Anarchical Fallacies;

being an examination of the Declaration of Rights issued during the French Revolution

by Jeremy Bentham

Preliminary Observations

THE Declaration of Rights – I mean the paper published under that name by the French National Assembly in 1791 – assumes for its subject-matter a field of disquisition as unbounded in point of extent as it is important in its nature. But the more ample the extent given to any proposition or string of propositions, the more difficult it is to keep the import of it confined without deviation, within the bounds of truth and reason. If in the smallest corners of the field it ranges over, it fail of coinciding with the line of rigid rectitude, no sooner is the aberration pointed out, than (inasmuch as there is no medium between truth and falsehood) its pretensions to the appellation of a truism are gone, and whoever looks upon it must recognise it to be false and erroneous – and if, as here, political conduct be the theme, so far as the error extends and fails of being detected, pernicious.

In a work of such extreme importance with a view to practice, and which throughout keeps practice so closely and immediately and professedly in view, a single error may be attended with the most fatal consequences. The more extensive the propositions, the more consummate will be the knowledge, the more exquisite the skill, indispensably requisite to confine them in all points within the pale of truth. The most consummate ability in the whole nation could not have been too much for the task – one may venture to say, it would not have been equal to it. But that, in the sanctioning of each proposition, the most consummate ability should happen to be vested in the heads of the sorry majority in whose hands the plenitude of power happened on that same occasion to be vested, is an event against which the chances are almost as infinity to one.

Here, then, is a radical and all-pervading error – the attempting to give to a work on such a subject the sanction of government; especially of such a government – a government composed of

members so numerous, so unequal in talent, as well as discordant in inclinations and affections. Had it been the work of a single hand, and that a private one, and in that character given to the world, every good effect would have been produced by it that could be produced by it when published as the work of government, without any of the bad effects which in case of the smallest error must result from it when given as the work of government.

The revolution, which threw the government into the hands of the penners and adopters of this declaration, having been the effect of insurrection, the grand object evidently is to justify the cause. But by justifying it, they invite it: in justifying past insurrection, they plant and cultivate a propensity to perpetual insurrection in time future; they sow the seeds of anarchy broad-cast: in justifying the demolition of existing authorities, they undermine all future ones, their own consequently in the number. Shallow and reckless vanity! – They imitate in their conduct the author of that fabled law, according to which the assassination of the prince upon the throne gave to the assassin a title to succeed him. '*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.*' Such is the constant language, for such is the professed object of this source and model of all laws – this self-consecrated oracle of all nations.

The more *abstract* – that is, the more *extensive* the proposition is, the more liable is it to involve a fallacy. Of fallacies, one of the most natural modifications is that which is called *begging the question* – the abuse of making the abstract proposition resorted to for proof, a lever for introducing, in the company of *other* propositions that are nothing to the purpose, the very proposition which is admitted to stand in need of proof.

Is the provision in question fit in point of expediency to be passed into a law for the government of the French nation? That, *mutatis mutandis*, would have been the question put in England: that was the proper question to have been put in relation to each provision it was proposed should enter into the composition of the body of French laws.

Instead of that, as often as the utility of a provision appeared (by reason of the wideness of its extent, for instance) of a doubtful nature, the way taken to clear the doubt was to assert it to be a provision fit to be made law for all men – for all Frenchmen – and for all Englishmen, for example, into the bargain. This medium of proof was the more alluring, inasmuch as to the advantage of removing opposition, was added the pleasure, the sort of titillation so exquisite to the nerve of

vanity in a French heart – the satisfaction, to use a homely, but not little less apposite proverb, of teaching grandmothers to suck eggs. Hark ye citizens of the other side of the water! Can you tell us what rights you have belonging to you? No, that you can't. It's *we* that understand rights: not our own only, but yours into the bargain; while you poor simple souls! know nothing about the matter.

Hasty generalization, the great stumbling-block of intellectual vanity! – hasty generalization, the rock that even genius itself is so apt to split upon! – hasty generalization, the bane of prudence and of science!

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The great enemies of public peace are the selfish and dissocial passions: – necessary as they are – the one to the very existence of each individual, the other to his security. On the part of these affections, a deficiency in point of strength is never to be apprehended: all that is to be apprehended in respect of them, is to be apprehended on the side of their excess. Society is held together only by the sacrifices that men can be induced to make of the gratifications they demand: to obtain these sacrifices is the great difficulty, the great task of government. What has been the object, the perpetual and palpable object, of this declaration of pretended rights? To add as much force as possible to these passions, already but too strong, – to burst the cords that hold them in, – to say to the selfish passions, there – everywhere – is your prey! – to the angry passions, there – everywhere – is your enemy.

Such is the morality of this celebrated manifesto, rendered famous by the same qualities that gave celebrity to the incendiary of the Ephesian temple.

