

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

## Index

---

- abolitionism, 1; Jefferson on, 184–89, 191, 194–98, 202–3
- abortion, 1, 145, 258, 262, 350–52, 354–55, 357–61; British attitudes and law on, 382, 415–16, 420–22
- academia, 2, 3, 4, 16–17, 329; influence on Supreme Court of, 16–17, 319–65; Kantian liberalism and, 307–13; rights theory in, 12, 15; Scottish, 38–41, 43, 46, 54, 65
- accused: due process and, 259, 296, 351, 369, 371, 452; equal protection and, 369–70; habeas corpus and, 76, 116, 245, 423; rights of, 262, 296, 371, 385, 409, 429–30; preventive detention of, 429–30; unreasonable searches and seizures of, 99, 230, 245, 259, 379, 452; trial by jury of, 66–67, 104, 379, 423
- Ackermann, Bruce, 323, 340–41
- Ackner, Lord, 372
- Adams, John, 65; on state of nature, 72
- affirmative action, 313–14; reverse discrimination and, 415, 436–37
- Agee, Philip, 412
- alienable rights, 78–79
- Alison, Francis, 44–45
- Allen, Noah, 63–64
- Alliance between British Liberals and Social Democrats, 428–29
- American Booksellers v. Hudnut*, 333
- American Civil Liberties Union, 371
- American Indians, *see* Indians
- American Medical Association, 398
- American Political Science Association, 397
- American Revolution: Bill of Rights and, 62–108; Madison's view of, 133–34
- animals, 1, 262
- antinomianism, 22, 23, 53
- anti-subordination principle, 315–16
- Aristotelianism, 156–57, 181n, 249, 251, 255; right v. good in, 310–11; and self, social nature of, 225
- arms, right to bear, 108
- atheism, 165–66
- Bailyn, Bernard, 91–92, 121
- balance of powers: British view of, 368, 385, 394, 405–6; judiciary's role in, 117–20, 141–42, 368, 394; legislative supremacy in, 120–24; Madison on, 102–3, 134–35, 141
- Barber, Benjamin, 233–34
- Bedau, Hugo Adam, 251–55
- Bentham, Jeremy, 376, 383, 389, 390
- Bergmann, Frithjof, 240n
- Berns, Walter, 240–41
- Beutel, Frederick, 284
- Bible: Jeffersonian interpretation of, 172, 185n; slavery sanctioned by, 185n
- bicameralism, 117
- Bill of Rights, 3; American Revolution and, 62–108; British view of, 4–7, 368–69, 372, 376, 379, 385, 386, 391, 422, 434, 436; contemporary issues of, 229–30; development of, 8, 12, 80–143, 146–49, 229; Federalists and Anti-Federalists on, 80–87, 103, 142n, 146–49; Hamilton on, 86, 229; Jefferson on, 136, 137, 149; Madison's contribution to, 85–91, 94, 96, 98, 124–43, 229; law schools and, 16–17, 319–65; scope of rights in, 15, 229–30; Supreme Court interpretation of, 266–68, 319–65 *passim*; text of, 451–60; *see also specific amendments*
- bills of rights: British view of, 12, 76, 109, 366–68, 376, 383, 390, 394–95, 416–19, 427–38; and English Declaration of Rights, 12, 109, 377, 379, 384–89; and European Convention on Human Rights, 367, 378, 383, 412, 416–19, 421, 428–29,

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

464

## Index

- 437–39; French, 377, 378; of states, 74–80; natural rights in, 74, 76–79, 91, 376, 433; and Universal Declaration of Human Rights, 223, 261, 417, 437
- birth control, *see* contraceptives
- Black, Donald, 288
- black Americans: Jefferson's views on, 180, 190n, 192, 198, 199, 201–2, 205; legal theory of, 313–14; *see also* racial minorities; slavery
- Blackmun, Henry, 363–65
- blacks, *see* black Americans
- Blackstone, William, 19, 41, 50, 78–79, 81, 82, 378
- Bollan, William, 64
- Brennan, William, 85, 323–24, 332, 343, 345, 348n, 362, 363
- British government: Alliance, parties in, 428–29; American opposition to, 62–63, 66–73; Christianity and, 373–74; and civil disobedience, 411, 423, 425–27, 429; Conservative party in, 375–76, 424, 428, 432; executive branch of, 383, 394–95, 402–4, 411–12; Glorious Revolution, 109–10, 112, 384, 386–87, 428; judiciary's role in, 368–69, 378–79, 386, 388, 394, 397, 409–16, 422, 430–31, 433–34, 439; Labour party in, 383, 405, 409, 410, 424, 428, 431; Liberal party in, 409, 428–29; Parliament's role in, 102, 105, 109–11, 120, 369–71, 383, 385, 388; and political parties, 367, 368, 395–98, 402–3, 405, 423–24, 428–29, 432
- British law and philosophy, 10, 17–18, 366–439; abortion and, 382, 415–16, 420–22; balance of powers in, 368, 385, 394, 405–6; on bills of rights, 12, 76, 109, 366–68, 376, 383, 390, 394–95, 416–19, 427–38; civil rights under, 370, 376; constitutional rights in, 38, 42, 67, 70, 76, 77, 104–11, 406–10; on contractarianism, 380–84; cultural factors affecting, 373–84, 405–6; death penalty and, 409; and Declaration of Rights, 12, 109, 377, 379, 384–89, 428; firearms under, 368–69, 385, 451; on First Amendment, 268, 371, 372, 373, 398, 399, 402, 414, 415, 427, 437; freedom of speech under, 371–73, 411, 413–14; inalienable rights and, 47–48, 51; individual rights under, 374, 377, 390, 419, 436; legal positivism in, 17, 390–95; natural-rights theory in, 19–21, 32, 40, 47, 61, 380–89; Parliament in, 102, 105, 109–11, 120, 369–71, 383, 385, 388; property rights under, 424; religious freedom under, 373–74, 385–86; right to dissent in, 368, 371, 383, 409, 411, 412, 425; on U.S. Bill of Rights, 368–69, 372, 376, 379, 385, 386, 391, 422, 434, 436; on Supreme Court, 367, 369–71, 398–99, 406, 407, 415, 430; utilitarianism today in, 381–82, 387, 389–91, 420, 435–37
- broadcast media, 322, 332
- Brown v. Topeka Board of Education*, 367, 370, 377
- Burger, Warren, 323–24, 359
- Burke, Edmund, 19, 61, 375–76, 380, 382
- Burlamaqui, Jean-Jacques, 33, 56–61, 178n
- Butler, Joseph, 55
- Calvinism, Jefferson on, 187n
- Canada, 246, 263
- capital punishment, *see* death penalty
- Carey v. Population Services International*, 362
- Catholicism, 257n, 385–87, 426
- Charter 88, 428, 431
- Christianity: antinomianism in, 22, 23, 53; and Bible, Jefferson's interpretation of, 172, 185n; British law and, 373–74; church-state relations of, 127–28, 373, 438; European, 373–74; evangelical, 52–56; Jefferson on, 128, 157n, 165–66, 168–71, 175, 177–78, 180–88; slavery and, 153n, 172, 185; utilitarianism and, 34, 40, 44, 47, 52–56; *see also* Protestantism
- Church of England, 373
- City of Akron v. Akron Center for Reproductive Health*, 360
- Civic Culture, The*, 374
- civil disobedience: slaves' right to, 191, 192, 200; British reaction to, 411, 423, 425–27, 429
- civil rights, 1, 5, 263, 382; British view of, 370, 376; complexity of, 103–4; legal theory of, 313–18; in state bills of rights, 74, 76–79, 376; *see also specific rights*
- Civil Rights Act of 1990, 263
- Civil War: national citizenship emerging from, 235n; state's rights and, 5; suspension of habeas corpus during, 245
- Clap, Thomas, 45
- Coase, Ronald, 303, 344
- Cohen, Felix, 278–81
- Cohen, G. A., 229
- Coles, Edward, 194–95, 212

