



NATURAL RIGHTS AS ‘NONSENSE UPON STILTS’: ASSESSING BENTHAM

Dennis Ejikeme Igwe

University of Uyo, Nigeria

This paper critically assesses Bentham’s view that the idea of natural rights is nonsensical. Bentham’s repudiation of natural rights is fundamentally premised on his conviction that rights are the creation of the law and law is a command of the sovereign. Thus, there are no laws and rights without government. Natural rights according to Bentham do not emanate from government and so, are not properly rights. In fact, they have no source and are anarchical. Contrary to Bentham’s view, this paper argues that there are rights (natural rights) which exist prior to the formation of the government, and hence, not dependent on government. Thus, without government, these rights exist. They are not anarchical as claimed by Bentham. On the contrary, it is their non-recognition by the government that may engender a state of anarchy. The paper argues strongly that natural rights are the sine qua non for human development. Consequently, their denunciation constitutes an impediment to human development. The paper observes that the United Nations Universal Declaration of Human Rights, the American Declaration of Independence, and the French Revolution which have contributed enormously to human development, hinge on the idea of natural rights. The paper concludes, therefore, that the very idea that persons have natural rights (non-legal rights) is sensible, contrary to Bentham’s view that it is nonsensical.

Keywords: Natural rights, Rights, Bentham’s view of natural rights, Human development.

Introduction

The idea of the existence of basic non-legal rights (natural rights) is common among some thinkers in the history of political thought. Proponents of this view contend that humans possess natural rights independent and anterior to the establishment of government. These rights, according to them, are fundamental to all human beings. Therefore, the government owes its citizens the obligation to respect them. Thomas Hobbes and John Locke are among the major advocates of this view.

The view, however, has received a vigorous attack from some other thinkers. Notable among them is Jeremy Bentham. Bentham contends that there are no such rights. No rights existed anterior to the establishment of government. The government is the source of law, and rights are created by the law made by the government. Therefore, the idea that persons have rights (natural) independent of and prior to the establishment of government is absurd. He blatantly dismissed natural rights as ‘simple nonsense’. In line with Bentham’s view, MacIntyre wrote that belief in such rights “is one with belief in witches and in unicorns” (69). The question thus, is whether the idea that humans possess basic non-legal rights (i.e. natural rights) nonsensical? This is the basic question this paper seeks to tackle, specifically, as evident in the thought of Jeremy Bentham.

The main body of this paper falls into three parts. First, I undertake an overview of natural rights. Second, I present Bentham's views on natural rights. Finally, I critically examine Bentham's views, concluding that the idea of the existence of natural rights is not nonsensical as postulated by Bentham.

Natural Rights: Overview

These are rights not dependent on the laws or customs of any particular culture or government, and thus, universal, inviolable, imprescriptible, and inalienable. They are inviolable because they are sacrosanct, imprescriptible because they could not be eroded by the passage of time, and inalienable because the holder could not divest himself of them (Jones 190). They are said to exist prior to the establishment of government.

Thomas Hobbes views them as those rights people are endowed with, in the state of nature. State of nature is the hypothetical condition of what people's lives would likely be before the existence of organised political society or if there were no government. Hobbes thought that people would have the same right in the state of nature. That right according to Hobbes (84), is "the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life" 'Natural rights' as found in Hobbes is 'liberty-rights' which is very significant in explaining the source or origin of political society.

John Locke seems to be the most famous advocate of natural rights. His view of natural rights derives from the idea of natural law. Natural law also called the law of nature, is a body or system of rules, established by nature which governs the conduct of humans. It is largely believed to emanate from God, the creator of the universe. It is also viewed as the use of reason to investigate or examine human nature and infer from it, necessary or requisite rules of moral conduct. It is said to be natural because it is not made by man, in other words, it is not artificial. It is distinct from positive or civil law which is a law made by governments or rulers to govern a given political society, state or nation. Hugo Grotius considers the natural law as eternal and unchanging. Its fundamental principles according to him, are unchanging. Even God cannot change the principles, just as he cannot change mathematical truths. Grotius, however, was convinced that the natural law emanated from God, the author of the nature of man who willed that such traits exist in man (145).

