

ISSA Proceedings 1998 - What Are The 'Anarchical Fallacies' Jeremy Bentham Discovered In The 1789 French: Declaration Of The Rights Of Man And Citizen?



1. Introduction

The year 1998 deserves to be remembered for at least two different but convergent reasons. In 1748 – two and a half centuries ago – Jeremy Bentham was born in London, and half a century ago – in 1948 – the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations in New York. Thus this year we celebrate both the two hundred and fiftieth anniversary of the birth of a major English philosopher, lawyer, reformer, and public policy analyst; and we also celebrate the fiftieth anniversary of the most influential manifesto of international human rights.

The conjunction of these two events provides an occasion for reflection on some of Bentham's views because he wrote an essay titled "Anarchical Fallacies" in which he attacked the most popular manifesto of human rights in his day, the 1789 French Declaration of the Rights of Man and Citizen. In light of Bentham's scathing criticisms of the French Declaration, one naturally wonders what he would have had to say today were he in a position to evaluate the United Nations Declaration. Would he say of it what he said of its French predecessor, that it consists of "execrable trash," that its purpose is "resistance to all laws" and "insurrection," that its advocates "sow the seeds of anarchy broad-cast," and, most memorably, that any doctrine of "natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, – nonsense upon stilts"?

2. Dubious Fallacies

Let us look more closely at Bentham's argument that the French Declaration is riddled with "anarchical fallacies." What, exactly, are "anarchical fallacies"? What is fallacious and what is anarchistic about them?

In 1824, more than two decades after he had written his essay on “anarchical fallacies,” Bentham arranged with some of his younger friends to publish (in London and in English) a volume called *The Book of Fallacies*. In this treatise, the first substantial contribution to the subject since Aristotle, Bentham set out an account of what he regarded as the rhetorical and logical errors to which political discourse was especially vulnerable. One would naturally expect, therefore, to find in this book an elucidation of the “anarchical fallacies” he had already discussed many years earlier in his essay of that name.

But there are at least three problems. The first arises from the way Bentham defines “fallacy” in that book. “By the name of fallacy,” he writes, “it is common to designate any argument employed or topic suggested, for the purpose, or with the probability, of producing the effect of deception – of causing some erroneous opinion to be entertained by any person to whose mind such argument may be presented.” If this definition is applied to the French Declaration, a problem immediately arises: According to Bentham’s definition of fallacy, fallacies are the property of certain arguments (namely, the invalid ones). But the Declaration is a manifesto of aspirations, full of imperatives and hortatory pronouncements addressed to the people and the government of France. So it is not as such an argument, except in the most extended sense of that term, in which any propositions asserted on any subject constitute an “argument.”

One might say, to be sure, that the Declaration is the product of an *implicit* argument, because it rests upon several tacit principles and beliefs from which its manifest content – those imperatives and exhortations – can be derived. But if it is this implicit argument Bentham wishes to attack, it is odd that he doesn’t say so and that nowhere in his critique does he attempt to formulate that implicit argument. I think we must conclude that if the French Declaration is spoiled by fallacy, it is not because its reasoning is suspect, for a manifesto such as this does not consist of a chain of reasons.

However, let us be charitable and concede that there is a loose and familiar sense of the term “fallacy,” in which it is roughly synonymous with “error” or “erroneous belief” or “mistaken claim” or “objectionable principle.”

This confronts us with the second problem:

Under Bentham’s official definition of “fallacy,” the French Declaration is surely not riddled with fallacies of any kind. The loose sense of the term “fallacy,” as Bentham defines it – as an argument or other prose text “suggested, for the

purpose, . . . of deception” – does not apply. For it is neither reasonable nor supported by any evidence Bentham cites to believe that the French authors of the Declaration wrote with the “purpose” of deceiving their intended audience.

