

Bentham's Critique of Rights

Please read the following selections from Jeremy Bentham's *Anarchical Fallacies*. After reading the selections, answer the questions that follow.

The [French] revolution, which threw the government into the hands of the penners and adopters of this declaration [of the Rights of Man and of the Citizen], 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 insurrection, they plant and cultivate a propensity to perpetual insurrection in time future; they sow the seeds of anarchy broad-cast: 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...

Is the provision in question fit in point of expediency to be passed into a law for the government of the French nation? That, *mutatis mutandis*, would have been the question put in England: that was the proper question to have been put in relation to each provision it was proposed should enter into the composition of the body of French laws.

Instead of that, as often as the utility of a provision appeared (by reason of the wideness of its extent, for instance) of a doubtful nature, the way taken to clear the doubt was to assert it to be a provision fit to be made law for all men—for all Frenchmen—and for all Englishmen, for example, into the bargain. This medium of proof was the more alluring, inasmuch as to the advantage of removing opposition, was added the pleasure, the sort of titillation so exquisite to the nerve of vanity in a French heart—the satisfaction, to use a homely, but not the less apposite proverb, of teaching grandmothers to suck eggs [telling someone something they already know, and better than you]. Hark! ye citizens of the other side of the water! Can you tell us what rights you have belonging to you? No, that you can't. It's *we* that understand rights: not our own only, but yours into the bargain; while you poor simple souls! know nothing about the matter.

Hasty generalization, the great stumbling-block of intellectual vanity!—hasty generalization, the rock that even genius itself is so apt to split upon!—hasty generalization, the bane of prudence and of science!...

1. How does the Declaration of the Rights of Man invite insurrection, according to Bentham?
2. Why does Bentham think it is improper for the French to claim their declaration, and the rights it includes, are universal?

ARTICLE I [of the Declaration of the Rights of Man and of the Citizen]

Men (all men) are born and remain free, and equal in respect of rights. Social distinctions cannot be founded, but upon common utility...

All men are born free? All men remain free? No, not a single man: not a single man that ever was, or is, or will be. All men, on the contrary, are born in subjection, and the most absolute subjection—the subjection of a helpless child to the parents on whom he depends every moment for his existence. In this subjection every man is born—in this subjection he continues for years—for a great number of years—and the existence of the individual and of the species depends upon his so doing.

What is the state of things to which the supposed existence of these supposed rights is meant to bear reference?—a state of things prior to the existence of government, or a state of things subsequent to the existence of government? If to a state prior to the existence of government, what would the existence of such rights as these be to the purpose, even if it were true, in any country where there is such a thing as government? If to a state of things subsequent to the formation of government—if in a country where there is a government, in what single instance—in the instance of what single government, is it true? Setting aside the case of parent and child, let any man name that single government under which any such equality is recognised.

All men born free? Absurd and miserable nonsense! When the great complaint—a complaint made perhaps by the very same people at the same time, is—that so many men are born slaves. Oh! but when we acknowledge them to be born slaves, we refer to the laws in being; which laws being void, as being contrary to those laws of nature which are the efficient causes of those rights of man that we are declaring, the men in question are free in one sense, though slaves in another;—slaves, and free, at the same time:—free in respect of the laws of nature—slaves in respect of the pretended human laws, which, though called laws, are no laws at all, as being contrary to the laws of nature. For such is the difference—the great and perpetual difference, betwixt the good subject, the rational censor of the laws, and the anarchist—between the moderate man and the man of violence. The rational censor, acknowledging the existence of the law he disapproves, proposes the repeal of it: the anarchist, setting up his will and fancy for a law before which all mankind are called upon to bow down at the first word—the anarchist, trampling on truth and decency, denies the validity of the law in question,—denies the existence of it in the character of a law, and calls upon all mankind to rise up in a mass, and resist the execution of it.

All men are born equal in rights. The rights of the heir of the most indigent family equal to the rights of the heir of the most wealthy? In what case is this true? I say nothing of hereditary *dignities* and *powers*. Inequalities such as these being proscribed under and by the French government in France, are consequently proscribed by that government under every other government, and consequently have no existence anywhere. For the total subjection of every other government to French government, is a fundamental principle in the law of universal independence—the French law. Yet neither was this true at the time of issuing this Declaration

of Rights, nor was it meant to be so afterwards. The 13th article, which we shall come to in its place, proceeds on the contrary supposition: for, considering its other attributes, inconsistency could not be wanting to the list. It can scarcely be more hostile to all other laws than it is at variance with itself.

All men (i.e. all human creatures of both sexes) *remain equal in rights*. All men, meaning doubtless all human creatures. The apprentice, then, is equal in rights to his master; he has as much liberty with relation to the master, as the master has with relation to him; he has as much right to command and to punish him; he is as much owner and master of the master's house, as the master himself. The case is the same as between ward and guardian. So again as between wife and husband. The madman has as good a right to confine anybody else, as anybody else has to confine him. The idiot has as much right to govern everybody, as anybody can have to govern him. The physician and the nurse, when called in by the next friend of a sick man seized with a delirium, have no more right to prevent his throwing himself out of the window, than he has to throw them out of it. All this is plainly and incontestably included in this article of the Declaration of Rights: in the very words of it, and in the meaning—if it have any meaning. Was this the meaning of the authors of it?—or did they mean to admit this explanation as to some of the instances, and to explain the article away as to the rest? Not being idiots, nor lunatics, nor under a delirium, they would explain it away with regard to the madman, and the man under a delirium. Considering that a child may become an orphan as soon as it has seen the light, and that in that case, if not subject to government, it must perish, they would explain it away, I think, and contradict themselves, in the case of guardian and ward. In the case of master and apprentice, I would not take upon me to decide; it may have been their meaning to proscribe that relation altogether;—at least, this may have been the case, as soon as the repugnancy between that institution and this oracle was pointed out; for the professed object and destination of it is to be the standard of truth and falsehood, of right and wrong, in everything that relates to government. But to this standard, and to this article of it, the subjection of the apprentice to the master is flatly and diametrically repugnant. If it do not proscribe and exclude this inequality, it proscribes none: if it do not do this mischief, it does nothing...

—Bentham, *Anarchical Fallacies*

3. Why does Bentham reject that all humans are born free?
4. What is the difference between the “moderate man” and the “man of violence” according to Bentham?
5. How do natural rights help the “man of violence” to “set up his will and fancy for a law before which all mankind are called upon to bow down at their first word?” What do you think of this accusation?
6. What is the point of Bentham's examples of apprentice and master, physician/nurse and sick person, ward and guardian?
7. Do you think the existence of “madmen” who can be justifiably confined is compatible with equality of rights? If so, please explain exactly why. If not, why not?