Locke believes strongly that natural law confers natural rights on humans, as well as imposes natural obligations. Reason, he states, "teaches all Mankind ... that being all equal and independent, no one ought to harm another in his life, Health, Liberty, or Possessions". This, for Locke, constitutes the basic or underlying law of nature. As it concerns obligation (duty), each person has a natural duty not to "take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb, or Goods of another" (271). Government, Locke avers, has a moral duty to serve the people by protecting life, liberty, and property. He regards defending people's natural rights as the main function of government.

This idea of the existence of natural rights found in Locke, Hobbes and other thinkers was vigorously criticised by Bentham who viewed it as nonsensical. In the section that follows, I present Bentham's views on natural rights.

Bentham on Natural Rights

Bentham's criticisms of moral rights are much developed in his *Anarchical Fallacies*, a work in which he vigorously attacked the declarations of rights issued in France during the French revolution. His criticisms are rooted in his belief of the nature of law. Rights, he believes, are created by the law, and the law is nothing but an order (command) of the sovereign. Law and rights, therefore, need government in order to exist. Without the government, law and rights are futile. The notion, thus, that there are or there could be rights not premised on sovereign command and which exist prior to the institution of government is vigorously challenged and repudiated. Natural rights, then, according to Bentham, is a pervasion of

language, ambiguous, and figurative, having anarchical consequences. Bentham asserts that such a right cannot function as a legal restraint on what we can or cannot do. At best, it may tell us what we ought to do.

Viewed as a pervasion of language, Bentham argues that ‘natural rights’ corrupts language. Appraising proposition 1 of Article IV of the French Declaration of Rights: “Liberty consists in being able to do that which is not hurtful to another”, Bentham exclaimed, “What! in that, and nothing else? Is not the liberty of doing mischief liberty? If not, what is it? ... How childish, how repugnant to the ends of language, is this perversion of language! — to attempt to confine a word in common and perpetual use, to an import to which nobody ever confined it before...” (60). Critiquing other propositions of the Declaration, Bentham affirmed that talks of ‘natural rights’ is a perversion of language.

Bentham goes on to affirm that ‘natural right’ is ambiguous. It suggests that there are general rights, in other words, rights over no particular thing. The consequence of exercising such a general (universal) right would be to utterly terminate it, given the fact that what is every man’s right is no man’s right (Waldron 38). Therefore, it is not possible to have a general (universal) right in the sense advocated by the French declarations. Whereas the terms, ‘law’ and ‘sovereign’ are very meaningful in that they are concrete and empirically verifiable, ‘natural rights’ is not. It doesn’t stand for anything tangible. It is beyond sense perception, and so makes no sense. The origin is questionable. Accordingly, Bentham (54) queries: “What is the real source of these imprescriptible rights— these unrepealable laws?” For Bentham, a natural right is nothing but a round square, an incorporeal body (72). Only legal rights exist, and a right and a legal right are the same things, he contends. Right and law, for him, are correlative terms, just as son and father. Whereas right is the child of the law, “a natural right is a son that never had a father” (73).

Additionally, the concept of moral rights is figurative. According to Bentham, no rights are prior to the establishment of government. The supposition that such rights exist prior to the institution of government, Bentham remarks, appears to originate from the social contract theory in which individuals agree to form a society, surrendering some of their freedoms and submitting to the authority of the ruler or decision of the majority, in exchange for safeguard or security of their remaining rights. Bentham contends that such doctrine is unhistorical, as well as lacks functionality as a useful fiction to describe and justify the origin of political authority. Governments evolve either by habit or by force, and for any contract to hold or be binding, there must be an already instituted government to implement them (55).

Finally, the notion of natural rights is ‘anarchical’, Bentham argues.