The logic of it is of a piece with its morality: – a perpetual vein of nonsense, flowing from a perpetual abuse of words, – words having a variety of meanings, where words with single meanings were equally at hand – the same words used in a variety of meanings in the same page, – words used in meanings not their own, where proper words were equally at hand, – words and propositions of the most unbounded signification, turned loose without any of those exceptions or modifications which are so necessary on every occasion to reduce their import within the compass, not only of right reason, but even of the design in hand, of whatever nature it may be; – the same

† denotes an omission in the text

inaccuracy, the same inattention in the penning of this cluster of truths on which the fate of nations was to hang, as if it had been an oriental tale, or an allegory for a magazine: – stale epigrams, instead of necessary distinctions, – figurative expressions preferred to simple ones, – sentimental conceit as trite as they are unmeaning, preferred to apt and precise expressions, – frippery ornament preferred to the majestic simplicity of good sound sense, – and the acts of the senate loaded and disfigured by the tinsel of the playhouse.

In a play or a novel, an improper word is but a word: and the impropriety, whether noticed or not, is attended with no consequences. In a body of laws – especially of laws given as constitutional and fundamental ones – an improper word may be a national calamity: – and civil war may be the consequence of it. Out of one foolish word may start a thousand daggers.

Imputations like these may appear general and declamatory – and rightly so, if they stood alone: but they will be justified even to satiety by the details that follow. Scarcely an article, which in rummaging it, will not be found a true Pandora's box.

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.

The criticism is verbal: – true, but what else can it be? Words – words without a meaning, or with a meaning too flatly false to be maintained by anybody, are the stuff it is made of. Look to the letter, you find nonsense – look beyond the letter, you find nothing.

Article I

Men (all men) are born and remain free, and equal in respect of rights. Social distinctions cannot be founded, but upon common utility.

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All men are born free? All men remain free? No, not a single man: not a single man that ever was, or is, or will be. All men, on the contrary, are born in subjection, and the most absolute subjection – the subjection of a helpless child to the parents on whom he depends every moment for his existence. In this subjection every man is born – in this subjection he continues for years – for a great number of years – and the existence of the individual and of the species depends upon his so doing.

What is the state of things to which the supposed existence of these

supposed rights is meant to bear reference? – a state of things prior to the existence of government, or a state of things subsequent to the existence of government? If to a state prior to the existence of government, what would the existence of such rights as these be to the purpose, even if it were true, in any country where there is such a thing as government? If to a state of things subsequent to the formation of government – if in a country where there is a government, in what single instance – in the instance of what single government, is it true? Setting aside the case of parent and child, let any man name that single government under which any such equality is recognised.

All men born free? Absurd and miserable nonsense! When the great complaint – a complaint made perhaps by the very same people at the same time, is – that so many men are born slaves. Oh! but when we acknowledge them to be born slaves, we refer to the laws in being; which laws being void, as being contrary to those laws of nature which are the efficient causes of those rights of man that we are declaring, the men in question are free in one sense, though slaves in another; – slaves, and free, at the same time: – free in respect of the laws of nature – slaves in respect of the pretended human laws, which, though called laws, are no laws at all, as being contrary to the laws of nature. For such is the difference – the great and perpetual difference, betwixt the good subject, the rational censor of the laws, and the anarchist – between the moderate man and the man of violence. The rational censor, acknowledging the existence of the law he disapproves, proposes the repeal of it: the anarchist, setting up his will and fancy for a law before which all mankind are called upon to bow down at the first word – the anarchist, trampling on truth and decency, denies the validity of the law in question, – denies the existence of it in the character of a law, and calls upon all mankind to rise up in a mass, and resist the execution of it.

All men are born equal in rights. The rights of the heir of the most indigent family equal to the rights of the heir of the most wealthy? In what case is this true? I say nothing of hereditary *dignities* and *powers*. Inequalities such as these being proscribed under and by the French government in France, are consequently proscribed by that government under every other government, and consequently have no existence anywhere. For the total subjection of every other government to French government, is a fundamental principle in the law of universal independence – the French law. Yet neither was this true at the time of issuing this Declaration of Rights, nor was it meant to be so afterwards. The 13th article, which we shall come to in its place,

proceeds on the contrary supposition: for, considering its other attributes, inconsistency could not be wanting to the list. It can scarcely be more hostile to all other laws than it is at variance with itself.

All men (i.e. all human creatures of both sexes) *remain equal in rights*. All men, meaning doubtless all human creatures. The apprentice, then, is equal in rights to his master; he has as much liberty with relation to the master, as the master has with relation to him; he has as much right to command and to punish him; he is as much owner and master of the master's house, as the master himself. The case is the same as between ward and guardian. So again as between wife and husband. The madman has as good a right to confine anybody else, as anybody else has to confine him. The idiot has as much right to govern everybody, as anybody can have to govern him. The physician and the nurse, when called in by the next friend of a sick man seized with a delirium, have no more right to prevent his throwing himself out of the window, than he has to throw them out of it. All this is plainly and incontestably included in this article of the Declaration of Rights: in the very words of it, and in the meaning – if it have any meaning. Was this the meaning of the authors of it? – or did they mean to admit this explanation as to some of the instances, and to explain the article away as to the rest? Not being idiots, nor lunatics, nor under a delirium, they would explain it away with regard to the madman, and the man under a delirium. Considering that a child may become an orphan as soon as it has seen the light, and that in that case, if not subject to government, it must perish, they would explain it away, I think, and contradict themselves, in the case of guardian and ward. In the case of master and apprentice, I would not take upon me to decide; it may have been their meaning to proscribe that relation altogether; – at least, this may have been the case, as soon as the repugnancy between that institution and this oracle was pointed out; for the professed object and destination of it is to be the standard of truth and falsehood, of right and wrong, in everything that relates to government. But to this standard, and to this article of it, the subjection of the apprentice to the master is flatly and diametrically repugnant. If it do not proscribe and exclude this inequality, it proscribes none: if it do not do this mischief, it does nothing.