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

## Index

465

- Colker, Ruth, 315  
 Collins, Steven, 255  
 common law, 452–53; in constitutional developments, 106; Legal Realism and, 277, 282n; natural-rights theory and, 20, 47, 377–79; obscenity as violation of, 414; in state constitutions, 75  
 communism, 2, 232, 263, 332, 399, 402  
*Communist Party v. Subversive Activities Control Board*, 332  
 congressional powers in relation to Bill of Rights, 89, 440–45, 456; *see also* legislative branch of government  
 conscience, 55  
 Conservative party (British), 375–76, 424, 428, 432  
*Considerations on Representative Government*, 390  
*Consolidated Edison Co. v. Public Service Commission of New York*, 329–30  
 Constant, Benjamin, 261n  
 Constitution of United States, 3, 5; British view of, 389; development of, 98–143; Federalists v. Anti-Federalists on, 82–86, 142n; Jefferson on, 163, 188, 203; language of, 62; originalism and interpretation of, 12, 100–1, 146; text of, 440–60; *see also* Bill of Rights  
 Constitutional Convention discussing British constitution, 70  
 constitutional rights under British law, 38, 42, 67, 70, 76, 77, 104–11, 406–10; *see also* bills of rights  
 contraceptives, 348–50, 422  
 contract law, 303–4, 309  
 contractarianism: 11–12, 25, 29, 31, 35–42, 253; British v. American view of, 380–84; economic contracts and, 303–4, 309; duty and, 36–41; inalienable rights under, 48, 50; individual rights and, 309; Jefferson on, 193–94; Lucretius on, 161; monarchy and, 380–81; social nature of man and, 226  
*Course of Lectures on the Principal Subjects in Pneumatology, Ethics, and Divinity*, 40  
 Cox, Archibald, 350–51  
 Critical Legal Studies, 267, 288–96, 315–18  
 Critical Race Theory, 316  
 Croly, Herbert, 381, 407–8  
 cruelty, 217, 453  
 cultural factors: British, 373–84, 405–6; foundation myth based on, 6–7; founded on rights, 222–5; legal theory and, 282, 288, 289, 293, 296; natural rights and, 222–25; politics and, 106, 144–45, 152, 288  
 Cumberland, Richard, 26–28, 31, 53  
 currency issued by state, 135  
 Daniels, Norman, 236n  
 Davis, David B., 185, 186n  
 De jure belli ac pacis, 24  
 De Witt, John, 93  
 death penalty, 259, 409  
 Declaration of Independence, 43n, 148, 239–47; implications today of, 216, 239–47; inalienable rights in, 49, 223, 384; Jefferson's contribution to, 43n, 49, 134, 145, 162, 175, 188, 190n, 242; on right to pursuit of happiness, 219, 244, 259; on right to self-preservation, 217; state of nature and, 73–74  
 Declaration of Rights, 12, 109, 377, 379, 384–89, 428  
 Declaration of the Rights of Man and of the Citizen, 377, 378, 393  
 Declaratory Act of 1776, 93  
 defamation, *see* Libel  
 defendants, *see* accused  
 deism, 242  
 Delgado, Richard, 317  
 democracy, 236; egoism in, 233, 234; freedom of speech and, 323–24; individual rights and, 233, 244–45; judicial power in, 235, 267, 301; Legal Realism and, 284, 295; privacy and, 233–34; property takings and, 336–37  
 deportation, 412–13; of freed slaves, 197, 198, 205  
 desegregation, 367, 370, 377, 398  
 detention, preventive, 429–30  
 Devlin, Lord, 260, 422  
 Dicey, A. V., 377, 379, 382, 386, 388, 427, 430, 438  
 Disaffection Act, 402  
 discrimination, 315–16; property takings and, 336–37; racial, 370; reverse, 415, 436–37  
 dissent, right to, 104, 321, 402; British reaction to, 368, 371, 383, 409, 411, 412, 425; suppression of, 302, 409, 411, 412, 425; *see also* civil disobedience  
 Dockyards Act of 1772, 66  
 Doddridge, Philip, 40  
 Dodsley, Robert, 39  
 Douglas, William, 348  
 Douglass, Frederick, 144