But a deeper criticism of Bentham’s definition now comes into view. His official definition of “fallacy” has to be judged fundamentally incorrect, because it transforms the concept of a fallacy into a complex intentional concept. (He said, it will be recalled, that a fallacy is “any argument . . . [with] the purpose of [causing deception].”)

But in ordinary usage “fallacy” is not an intentional concept at all. That is to say, a reasoner can commit a fallacy by means of asserting an invalid argument without the intention to deceive anyone. If, as Bentham insists, the French Declaration suffers from fallacies, we should expect its authors and audience alike to be equally surprised to learn this. To suggest otherwise is to impugn the sincerity of the authors of the Declaration; neither Bentham nor history gives us reason to do that.

Bentham might offer a line of self-defense against this criticism by reminding the reader that in his definition of fallacy he also said that an argument is fallacious if there is some “probability” that it would deceive. Now a probability of deception is not an intentional concept, and so Bentham might well concede that although the Declaration is not intentionally deceptive, nonetheless there is a probability that it will deceive, in the sense of tending to cause the reader of the Declaration to believe the falsehoods and ill-advised exhortations contained in it. Yet a defense along these lines is unacceptable because it yields a conception of fallacy that is far too broad and indiscriminate. Virtually any prose text is likely to mislead some reader or even many readers, but we would not want for that reason alone to describe the text as fallacious.

As a third and final problem, we must note that one will look in vain in Bentham’s *Book of Fallacies* for any account of what he called the “anarchical fallacies” in his essay of that name. This appears to be a major oversight and a bewildering omission on his part. Having diagnosed the supposed fallacies in the French Declaration years before he wrote his *Book of Fallacies*, why should he fail to mention them in his later and longer work? To be sure, one can find reference in the *Book of Fallacies* to “anarchy”; there Bentham points out that the term “anarchy” is characteristically used as an abusive epithet in political discourse. This, he says, was especially true of those who oppose any political reforms; their tactic is to condemn as anarchic all new legislation, reforms, and ventures.

Ironically, Bentham himself is vulnerable to the charge that his denunciation of “anarchical fallacies” in the French Declaration comes rather too close for comfort to being just another example of precisely the rhetorical abuse that he later criticized.

3. Anarchy Unlikely

Against that background, let us turn directly to why Bentham thinks the French Declaration, as he says, “sows the seeds of anarchy broad-cast,” why he thinks it is a doctrine of “the rights of anarchy – the order of chaos.” The Declaration does this, he says, because its tacit message is this: “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.”

This is a startling remark; no such radically anarchic language actually appears in the preamble or in any of the seventeen articles of the Declaration. The closest we come is in the second article, where all persons are told they have a “natural and imprescriptible ... right of resistance to oppression” – something not found either in the American Bill of Rights of 1791 or in the 1948 United Nations Declaration. This leads Bentham to heap scorn on the very idea of an “imprescriptible” right – a right that no political or legal authority may (or can?) modify, suspend, or nullify. (In passing, we might compare the imprescriptibility of rights that Bentham attacks with the nonderogable human rights found in the International Covenant on Civil and Political Rights [1966] inspired by the Universal Declaration of Human Rights.

Today’s nonderogable human rights are yesterday’s imprescriptible natural rights. Their relative rarity under the current international law of human rights would have pleased Bentham, because this rarity constitutes a qualified endorsement of Bentham’s utilitarian critique of imprescriptible rights. Nonetheless, he would have rejected the idea that even one such right is nonderogable.)

Despite insisting that the rights listed in the French Declaration are imprescriptible, the Declaration is completely silent on what recourse the French citizens have if in their judgment any of their “imprescriptible rights” are violated. The measures it is appropriate for individual citizens (or group of citizens) to take to secure rights disrespected by their government is a question of judgment in the circumstances, not a matter for large-scale constitutional pronouncements.

So the silence of the Declaration on this point is neither evasive nor disingenuous; rather, it is evidence of sound political caution. Bentham, putting the worst face on the French Declaration, gratuitously assumes that insurrection is the implied (and only) weapon available to persons who judge they are deprived of their natural rights.

