



CRITIQUE OF THE DOCTRINE OF INALIENABLE, NATURAL RIGHTS¹ JEREMY BENTHAM

Jeremy Bentham

Abstract: A classical text, with a vehement attack of Jeremy Bentham on the Declaration of the Rights of Man and of the Citizen, in general, and to the notion of natural rights, out of the state, in particular. There is one of the logical elements of the utilitarian proposition, regarding the general public interest, or the maximization of happiness and well-being of all, as prior and more important than anything, including the notion of natural rights. Nowadays, the same logic is used when some governments try to oppose the general public interest to the need of eliminating or reducing social and economic rights of the population.

Keywords: Utilitarianism. Collective ethics. Natural rights.

1 Translator comments

Jeremy Bentham made a vehement and virulent attack on the Declaration of the Rights of Man and of the Citizen, imputing it with the slogans of philosophically weak, logically inconsistent, verbally mistaken and ineffective in practice. It is a fragment of his work that needs to be contextualized and explored in more depth, given the rich interpretations and extrapolations that can be made from his text.

The purpose of this translation is to make this text available in Portuguese, precisely in order to invite further analysis and reflection in our mother tongue. The moment, however, is also an opportune element to signal the validity of thinking from the elements that are advanced in Bentham's thought.

Radical repudiation of the proposition of rights that would be natural and imprescriptible, specifically, and jusnaturalism in general, is directly related to the assumption that utility should be the ultimate criterion in all ethical questions, which, in turn, it is at the root of utilitarian thinking. For Bentham, the purpose of government would be to achieve the greatest happiness for as many people as possible, not to recognize individual rights.

Adopting the concept of utility as the sole filter for the individual rights to be created and maintained, coupled with the legalistic view of rights - there are no rights without the law, no rights against the law and no rights before the law - is the mantra of Bentham. The theme becomes pertinent at a time when the state threatens individual, social and economic rights by invoking the 'general public interest', just another way of expressing the principle of utility. At the altar of the austericides, social and economic rights are sacrificed in the name of the state's financial survival.

¹ BENTHAM, Jeremy. **Anarchical Fallacies**. Londres: Bowring, 1843. v. 2.

Similarly, an alleged 'general public interest' is also claimed to remove rights of expression, censor works and practice public policies of deconstructing the institutional — democratic framework for the preservation of minorities. Perhaps this key explains, at least in part, the combination of reactionary thinking and the liberal economic ideas that were successful in Brazil's last national elections.

2 Preliminary Observations

The Declaration of Rights -- I mean the paper published under that name by the French National Assembly in 1791 -- assumes for its subject-matter a field of disquisition as unbounded in point of extent as it is important in its nature. But the more ample the extent given to any proposition or string of propositions, the more difficult it is to keep the import of it confined without deviation, within the bounds of truth and reason. If in the smallest corners of the field it ranges over, it fail of coinciding with the line of rigid rectitude, no sooner is the aberration pointed out, than (inasmuch as there is no medium between truth and falsehood) its pretensions to the appellation of truism are gone, and whoever looks upon it must recognize it to be false and erroneous, -- and if, as here, political conduct be the theme, so far as the error extends and fails of being detected, pernicious.

In a work of such extreme importance with a view to practice, and which Throughout keeps practice so closely and immediately and professedly in view, a single error may be attended with the most fatal consequences. The more extensive the propositions, the more consummate will be the knowledge, the more exquisite the skill, indispensably requisite to confine them in all points within the pale of truth. The most consummate ability in the whole nation could not have been too much for the task -- one may venture to say, it would not have been equal to it. But that, in the sanctioning of each proposition, the most consummate ability should happen to be vested in the heads of the sorry majority in whose hands the plenitude of power happened on that same occasion to be vested, is an event against which the chances are almost as infinity to one.