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Article II

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 I. 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 holden 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 undistinguisable 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.

What is the real source of these imprescriptible rights – these unrepealable laws? Power turned blind by looking from its own height: self-conceit and tyranny exalted into insanity. No man was to have any other man for a servant, yet all men were forever to be their slaves. Making laws with imposture in their mouths, under pretence of declaring them – giving for laws anything that came uppermost, and these unrepealable ones, on pretence of finding them ready made.

Made by what? Not by a God – they allow of none; but by their goddess, Nature.

The origination of governments from a contract is a pure fiction, or in other words, a falsehood. It never has been known to be true in any instance; the allegation of it does mischief, by involving the subject in error and confusion, and is neither necessary nor useful to any good purpose.

All governments that we have any account of have been gradually established by habit, after having been formed by force; unless in the instance of governments formed by individuals who have been emancipated, or have emancipated themselves, from governments already formed, the governments under which they were born – a rare case, and from which nothing follows with regard to the rest. What signifies it how governments are formed? Is it the less proper – the less conducive to the happiness of society – that the happiness of society should be the one object kept in view by the members of the government in all their measures? Is it the less the interest of men to be happy – less to be wished that they may be so – less the moral duty of their governors to make them so, as far as they can, at Mogadore than at Philadelphia?

Whence is it, but from government, that contracts derive their binding force? Contracts came from government, not government from contracts. It is from the habit of enforcing contracts, and seeing them enforced, that governments are chiefly indebted for whatever disposition they have to observe them.

Sentence 2. These rights (these imprescriptible as well as natural rights,) are liberty, property, security, and resistance to oppression.

Observe the extent of these pretended rights, each of them belonging to every man, and all of them without bounds. Unbounded liberty; that is, amongst other things, the liberty of doing or not doing on every occasion whatever each man pleases: – Unbounded property; that is, the right of doing with everything around him (with every *thing* at least, if not with every person,) whatsoever he pleases; communicating that right to anybody, and withholding it from anybody: – Unbounded security; that is, security for such his liberty, for such his property, and for his person, against every defalcation that can be called for on any account in respect of any of them: – Unbounded resistance to oppression; that is, unbounded exercise of the faculty of guarding himself against whatever unpleasant circumstance may present itself to his imagination or his passions under that name.

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Unbounded liberty – I must still say unbounded liberty; – for though the next article but one returns to the charge, and gives such a definition of liberty as seems intended to set bounds to it, yet in effect the limitation amounts to nothing; and when, as here, no warning is given of any exception in the texture of the general rule, every exception which turns up is, not a confirmation but a contradiction of the rule: – liberty, without any pre-announced or intelligible bounds; and as to the other rights, they remain unbounded to the end: rights of man composed of a system of contradictions and impossibilities.

In vain would it be said, that though no bounds are here assigned to any of these rights, yet it is to be understood as taken for granted, and tacitly admitted and assumed, that they are to have bounds; viz. such bounds as it is understood will be set them by the laws. Vain, I say, would be this apology; for the supposition would be contradictory to the express declaration of the article itself, and would defeat the very object which the whole declaration has in view. It would be self-contradictory, because these rights are, in the same breath in which their existence is declared, declared to be imprescriptible; and imprescriptible, or, as we in England should say, indefeasible, means nothing unless it exclude the interference of the laws.

It would be not only inconsistent with itself, but inconsistent with the declared and sole object of the declaration, if it did not exclude the interference of the laws. It is against the laws themselves, and the laws only, that this declaration is levelled. It is for the hands of the legislator and all legislators, and none but legislators, that the shackles it provides are intended, – it is against the apprehended encroachments of legislators that the rights in question, the liberty and property, and so forth, are intended to be made secure, – it is to such encroachments, and damages, and dangers, that whatever security it professes to give has respect. Precious security for unbounded rights against legislators, if the extent of those rights in every direction were purposely left to depend upon the will and pleasure of those very legislators!

Nonsensical or nugatory, and in both cases, mischievous: such is the alternative.

So much for all these pretended indefeasible rights in the lump: their inconsistency with each other, as well as the inconsistency of them in the character of indefeasible rights with the existence of government and all peaceable society, will appear still more plainly when we examine them one by one.