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

466

## Index

- Du Pont de Nemours, Pierre-Samuel, 162–63
- due process, 259, 296, 351, 369, 371, 452
- duty: contractarianism and, 36–41; development of, 230–31; God and, 29, 32, 35, 40, 49, 51, 55–57; inalienable rights and, 48, 49, 51, 52, 246; Jefferson on, 168n, 170–71, 178n, 181, 189–90, 192–93, 194n; Pufendorf on, 29–30, 32, 38; Rutherford on, 33–35; Scottish philosophy of, 46; Witherspoon on, 54–55
- Dworkin, Ronald, 228, 230–31, 240–41, 247–50, 258, 309, 310, 323–25, 355, 366, 433–36
- economic factors: broadcast rights and, 322; contracts and, 303–304, 309; freedom of speech and, 321–23; Legal Realism and, 274–75, 282; legal theory and, 303–7, 313–18, 321–23, 352–53; legislative powers and, 131–33; minority legal scholars on, 318; and political campaigns, 326–27; post-Revolutionary, 122–24; and poverty, 262–63, 308–309; and public debt, 122–23, 173–74; slavery and, 196–97; *see also* currency; poverty; property rights; welfare rights
- education: desegregation and, 367, 370, 377; Jefferson on, 213; right to, 318
- egoism, 233, 234
- Eighth Amendment, 217
- Eisenstadt v. Baird*, 362
- elective government, *see* representative government
- Elements of Moral Philosophy*, 38
- Ely, John Hart, 91, 301, 302, 320–21, 351, 352, 361
- emigration: deportation, 412–13; freed slaves forced into, 197, 198, 205; right to, 172–73
- Encyclopaedia Britannica*, 39
- Enforcement of Morals, The*, 422
- English Bill of Rights, 76
- Enlightenment, 3, 23, 242; contract theory during, 38; Jefferson as part of, 213; contribution of, to natural-rights theory, 145, 151; stoicism and, 30
- Entick v. Carrington*, 379
- environmentalism, 1, 262–63
- Epictetus, 161n
- Epicureanism, 152–89 *passim*, 197–200, 211, 212
- epistemology of rights, 222–23, 315
- equality of persons, 185n, 242–43, 255, 258, 259, 436; and epistemology of rights, 222–23; gender and, 315–17, 358, 457; individual merit v., 218, 221; Jefferson on, 180, 193–94, 198, 203n, 205; permissible inequality and, 237; positivists on, 391–92
- Espionage and Sedition Acts, 399
- Essex Result*, 79
- Estlin, John, 39
- Europe, 9, 263, 284; Christianity in, 373–74; cultural factors in, 373–75, 377–79; legal systems of, 377–78; subnational ethnic groups in, 246, 263; *See also specific countries*
- European Community, 2, 375, 418–19, 421
- European Convention on Human Rights, 367, 378, 383, 412, 416–19, 421, 428–29, 437–39
- European Court of Human Rights, 369, 422–23
- European Court of Justice, 418
- evangelicalism, 60, 185, 186, 187n; Christian utilitarianism and, 52–56
- evidence, rules of, 295–96, 415, 429
- executive branch of government: British, 383, 394–95, 402–4, 411–12; U.S. passages on, 446–48, 453–54, 457, 458, 459; control of, 115; governors' rights protected by, 113; judicial branch in relation to, 118–19, 134, 135, 141–42, 368, 394–95, 411–12; Madison on veto power of, 134, 135, 136, 139, 141–42; Whig distrust of, 111, 112
- expatriation, *see* emigration
- F.C.C. v. League of Women Voters*, 331–32
- faith, 23
- family rights, 348–65
- fascism, 233, 263, 284
- federalism: Federalists' conflict with Anti-Federalists over, 5, 8, 12, 80–87, 95–97, 102, 103, 140, 142n, 146–49, 203; state laws and, 84–88, 90, 134, 135, 136, 139
- Federalist* 2, 93
- Federalist* 10, 126, 131, 137–38
- Federalist* 37, 102–3, 147, 148
- Federalist* 48, 132
- Federalist* 84, 147
- Federalist* 85, 148
- Feinberg, Joel, 249, 258
- feminism, 237n, 313, 315–16, 327–28, 333–34, 357–58
- fetal rights, 2, 262, 354, 355, 358, 360–61, 412
- Fifth Amendment, 99, 217, 219, 258,

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

## Index

467

- 268, 371, 398, 437; contraceptive use under, 348; property takings and, 335–48
- Findley, William, 83
- firearms, 108; British law on, 368–69, 385, 451; *see also* Second Amendment
- First Amendment, 89, 216–17, 219–35; British view of, 268, 371, 372, 373, 398, 399, 402, 414, 415, 427, 437; contraceptive use under, 348
- First Continental Congress: natural rights debate during, 69; creating precursor of Ninth Amendment, 89; state of nature, use in, 72
- First Federal Congress, 125–26, 139
- Flathman, Richard, 257
- Fordyce, David, 38–39
- Foundation myth, 6–7
- foundationalist view, 222
- Four Letters on Interesting Subjects*, 114–16, 118–19
- Fourteenth Amendment, 5–6, 261, 331, 369–70; Madison and, 143; property rights under, 219, 335
- Fourth Amendment, 99, 230, 245, 295, 371, 402, 427, 437; contraceptive use under, 348
- France, 377, 378, 387, 393, 397
- France, Anatole, 435
- Frankfurter, Felix, 298
- Franklin, Benjamin, 123
- freedom of assembly, 402, 451
- Freedom of Information Act, 400, 401
- freedom of press, 4, 89, 104, 322, 332–33, 413–14, 451; libel and, 322n, 325–26; Madison on, 323–24; national security v., 372, 400–2, 416, 427, 429, 438–39
- freedom of religion, 4, 89, 217–18, 221, 259, 312, 406, 451; under British law, 373–74, 385–86; Jefferson on, 189, 190n; Madison on, 126–28, 138
- freedom of speech, 259, 451; British view of, 371–73, 411, 413–14; economics of, 321–23; judiciary's role in protecting, 302; Kantian philosophy and, 323–25, 332; Legal Process Theory and, 320, 323, 329–31; Madison's draft Bill of Rights on, 89; pornography and, 324–25, 327–29, 333–34, 413–15; public safety v., 371; representative government and, 320–21; in state bills of rights, 78; Supreme Court interpretations of, 17, 268, 294, 296, 319, 321–35, 399; utilitarianism and, 324, 331; *see also* dissent; libel; self-expression
- French Revolution, 163
- Fried, Charles, 309, 310, 361, 364
- Fuller, Lon, 299, 392
- Gabel, Peter, 293–94
- Gabriel's rebellion, 208
- George III (King of Great Britain), 63, 67, 73, 111–12
- Gerson, Jean, 92
- Gewirth, Alan, 252–53
- Gisborne, Thomas, 40
- Glorious Revolution, 109–10, 112, 384, 386–87, 428
- God: and equality of men, 243; Jefferson on, 168n, 177–78, 183n, 213n; and natural law, 11, 45, 70, 74, 183; and natural law in European perspective, 9, 22, 23, 25, 26, 28–29, 31, 34; duty to, 29, 32, 35, 40, 49, 51, 55–57; as referred to in Declaration of Independence, 242; *see also* atheism; theology
- Goldberg, Arthur, 348n
- Golding, Martin, 252, 255–56
- good, theories of: present-day, 309–13, 325; privacy and, 353, 355–56; property takings and, 342, 347; right v., 308, 310–11.
- Gorham, Nathaniel, 81, 93
- Gramsci, Antonio, 291
- Grayson, William, 96
- Greenawalt, Kent, 262
- Grey, Thomas, 69, 107
- Griswold v. Connecticut*, 348, 422
- Grotius, Hugo, 23–27, 31, 32, 42, 57
- group rights, 246, 263, 325–26
- Gutmann, Amy, 224
- habeas corpus, 245, 423
- Habeas Corpus Act, 76, 116
- Habermas, Jürgen, 220
- Hailsham, Lord, 423–24
- Hamilton, Alexander, 69; on Bill of Rights, 86, 229; on collectivism, 220; natural rights interpreted by, 77
- Hampshire, Stuart, 258
- Hand, Learned, 321
- Hanson, Alexander Contee, 81
- happiness, *see* pursuit of happiness
- Harlan, John, 331
- Harris v. MacRae*, 357
- Hart, H. L. A., 217, 253, 258, 260, 307
- Hart, Henry, 300
- Hartley, Thomas, 70, 93
- Hattersley, Roy, 431
- Haworth, Lawrence, 257n
- Heath, Edward, 408, 426