Here, then, is a radical and all-pervading error -- the attempting to give to a work on such a subject the sanction of government; especially of such a government -- a government composed of members so numerous, so unequal in talent, as well as discordant in inclinations and affections. Had it been the work of a single hand, and that a private one, and in that character given to the world, every good effect would have been produced by it that could be produced by it when published as the work of government, without any of the bad effects which in case of the smallest error must result from it when given as the work of government.

The revolution which threw the government into the hands of the penners and adopters of this declaration, having been the effect of insurrection, the grand object evidently is to justify the cause. But by justifying it, they invite it: in justifying past insurrections they plant and cultivate a propensity to perpetual insurrection in time future; they sow the seeds of anarchy broadcast: in

justifying the demolition of existing authorities, they undermine all future ones, their own consequently in the number. Shallow and reckless vanity! - They imitate in their conduct the author of that fabled law, according to which the assassination of the prince upon the throne gave to the assassin a title to succeed him. "*People, behold your rights! If a single article of them be violated, insurrection is not your right only, but the most sacred of your duties.*" Such is the constant language, for such is the professed object of this source and model of all laws -- this self-consecrated oracle of all nations....

The great enemies of public peace are the selfish and dissocial passions:-- necessary as they are -- the one to the very existence of each individual, the other to his security. On the part of these affections, a deficiency in point of strength is never to be apprehended: all that is to be apprehended in respect of them, is to be apprehended on the side of their excess. Society is held together only by the sacrifices that men can be induced to make of the gratifications they demand: to obtain these sacrifices is the great difficulty, the great task of government. What has been the object, the perpetual and palpable object, of this declaration of pretended rights? To add as much force as possible to these passions, already but too strong, -- to burst the cords that hold them in, -- to say to the selfish passions, there - everywhere -- is your prey! -- to the angry passions, there - everywhere -- is your enemy.

Such is the morality of this celebrated manifesto, rendered famous by the same qualities that gave celebrity to the incendiary of the Ephesian temple.

The logic of it is of a piece with its morality: -- a perpetual vein of nonsense, flowing from a perpetual abuse of words, -- words having a variety of meanings, where words with single meanings were equally at hand -- the same words used in a variety of meanings in the same page, - - words used in meanings not their own, where proper words were equally at hand, -- words and propositions of the most unbounded signification, turned loose without any of those exceptions or modifications which are so necessary on every occasion to reduce their import within the compass, not only of right reason, but even of the design in hand, of whatever nature it may be; - - the same inaccuracy, the same inattention in the penning of this cluster of truths on which the fate of nations was to hang, as if it had been an oriental tale, or an allegory for a magazine: -- stale epigrams, instead of necessary distinctions, -- figurative expressions preferred to simple ones, -- sentimental conceits, as trite as they are unmeaning, preferred to apt and precise expressions, -- frippery ornament preferred to the majestic simplicity of good sound sense, -- and the acts of the senate loaded and disfigured by the tinsel of the playhouse.

Article II

The end in view of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

Sentence 1. The end in view of every political association, is the preservation of the natural and imprescriptible rights of man.

More confusion -- more nonsense, -- and the nonsense, as usual, dangerous nonsense. The words can scarcely be said to have a meaning: but if they have, or rather if they had a meaning, these would be the propositions either asserted or implied:--

1. That there are such things as rights anterior to the establishment of governments: for natural, as applied to rights, if it mean anything, is meant to stand in opposition to legal -- to such rights as are acknowledged to owe their existence to government, and are consequently posterior in their date to the establishment of government.

2. That these rights *can not* be abrogated by government: for *can not* is implied in the form of the word imprescriptible, and the sense it wears when so applied, is the cut-throat sense above explained.

3. That the governments that exist derive their origin from formal associations or what are now called *conventions*: associations entered into by a partnership contract, with all the members for partners, -- entered into at a day prefixed, for a predetermined purpose, the formation of a new government where there was none before (for as to formal meetings holden under the controul of an existing government, they are evidently out of question here) in which it seems again to be implied in the way of inference, though a necessary and an unavoidable inference, that all governments (that is, self-called governments, knots of persons exercising the powers of government) that have had any other origin than an association of the above description, are illegal, that is, no governments at all; resistance to them and subversion of them, lawful and commendable; and so on.

