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Mill's conception of « Human » Rights

Abstract

I treat in this work of the millian conception of human rights as a serious expression and depiction of the debate that took place in the XIX Century about the Declaration of the Human Rights and the moral theory of John Stuart Mill. This moral theory illustrates a special utilitarianism that does not support the human rights position Bentham criticized and rejected but integrates a conception of moral justice and moral rights juxtaposed alongside the justice and legal rights Bentham defended. The main points I make are founded on an ontology which conceived man not as abstracted essence but as infinite possibilities. Mill's moral theory of justice and rights is applied to the case of women' subjection to prove that without liberty and without equality human possibilities will never become fully realized and any worthy life is possible for human beings whether they be men or women.

Intoduction

The starting point of my reflection that I would have the pleasure of sharing with you is two texts. The first is an extract of chapter one of *On Liberty* where Mill distinguished the argument for liberty from abstract right when he said: "It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility" (1). The second text is the recent book of James Griffin *On Human Rights* where it is asserted that : "Neither Kant nor Mill was trying to explore the notion of human rights as it appears in that historical tradition they were just commandeering the term « human rights »(or natural or in Mill's case just plain « rights » to do service in the exposition of their own general moral theory" (2).

These comments led me to ask the following questions : What are these abstract rights that Mill's conception of rights allows him to reject ? What role Bentham, founder of utilitarianism and a harsh critiquer of human rights, plays in Mill's theory of right? When we consider Mill as utilitarian, we have to ask what are the links between right and justice on one side and between right and the principle of utility on the other side which constitutes the *philosophia prima* of his general moral theory?

While treating these problems we have to keep present in mind two things:

First, Mill's criticism of Bentham and second his commitment for the defense of many causes such as workers', blacks ' and women's causes. Mill's defense of these causes legitimizes our research of a special conception of Mill's rights. Even though it is so far from the declaration of human rights in 1789, because of their abstract and metaphysical character but which is so near to the universal declaration of human rights of 1949 by the human ontology it supposes.

Treating this question of Mill's human rights will be an occasion of giving an illustration of Mill's original utilitarianism which is larger and deeper than Bentham's and which protects rights Bentham did his utmost to reject.

We shall tackle Mill's conception of rights in three steps which we respectively qualify as polemical, theoretical and practical .

First, we present Bentham's critique of human rights and the arguments that found it and the critique Mill addresses to his moral and political theory.

Second, we examine the meaning Mill gives to rights in general and moral rights in particular, which are for us Human rights founded on Mill's conception of human nature. Finally, we will show the practical aspect of Mill's theory of moral rights applied to the cause of women and distinguished from natural and legal rights. In this case we illustrate Mill's defense of justice and equality between men and women that was not recognized in the French Declaration of Human Rights(1789) and that will be approved years after Mill's *Subjection of Women*(1869) by the Universal Declaration of Human Rights in 1949.

I- Bentham, Human rights and Mill's critic

I-1 Bentham and human rights critique's

Bentham formulated his critique of human rights and citizen of 1789 in *Anarchical fallacies, being an Examination of the declaration of Rights issued during the French Revolution*,⁽³⁾ at the occasion of the debate about French revolution and when he was searching the appropriate method for happiness. For Bentham, human happiness can not be determined in reference to a subjective good or to natural rights like those announced by the Declaration of American Independence or the Rights of Man and Citizen. It will be better to refer to laws that are for Bentham, commandments conceived by a sovereign power that is not limited by a theory of natural rights. Those laws have to help individuals in finding their proper way to happiness . They are necessary to tie people mutually because laws qualified by their sanctions do not give rise to liberty but exclude its necessity to general happiness.

For Bentham , a rational political order is the order in which we distinguish precisely what is obligatory from what is relevant to private choice. Bentham's theory deals with the relation between private ethics and legal obligations, but what is pre-eminent for him is the law not the right. From this pre-eminence of law, Bentham criticizes human rights.

Bentham's critique of human rights concerns two levels : a theoretical level that deals with the errors of this theory. The second level concerns the practical faults as he said : "In running over the several articles, I shall on the occasion of each article point out, in the first place, the errors it contains in theory, and then in the second place, the mischiefs it is pregnant with in practice" (4).

Relating to the first level, Bentham attacks the first article of Human rights declaration which states that all human beings are born and remain free and that they are born and remain equal in rights. Bentham rejects contractual theories and the natural and imprescriptible characteristics of human rights when he said : "Natural rights is simple nonsense : natural and imprescriptible rights rhetorical nonsense_nonsense upon stilts" (5). Natural rights for Bentham are absurd because they are conceived independently of government and of law. For Bentham the law is the only origin of right because the existence of rights must be preceded by the existence of political power which defines

the laws as he said : “*Right*, is the child of law : from real laws come real rights; but from imaginary laws, from imaginary, from laws of nature fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights, a bastard brood of monsters” (6). As the law does not rest on metaphysical or theological foundation, it is contradictory to speak about rights independently from human and positive laws, and human general happiness.