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

468

## Index

- Hegel, Georg, 310, 341  
 Helvétius, Claude-Adrien, 181  
 Henry, Patrick, 72, 80, 87, 88, 94  
 Hill, Thomas, 249  
 Hobbes, Thomas, 23–27, 31, 41, 42, 53, 253, 310, 380–81, 393; egoism and, 234n; rights as power, 92; self-preservation and, 217; state of nature and, 71;  
*Hodel v. Irving*, 347  
 Hohfeld, Wesley, 273  
 Holmes, Oliver Wendell, 269, 277–78, 282n, 319  
 Holmes, Stephen, 226  
 homosexuality, 260, 312, 349, 356, 363–64, 371n, 382, 419–20, 422–23  
 Hosenball, Mark, 412–13  
 House of Commons, 113, 120  
 Hume, David, 141, 148, 180, 386–87  
 Hurd, Douglas, 411  
 Hutcheson, Francis, 31, 32, 38, 46, 65, 179; opposed to Witherspoon, 54, 55, 56  
 Hutchinson, Thomas, 63, 68
- immediatism, 185n  
 Immigration Act, 412  
 immortality; Jefferson on, 168n, 175, 178n, 189, 190n  
 imprisonment, 22, 119, 259, 385, 409, 429–30  
 inalienability of rights, 47–52, 223, 243, 244, 246; state-level pronouncements on, 76, 78–80; *see also* liberty, right to, life, right to; property rights  
 indeterminacy thesis, 290–91  
 Indians; Jefferson on, 198; property rights of, 347  
 individualism and individual rights, 363; British v. American, attitudes toward, 374, 377, 390, 419, 436; contractarianism and, 309; democracy and, 233, 244–45; early history of, 92; egoism and, 233, 234; equality of persons opposed to, 218, 221; inalienable rights and, 51–52; Jefferson on, 10, 60; Kant on, 220, 221; Legal Realism and, 271, 289; Lincoln on, 233, 245; Locke on, 9; Madison on, 137, 141, 142; Mill on, 390; ontology of rights and, 224, 227; self-government and, 60; utilitarianism and, 221, 228–30, 244–45, 247–48, 250–52, 437; *see also specific rights*  
 Industrial Relations Act, 407  
 interest theories, 248, 257  
 international law; Jefferson on, 192–93; seas, freedom of, and, 204n; Vattel on, 40; *see also* European Community; European Convention on Human Rights; European Court of Human Rights; Treaty of Rome; Universal Declaration of Human Rights  
 Intolerable Acts, 72  
 Irish Republican Army, 411, 425  
 Islam, 233  
 Italy, 397
- Jaffa, Harry, 69, 70  
 James II (King of Great Britain), 384–87  
 Jefferson, Thomas: abolitionism and, 184–89, 191, 194–98, 202–3; Bible interpretation by, 172, 185n; Bill of Rights contribution by, 136, 137, 149; on blacks, 180, 190n, 192, 198, 199, 201–2, 205; on church-state relations, 128; on Constitution, 163, 188, 203; on constitutional monarchy, 111; on contractarianism, 193–94; and Declaration of Independence, 43n, 49, 134, 145, 162, 175, 188, 190n, 242; on democracy and individual rights, 233; on duty, 168n, 170–71, 178n, 181, 189–90, 192–93, 194n; Epicureanism of, 152–89 *passim*, 197–200, 211, 212; on elective dictatorship, 423; on equality of persons, 180, 193–94, 198, 203n, 205; and inalienability of rights, 48–51; on individualism, 10, 60; on judiciary, 119; materialism and, 167–68, 171, 177, 214; on natural rights, 13–14, 43n, 145, 171–80, 189–90, 192–93, 205–9, 214; on prudence, 158, 162, 164–65, 171, 180n, 182–86, 189–214; on rationality, 183–84; on religion, 128, 157n, 165–66, 168–71, 175, 177–78, 180–9, 190n; on right to education, 318; on right to life, 173, 175; on role of science, 165–67, 172, 183; on slavery, 14, 144–214; on state-level issues, 172n, 203–7; on utilitarianism, 163–65, 179n  
 Jellinck, George, 76  
 Jenkins, Roy, 382n  
 judiciary and jurisprudence, 3, 448–49; in balance of powers, 117–20, 141–42, 368, 394; British, 368–69, 378–79, 386, 388, 394, 397, 409–16, 422, 430–31, 433–34, 439; democracy and, 235, 267, 301; due process and, 259, 296, 351, 369, 371, 430, 452; European Court of Human Rights and, 369, 422–23; European Court of Justice and, 418; executive power in relation to,