1. *Liberty*, then, is imprescriptible – incapable of being taken away – – out of the power of any government ever to take away: liberty, –

that is, every branch of liberty – every individual exercise of liberty; for no line is drawn – no distinction – no exception made. What these instructors as well as governors of mankind appear not to know, is, that all rights are made at the expense of liberty – all laws by which rights are created or confirmed. No right without a correspondent obligation. Liberty, as against the coercion of the law, may, it is true, be given by the simple removal of the obligation by which that coercion was applied – by the simple repeal of the coercing law. But as against the coercion applicable by individual to individual, no liberty can be given to one man but in proportion as it is taken from another. All coercive laws, therefore (that is, all laws but constitutional laws, and laws repealing or modifying coercive laws,) and in particular all laws creative of liberty, are, as far as they go, abrogative of liberty. Not here and there a law only – not this or that possible law, but almost all laws, are therefore repugnant to these natural and imprescriptible rights: consequently null and void, calling for resistance and insurrection, and so on, as before.

Laws creative of rights of property are also struck at by the same anathema. How is property given? By restraining liberty; that is, by taking it away so far as is necessary for the purpose. How is your house made yours? By debarring every one else from the liberty of entering it without your leave. But

2. *Property*. Property stands second on the list, – proprietary rights are in the number of the natural and imprescriptible rights of man – of the rights which a man is not indebted for to the laws, and which cannot be taken from him by the laws. Men – that is, every man (for a general expression given without exception is an universal one) has a right to property, to proprietary rights, *a right which* cannot be taken away from him by the laws. To proprietary rights. Good: but in relation to what subject? for as to proprietary rights – without a subject to which they are referable – without a subject in or in relation to which they can be exercised – they will hardly be of much value, they will hardly be worth taking care of, with so much solemnity. In vain would all the laws in the world have ascertained that I have a right to something. If this be all they have done for me – if there be no specific subject in relation to which my proprietary rights are established, I must either take what I want without right, or starve. As there is no such subject specified with relation to each man, or to any man (indeed how could there be?) the necessary inference (taking the passage literally) is, that every man has all manner of proprietary rights with relation to every subject of property without exception: in a word, that every man has a right to everything. Unfortunately, in

most matters of property, what is every man's right is no man's right; so that the effect of this part of the oracle, if observed, would be, not to establish property, but to extinguish it – to render it impossible ever to be revived: and this is one of the rights declared to be imprescriptible.

It will probably be acknowledged, that according to this construction, the clause in question is equally ruinous and absurd: – and hence the inference may be, that this was not the construction – this was not the meaning in view. But by the same rule, every possible construction which the words employed can admit of, might be proved not to have been the meaning in view: nor is this clause a whit more absurd or ruinous than all that goes before it, and a great deal of what comes after it. And, in short, if this be not the meaning of it, what is? Give it a sense – give it any sense whatever, – it is mischievous: – to save it from that imputation, there is but one course to take, which is to acknowledge it to be nonsense.

Thus much would be clear, if anything were clear in it, that according to this clause, whatever proprietary rights, whatever property a man once has, no matter how, being imprescriptible, can never be taken away from him by any law: or of what use or meaning is the clause? So that the moment it is acknowledged in relation to any article, that such article is my property, no matter how or when it became so, that moment it is acknowledged that it can never be taken away from me: therefore, for example, all laws and all judgments, whereby anything is taken away from me without my free consent – all taxes, for example, and all fines – are void, and, as such, call for resistance and insurrection, and so forth, as before.

3. *Security*. Security stands the third on the list of these natural and imprescriptible rights which laws did not give, and which laws are not in any degree to be suffered to take away.

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Security for person is the branch that seems here to have been understood: – security for each man's person, as against all those hurtful or disagreeable impressions (exclusive of those which consist in the mere disturbance of the enjoyment of liberty,) by which a man is affected in his person; loss of life – loss of limbs – loss of the use of limbs – wounds, bruises, and the like. All laws are null and void, then, which on any account or in any manner seek to expose the person of any man to any risk – which appoint capital or other corporal punishment – which expose a man to personal hazard in the service of

the military power against foreign enemies, or in that of the judicial power against delinquents: – all laws which, to preserve the country from pestilence, authorize the immediate execution of a suspected person, in the event of his transgressing certain bounds.

4. *Resistance to oppression*. Fourth and last in the list of natural and imprescriptible rights, resistance to oppression – meaning, I suppose, the right to resist oppression. What is oppression? Power misapplied to the prejudice of some individual. What is it that a man has in view when he speaks of oppression? Some exertion of power which he looks upon as misapplied to the prejudice of some individual – to the producing on the part of such individual some suffering, to which (whether as forbidden by the laws or otherwise) we conceive he ought not to have been subjected.