Such a right involves freedom from all control, specifically, from all legal restraint. Natural right could not be regulated by law since it is assumed to be prior to law, and given the fact that human beings are aroused by self-interest, exercising such freedom will obviously lead to anarchy. Bentham remarks that proponents of natural rights do not know what they are talking under the name of ‘natural rights’. They use it as a tool to resist laws, gathering the members of the society to rebel against the laws. In this light, Bentham charges: “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? This and other to excite and keep up a spirit of resistance to all laws— a spirit of insurrection against all governments...” (54).

Therefore, Bentham concludes that “Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, — nonsense upon stilts” (53). Real rights for Bentham, is basically legal rights. Whatsoever is called ‘rights’ must be legal and specific, in other words, there must be a specific object and subject, beyond this, such rights are nonsensical. Rights must exist in law to be protected by it. Outside of law, rights are, at best, reasons for wishing there were such things as rights.

In a nutshell, the following constitutes Bentham’s major points: (1) Rights are created by law; (2) Law is a command of the sovereign; (3) Without government there are no laws and rights; (4) Natural rights are rights over no specific object; (5) Natural rights are incorporeal; (6) Natural rights cannot function as a legal restraint; (7) Natural rights have no source; (8) Natural rights are anarchical. Therefore, ‘Natural rights’ is nonsensical [in view of (1) – (8)].

In the section that follows, I consider each of the points to show ultimately that the idea of Natural rights is not nonsensical, in other words, persons have non-legal rights. Before proceeding to the section,

it is worthy of note that Bentham's desire for a stable state is commendable. Indeed, when there's stability, we experience peace and progress. However, it must be noted that desiring peace and progress in the utter dismissal of natural rights is mistaken. In fact, one doubts the possibility of realising them without regard for natural rights. Again, Bentham's emphasis on that which is tangible (against much emphasis on the metaphysical) is to be appreciated. This helps to drastically reduce disputes and conflicts among people arising from much dependence on the metaphysical. However, it must be noted that Bentham went too far in dismissing 'natural rights' as nonsensical on grounds of (among others) intangibility or non-empirical verifiability. Reality, one is convinced, is not limited to that which is empirically verifiable.

Against Bentham

Among Bentham's views is the idea that rights are created by law (Point 1). While I agree that law confers rights on persons, I do not agree that all rights derive from the law. There are, I believe, rights (natural) prior to laws established by the government. It is a truism that conditions induce or necessitate the establishment of laws. In other words, there were laws enacted owing to peoples' agitations for them. For instance, there was a time, women did not have the right to vote in the United States of America. Today, the story is different, they have such right. The agitations which led to the conferment of voting rights on the US women were premised on natural rights. Still in the US, there was a time Blacks did not have the right to vote. This accounted for the civil rights activities of Martin Luther King, (Jr.) and his followers. King organized and led protests for blacks' rights to vote and other basic civil rights. This led to the enactment of most of these rights into law with the passage of the 1964 Civil Rights Acts and the Voting Rights Act of 1965 (Loevy 337). This clearly shows that there are some rights (natural) which exist prior to the law which the law originally did not recognise but later upheld.

Bentham also postulates that law is a command of the sovereign (Point 2). While I agree that government as an established institution could make laws which confer rights on citizens, I do not agree that all laws emanate from the government. Indeed, there are laws beyond government, namely, natural laws. These laws do not exist via the agency of any government. They are laws of nature, only discoverable by man, hence, we could today, talk about such laws as Coulomb's law, Boyle's law, Dalton's law of Partial Pressure, Newton's laws of motion, and so on. Given this fact, one can validly contend that there are rights beyond the command of the sovereign— Natural Rights which from time to time compels the sovereign to promulgate laws in its favour. It therefore, follows that without government, laws and rights exist. Thus, Bentham's view that without government there are no laws and rights (Point 3) is repudiated.