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

## Index

469

- 118–19, 134, 135, 141–42, 368, 394–95, 411–12; freedom of speech and, 302; Jefferson on, 119; legislative power and, 117, 118, 120, 285, 301–2, 368, 386, 397, 410–11, 439; Madison on, 129, 141–42, 230; monarchy and, 118; natural law and, 10, 11, 12, 19–20, 39; and original intention of Constitution, 12, 100–1, 146; Parliament and, 369, 370–71, 410–11, 418–19, 439; politics of, 376; and right to jury trial, 104, 66–67, 379; and right to legal counsel, 262, 296; and rules of evidence, 295–96, 415, 429; state-level issues of, 119–20; Wilson, James, on, 19, 45; *see also* Legal Process Theory; Legal Realism; legal theory; Supreme Court
- jury trial, right to: 104, 379, 423; Stamp Act and, 66–67
- Kahan, Dan, 325–26
- Kaiser-Aetna v. United States*, 345–46
- Kammen, Michael, 97
- Kantian philosophy, 307–13; animal rights in, 262; freedom of speech and, 323–25, 332; good, theories of, in, 309–10; individual rights in, 220, 221; legal theory and, 307–10, 311, 323–25, 332; liberalism in, 307–9, 311, 323, 324, 353; liberty, right to, 393; moral theory in, 152, 158, 164, 179, 200, 211, 221, 231, 234, 377; privacy and, 353–55, 356, 361, 363, 364; property takings and, 339–43, 346–47; prudence in moral theory of, 158, 164, 211
- Karst, Kenneth, 356, 364
- Kelman, Mark, 289
- Kennedy, Duncan, 289–90
- Keystone Bituminous Coal Assn. v. DeBenedictus*, 342–43
- Konigsberg v. State Bar of California*, 331
- Ku Klux Klan, 371
- labor unions, 1, 407–8, 410, 415, 425–27
- Labour party (British), 383, 405, 409, 410, 424, 428, 431
- Ladies Directory*, 414
- Landes, Elizabeth, 352, 358
- Law, Sylvia, 357
- Law and Society Association, 287, 288, 295
- Lee, Richard Henry, 80, 93, 242
- Leff, Arthur, 307
- legal formalism, 269, 270, 274n
- legal positivism, 269; British, 17, 390–95
- Legal Process Theory, 297–302, 307, 351–52; abortion and, 351; freedom of speech and, 320, 323, 329–31; property rights and, 336; privacy and, 350, 358–59
- Legal Realism, 16, 267–95, 299, 301, 302, 303, 307, 313, 318, 430
- legal theory, 267, 295–318, 321–23, 352–53
- legislative branch of government, 120–24, 440–45, 456; bicameralism, 117; economic factors and, 131–33; judicial power and, 117, 118, 120, 285, 301–2, 368, 386, 397, 410–11, 439; Madison on, 102, 128–29, 131–39; power of, delegated to administrative authorities, 302; protection against abuses by, 116, 117; state-level, 114, 115, 122, 125, 130, 132–39; Whigs' attitude toward, 109, 110, 120; *see also* parliamentary rule; representative government
- Leninist regime, 232
- Leviathan*, 71
- Levy, Leonard, 70, 75, 90
- libel, 322n, 325–26
- Liberal party (British), 409, 428–29
- liberalism, 9, 46, 47, 220–21, 232–37, 238, 249–50, 253–65; Eastern European, 232; feminism and, 237n; good v. right in legal theory of, 309–13; Jefferson and, 189; Kantian, 307–9, 311, 323, 324, 353; Legal Realism and, 289, 292, 294; and liberty, 394; ontology of rights under, 224–25; pornography and, 324–25; social democracy v., 236; utilitarianism v., 307, 323, 340–41.
- liberty, right to, 258, 259, 363, 393–94; imprisonment and, 22, 119, 259, 385, 409, 429–30; inalienability of, 49, 78–79; Jefferson on, 175
- life, right to, 236, 244, 258–59; death penalty and, 259, 409; defined in response to religious wars, 217; fetal, 2, 262, 354, 355, 358, 360–61, 421; inalienability of, 49, 78–79, 218; Jefferson on, 173, 175; and minimal standard of living, 318
- Lincoln, Abraham, 241, 242; on democracy and individual rights, 233, 245
- Llewellyn, Karl, 269, 276–77, 279, 280, 282
- local issues' effect on national citizenship, 235n
- Locke, John, 9, 44, 310; on equality of humans, 242–43; Jefferson and, 151;

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

470

participation of, in slavery, 151n; on property, 9, 219, 220; on revolution, 245; on rights surrendered to society, 81, 82; on self-preservation, 217–18; on state of nature, 71, 78

Logan, James, 62

*Loretto v. Teleprompter Manhattan CATV Corp.*, 344

Louisiana Purchase, Jefferson on, 163

Lucretius, 161n

McCloskey, H. J., 255

McDonald, Forrest, 103–4

Machiavelli, Niccolo, 310–11

MacKinnon, Catharine, 316, 327–29, 334, 357

Madison, James, 144; on American Revolution, 133–34; on balance of powers, 102–3, 134–35, 141; Bill of Rights contributions of, 85–91, 94, 96, 98, 124–43, 229; on executive power, 134, 135, 136, 139, 141–42; on freedom of the press, 323–24; on individual rights, 137, 141, 142; on judicial power's reliance, 129, 141–42, 230; on legislative power, 102, 128–29, 131–39; on minority rights, 137, 141, 143; on property rights, 130–31, 137–38, 174n; on religious freedom, 126–28, 138; on state-level actions, 84, 102, 125, 130, 132–41, 143n; theory of rights of, 13, 17, 74, 125, 174n

Magna Charta, 19–20, 66, 76

majority rule: effect of, on equality of humans, 243; liberal rights and, 233; Madison on, 137

Mansfield, Lord, 414

manumission, 194–95, 201

Marshall, John, 85

Marshall, Thurgood, 344–45

Martin, Luther, 83, 84

Marxism, 232, 236, 282

Maryland state constitution, 76

Mason, George, 78–79, 136

mass media, 4, 89, 104, 332–33, 372, 400–2, 411; broadcast, 322, 332; *see also* freedom of press