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Whenever you are about to be oppressed, you have a right to resist oppression: whenever you conceive yourself to be oppressed, conceive yourself to have a right to make resistance, and act accordingly. In proportion as a law of any kind – any act of power, supreme or subordinate, legislative, administrative, or judicial, is unpleasant to a man, especially if, in consideration of such its unpleasantness, his opinion is, that such act of power ought not to have been exercised, he of course looks upon it as oppression: as often as anything of this sort happens to a man – as often as anything happens to a man to inflame his passions, – this article for fear his passions should not be sufficiently inflamed of themselves, sets itself to work to blow the flame and urges him to resistance. Submit not to any decree or other act of power, of the justice of which you are not yourself perfectly convinced.

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Article IV

Liberty consists in being able to do that which is not hurtful to another, and therefore the exercise of the natural rights of each man has no other bounds than those which insure to the other members of the society the enjoyment of the same rights. These bounds cannot be determined but by the law.

In this article, three propositions are included:

Proposition 1. Liberty consists in being able to do that which is not

hurtful to another. What! in that, and nothing else? Is not the liberty of doing mischief liberty? If not, what is it? and what word is there for it in the language, or in any language by which it can be spoken of? 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, or will continue to confine it! And so I am never to know whether I am at liberty or not to do or to omit doing one act, till I see whether or no there is anybody that may be hurt by it – till I see the whole extent of all its consequences? Liberty! What liberty? – as against what power? as against coercion from what source? As against coercion issuing from the law? – then to know whether the law have left me at liberty in any respect in relation to any act, I am to consult not the words of the law, but my own conception of what would be the consequences of the act. If among these consequences there be a single one by which anybody would be hurt, then, whatever the law says to me about it, I am not at liberty to do it. I am an officer of justice, appointed to superintend the execution of punishments ordered by justice: – if I am ordered to cause a thief to be whipped, – to know whether I am at liberty to cause the sentence to be executed, I must know whether whipping would hurt the thief: if it would, then I am not at liberty to whip the thief – to inflict the punishment which it is my duty to inflict.

Proposition 2. And therefore the exercise of the natural rights of each man has no other bounds than those which insure to the other members of the society the enjoyment of those same rights. Has no other bounds? Where is it that it has no other bounds? In what nation – under what government? If under any government, then the state of legislation under that government is in a state of absolute perfection. If there be no such government, then, by a confession necessarily implied, there is no nation upon earth in which this definition is conformable to the truth.

Proposition 3. These bounds cannot be determined but by the law. More contradiction, more confusion. What then? – this liberty, this right, which is one of four rights that existed before laws, and will exist in spite of all that laws can do, owes all the boundaries it has, all the extent it has, to the laws. Till you know what the laws say to it, you do not know what there is of it, nor what account to give of it: and yet it existed, and that in full force and vigour, before there were any such things as laws; and so will continue to exist, and that for ever, in spite of anything which laws can do to it. Still the same inaptitude of expressions – still the same confusion of that which it is supposed *is*, with that which it is conceived ought to be.

What says plain truth upon this subject? What is the sense most approaching to this nonsense?

The liberty which the law *ought* to allow of, and leave in existence – leave uncoerced, unremoved – is the liberty which concerns those acts only, by which, if exercised, no damage would be done to the community upon the whole; that is, either no damage at all, or none but what promises to be compensated by at least equal benefit.

Accordingly, the exercise of the rights allowed to and conferred upon each individual, ought to have no other bounds set to it by the law, than those which are necessary to enable it to maintain every other individual in the possession and exercise of such rights as it is consistent with the greatest good of the community that he should be allowed. The marking out of these bounds ought not to be left to anybody but the legislator acting as such – that is, to him or them who are acknowledged to be in possession of the sovereign power: that is, it ought not to be left to the occasional and arbitrary declaration of any individual, whatever share he may possess of subordinate authority.

The word *autrui* – another, is so loose, – making no distinction between the community and individuals, – as, according to the most natural construction, to deprive succeeding legislators of all power of repressing, by punishment or otherwise, any acts by which no individual sufferers are to be found; and to deprive them beyond a doubt of all power of affording protection to any man, woman, or child, against his or her own weakness, ignorance, or imprudence.

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Article X

No one ought to be molested [meaning, probably, by government] *for his opinions, even in matters of religion, provided that the manifestation of them does not disturb* [better expressed perhaps by saying, except in as far as the manifestation of them disturb, or rather tends to the disturbance of] *the public order established by the law.*

Liberty of publication with regard to opinions, under certain exceptions, is a liberty which it would be highly proper and fit to establish, but which would receive but a very precarious establishment from an article thus worded. Disturb the public order? – what does that mean? Louis XIV need not have hesitated about receiving an article thus worded into his code. The public order of things in this behalf, was an order in virtue of which the exercise of every religion but the Catholic, according to his edition of it, was proscribed. A law

is enacted, forbidding men to express a particular opinion, or set of opinions, relative to a particular point in religion: forbidding men to express any of those opinions, in the expression of which the Lutheran doctrine, for example, or the Calvinistic doctrine, or the Church of England doctrine consists: – in a prohibition to this effect, consists the public order established by the law. Spite of this, a man manifests an opinion of the number of those which thus stand prohibited as belonging to the religion thus proscribed. The act by which this opinion is manifested, is it not an act of disturbance with relation to the public order thus established? Extraordinary indeed must be the assurance of him who could take upon him to answer in the negative.