Such are the notions implied in this first part of the article. How stands the truth of things? That there are no such things as natural rights -- no such things as rights anterior to the establishment of government -- no such things as natural rights opposed to, in contradistinction to, legal: that the expression is merely figurative; that when used, in the moment you attempt to give it a literal meaning it leads to error, and to that sort of error that leads to mischief -- to the extremity of mischief.

We know what it is for men to live without government -- and living without government, to live without rights: we know what it is for men to live without government, for we see instances of such a way of life -- we see it in many savage nations, or rather races of mankind; for instance, among the savages of New South Wales, whose way of living is so well known to us: no habit of obedience, and thence no government -- no government, and thence no laws -- no laws, and thence no such things as rights -- no security -- no property: --liberty, as against regular controul, the controul of laws and government --perfect; but as against all irregular controul, the mandates of stronger individuals, none. In this state, at a time earlier than the commencement of history -- in this same state, judging from analogy, we the inhabitants of the part of the globe we call Europe,

were; -- no government, consequently no rights: no rights, consequently no property -- no legal security -- no legal liberty: security not more than belongs to beasts -- forecast and sense of insecurity keener - - consequently in point of happiness below the level of the brutal race.

In proportion to the want of happiness resulting from the want of rights, a reason exists for wishing that there were such things as rights. But reasons for wishing there were such things as rights, are not rights; -- a reason for wishing that a certain right were established, is not that right -- want is not supply -- hunger is not bread.

That which has no existence cannot be destroyed -- that which cannot be destroyed cannot require anything to preserve it from destruction. *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, -- nonsense upon stilts. But this rhetorical nonsense ends in the old strain of mischievous nonsense for immediately a list of these pretended natural rights is given, and those are so expressed as to present to view legal rights. And of these rights, whatever they are, there is not, it seems, any one of which any government can, upon any occasion whatever, abrogate the smallest particle.

So much for terrorist language. What is the language of reason and plain sense upon the same subject? That in proportion as it is *right or proper*, i.e. advantageous to the society in question, that this or that right -- a right to this or that effect -- should be established and maintained, in that same proportion it is wrong that it should be abrogated: but that as there is no right, which ought not to be maintained so long as it is upon the whole advantageous to the society that it should be maintained, so there is no right which, when the abolition of it is advantageous to society, should not be abolished. To know whether it would be more for the advantage of society that this or that right should be maintained or abolished, the time at which the question about maintaining or abolishing is proposed, must be given, and the circumstances under which it is proposed to maintain or abolish it; the right itself must be specifically described, not jumbled with an undistinguishable heap of others, under any such vague general terms as property, liberty, and the like.

One thing, in the midst of all this confusions is but too plain. They know not of what they are talking under the name of natural rights, and yet they would have them imprescriptible --proof against all the power of the laws -- pregnant with occasions summoning the members of the community to rise up in resistance against the laws. What, then, was their object in declaring the existence of imprescriptible rights, and without specifying a single one by any such mark as it could be known by? This and no other -- to excite and keep up a spirit of resistance to all laws -- a spirit of insurrection against all governments -- against the governments of all other nations instantly, -- against the government of their own nation -- against the government they themselves were pretending to establish -- even that, as soon as their own reign should be at an end. In us is the perfection of virtue and wisdom: in all mankind besides, the extremity of wickedness and folly. Our will shall consequently reign without controul, and for ever: reign now we are living -

- reign after we are dead.

All nations – all future ages -- shall be, for they are predestined to be, our Slaves.

Future governments will not have honesty enough to be trusted with the determination of what rights shall be maintained, what abrogated -- what laws kept in force, what repealed. Future subjects (I should say future citizens, for French government does not admit of subjects) will not have wit enough to be trusted with the choice whether to submit to the determination of the government of their time, or to resist it. Governments, citizens -- all to the end of time -- all must be kept in chains.