Massachusetts: control of, over colonial courts, 67; state of nature proclaimed in, 72–73

materialism, Jefferson on, 167–68, 171, 177, 214

Matsuda, Mari, 313n, 314

Meiklejohn, Alexander, 320, 329–30

*Memorial and Remonstrance against Religious Assessments*, 127–28

## Index

*Miami Herald Publishing Co. v. Tornillo*, 332

Michelman, Frank, 308–9, 337–40, 344–46

Mill, John Stuart, 219, 227, 228, 250, 260, 324, 376, 389–90, 393

*Miller v. Schoene*, 343–44

minority rights, 235, 302, 371–72; affirmative action and, 313–14, 415, 436–37; anti-subordination principle, 315–16; European subnational ethnic groups and, 246, 263; group libel laws and, 325–26; of Indians, 198, 347; legal theory of, 313–18; Madison on, 137, 141, 143; Mill on, 390; slavery and, 205, 207

Minow, Martha, 314

*Miranda* rights, 371

Missouri statehood and slavery, Jefferson on, 165, 203, 205–7

monarchy: contractarianism and, 380–81; English Declaration of Rights and, 385, 386, 387; judiciary under, 118; Lucretius on, 161n; parliamentary government in, 109–10, 385, 387; rights under, 110–14, 137, 385, 389; Whig party and, 386, 387

monopoly of television, 322

Monroe, James, 139

Montaigne, Michel, 217

moral-sense theories, 55; Jefferson's, 153n, 159, 161n, 162, 169–89, 191n, 192–93, 197–200, 209–10

moral theories: anti-Kantian, 152; athiesm and, 165–66; Constitutional law and, 240–41; and conscience, 55; contemporary rights theories and, 227–38, 247–65; Kantian, 152, 158, 164, 179, 200, 211, 221, 231, 234, 377; and Mill, 389–90; political, 232–38

Morgan, Edmund, 71

Morris, Robert, 139

National Association for the Advancement of Colored People, 382

National Rifle Association, 369

national security, 399–400, 411, 415, 429; freedom of the press and, 372, 400–2, 416, 427, 429, 438–39; terrorism and, 411, 423, 425

National Union of Mineworkers, 425–26

Nationality and citizenship, 235n, 238

native Americans, *see* Indians

natural-rights theory, 9–13; American application of, in Revolutionary period, 67–69; and bills of rights incorporation, 74, 76–79, 91, 376, 433; British



Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

## Index

471

- view of, 19–21, 32, 40, 47, 61, 380–89; civil rights and, 74, 76–79, 376; common law and, 20, 47, 377–79; present-day effects of, 215–65; cultural factors and, 222–5; Declaration of Independence articulating, 148; Enlightenment contributions to, 151; epistemology of, 222–23; European perspective on, 19–61, 373–76, 391–95, 419, 433, 435; inalienability and, 47–52, 76, 79; Jefferson on, 13–14, 43n, 145, 171–80, 189–90, 192–93, 205, 206–9, 214; jurisprudence and, 10, 11, 12, 19–20, 39; Madison on, 13, 17, 74, 125, 174n; ontology of, 223–27; positivism and, 391–95; Protestantism and, 21–24, 51, 67, 217–18; power and, 91–95; republicanism and, 46, 47; scholasticism and, 21, 22; slavery and, 153n, 171–80, 189–90, 192–93, 205, 206–9, 214; state-level issues based on, 67–68; subjectivism and, 20–21, 26, 31, 32, 53, 56, 57; *see also specific rights*
- New Deal, 284
- Nicholas, George, 81
- Ninth Amendment, 89–91, 94–95, 405; sexuality, privacy of, and, 260, 348
- Northern Ireland, 415, 422, 425, 426, 429
- Notes on the State of Virginia*, 199, 201
- Novus Ordo Seclorum*, 103–4
- Nozick, Robert, 220, 228, 244–45, 251–52, 309
- Nussbaum, Martha, 255
- Obscene Publications Act, 413–14
- obscenity, 294, 404, 413–15; *see also* pornography
- Ockham, William of, 92
- O'Connor, Sandra, 346, 359
- Official Secrets Acts, 399, 402
- Okin, Susan Moller, 255
- Olsen, Francis, 315–16, 357
- On Liberty*, 389
- On the Nature of the Universe*, 161n
- ontology of rights, 223–27
- Opus Nonaginata Dierum*, 92
- originalism, 12, 100–1, 146
- Otis, James, 72
- Paine, Thomas, 79, 197
- Pareto principle, 305–7, 341
- parliamentary rule, 102, 105, 383, 385, 388; American representative government and, 109–14; House of Commons, 113, 120; judiciary and, 369–71, 410–11, 418–19, 439; power of, 120–21, 370–71, 395–416, 418, 439
- Penn, William, 62
- Penn Central Transportation Co., v. New York City*, 343, 344
- Pennell v. City of San Jose*, 346
- Pentagon Papers*, 372
- People the Best Governors, The*, 115, 119
- personhood, 310; ontology of self in, 224–25; Supreme Court, 17
- Pinckney, Charles, 82, 85
- Plato, 188, 251
- Police and Criminal Evidence Act, 415, 429
- political campaigns, legal theory on contributions to, 326–27
- political parties, 326–27, 367, 368, 395–98, 402–3, 405, 423–24, 428–29, 432; *see also specific parties*
- political theory, 240; cultural aspects of, 106, 144–45, 152, 288; emphasizing rights on, 231; popular knowledge of, 63–64
- politics: Epicurean view of, 161–62; judiciary and, 376; present-day, effects of, 232–38, 367
- pornography, 324–25, 327–29, 333–34, 413–15; *see also* obscenity
- Posner, Richard, 306, 321–23, 331, 352, 358
- Post, Robert, 364
- poverty, 262–63, 308–9; *see also* welfare rights
- Powell, Lewis, 329–30
- pragmatism and Jefferson, 162–65, 172n, 187
- Preceptor, The*, 39
- Prevention of Terrorism Act, 425
- Price, Richard, 57–58
- privacy, 260; and good, theories of, 353–56; Jefferson on, 161; Kantian philosophy and, 353–6, 361, 363, 364; Legal Process Theory and, 350, 358–59; liberal democracy and, 233–34; minority legal theorists on, 318; sexual activity and, 221, 260, 296, 312, 348–65, 419–20; Supreme Court on, 12, 17, 221, 348–65; utilitarianism v. 307, 323, 340–41
- “Problem of Social Cost, The,” 303
- progressivism, 185n, 220, 397; Jefferson on, 176n, 182–83, 207–8
- Promise of American Life*, 407
- property rights, 259, 260–61, 305, 452; British and, 424; complexity of, 103–4; democracy and, 336–37; early