Thus nugatory, thus flimsy, is this buckler of rights and liberties, in one of the few instances in which any attempt is made to apply it to a good purpose.

What should it have done, then? To this question an answer is scarcely within the province of this paper: the proposition with which I set out is, not that the Declaration of Rights should have been worded differently, but that nothing under any such name, or with any such design, should have been attempted.

A word or two, however, may be given as a work of supererogation: – that opinions of all sorts might be manifested without fear of punishment; that no publication should be deemed to subject a man to punishment on account of any opinions it may be found to contain, considered as mere opinions; but at the same time, that the plea of manifesting religious opinions, or the practising certain acts supposed to be enjoined or recommended in virtue of certain religious opinions as proper or necessary to be practised, should not operate as a justification for either exercising, or prompting men to exercise, any act which the legislature, without any view or reference to religion, has already thought fit, or may hereafter think fit, to insert into the catalogue of prohibited acts or offences.

To instance two species of delinquency, – one of the most serious, the other of the slightest nature – acts tending to the violent subversion of the government by force – acts tending to the obstruction of the passage in the street: – An opinion that has been supposed by some to belong to the Christian religion, is, that every form of government but the monarchical is unlawful: an opinion that has been supposed by some to belong to the Christian religion – by some at least of those that adhere to that branch of the Christian religion which is termed the Roman Catholic – is, that it is a duty, or at least a merit, to join in processions of a certain description, to be performed on certain occasions.

What, then, is the true sense of the clause in question, in relation to these two cases? What ought to be the conduct of a government that is neither monarchical nor Catholic, with reference to the respective manifestation of these two opinions?

First, as to the opinion relative to the unlawfulness of a government not monarchical. The falsity or erroneousness which the members of such a government could not but attribute in their own minds to such an opinion, is a consideration which, according to the spirit and intent of the provision in question, would not be sufficient to authorize their using penal or other coercive measures for the purpose of preventing the manifestation of them. At the same time, should such manifestation either have already had the effect of engaging individuals in any attempt to effect a violent subversion of the government by force, or appear to have produced a near probability of any such attempt – in such case, the engagement to permit the free manifestation of opinions in general, and of religious opinions in particular, is not to be understood to preclude the government from restraining the manifestation of the opinion in question, in every such way as it may deem likely to promote or facilitate any such attempt.

Again, as to the opinion relative to the meritoriousness of certain processions. By the principal part of the provision, government stands precluded from prohibiting publications manifesting an opinion in favour of the obligatoriness or meritoriousness of such processions. By the spirit of the same engagement, they stand precluded from prohibiting the performance of such processions, unless a persuasion of a political inconvenience as resulting from such practice – a persuasion not grounded on any notions of their unlawfulness in a religious view – should come to be entertained: as if, for example, the multitude of the persons joining in the procession, or the crowd of persons flocking to observe them, should fill up the streets to such a degree, or for such a length of time, and at intervals recurring with such frequency, as to be productive of such a degree of obstruction to the free use of the streets for the purposes of business, as in the eye of government should constitute a body of inconvenience worth encountering by a prohibitive law.

It would be a violation of the spirit of this part of the engagement, if the government – not by reason of any view it entertained of the political inconveniences of these processions (for example, as above,) but for the purpose of giving an ascendency to religious opinions of an opposite nature (determined, for example, by a Protestant antipathy to Catholic processions) – were to make use of the real or pretended

obstruction to the free use of the streets, as a pretence for prohibiting such processions.

These examples, while they serve to illustrate the ground and degree and limits of the liberty which it may seem proper, on the score of public tranquillity, and peace, to leave to the manifestation of opinions of a religious nature, may serve, at the same time, to render apparent the absurdity and perilousness of every attempt on the part of the government for the time being, to tie up the hands of succeeding governments in relation to this or any other spot in the field of legislation. Observe how nice, and incapable of being described beforehand by any particular marks, are the lines which mark the limits of right and wrong in this behalf – which separate the useful from the pernicious – the prudent course from the imprudent! – how dependent upon the temper of the times – upon the events and circumstances of the day! – with how fatal a certainty persecution and tyranny on the one hand, or revolt and civil war on the other, may follow from the slightest deviation from propriety in the drawing of such lines! – and what a curse to any country a legislator may be, who, with the purest intentions, should set about settling the business to all eternity by inflexible and adamantine rules, drawn from the sacred and inviolable and imprescriptible rights of man, and the primeval and everlasting laws of nature!

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Article XVI

Every society in which the warranty of rights is not assured ('la garantie des droits n'est pas assurée,') nor the separation of powers determined, has no constitution.

Here we have an exhibition: self-conceit inflamed to insanity – legislators turned into turkey-cocks – the less important operation of constitution-making, interrupted for the more important operation of bragging. Had the whole human species, according to the wish of the tyrant, but one neck, it would find in this article a sword designed to sever it.