Such are their maxims -- such their premises -- for it is by such premises only that the doctrine of imprescriptible rights and unrepealable laws can be supported.

What is the real source of these imprescriptible rights -- these unrepealable laws? Power turned blind by looking from its own height: self-conceit and tyranny exalted into insanity. No man was to have any other man for a servant, yet all men are forever to be their slaves. Making laws with imposture in their mouths, under pretence of declaring them -- giving for laws anything that came uppermost, and these unrepealable ones, on pretence of finding them ready made. Made by what? Not by a God -- they allow of none; but by their goddess, Nature.

The origination of governments from a contract is a pure fiction, or in other words, a falsehood. It never has been known to be true in any instance; the allegation of it does mischief, by involving the subject in error and confusion, and is neither necessary nor useful to any good purpose.

All governments that we have any account of have been gradually established by habit, after having been formed by force; unless in the instance of governments formed by individuals who have been emancipated, or have emancipated themselves, from governments already formed, the governments under which they were born -- a rare case, and from which nothing follows with regard to the rest. What signifies it how governments are formed? Is it the less proper -- the less conducive to the happiness of society -- that the happiness of society should be the one object kept in view by the members of the government in all their measures? Is it the less the interest of men to be happy - less to be wished that they may be so -- less the moral duty of their governors to make them so, as far as they can, at Mogadore than at Philadelphia.

Whence is it, but from government, that contracts derive their binding force? Contracts came from government, not government from contracts. It is from the habit of enforcing contracts, and seeing them enforced that governments are chiefly indebted for whatever disposition they have to observe them.

Sentence 2. These rights [these imprescriptible as well as natural rights,] are liberty, property, security, and resistance to oppression.

Observe the extent of these pretended rights, each of them belonging to every man, and all of them without bounds. Unbounded liberty; that is, amongst other things, the liberty of doing

or not doing on every occasion whatever each man pleases: --Unbounded property; that is, the right of doing with everything around him (with every *thing* at least, if not with every person,) whatsoever he pleases; communicating that right to anybody and withholding it from anybody: -
- Unbounded security; that is, security for such his liberty, for such his property and for his person, against every defalcation that can be called for on any account in respect of any of them: --
Unbounded resistance to oppression; that is, unbounded exercise of the faculty of guarding himself against whatever unpleasant circumstance may present itself to his imagination or his passions under that name. Nature, say some of the interpreters of the pretended law of nature -- nature gave to each man a right to everything; which is, in effect, but another way of saying -- nature has given no such right to anybody; for in regard to most rights, it is as true that what is every man's right is no man's right, as that what is every man's business is no man's business. Nature gave -- gave to every man a right to everything -- be it so -- true; and hence the necessity of human government and human laws, to give to every man his own right, without which no right whatsoever would amount to anything. Nature gave every man a right to everything before the existence of laws, and in default of laws. This nominal universality and real nonentity of right, set up provisionally by nature in default of laws, the French oracle lays hold of, and perpetuates it under the law and in spite of laws. These anarchical rights which nature had set out with, democratic art attempts to rivet down, and declares indefeasible.

Unbounded liberty -- I must still say unbounded liberty; -- for though the next article but one returns to the charge, and gives such a definition of liberty as seems intended to set bounds to it, yet in effect the limitation amounts to nothing; and when, as here, no warning is given of any exception in the texture of the general rule, every exception which turns up is, not a confirmation but a contradiction of the rule: -- liberty, without any preannounced or intelligent bounds; and as to the other rights, they remain unbounded to the end: rights of man composed of a system of contradictions and impossibilities.

In vain would it be said, that though no bounds are here assigned to any of these rights, yet it is to be understood as taken for granted and tacitly admitted and assumed, that they are to have bounds; viz. such bounds as it is understood will be set them by the laws. Vain, I say, would be this apology; for the supposition would be contradictory to the express declaration of the article itself, and would defeat the very object which the whole declaration has in view. It would be self contradictory, because these rights are, in the same breath in which their existence is declared, declared to be imprescriptible; and imprescriptible, or as we in England should say, indefeasible, means nothing unless it exclude the interference of the laws.

