarianism and, of minorities, 224, 226–9
- Orsi, Francesco, 87

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

250

INDEX

- pain. *See* pleasure and pain
- Paine, Thomas, 5, 212, 213–15, 218, 220, 229
- Paley, William, 212
- pannomion
- complete body of law, 128
 - displays dictates of utility, 133, 191
 - general and particular codes in, 194
 - presupposed by Constitutional Code, 137
 - publicity central goal of, 138
- paraphrasis
- and definition, 156–60
 - and exposition of law, 164–6
 - Harrison v. Hart on, 163
 - meaning of, 158–9, 216
 - of obligation, 166–7
- Paul, Saint
- condemns sexual activity, 97–8, 118
 - v. Jesus on asceticism, 91, 99–100, 118
 - origins of Paul's asceticism, 98–9, 108
- pederasty. *See* homosexuality
- penal law. *See* law
- perception, accompanied by judgment, 151–2
- Perry, Stephen, 144 & n
- phraseoplerosis
- necessary preliminary to paraphrasis, 159
 - of obligation, 166
- Pitts, Jennifer, 77
- Plato, 23, 41
- pleasure and pain
- and abstract v. net utility, 70–8
 - addition to mass of pleasure from sexual liberty, 113–14
 - Bentham v. Mill on higher and lower pleasures, 115–18
 - and good v. bad taste, 92–5
 - and good and evil, 209
 - and homosexual acts, 72, 90, 115
 - and indifferent actions, 75
 - natural arrangement and, 147–8
 - pleasures and happiness, 104–5
 - pain v. harm in Mill, 63
 - pleasures of body v. of mind, 108–9
 - pleasures in 'justice as fairness', 223
 - principle of asceticism recommends seeking pain, 104
 - purity v. impurity of, 107
 - quantity measure of value of, 107
 - real sources of legal and moral fictitious entities, 160, 166
 - sexual pleasures within reach of all, 96
 - sources of every thought and action, 157, 167, 171, 208, 211
 - and utility of arts and sciences, 93
- positivism, 143–5
- Postema, Gerald, 130, 144, 145, 173–4, 177
- power
- Bentham's technology of, 138–42
 - censorial, 204
 - codification and democracy
 - instruments against abuse of, 140 - Constitutional Code distributes public offices and, 136
 - Constitutional Code security against abuse of judicial, 129
 - name of fictitious entity, 160, 216
 - public records both instruments of, and instruments against abuse of, 141–2
 - publicity solution to problem of, 40–1
 - rule of law v. arbitrary exercise of, 10–13, 40, 55
 - See also* separation of powers
- prejudice
- business of legislator to cure, 85
 - combated by evidence, 82
 - unevidenced assertion, 73
- Price, Richard, 202
- Priestley, Joseph, 185
- principle of asceticism
- condemns pleasures of body, 108
 - defined, 104, 209–10
 - and homosexual relationships, 110
 - linguistic sleight of hand in, 109, 110–11