This constitution, – the blessed constitution, of which this matchless declaration forms the base – the constitution of France – is not only the most admirable constitution in the world, but the only one. That no other country but France has the happiness of possessing the sort of thing, whatever it be, called a constitution, is a meaning sufficiently conveyed. This meaning the article must have, if it have any: for other meaning, most assuredly it has none.

Every society in which the warranty of rights is not assured (*toute société dans laquelle la garantie des droits n'est pas assurée,*) is, it must be confessed, most rueful nonsense; but if the translation were not exact, it would be unfaithful: and if not nonsensical, it would not be exact.

Do you ask, has the nation I belong to such a thing as a constitution belonging to it? If you want to know, look whether a declaration of rights, word for word the same as this, forms part of its code of laws; for by this article, what is meant to be insinuated, not expressed (since by nonsense nothing is expressed,) is the necessity of having a declaration of rights like this set by authority in the character of an introduction at the head of the collection of its laws.

As to the not absolutely nonsensical, but only very obscure clause, about a society's having 'the separation of powers determined,' it seems to be the result of a confused idea of an intended application of the old maxim, *Divide et impera*: the governed are to have the governors under their governance, by having them divided among themselves. A still older maxim, and supposing both maxims applied to this one subject, I am inclined to think a truer one, is, that a house divided against itself cannot stand.

Yet on the existence of two perfectly independent and fighting sovereignties, or of three such fighting sovereignties (the supposed state of things in Britain seems here to be the example in view,) the perfection of good government, or at least of whatever approach to good government can subsist without the actual adoption *in terminis* of a declaration of rights such as this, is supposed to depend. Hence, though Britain have no such thing as a constitution belonging to it at present, yet, if during a period of any length, five or ten years for example, it should ever happen that neither House of Commons nor House of Lords had any confidence in the King's Ministers, nor any disposition to endure their taking the lead in legislation (the House of Commons being all the while, as we must suppose, peopled by universal suffrage,) possibly in such case, for it were a great deal too much to affirm, Britain might be so far humoured as to be allowed to suppose herself in possession of a sort of thing, which, though of inferior stuff, might pass under the name of a constitution, even without having this declaration of rights to stand at its head.

That Britain possesses at present anything that can bear that name, has by Citizen Paine, *following*, or *leading* (I really remember not, nor is it worth remembering,) at any rate *agreeing* with this declaration of rights, been formally denied.

According to general import, supported by etymology, by the word

constitution, something *established*, something *already* established, something possessed of *stability*, something that has given *proofs* of stability, seems to be implied. What shall we say, if of this most magnificent of all boasts, not merely the simple negative, but the direct converse should be true? and if instead of France being the only country which has a constitution, France should be the only country that has none! Yet if government depend upon obedience – the stability of government upon the permanence of the disposition to obedience, and the permanence of that disposition upon the duration of the habit of obedience – this most assuredly must be the case.

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Conclusion

On the subject of the fundamental principles of government, we have seen what execrable trash the choicest talents of the French nation have produced.

On the subject of chemistry, Europe has beheld with admiration, and adopted with unanimity and gratitude, the systematic views of the same nation, supported as they were by a series of decisive experiments and conclusive reasonings.

Chemistry has commonly been reckoned, and not altogether without reason, among the most abstruse branches of science. In chemistry, we see how high they have soared above the sublimest knowledge of past times; in legislation, how deep they have sunk below the profoundest ignorance: – how much inferior has the maturest design that could be furnished by the united powers of the whole nation proved, in comparison of the wisdom and felicity of the chance-medley of the British Constitution.

Comparatively speaking, a select few applied themselves to the cultivation of chemistry – almost an infinity, in comparison, have applied themselves to the science of legislation.

In the instance of chemistry, the study is acknowledged to come within the province of science: the science is acknowledged to be an abstruse and difficult one, and to require a long course of study on the part of those who have had the previous advantage of a liberal education; whilst the cultivation of it, in such manner as to make improvements in it, requires that a man should make it the great business of his life; and those who have made these improvements have thus applied themselves.

In chemistry there is no room for passion to step in and to confound the understanding – to lead men into error, and to shut their eyes against knowledge: in legislation, the circumstances are opposite, and vastly different.

What, then, shall we say of that system of government, of which the professed object is to call upon the untaught and unlettered multitude (whose existence depends upon their devoting their whole time to the acquisition of the means of supporting it,) to occupy themselves without ceasing upon all questions of government (legislation and administration included) without exception – important and trivial, – the most general and the most particular, but more especially upon the most important and most general – that is, in other words, the most scientific – those that require the greatest measures of science to qualify a man for deciding upon, and in respect of which any want of science and skill are liable to be attended with the most fatal consequences?

What should we have said, if, with a view of collecting the surest grounds for the decision of any of the great questions of chemistry, the French Academy of Sciences (if its members had remained unmurdered) had referred such questions to the Primary Assemblies?