From a practical point of view a theory of human rights for Bentham is not founded on utility because it is opposed to government and peaceful society and gives rise to anarchy and chaos. In conclusion, Bentham denies that the defense of human rights is a triumph of justice but it illustrates the injustice made to society.

Even though Mill recognizes the important role of Bentham in the field of legislation, he criticizes him concerning his political and moral theory that accepts only real and judicial right and admits only one justice, legal justice .

I-2 Mill, critique of Bentham

In his article *Bentham* (7) Mill reproaches two main points to Bentham considered as a philosopher not as a philosopher who revolutionized the field of legislation .

The first thing is concerned with the aspects of human nature. Mill reproaches Bentham for his inability to understand human feeling when he said :” In many of the most natural and strongest feelings of human nature he had no sympathy” (8). Such fault is due to a lack of imagination which is a main human faculty and a power that enables one to fathom another’s mind and its circumstances. Without imagination many real things remain unknown for man. Lack of imagination enables Bentham to conceive man rightly and perceive the existence of conscience and the importance of human feelings especially the dignity feeling or what Mill calls self respect in the moral field.

From this critique, Mill has to present a systemic and ethical vision and an approach of moral questions that requires an exhaustive knowledge of human nature or as he said : “ a profound knowledge of human heart” and not only of human reason .

It is the case for Mill to integrate in his moral theory the aspects Bentham neglected because he is only interested in the moral aspect that concerns our reason. But for Mill, there are two other aspects : The aesthetic aspect that deals with the beauty of an action and the sympathetic aspect that gives an action its *loveableness*. The second aspect refers to imagination and the third to a sympathetic feeling towards our fellow

creatures. It is within this moral conception that takes into account these three aspects that Mill presents his concept of right that can not be conformed to Bentham's.(9)

This millian conception of right is integral to his general moral theory where utility is not denied but where a strong feeling of justice one finds a special right, moral or human right.

II-John Stuart Mill, legal rights and moral rights

Mill's conception of rights is juxtaposed to his relation to Bentham and to utilitarianism. Apprehended in its diachronical dimension, this relation passes through three periods (10).

During the first period, Mill adopted the same conception of right as Bentham that we summarized in the first part of our analysis.

The second period is that of Mill's critique of Bentham (1826-1845) when Mill distinguished legal rights from moral rights. The third period, that begins in 1845 is a period of the consolidation and the development of Mill's own conception of rights.

We will recall briefly Mill's distinction between moral rights and legal rights that appeared during the second period and we will present his conception developed in chapter V of *Utilitarianism*.

Even though Mill accepted the influence of Bentham when he found right in obligation or law, in 1832 he introduced in *Use and abuse of political terms* another kind of rights and obligations : moral rights and moral obligations. This distinction appears in these terms : "Right is the correlative of duty, or obligation; and (with some limitations) is co-extensive with those terms. Whatever any man is under an obligation to give you, or to do for you, to that you have a right. There are legal obligations, and there are consequently legal rights. There are also *moral* obligations; and no one, that we know of considers this phrase an abuse of language, or proposes that it should be dispensed with. It seems, therefore, but an adherence to the established usage of our language, to speak of moral rights; which stand in the same relation to moral obligations as legal rights do to legal obligations." (11). We notice the ironic style in Mill's quotation when he asserts twice that speaking of moral rights is not "an abuse of language" or an opposition to the right use of English language as Bentham thought when he addressed his critiques to human rights. When Mill admits these two kinds of rights, he does not reject Bentham's critiques of human rights for him, but he admits moral rights that express a human reality. Mill is

obliged to enlarge his moral conception to contain these moral rights distinguished from legal rights and to define the differences between both of them and the kinds of relations between them.

Mill accomplishes these tasks many years after in chapter V of *Utilitarianism* that concerns justice and its relation to utility.

Mill begins this chapter by reminding one of the common meaning of justice as opposed to utility and that supposes the existence of “an inherent quality in things; to show that the Just must have an existence in Nature as something absolute—generically distinct from every variety of the Expedient, and, in idea, opposed to it, though (as is commonly acknowledged) never, in the long run, disjoined from it in fact.” (12). This expression of “the majority of thinkers” asserts that the just is objectively existent independently of its link to utility. The just is the origin of natural rights that are supposed to be logically anterior to positive rights.