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

INDEX

251

- principle of sympathy and antipathy
 - human rights theories versions of, 211
 - moral sanction typically guided by, 85
 - v. principle of utility, 85, 175–6, 209–10
- principle of utility
 - governs natural arrangement, 176
 - and homosexual relationships, 111–13
 - presides over universal expository jurisprudence, 167
 - v. principle of asceticism, 104–9
 - v. principle of sympathy and antipathy, 85, 175–6, 209–10
 - unites morals and legislation, 196
 - universal standard of right and wrong, 209
 - unsusceptible of proof, 167–8, 175
 - and virtues, 106
 - See also* utility
- probity, 106
- prostitute
 - diminution of female prostitution benefit from sexual liberty, 114
 - has more than wife to fear from sexual liberty, 113
- prudence, 106
- publicity
 - Bentham architect of, 47
 - Bentham's solution to abuse of power, 40, 43, 46–56
 - Constitutional Code as instrument of, 138–42
 - disciplinary function of, 50–4
 - and rule of law, 57–61
- public opinion
 - enlightenment of, and Bentham's attitude to democracy, 207
 - and indirect legislation, 82
 - power of, chief security against misrule, 135–6, 203, 228
 - 'regular' means conformity to rule prescribed by, 110
 - system of law, 61, 135
 - typically led by sympathy and antipathy, 84
 - and principle of utility, 73
- Public Opinion Tribunal
 - broadly based membership, 48
 - chief check on official power, 46–50
 - earliest mention of, in Bentham, 204
 - enforces moral sanction, 53, 135–6
 - incorruptible, 50
 - tribunal of free criticism in public matters, 54
- punishment
 - accountability as liability to, 51
 - Beccaria on, 186
 - of consensual same-sex acts in Bentham, 80, 115n
 - infliction of harm necessary condition for, 63, 118
 - justification of, in Bentham, 64–70, 106
 - natural, applied to sovereign by public opinion, 203
 - of sexual irregularities, in Bentham, 115
- push-pin, utility of, v. of poetry, 93–4
- quantity
 - v. quality in Bentham v. in Mill, 116–18
 - v. shape of pleasure, 113
 - measure of value in Bentham, 107
- quasi-jury, 47
- rational
 - common law lacks public, 55
 - serves purpose of communication, 139
 - utilitarian reasoning promoted by insertion of, in law, 197
- Rawls, John, 210, 213, 221–4, 228, 229
- Raz, Joseph, 121, 174, 179
- real and fictitious entities. *See* entities, real and fictitious
- reasoning, and law's governance, 13
- See also* reasons
- reasons
 - v. antipathies, 73
 - v. facts, 146, 171

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

252

INDEX

- reasons (*cont.*)
 - and operation of the moral sanction, 52–4
 - perpetual commentary of, in Pannomion, 139–40, 193
 - in universal expository jurisprudence, 171–2
- recognition, rules of, 123
- Rees, John, 72–3
- reflexivity, *sine qua non* of rule of law, 23
- reform
 - Bentham on legal v. constitutional, 198–200
 - by law v. by habits, 195
 - debate on, of penal law in Europe, 186–9
- religion
 - Bentham on freedom of, 80–1, 135
 - heresy in, and in taste, 96
 - source of variation in law, 74–8, 201
- religionists, adherents of principle of asceticism, 104n, 210
- reputation, manipulation of, by public, 52, 135–6
- responsibility
 - as accountability v. as liability to punishment, 51
 - as demand for reasons, 52–4
 - publicity best security for, 50–4
- rights
 - and content of rule of law, 16
 - fundamental rights in rule of law tradition, 42–3
 - fictitious entities, 160, 216
 - human rights
 - and natural rights, 208 & n, 211
 - and principle of sympathy and antipathy, 211
 - and utility calculation, 220
 - law creates, 138
 - legal, and protection of vital interests in Bentham, 226–8
 - natural rights
 - Bentham on, 208, 210–13, 215–20
 - v. civil rights in Paine, 214
 - in Declaration of the Rights of Man and the Citizen, 215
 - as trumps, 210–11
- Rosen, Frederick, 131–2
- Rousseau, J.-J., 191, 198
- rule of law
 - v. arbitrary exercise of power, 10–13, 15, 40–1, 55
 - Bentham and, 41–2, 55–62
 - conditions for realization of, 18–25, 32–9
 - content of, 15–17
 - legality v. fidelity in, 7–8, 18–20
 - and negative liberty, 17
 - not essentially Western ideal, 17–18
 - v. rule of judges, 34–9
 - v. sovereignty, 38–9
- rule of recognition. *See* recognition, rules of
- sanction
 - and accountability, 14
 - moral sanction
 - and demand for reasons, 52
 - engine of great power, 86–7
 - v. legal sanction, 57, 86–7
 - role of, in functioning of law, 57–61, 126
 - typically guided by sympathy and antipathy, 85
 - and utility, 73
 - no law without, 199
- Schofield, Philip, 121 & n, 144–5
- sciences. *See* arts and sciences
- security
 - branches of, 65, 228
 - and condition of females, 113
 - in Constitutional Charter for Tripoli, 80–1
 - Constitutional Code provides, against abuse of judicial power, 129
 - in Declaration of the Rights of Man and the Citizen, 218–19
 - fundamental task of law, 40, 138, 230
 - justice mother of, 40
 - offences as acts injuring, 65
 - and population, 111
 - subordinate end of legislation, 200, 226–8
 - threat to, from equality, 200, 226–7
 - See also* securities against misrule