If a collection of general propositions, put together with the design that seems to have given birth to this performance – propositions of the most general and extensive import, embracing the whole field of legislation – were capable of being so worded and put together as to be of use, it could only be on the condition of their being deduced in the way of abridgment from an already formed and existing assemblage of less general propositions, constituting the tenor of the body of the laws. But for these more general propositions to have been abstracted from that body of particular ones, that body must have been already in existence: the general and introductory part, though placed first, must have been constructed last; – although first in the order of communication, it should have been last in the order of composition. For the framing of the propositions which were to be included, time, knowledge, genius, temper, patience, everything was wanting. Yet the system of propositions which were to include them, it was determined to have at any rate. Of time, a small quantity indeed might be made to serve, upon the single and very simple condition of not bestowing a single thought upon the propositions which they were to include: and as to knowledge, genius, temper, and patience, the place of all these trivial requisites was abundantly supplied by effrontery and self-conceit. The business, instead of being performed in the way of abridgment, was performed in the way of anticipation – by a loose conjecture of what the particular propositions in question, were they to be found, might amount to.

What I mean to attack is, not the subject or citizen of this or that country – not this or that citizen – not citizen Sieyes or citizen anybody else, but all anti-legal rights of man, all declarations of such rights. What I mean to attack is, not the execution of such a design in this or that instance, but the design itself.

It is not that they have failed in their execution of the design by using the same word promiscuously in two or three senses – contradictory and incompatible senses – but in undertaking to execute a design which could not be executed at all without this abuse of words. Let a man distinguish the senses – let him allot, and allot invariably a separate word for each, and he will find it impossible to make up any such declaration at all, without running into such nonsense as must stop the hand even of the maddest of the mad.

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It is in England, rather than in France, that the discovery of the *rights of man* ought naturally to have taken its rise: it is we – we English, that have the better *right* to it. It is in the English language that the transition is more natural, than perhaps in most others: at any rate, more so than in the French. It is in English, and not in French, that we may change the sense without changing the word, and, like Don Quixote on the enchanted horse, travel as far as the moon, and farther, without ever getting off the saddle. One and the same word, right – right, that most enchanting of words – is sufficient for operating the fascination. The word is ours, – that magic word, which, by its single unassisted powers, completes the fascination. In its adjective shape, it is as innocent as a dove: it breathes nothing but morality and peace. It is in this shape that, passing in at the heart, it gets possession of the understanding: – it then assumes its substantive shape, and joining itself to a band of suitable associates, sets up the banner of insurrection, anarchy, and lawless violence.

It is right that men should be as near upon a par with one another in every respect as they can be made, consistently with general security: here we have it in its adjective form, synonymous with desirable, proper, becoming, consonant to general utility, and the like. I have a right to put myself upon a par with everybody in every respect: here we have it in its *substantive* sense, forming with the other words a phrase equivalent to this, – wherever I find a man who will not let me put myself on a par with him in every respect, it is right, and proper, and becoming, that I should knock him down, if I have a mind to do so, and if that will not do, knock him on the head, and so forth.

The French language is fortunate enough not to possess this

mischievous abundance. But a Frenchman will not be kept back from his purpose by a want of words: the want of an adjective composed of the same letters as the substantive *right*, is no loss to him. Is, has been, ought to be, shall be, can, – all are put for one another – all are pressed into the service – all made to answer the same purposes. By this inebriating compound, we have seen all the elements of the understanding confounded, every fibre of the heart inflamed, the lips prepared for every folly, and the hand for every crime.

Our right to this precious discovery, such as it is, of the rights of man, must, I repeat it, have been prior to that of the French. It has been seen how peculiarly rich we are in materials for making it. *Right*, the substantive *right*, is the child of law: from *real* laws come *real* rights; but from *imaginary* laws, 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, 'gorgons and chimæras dire.' And thus it is, that from *legal rights*, the offspring of law, and friends of peace, come *anti-legal rights*, the mortal enemies of law, the subverters of government, and the assassins of security.

Will this antidote to French poisons have its effect? – will this preservative for the understanding and the heart against the fascination of sounds, find lips to take it? This, in point of speedy or immediate efficacy at least, is almost too much to hope for. Alas! how dependent are opinions upon sound! Who shall break the chains which bind them together? By what force shall the associations between words and ideas be dissolved – associations coeval with the cradle – associations to which every book and every conversation give increased strength? By what authority shall this original vice in the structure of language be corrected? How shall a word which has taken root in the vitals of a language be expelled? By what means shall a word in continual use be deprived of half its signification? The language of plain strong sense is difficult to learn; the language of smooth nonsense is easy and familiar. The one requires a force of attention capable of stemming the tide of usage and example; the other requires nothing but to swim with it.

It is for education to do what can be done; and in education is, though unhappily the slowest, the surest as well as earliest resource. The recognition of the nothingness of the laws of nature and the rights of man that have been grounded on them, is a branch of knowledge of as much importance to an Englishman, though a negative one, as the most perfect acquaintance that can be formed with the existing laws of England.

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