It would be not only inconsistent with itself, but inconsistent with the declared and sole object of the declaration, if it did not exclude the interference of the laws. It is against the laws themselves, and the laws only, that this declaration is levelled. It is for the hands of the legislator and all legislators, and none but legislators, that the shackles it provides are intended, -- it is

against the apprehended encroachments of legislators that the rights in question, the liberty and property, and so forth, are intended to be made secure, -- it is to such encroachments, and damages, and dangers, that whatever security it professes to give has respect. Precious security for unbounded rights against legislators, if the extent of those rights in every direction were purposely left to depend upon the will and pleasure of those very legislators!

Nonsensical or nugatory, and in both cases mischievous such is the alternative.

So much for all these pretended indefeasible rights in the lump: their inconsistency with each other, as well as the inconsistency of them in the character of indefeasible rights with the existence of government and all peaceable society, will appear still more plainly when we examine them one by one.

1. *Liberty*, then, is imprescriptible -- incapable of being taken away -- out of the power of any government ever to take away liberty, -- that is, every branch of liberty -- every individual exercise of liberty; for no line is drawn -- no distinction -- no exception made. What these instructors as well as governors of mankind appear not to know, is, that all rights are made at the expense of liberty -- all laws by which rights are created or confirmed. No right without a correspondent obligation. Liberty, as against the coercion of the law, may, it is true, be given by the simple removal of the obligation by which that coercion was applied -- by the simple repeal of the coercing law. But as against the coercion applicable by individual to individual, no liberty can be given to one man but in proportion as it is taken from another. All coercive laws, therefore (that is, all laws but constitutional laws and laws repealing or modifying coercive laws,) and in particular all laws creative of liberty are, as far as they go, abrogative of liberty. Not here and there a law only -- not this or that possible law, but almost all laws, are therefore repugnant to these natural and imprescriptible rights consequently null and void, calling for resistance and insurrection, and so on, as before.

Laws creative of rights of property are also struck at by the same anathema. How is property given? By restraining liberty; that is, by taking it away so far as is necessary for the purpose. How is your house made yours? By debarring every one else from the liberty of entering it without your leave.

2. *Property*. Property stands second on the list, -- proprietary rights are in the number of the natural and imprescriptible rights of man -- of the rights which a man is not indebted for to the laws, and which cannot be taken from him by the laws. Men -- that is, every man (for a general expression given without exception is an universal one) has a right to property, to proprietary rights, a right which cannot be taken away from him by the laws. To proprietary rights. Good: but in relation to what subject? for as to proprietary rights -- without a subject to which they are referable -- without a subject in or in relation to which they can be exercised -- they will hardly be of much value, they will hardly be worth taking care of, with so much solemnity. In vain would all the laws in the world have ascertained that I have a right to something. If this be all they have

done for me -- if there be no specific subject in relation to which my proprietary rights are established, I must either take what I want without right, or starve. As there is no such subject specified with relation to each man, or to any man (indeed how could there be?) the necessary inference (taking the passage literally) is, that every man has all manner of proprietary rights with relation to every subject of property without exception: in a word, that every man has a right to every thing. Unfortunately, in most matters of property, what is every man's right is no man's right; so that the effect of this part of the oracle, if observed, would be, not to establish property, but to extinguish it -- to render it impossible ever to be revived: and this is one of the rights declared to be imprescriptible.

It will probably be acknowledged, that according to this construction, the clause in question is equally ruinous and absurd -- and hence the inference may be, that this was not the construction -- this was not the meaning in view. But by the same rule, every possible construction which the words employed can admit of, might be proved not to have been the meaning in view nor is this clause a whit more absurd or ruinous than all that goes before it, and a great deal of what comes after it. And, in short, if this be not the meaning of it, what is? Give it a sense -- give it any sense whatever, -- it is mischievous -- to save it from that imputation, there is but one course to take, which is to acknowledge it to be nonsense.