Cambridge University Press

978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion

Edited by Xiaobo Zhai and Michael Quinn

Index

[More information](#)

INDEX

253

- securities against misrule
 - Bentham's mantra, 43
 - cross cultural appeal of, 17
 - v. irrevocable rights, 43, 135
 - power of public opinion as, 135–6
 - in *Projet*, 204–5
 - and rule of law, 56
- sensation
 - and pleasures of body v. of mind, 116
 - real source of legal and moral fictitious entities, 160, 166–7, 208–9
 - and understanding, 109
- sensibility
 - and belief, 71–2, 77–8
 - of Muslims, 80–1
 - See also* circumstances influencing sensibility
- separation of powers
 - Bentham on, 42–3, 135
 - in rule of law tradition, 43
- sexual gratification. *See* gratification, sexual
- sexual irregularity. *See* irregularity, sexual
- sexuality, of Jesus, 100–2
- Shapiro, Scott, 178n
- Sidgwick, Henry 87–8, 221
- simplicity, v. technicality and v. copiousness, 161
- sinister interest
 - public opinion most important resource against, 136
 - democratic implications of emergence of, 95–6
 - discovery of, and legislator as embodiment of principle of utility, 85
 - government by will and, 55
 - and interest-begotten prejudice, 153
 - in Luzerne County, 9
 - and self-interest, 224
 - task of democracy to combat, 134
 - ways to counter, of officials, 45–6
- slavery, Bentham on, 200
- social contract
 - in Declaration of the Rights of Man and the Citizen, 215, 218–20
 - in Paine, 214
 - in Rawls, 222–4
- Sodom, 100, 101
- sovereignty
 - Bentham on, 56–60, 125–8
 - and command theory of law, 124
 - depends upon disposition to obey, 85, 125
 - notion of, incompatible with law's rule, 29, 38–9
- stoics, and asceticism, 99, 104n, 209
- subordinate ends of legislation, 200, 226–7
- subsistence, subordinate end of legislation, 200n, 226
- Supreme Court, United States, 35–8
- sympathy, in catalogue of pleasures and pains, 84
 - See also* principle of sympathy and antipathy
- Tacitus, 94
- taste
 - Bentham v. Mill on, 115–18
 - good v. bad, and pleasure and pain, 92–7
 - meaning, in Bentham, 91–2
- Ten, C.L., 79
- Thucydides, 21
- Tripoli, 80–1
- truth
 - inductive and provisional, 179
 - morally neutral description and, 174–5
 - operates by evidence, 175
 - paraphrase and, 163
- universal expository jurisprudence
 - division of eudaimonics, 168
 - v. morally neutral description, 143–5, 167–76, 179–83
 - and natural arrangement, 146–8, 167–74,
 - principle of utility presides over, 147
 - purposes of, 169–71
- universalism, in Bentham, 76–8, 82–4, 208n

Cambridge University Press
978-1-107-67430-1 - Bentham's Theory of Law and Public Opinion
Edited by Xiaobo Zhai and Michael Quinn
Index
[More information](#)

254

INDEX

- utilitarianism
 - aggregate, v. average, 221
 - avoids claiming infallibility, 229
 - v. legal positivism in Bentham, 143–5, 167–76, 207
 - modern criticisms of, 210, 220–4
- utility
 - abstract, v. net, 70–8, 80–1, 84–8
 - and arts and sciences, 92–3
 - Bentham's reservations about, 104–5
 - deals in facts, 78
 - defined, 148
 - draws line between morals and legislation, 196
 - Pannomion displays dictates of, 133, 191
 - See also* principle of utility
- Voltaire, 4, 188, 189, 190
- will
 - arbitrary, 12, 23
 - law as expression of, 55, 165
 - logic of, elucidates command, 123
 - and reasons in law, 55
- Williams, Bernard, 210
- Wynne, Edward, 190–1