Bentham could, of course, point in particular to the Terror and in general to the instability of French society in the aftermath of 1789, and to the evident inability of the French revolutionaries of that day to govern effectively. He could make an argument in defense of his interpretation of the Declaration along the following lines: First, the Declaration does not rule out a right to violent insurrection as the appropriate response to a government that violates its citizens' rights; second, few if any of the rights proclaimed in the Declaration were operative under law in French society at the time it was promulgated. Therefore, he might conclude, the publication of the Declaration is a tacit invitation to insurrection, and the result of insurrection is anarchy. To put it another way, it would be only natural for believers in the "natural and imprescriptable" rights of man and citizen to use direct and violent measures in an effort to secure their alleged rights, and to be willing to overthrow any government that fails to accord such rights to its citizens. Thus Bentham might have reasoned.

But such an argument cannot be sustained without evidence to back it up, and in the entirety of his critique, Bentham never produces any such evidence. He never argues that reformers and enemies of the "ancient regime" in France, drunk on the intoxicating liquor of "natural and imprescriptible rights," were bound to lose all judgment and - casting prudence aside - would strike at every form of governing authority in their foolish zeal to obtain their alleged rights. He never explains why insistence on natural rights is the sole or the dominant cause of political unrest in France.

Not only that, the Declaration's professed right to resist oppression need not be taken as a right of *violent* individual and collective resistance to government officials. We can, after all, think of collective *nonviolent* protest, of the sort made famous in the 1960s in the United States during the Civil Rights movement. If that is how we intend to act in exercising our right to resist oppression, it is not obvious why we should be told we have no such right.

Bentham overlooked the possibility of nonviolent resistance to government oppression; it probably never occurred to him to ponder, as many thoughtful

philosophers and activists have argued in this century, that mass nonviolent civil disobedience is a legitimate form of protest even in a moderately just, liberal constitutional republic and a fortiori in an illiberal society. To be sure, Bentham was not an advocate, here or elsewhere, of civil disobedience. He lived in a day in which fear of “the mob” was a constant preoccupation of the English upper class, a worry made all the more troubling by the excesses of the French Revolution. Nevertheless, is it merely sentimental and anachronistic to suggest that the worst that can be said of the French Declaration on the point under discussion is that its use of the term “resistance” in this context needs careful interpretation? I think not.

A related but even stronger objection to Bentham’s views emerges here. Let us put the French Declaration aside for the moment and think of its American and United Nations counterparts. I challenge anyone to point to any anarchic consequences in political behavior directly caused by widespread belief among Americans two centuries ago in their Bill of Rights, or among any who believe in the human rights cited in the United Nations Declaration during the half century since its promulgation. Whatever political actions have been engendered by belief in these rights, there is little or no evidence that their chief effect has been to nourish seeds of insurrection and anarchy where prior to such declarations no such inclinations existed. On the contrary, the violence associated with belief in human rights and with protests against violation of such rights almost invariably comes from the police and government officials who use their power (as the British did in Amritsar in the 1920s, as the local police across the United States did in anti-union riots of the 1930s, and as the Chinese did in Tiananmen Square in the 1980s) to crush those who nonviolently protested violations of their human rights.

Perhaps the aftermath of the storming of the Bastille in the summer of 1789 was different; perhaps shrieks and cries in the streets of Paris of “natural and imprescriptible rights” did play a prominent causal role in ending Bourbon rule and paving the way for the abuses that culminated in the Terror and then in Napoleon’s reign. But if that is what Bentham believed, and what prompted him to denounce the French Declaration within a few years of its promulgation, it is most unfortunate that he so conspicuously failed to say so.

I can only conclude that Bentham has not made out his case for the claim that the French Declaration – or any of the other largely aspirational manifestos of that day and later that were drafted along the same lines – is invalid, unsound, or false

because of its “anarchical fallacies”.

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