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

472

development of, 218–19; under Fifth Amendment, 335–48; Fourteenth Amendment and, 219, 335; inalienability of, 48, 49, 50, 78–79; of Indians, 347; Jefferson on, 174–75, 195; Kantians on, 339–43, 346–47; Legal Process Theory and, 336; Lockean, 9, 219, 220; Madison on, 130–31, 137–38, 174n; in Magna Charta, 66; minority legal theorists on, 318; in slaves, 195; state-level control over, 335, 343–44; Supreme Court interpretation of, 17, 268, 335–48; taxation and, 104; and theories of good, 342, 347; utilitarianism and, 337–39, 340–41, 343–45

Protestantism, 385; impact of natural rights on, 21–24, 51, 67, 217–18; and Jefferson on Calvinism, 187n

prudence: amoralist, rationality of, 252; Jefferson on, 158, 162, 164–65, 171, 180n, 182, 183–85, 186, 189–214; Kant on, 158, 164, 211

public debt, 122–23; Jefferson on, 173–74

Public Order Act, 402, 429

Pufendorf, Samuel, 27–32, 38, 44, 57, 193n

punishment, 22, 119, 259, 385, 409, 453, 429–30; death penalty as, 259, 453

pursuit of happiness: Declaration of Independence and, 219, 244, 259; Jefferson on, 175, 181

Putney debates, 218

Quakers, 186n

racial minorities, 369–71, 398, 455; and desegregation, 367, 370, 377, 398; legal theory on, 313–14; *see also* black Americans; slavery

Radin, Margaret, 310, 341–42

Randolph, Edmund, 75, 90, 94, 95

rationality, 26–27, 55, 58–59, 60, 312; amoralist prudence and, 252; cultural aspects of, 222; Jefferson on, 183–84; Legal Realism and, 279–80; religion and, 242

Rawls, John, 220, 224–25, 231, 234n, 236n, 240n, 253–54, 261, 308–9, 339–40, 433, 434, 435

Raz, Joseph, 232, 256, 393, 437

Reagan, Ronald, administration of, 415

realism, 34

*Red Lion Broadcasting Co. v. Federal Communications Commission*, 322

*Reflections on the Revolution in France*, 19

*Index*

Reformation, wars after, 217–18

Rehnquist, William, 345, 355

Reid, John P., 42n, 67–69, 104–7

Reid, Thomas, 38, 40, 45

relativism, 222; Legal Realism and, 279, 283–84, 295.

religion: and church-state relations, 127–28, 373, 438; faith and, 23; Jefferson on, 128, 157n, 165–66, 168–69, 170–71, 175, 177–78, 180–87, 188, 189, 190n; rationality and, 242; sin and, 54–55, 185–86; *see also* Catholicism; freedom of religion; God; Protestantism; theology

Renaissance, skepticism of, 22, 23

representative government, 108–16; freedom of speech and, 320–21; judiciary and, 301; legal theory and, 301, 311, 312; Madison on, 129–30; position of minority parties in, 235; taxation without, 66; *see also* parliamentary rule

*Republic*, 188, 251

republicanism, 13; Federalists v., 203; legal theory and, 311, 312, 326–27; Madison on, 135; minority legal theorists on, 318n; natural law and, 46, 47

