

BENTHAM AGAINST HUMAN RIGHTS

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J.BENTHAM, ANARCHICAL FALLACIES
(1796)

Texts

J.Bentham's «Nonsense upon Stilts» hitherto known as «Anarchical fallacies» (1796)

Main target: criticism of «natural law theory» through the criticism of particularly the French Declaration of 1789 (as also replicated in 1791)

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natural law as feeding «the old appetite of ruling posterity»

(J.Bentham, Rights, Representation, and Reform pp. 181)

«What I mean to attack is...all ante-legal and anti-legal rights of man...not the execution of such design..but the design itself...the French had not failed in the execution of their design...but rather the design could not be executed...» Ibid.38

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Why «Fallacies»?

«...it is common to designate an argument ..with..the effect of deception» (p.3)

But

The French Declaration is not an argument but a list of manifesto aspirations!

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Interpretive hypothesis: the French Declaration contains an «implicit fallacy» from which such aspirations are derived.

Since there is no «reasoning» for which it can be accused to be fallacious, the French Declaration is only implicitly fallacious.

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Main Problem

Ontological problem: inappropriate use of language. The language of the Declaration would have suited «an oriental tale...but not a body of laws, especially of laws given as constitutional and fundamental ones»

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Bentham was not against declarations as such but considered a different function they serve: as advice to the legislator and not as law!

He wrote himself a constitutional charter for the Pasha of Tripoli in 1822:

- ✓ In the first address - the Pasha has to claim a vision for the Prophet Mohammed
- ✓ In the second address – the Pasha was to acknowledge the greatest happiness of the greatest number.

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Why Anarchies?

The Declaration makes propositions of fact which are obviously false! For Bentham: Art.1 states «in respect of their rights men are born and remain free and equal»

YET ALL MEN «were born in subjection»! It is irrelevant if this were valid before the institutionalization of a government or after a government has been created!

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The Declaration is ambiguous in the use of the conceptual status of rights:

- 1) As signifying: «what is established»
- 2) As signifying «what ought to be established»

This is because natural rights pretend to exist independently of a government and prior to this!

To say that natural rights cannot be abrogated is nonsensical!

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Rights as stated in the French Declaration justify:

➤ Tendency to produce anarchy: revolutionary insurrection had to be justified but this encourage future insurrection «they saw the seeds of anarchy broadcast: in justifying the demolition of existing authorities, they undermine all future ones ...»

Note: the source of law is detached from a positive institution (with a history etc.)

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«Natural rights is simple nonsense: natural and imprescriptible rights, rethorical nonsense, nonsense upon stilts»

Bentham, Anarchical Fallacies *THE WORKS OF JEREMY BENTHAM* 489 (John Bowring ed., 1843), p.501.

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Why then if it is nonsense, Bentham believes he should spend time on his criticisms?

Because it is «nonsense with great pretensions, with the pretensions of governing the world»!

J.BENTHAM FRAGMENT ON
GOVERNMENT (1776)

J.Bentham, Fragment on Government (1776).

Intereting writing to understand the Legal Philosohy of Bentham,
namely, the Principle of Utility

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Target of the criticisms

W.Blackstone's Commentaries on the Laws of England

- he did not justified law in accordance to the principle of utility (max of total happiness)
- he confused the role of the «censor» with that of the «expositor» when he claimed that «every thing is as it should be» with reference to english law

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Blackstone has confounded:

- the task of **the expositor** is to show what judges and legislators have done
- The task of **the censor**, instead, is to show what they ought to do in the future

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Bentham's idea of legal improvement

«...a system that is never to be censured, will never be improved...»

Thus NOT by resorting to external morality BUT through censor's legal improvements with «securities against misrule»!

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Only practical securities grant the maximization of total happiness as according to the principle of utility for which:

No law ought to be made which would diminish general happiness!

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No right should be maintained if it does not produce utility/happiness!

This is the opposite of natural law/human rights principles since the latter cannot be abrogated!

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This point would help understanding also Bentham's distinction in Bentham's «A Fragment on Government» 1776

the task of **the expositor** is to show what judges and legislators have done

The task of **the censor**, instead, is to show what they ought to do in the future

Blackstone has confounded the two functions!

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