

Bentham's Critique of Rights

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

Article II [of the Declaration of the Rights of Man and of the Citizen]

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 held 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 this 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 confusion, 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.

—Bentham, *Anarchical Fallacies*

1. What does Bentham oppose natural rights to? Why would these come into conflict?
2. Why does Bentham equate living without government to living without rights? What connection does he draw between law and rights?
3. How does Bentham suggest we should think about rights? How do we establish what rights people have?
4. What is Bentham's problem with natural rights?
5. Why does Bentham claim that the Declaration makes future generations and governments the "slaves" of its authors?