Bentham further contends that natural rights are rights over no specific object (Point 4). It is too general, abstract, unbounded, hence, meaningless. When it is claimed, for instance, 'We have a legal right to P', there is concrete evidence, in which case, we can refer to the law to confirm our claim, but to say 'we have a natural right to P' is abstruse, for there is no concrete reference. It is vague and confusing, and hence, nonsensical. But how correct is this Bentham's view? That one cannot empirically refer to or verify natural right does not make the idea of natural rights nonsensical? The fact of natural law is crucial here. Now, reason is very fundamental to natural law as it analyses human nature and deduces binding principles or rules of moral conduct or behaviour. 'Natural Rights' as a product of nature, shares the knack of reason. Given this, it is mistaken to consider it unreasonable. As general as 'natural rights' may be derided, particular instances of it abound. For instance, we could talk about a person's right to live, a person's right to breathe fresh air, a person's right to know his or her medical diagnosis, a woman's right not to be raped, a worker's right to be paid his (agreed) wages, a child's right not to be sold for money by his or her parents, a person's right to request what was promised him or her, and so on (Feinberg 150). All these are natural rights which are evident even when we cannot refer to any governmental law upholding them. With or without legal backing, they remain rights. Indeed, natural rights are real and make sense outside the law. Rights could be natural, yet, not legal and vice versa. For instance, the right to revolt can't be legalised by the government, yet, it could be naturally right to revolt. Suppose we have a

totalitarian regime that delights in killing people (as well as seizing their wives) who criticise its malevolent policies, would the citizens be justified in revolting against such regime even when they lack the legal right to do so? I think the answer is yes.

The charge of incorporeity (Point 5) against ‘natural rights’ is to me, unconvincing. Reality (as earlier argued), is not absolutely empirical. In science, for instance, we talk about forces and energy, yet, these concepts cannot be seen with our eyes or touched with our hands? We talk about the meaningfulness of Newton’s First law of motion— A body continues in its state of rest or uniform motion along a straight line unless compelled to do otherwise by an impressed force (Newton 14) and the First law of Thermodynamics— “energy cannot be created nor destroyed” (Atkins 16) but can be transformed from one form to another, yet, we cannot see or touch ‘force’ and ‘energy’. If meaningfulness and reasonableness could be attributed to concepts such as ‘force’ and ‘energy’, I strongly think that it is not unreasonable to believe the existence of natural rights, even though they are not empirically verifiable.

Another charge against ‘natural rights’ by Bentham is that it cannot function as a legal restraint (Point 6). The best it could do is to tell us what we ought to do. First, for Bentham to talk about ‘natural rights’ being able to tell us what we ought to do tends to confirm the reality and reasonableness of ‘natural rights’, thus, a contradiction to his position. If the best natural right could do is to tell us what we ought to do, then, the idea of the existence of natural rights is reasonable. Telling us what we ought to do, obviously, would lead many in the right direction, and to the extent it does this, it is reasonable and so, not nonsensical. Second, that natural right cannot function as a legal restraint is no proof of it being nonsensical. The fact that it could induce promulgation, modification, and amendment of laws, makes it sensible.

Another point: natural right functions as a natural restraint. This, I am convinced, is the case. Why, for instance, do men and women not marry their own (biological) children (in the event of death of their spouses or divorce) and fulfil all marital obligations which, of course, include procreation? Why do siblings not marry? Why do rapists not rape their own mothers? Why are male and female students not housed in the same room? Why do people not pop into other people’s privacies as often as they want? Clearly, nature is at work. There’s natural restraint. A possible response to this position might be that there have been cases of, for instance, incest which tend to violate the so-called natural principles. My reply is this: a few contrary evidence does not invalidate the reality of natural rights just as the breaking of laws promulgated by the government does not prove the inexistence of laws and legal rights.

On the view that natural rights have no source (Point 7), I strongly disagree with Bentham. He makes the point that when you talk about a legal right, he knows because he knows the source, and the source is the law as promulgated by the government, but for a natural right, he knows not. My response (in view of the arguments I have put forward so far) is simple: Natural rights emanates from nature just as the natural laws. Nature confers it on persons and it thus, remains inalienable and imprescriptible. It is, therefore, not the case that a natural right is a son that never had a father as claimed by Bentham. While Bentham is of the view that legal right is the child of the law, I aver that natural right is the son of Nature.