It is on the occasion of the analysis of the feeling of injustice that the notion of right appears in chapter V of *Utilitarianism* when Mill asserts : “ We may say, therefore, that a second case of injustice consists in taking or withholding from any person that to which he has a *moral right*” (13). For Mill, justice is not conformity to a law because we can consider a law as unjust : there is injustice for Mill when a right is encroached upon .

But what is this nature’s right? Is it a real and legal right founded on law or is it an abstract right as Bentham said ?

To resolve this difficulty, Mill imagined that he was in the place of a person whose right is encroached upon and who asks for his right. Mill tries to analyse this feeling of injustice by a feeling of sympathy . Justice is not defined as the mean to give someone’s right fixed by the law, because the individual can claim legitimately another kind of right, moral right referred to another justice, moral justice as Mill said : “Justice implies something which is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right ” (14).

But the problem is how to preserve these moral rights if legal rights are protected by laws, do we have to protect moral rights by force and violence, individual or collective?

Mill resolves this problem by saying : “To have a right, then is I conceive, to have something which society ought to defend me in the possession of ” (15). Moral rights for Mill are not rights that the individual possesses and protects by his own means without the recognition and the help of society because moral rights are not natural rights

independent of society and its protection . The recognition of moral rights by society is commitment to the evolution of society and its conviction of their utility. For this reason Mill tries to link, with skill, justice to moral rights and to utility. By this mean he doe not break off with utilitarianism but he moves away from Bentham by giving a large meaning to justice that includes moral rights, a field rejected by Bentham when he rejected human rights.

III – Application :Equality between sexes and moral rights .

The problem of equality between sexes had its roots in the XVIIth century when Mary Wollstoncraft published *The vindication of the rights of woman* (1792)(16). It continued through the XIXth century with William Thompson , who in reaction to the article of James Mill the father of John Stuart Mill, in 1825 wrote “ *Appeal of one half of the human race women, against the other half Men, to retain them in political and thence in civil and domestic slavery. In reply to a paragraph in Mr Mill’s Article on Government.*” (17). During this period we find two prevalent ideas : the recognition of the subjection of women and the vindication of the right to vote. Mill published his *Subjection of Women* which made him the first feminist philosopher. In our approach to this book we only emphasize the idea of opposition between legal rights and moral rights, between legal justice and moral justice . When describing this conflict Mill defended women’s rights that express a legitimate feeling of injustice and a claim of liberty. His defense has not a metaphysical foundation but when we examine the millian moral we notice that its foundations suppose a particular conception of man, which Bentham did not develop. These moral rights that Mill juxtaposed to legal rights are in need of a concept of man different from that of the metaphysical school but that is an ontological conception although it denies an essential definition of man. Mill’s rejection of the essential definition of man is one of the reasons for his rejection of moral rights as natural rights.

We can find three reasons for his rejection :

- 1- Mill rejects nature as a foundation of ethics and as an ethical model because he rejects all theological foundations of morals expressed by nature.(18)
- 2- Natural rights stay on intuitive and *a priori* foundations of morals that Mill rejected. (19)
- 3- Natural rights are generally considered as rights preceding society and independent of it. But for Mill every right requires the intervention of society to recognize it and to preserve it by law or by education, and the development of culture and science. Society also offers various circumstances that allow the exercise and the preservation of these moral rights.

But what are these moral rights distinguished from natural and legal rights. ?

Legal right is defined by law that determines what I possess, but concerning moral right, what I possess is determined by my human being status. But What is a human being for Mill?

It is not easy to answer this question because it depends upon a human being conception presented through Mill's works but not one presented systematically. To resolve this problem we return to a logical analysis in which Mill gives a definition to the word "man" or human nature. Referring to *System of logic*, human nature is the general name defined as « ... A name which is capable of being truly affirmed, in the same sense, of each of an indefinite number of things. An individual or singular name is a name which is only capable of being truly affirmed, in the same sense, of one thing. Thus, *man* is capable of being truly affirmed of John, George, Mary , and other persons without assignable limit; and it is affirmed of all of them in the same sense; for the word man expresses certain qualities, and when we predicate it of those persons, we assert that they all possess those qualities» (20). Mill rejects the definition of human as an entity that exists *per se* or an essence that is embodied in individuals. Human nature as a general name means particular attributes that are perpetually linked to nature, society and history and that appear through these links .

What are these attributes with which Mill defines man ?

