

Bentham and Punishment of the Innocent

This paper examines the claim that the classical utilitarian moral theory (particularly Bentham) approves of punishing the innocent, and develops arguments answering such claim and showing that for Bentham the principle of utility does not approve of punishing the innocent.

First, the paper reviews the elements of such claim, including what would be necessary on purportedly utilitarian grounds in order to justify punishing the innocent.

Next, the paper develops a utilitarian response which rejects punishment of the innocent based on Bentham's theory of punishment, as stated in *Principles of Morals and Legislation* (Ch XIII- XVII), particularly the 'immediate principal end' and four objects of punishment, cases unmeet for punishment, rules of proportion of punishments to offenses, and properties of punishment; with special emphasis on what Bentham expressly states concerning what the principle of utility requires where a judge 'appoints a punishment which the legislator had not appointed' (Ch XIII), where punishment is inflicted but 'the sufferer is innocent of the offense' (Ch XV), and where there may be danger of punishment 'involving the innocent in the fate designed only for the guilty.' (Ch XVII)

Next, the paper develops a further utilitarian response which rejects punishment of the innocent based on Bentham's theory of the four subordinate ends of legislation derived from the principle of utility, as set forth in the *Principles of the Civil Code and Constitutional Code*, and particularly Bentham's view that 'security' – the highest priority of the legislator – includes 'liberty' and directs the legislator to protect against the 'pain of disappointed expectation' and 'attacks upon security' and 'attacks upon property.'

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