Finally, Bentham holds the view that natural rights are anarchical (Point 8). This, he contends, is the case since ‘natural rights’ is said to be prior to law and so cannot be regulated by it. Bentham is of the view that the idea of natural rights is used to resist laws and to revolt against the government. It is an instrument in the hands of disloyal citizens to create chaos in the state. Chaos in the state, I am convinced, does not render natural right unreasonable. That government fails to uphold the natural rights of its citizens which as a consequence leads to chaos does not render natural right unreasonable. Unreasonableness here, I argue, could be located in the government for its refusal to hearken to the voice of reason. Truly, no government which fails to uphold the natural rights of its citizens will have peace, for these rights are known to the citizens and they cherish them dearly and are even ready to die for them. What government can have peace when it deprives its citizens the right to breathe fresh air, the right to vote, the right to acquire property, the right to freedom of worship, the right to security of life and property, the right to freedom from arbitrary arrest and imprisonment, the right to freedom of employment and so on? It is, therefore, not the case that ‘natural rights’ is anarchical, rather, it is its non-recognition that is capable of inducing a state of anarchy.

My position, contrary to Bentham's can be summarised as follows: (1) Not all rights are created by law. Natural rights are not; (2) Not all laws are the command of the sovereign. Natural laws are not; (3) Without government there are laws (natural) and rights (natural) which exist; (4) Natural rights, though, universal, are also rights over specific objects; (5) Natural rights, although corporeal, are meaningful; (6) 'Natural rights', even if it cannot function as a legal restraint, functions as a natural restraint; (7) Natural rights have source, namely, Nature; (8) Natural rights are not anarchical, rather, it is their non-recognition by the government that can induce a state of anarchy. Therefore, the idea of 'Natural rights' is sensible [in view of (1) – (8)].

Beyond attacking Bentham's claims, I consider the reasonableness and reality of natural rights in light of human development. Human development I aver, intersect with human rights. It is a truism that human development is a well-being notion which emphasises human well-being as the goal of development. Among the basic pillars of human developments are equity, productivity, sustainability, and cooperation (UNDP 232-237). Equity is the notion of fairness among humans. Thus, all humans irrespective of race, gender and religion have the equal right to employment, education, health care, and so on. Productivity allows all humans to fully engage or participate in meaningful and legitimate endeavours geared towards income generation. Sustainability, on its part, confers on people, the right to earn a living in order to sustain their lives. It also allows people access to the equitable distribution of goods and services for the sustainability of their life. Finally, cooperation allows people to cooperate with others, belong to associations and establish communities in order to have a meaningful life. All this tends to show that human development is interrelated with natural rights as its basic pillars recognise natural rights and natural rights are evident in, among other virtues, treating people equally, offering them the freedom and right to produce in order to sustain their lives, as well as cooperate with fellow humans for their well-being.

It is worthy of note that the universal declaration of human rights by the United Nations is premised on the idea of human rights. It emphasised the "recognition of the inherent dignity and of the equal and inalienable rights of all members of human family" and affirmed that it is "the foundation of freedom, justice and peace in the world" (United Nations Universal Declaration of Human Rights 1948 1). It is also this idea of natural rights that inspired the 1776 American declaration of independence. In recognition of the natural rights of humans, The Declaration of Independence in part reads:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. (1)

More so, the French Revolution of 1789 was galvanized by the doctrine of natural rights. Article 2 of the Declaration of the Rights of Man and of the Citizen (1789) which is the underlying document of the French Revolution affirms that "The aim of political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression". Both the 'American Declaration of Independence' and the 'French Declaration of the Rights of Man', as well as the 'United Nations Universal Declaration of Human Rights' have had much impact on the development of freedom and democracy in the world. Clearly, the notion of the existence of natural rights has to a reasonable extent, helped to secure people's dignity, as well as build self-respect and respect for others, ultimately improving human well-being.

In light of the arguments put forward against Bentham's thought on natural rights and the invaluable contribution of natural rights to human development, it becomes a reasonable supposition that the very idea that persons have non-legal rights (natural rights) is sensible, contrary to Bentham's view that it is nonsensical.

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