Richards, David, 353–54

*Richmond Newspapers v. Virginia*, 323

right reason, 26–27

rights as essential to constitution, 106; *see also specific rights*

*Rights of Man*, 79

rights-of-man theories, 60

*Roberts v. United States Jaycees*, 333, 363

*Roe v. Wade*, 350–51, 357, 359–62, 422

Romanticism, 221

Roosevelt, Franklin, 284, 295, 407

Rorty, Richard, 222, 223

Rush, Benjamin, 79

Rutherford, Thomas, 33–34

Ryan, Alan, 250

Ryan, Michael, 369

Sacks, Albert, 300

Sandel, Michael, 223–24, 310, 356, 364

Sartorius, Ray, 250

Sax, Joseph, 336–37, 343–43

Scalia, Antonin, 346, 355

Scargill, Arthur, 426

Scarman, Lord, 416, 428, 429

scholasticism and natural law, 21, 22

science, Jefferson on, 165–67, 172, 183

Scotland, 371n

Scottish philosophy, 38–39, 40, 41, 43, 46, 54, 65

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

## Index

473

- searches and seizures, unreasonable, 99, 230, 245, 259, 379, 452; *see also* Fourth Amendment
- seas, freedom of, and slave trade, 204n
- Second Amendment, 108, 368–69
- Seigel, Fred, 235
- self, conceptions of, 224–26
- self-expression, right to, 254, 259, 294, 320; sexual, 420
- self-incrimination, 99; *see also* Fifth Amendment
- Sen, Amartya, 236
- sex discrimination, 315–17, 457
- sexes, equality of, 358
- sexuality: pornography and, 324–25, 327–29, 333–34; privacy rights and, 221, 260, 296, 312, 348–65, 419–20; *see also* homosexuality
- Sharp, Granville, 59n
- Shays's Rebellion, 130
- Sherman, Roger, 86, 95–96
- Sherry, Suzanna, 107
- Shklar, Judith, 217, 234n, 240n, 247
- sin, 54–55; slavery as, 185–86
- Singer, Joseph, 310
- skepticism, 22, 23, 26, 375–76; *see also* subjectivism
- slavery, 1, 454; abolitionism against, 1, 184–89, 191, 194–98, 202–3; Christianity and, 153n, 172, 185; civil disobedience under, 191, 192, 200; economics of, 196–97; Jefferson and, 14, 144–214; Locke's participation in, 151n; Madison's bill of rights draft on, 88; manumission, 194–95, 201; minority rights and, 205, 207; natural rights theory and, 153n, 171–80, 189–90, 192–93, 205, 206–9, 214; sin and, 185–86; states' rights and, 5, 165, 203, 204, 205–7, 445
- Slavery in Western Culture*, 186
- Smellie, William, 39
- Smilie, John, 80
- Smith, Adam, 42n
- social contract theory, *see* contractarianism
- Social Democrats (Great Britain), 428–29
- social factors, 237–38; in British balance of power, 405–6; economics in legal theory of, 303–7, 313–18; good v. right in legal theory of, 309–13; Legal Realism and, 271, 274–75, 276, 282, 287, 288, 293, 294; self, nature of, and, 225–26; status of, v. individual, 251–52; *see also* cultural factors
- Spain, 21, 162–63
- Spycatcher*, 372, 416, 427, 429, 438
- Stamp Act, 62, 66, 68, 104
- state of nature, 26, 27, 48, 53, 70–74; in early American tradition, 70–74, 83, 90; social nature of man and, 226; U.S. Constitution and, 83, 90
- states (U.S.), 1, 5, 369; constitutions and bills of rights of, 74–79, 82, 83–85, 86–87, 88, 90, 102, 114, 115, 117, 119–20, 122; Federalists on, 84, 85, 86–87, 88, 90; Jefferson on, 172n, 203, 204, 205–7; judiciary, powers of, 119–20; legislature, powers of, 114, 115, 122, 125, 130, 132–39; Madison on, 84, 102, 125, 130, 132–41, 143n; and national citizenship, 235n; natural rights as basis for, 67–68; pornography laws of, 327–29; property control by, 335, 343–44; slavery control by, 5, 165, 203, 204, 205–7, 445; taxation and, 122–23; Tenth Amendment and, 95, 405, 453
- Stevens, John, 361
- stoicism, 30, 157, 158n, 161n
- Storing, Herbert, 142n
- Strauss, Leo, 230
- Suarez, Francisco, 21
- subjectivism, rights theory and, 20–21, 26, 31, 32, 53, 56, 57
- Sullivan, Kathleen, 310
- Summary View*, 173n, 175n, 178n, 190n
- Supreme Court, 3, 97, 266–68, 294, 295, 298, 300, 319–65; abortion decisions of, 350–52, 354–55, 357–61, 415; academic influence on, 16–17, 319–65; on basic rights, 12, 245; Bill of Rights interpreted by, 266–68, 319–65 (*passim*); British view of, 367, 369–71, 398, 399, 406, 407, 415, 430; on Communists' rights, 398–99; on desegregation, 367, 370, 377, 398; on discrimination, 308, 415, 436–37; freedom of speech interpreted by, 17, 268, 294, 296, 319, 321–35, 399; incorporation doctrine and, 5–6; nomination to, 367; privacy rights interpreted by, 12, 17, 221, 348–65; property rights interpreted by, 17, 268, 335–48; Roosevelt, Franklin, and, 407
- System of Moral Philosophy*, 65
- takings doctrine, 335–48
- taxation, 456: post-Revolutionary, 122–23, property rights and, 104; Stamp Act and, 62, 66, 68; voting rights and, 459
- Taylor, Charles, 213, 214, 225–27
- Tenth Amendment, 95, 405

Cambridge University Press

978-0-521-44653-2 - A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law-1791 and 1991

Edited by Michael J. Lacey and Knud Haakonssen

Index

[More information](#)

474

terrorism, 411, 423, 425  
 Thatcher, Margaret, 366, 408, 423, 426–27, 429, 431, 438  
 theology, 9; and natural rights, 11, 45  
 Third Amendment, 108; contraceptive use under, 348  
*Thornburgh v. American College of Obstetricians and Gynecologists*, 360, 361  
*Thoughts upon Slavery*, 185  
 torts, 309  
*Treatise of Government*, 9  
 Treaty of Rome, 419  
 Tushnet, Mark, 239, 294, 326–27  
*Two Treatises of Government*, 71, 219  
 Unger, Roberto, 238  
 unions, *see* labor unions  
 United Nations, 223, 261, 417, 437  
 Universal Declaration of Human Rights, 223, 261, 417, 437  
*Utilitarianism*, 389, 437  
 utilitarianism: animal rights and, 262; present-day British, 381–82, 387, 389–91, 420, 435–36, 437; Christianity and, 34, 40, 44, 47, 52–56; equality of humans and, 243; freedom of speech and, 324, 331; individual rights and, 221, 228–30, 244–45, 247–48, 250–52, 437; Jeffersonian, 163–65, 179n; Kantian liberalism v., 307, 323, 340–41; Pareto principle, 305–7, 341; property rights and, 337–39, 340–41, 343–45  
 Vattel, Emerich de, 40, 93  
 veto power, 403  
*Vindication of the Government of the New England Churches*, A, 71  
 Virginia: constitution, ratifying convention of, 89–92, 94; constitution of, 115; Declaration of Rights of, 75, 78, 90, 114–15, 119, 127  
 Vlastos, Gregory, 218  
 voluntarism: Burlamaqui on, 59; in contract theory, 37; privacy and, 362, 364; Pufendorfan, 57, 59n

*Index*

voting rights, 370, 455, 456, 459, 460; referendum and recall under, 397  
 Waldron, Jeremy, 223, 231–32, 238, 247  
 Warren, Earl, 348n  
 Warren, James, 72  
 Webb, Sidney, 410  
 Webster, Noah, 81  
*Webster v. Reproductive Health Services*, 357  
 Wechsler, Herbert, 299  
 welfare rights, 261–62, 435, 437; early development of, 219–20; liberty rights v., 236, 238  
 Wellington, Harry, 350  
 Wesley, John, 185  
 Whig party, 101, 384; executive power and, 111, 112; monarchy and, 386, 387; representative government and, 109, 110, 120; on right to firearms, 108  
 White, Byron, 360, 361  
 White, G. Edward, 356  
 White, Morton, 33  
 Whitehall, Robert, 80  
 Wilkinson, J. Harvie, 356  
 will theories, 248  
 Williams, Bernard, 221  
 Williams, Joan, 316  
 Wills, Gary, 241, 245–46  
 Wilson, James, 19, 33, 42, 45, 47, 57n, 65, 137; on federalism, 81–82, 86, 93–94; on natural rights, 77; on state of nature, 70, 73  
 Wilson, Woodrow, 2  
*Wisconsin v. Yoder*, 359  
 Wise, John, 71  
 Witherspoon, John, 23, 36, 45, 54–56, 60, 72  
 Wittgenstein, Ludwig, 144  
 women, 2; conduct books for, 29; *see also* feminism  
 Wood, Gordon, 75, 106, 124  
 World War I, 406  
 World War II, 399, 406  
 Wright, Peter, 372