Before all, we have to notice that man is characterized by his complexity as Mill notes it in his critique of Bentham. If Mill recognizes that man has moral rights, that is because of his complexity and the variety of his possibilities that man claims his moral rights without which he can not realize his self . Man has many wants that Mill resumes in this text : "After the primary necessities of food and raiment, freedom is the first and strongest want of human nature"(21). There are two kinds of needs that belong to different orders : the necessity order and the liberty order. Referring to biological and chronological order man is in need of food and raiment, whereas in an ontological and axiological order, liberty represents the first need of man. By the first category, man preserves his self as an animal, by the second he realizes his self as a man. We can resume these moral rights in liberty. It's the main right by which human individual asserts his deference in thought and his way of life. This liberty is absolute : «In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.» (22)

As a moral human being, man possesses his right to liberty and it will be morally unjust to deprive him of liberty because it means to deprive him of his humanity and to count him among animals and automatons.

But if liberty is considered as an absolute right of the individual does it mean that the principle of utility is put in peril ?

For Mill there is no risk of contradiction between liberty and utility because he has reformed the principle of utility to be not opposed to liberty : « I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being » (23)

Mill asserts that there are permanent interests of the individuals concerning the field of conscience, thought, opinion, feelings, concerning all subjects, speculative, scientific, moral, and theological. So the moral theory of Mill comprehends at the same time utility, liberty, perfectibility to realize the happiness of man as a moral being, that has moral rights which he can justly claim as possible as they do not encroach upon legal rights. It will be unjust for Mill to deprive man of his liberty because it will be contradictory to utility. Society has not any advantage in depriving individuals of their moral right, including when they live in a state of subjection like women. Mill thinks that women are deprived of their moral rights and so they express their feeling of injustice and claim equality with men to realize themselves as human beings.

In the name of justice Mill denounces the subjection of women and defends equality between sexes in all fields economic, political and social. Injustice has its origins in the opposition between moral rights and the existing laws, so it is necessary to establish a moral justice which is not only meta - legal but anti- legal (24). The existing laws concerning women establishes their inferiority founded in nature . But Mill rejected the existence of women nature inferred from historical and cultural conditions which direct women ideas, feelings and actions as they exist, given that there are possibilities which societies ancient and actual do not allow their development. These circumstances can not determine women because it will be sufficient to change laws and customs and to recognize women' moral rights to allow other female attributes to appear.

For Mill it is possible for human beings to influence the circumstances by the will and by choosing and perfecting themselves in the case of abolishing the right of the strongest which is a natural right.

The law of the strongest is not considered as legitimate by Mill because strength is not a legal or ethical model for men because every ethics is opposed to nature and tends to

correct it as Mill says : “But this dependence, as it exists at present, is not an original institution taking a fresh start from considerations of justice and social expediency”(25). The preeminence of the law of the strongest in the relationship between the two sexes is well illustrated in a marriage contract.

The contract of marriage allows legally women’s subjection to their husbands. This contract does not recognize any right to women and obliges them to obey their husbands. Mill discerned the difference between what the laws must be and what they really are. Laws must guarantee liberty, justice and equality but the marriage contract allows slavery, injustice and inequality as Mill says:”The law, not determining her rights, but theoretically allowing her none at all, practically declares that the measure of what she has a right to, is what she can contrive to get”(26) The law for Mill can be unjust when it encourages selfishness, and the worst feelings that exist as possibility , to exist as reality.

This state is more unjust because it is confirmed by laws and because the normal state of society is a state of equality. Mill defends a moral of justice that resolves contradictions between the spirit of law and the spirit of the age. Women, as human beings, that means infinite possibilities, are in need for their perfection of power shared with man. Human perfectibility is founded for Mill on justice, liberty and utility as he says : “ We have had the morality of submission, and the morality of chivalry and generosity; the time is now come for the morality of justice . Whenever, in former ages, any approach has been made to society in equality. Justice has asserted its claims as the foundation of virtue”(27)

Conclusion

We conclude our analysis by asserting that Mill’s conception of rights is full of nuances when compared to that of the declaration of human rights and of Bentham .

It is not the case for Mill to defend abstract rights or metaphysical human rights such as natural rights or theological rights. It is necessary for Mill to recognize moral rights for man as a moral human being who is not defined by a preexistent essence, for man is a set of infinite possibilities the realization of requires a typical environment. This environment allows him to enjoy moral rights which have a historical character : they have to be recognized by society, guaranteed by laws when society attains a normal state, state of equality, liberty and justice. In this state every kind of subjection is abolished comprehending women’s subjection .

When we take into account Mill's analysis of justice we remark that moral rights have a hybrid character, that come from reason and feeling . They express a human nature which is at the same time identical and different . Put into Mill's general theory of morals, moral rights are the meeting point of the principle of liberty, of utility and of perfectibility.

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are conceived human rights not as abstracted gasoline but as infinite possibilities. Without liberty and without equality these possibilities never will realize themselves and any worthy life is possible for the human etres that they be men or women.