Thus much could be clear, if anything were clear in it, that according to this clause, whatever proprietary rights, whatever property a man once has, no matter how, being imprescriptible, can never be taken away from him by any law: or of what use or meaning is the clause? So that the moment it is acknowledged in relation to any article, that such article is my property, no matter how or when it became so, that moment it is acknowledged that it can never be taken away from me: therefore, for example, all laws and all judgments, whereby anything is taken away from me without my free consent -- all taxes, for example, and all fines -- are void, and, as such call for resistance and insurrection, and so forth, as before.

3. *Security*. Security stands the third on the list of these natural and imprescriptible rights which laws did not give, and which laws are not in any degree to be suffered to take away. Under the head of security, liberty might have been included, so likewise property: since security for liberty, or the enjoyment of liberty, may be spoken of as a branch of security: -- security for property, or the enjoyment of proprietary rights, as another. Security for person is the branch that seems here to have been understood: -- security for each man's person, as against all those hurtful or disagreeable impressions (exclusive of those which consist in the mere disturbance of the enjoyment of liberty,) by which a man is affected in his person; loss of life -- loss of limbs -- loss of the use of limbs -- wounds, bruises, and the like. All laws are null and void then, which on any account or in any manner seek to expose the person of any man to any risk -- which appoint capital or other corporal punishment -- which expose a man to personal hazard in the service of the military power against foreign enemies, or in that of the judicial power against delinquents -- all

laws which, to preserve the country from pestilence, authorize the immediate execution of a suspected person, in the event of his transgressing certain bounds.

4. *Resistance to oppression.* Fourth and last in the list of natural and imprescriptible rights, resistance to oppression -- meaning, I suppose, the right to resist oppression. What is oppression? Power misapplied to the prejudice of some individual. What is it that a man has in view when he speaks of oppression? Some exertion of power which he looks upon as misapplied to the prejudice of some individual -- to the producing on the part of such individual some sufferings to which (whether as forbidden by the laws or otherwise) we conceive he ought not to have been subjected. But against everything that can come under the name of oppression, provision has been already made, in the manner we have seen, by the recognition of the three preceding rights; since no oppression can fall upon a man which is not all infringement of his rights in relation to liberty, rights in relation to property, or rights in relation to security, as above described. Where, then, is the difference? -- to what purpose this fourth clause after the three first? To this purpose: the mischief they seek to prevent, the rights they seek to establish are the same; the difference lies in the nature of the remedy endeavoured to be applied. To prevent the mischief in question, the endeavour of the three former clauses is, to tie the hand of the legislator and his subordinates, by the fear of nullity, and the remote apprehension of general resistance and insurrection. The aim of this fourth clause is to raise the hand of the individual concerned to prevent the apprehended infraction of his rights at the moment when he looks upon it as about to take place.

Whenever you are about to be oppressed, you have a right to resist oppression: whenever you conceive yourself to be oppressed, conceive yourself to have a right to make resistance, and act accordingly. In proportion as a law of any kind -- any act of power, supreme or subordinate, legislative, administrative, or judicial, is unpleasant to a man, especially if, in consideration of such its unpleasantness, his opinion is, that such act of power ought not to have been exercised, he of course looks upon it as oppression: as often as anything of this sort happens to a man -- as often as anything happens to a man to inflame his passions, -- this article, for fear his passions should not be sufficiently inflamed of themselves, sets itself to work to blow the flame, and urges him to resistance. Submit not to any decree or other act of power, of the justice of which you are not yourself perfectly convinced. If a constable call upon you to serve in the militia, shoot the constable and not the enemy; - if the commander of a press-gang trouble you, push him into the sea -- if a bailiff, throw him out of the window. If a judge sentences you to be imprisoned or put to death, have a dagger ready, and take a stroke first at the judge.