ANARCHICAL FALLACIES;

BEING

AN EXAMINATION

OF

THE DECLARATIONS OF RIGHTS

ISSUED DURING

THE FRENCH REVOLUTION.

BY

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ADVERTISEMENT.

THE following papers are now first published in English, from Mr. Bentham's MSS.; the substance of them has previously been published in French by Dumont.

AN EXAMINATION OF THE DECLARATION

OF THE

RIGHTS OF THE MAN AND THE CITIZEN

DECREED BY THE

CONSTITUENT ASSEMBLY IN FRANCE.

PREAMBLE.

"THE Representatives of the French people, constituted in National Assembly, considering that ignorance, forgetfulness, or contempt of the Rights of Man, are the only causes of public calamities, and of the corruption of governments, have resolved to set forth in a solemn declaration, the natural, unalienable, and sacred rights of man, in order that this declaration, constantly presented to all the members of the body social, may recall to mind, without ceasing, their rights and their duties; to the end, that the acts of the legislative power, and those of the executive power, being capable at every instant of comparison with the end of every political institution, they may be more respected, and also that the demands of the citizens hereafter, founded upon simple and incontestable principles, may always tend to the maintenance of the constitution and to the happiness of all."

"In consequence, the National Assembly acknowledges and declares, in the presence and under the auspices of the Supreme Being, the following Rights of the Man and the Citizen."—

From this preamble we may collect the following positions: —

1. That the declaration in question ought to include a declaration of all the powers which it is designed should thereafter subsist in the State; the limits of each power precisely laid down, and every one completely distinguished from the other.

2. That the articles by which this is to be done, ought not to be loose and scattered, but closely connected into a whole, and the connexion all along made visible.

3. That the declaration of the rights of man, in a state preceding that of political society, ought to form a part of the composition in question, and constitute the first part of it.

4. That in point of fact, a clear idea of all these stands already imprinted in the minds of every man

5. That, therefore, the object of such a draught is not, in any part of such a draught, to teach the people anything new.

6. But that the object of such a declaration is to declare the accession of the Assembly, as such, to the principles as understood and embraced, as well by themselves in their individual capacity, as by all other individuals in the State.

7. That the use of this solemn adoption and recognition is, that the principles recognised may serve as a standard by which the propriety of the several particular laws that are afterwards to be enacted in consequence, may be tried.

8. That by the conformity of these laws to this standard, the fidelity of the legislators to their trust is also to be tried.

9. That accordingly, if any law should hereafter be enacted, between which, and any of those fundamental articles, any want of conformity in any point can be pointed out, such want of conformity will be a conclusive proof of two things: 1. Of the impropriety of such law; 2. Of error or criminality on the part of the authors and adopters of that law.

It concerns me to see so respectable an Assembly hold out expectations, which, according to my conception, cannot in the nature of things be fulfilled.

An enterprise of this sort, instead of preceding the formation of a complete body of laws, supposes such a work to be already existing in every particular except that of its obligatory force.

No laws are ever to receive the sanction of the Assembly that shall be contrary in any point to these principles. What does this suppose? It supposes the several articles of detail that require to be enacted, to have been drawn up, to have been passed in review, to have been confronted with these fundamental articles, and to have been found in no respect

repugnant to them. In a word, to be sufficiently assured that the several laws of detail will bear this trying comparison, one thing is necessary: the comparison must have been made.

To know the several laws which the exigencies of mankind call for, a view of all these several exigencies must be obtained. But to obtain this view, there is but one possible means, which is, to take a view of the laws that have already been framed, and of the exigencies which have given birth to them.

To frame a composition which shall in any tolerable degree answer this requisition, two endowments, it is evident, are absolutely necessary: — an acquaintance with the law as it is, and the perspicuity and genius of the metaphysician: and these endowments must unite in the same person.

I can conceive but four purposes which a discourse, of the kind proposed under the name of a Declaration of Rights, can be intended to answer:—the setting bounds to the authority of the crown; — the setting bounds to the authority of the supreme legislative power, that of the National Assembly; — the serving as a general guide or set of instructions to the National Assembly itself, in the task of executing their function in detail, by the establishment of particular laws; — and the affording a satisfaction to the people.

These four purposes seem, if I apprehend right, to be all of them avowed by the same or different advocates for this measure.

Of the fourth and last of these purposes I shall say nothing: it is a question merely local — dependent upon the humour of the spot and of the day, of which no one at a distance can be a judge. Of the fitness of the end, there can be but one opinion: the only question is about the fitness of the means.

In the three other points of view, the expediency of the measure is more than I can perceive.

The description of the persons, of whose rights it is to contain the declaration, is remarkable. Who are they? The French nation? No; not they only, but all citizens, and all men. By citizens, it seems we are to understand men engaged in political society: by men, persons not yet engaged in political society — persons as yet in a state of nature.

The word men, as opposed to citizens, I had rather not have seen. In this sense, a declaration of the rights of men is a declaration of the rights which human creatures, it is supposed, would possess, were they in a state in which the French nation certainly are not, nor perhaps any other; certainly no other into whose hands this declaration could ever come.

This instrument is the more worthy of attention, especially of the attention of a foreigner, inasmuch as the rights which it is to declare are the rights which it is supposed belong to the members of every nation in the globe. As a member of a nation which with relation to the French comes under the name of a foreign one, I feel the stronger call to examine this declaration, inasmuch as in this instrument I am invited to read a list of rights which belong as much to me as to the people for whose more particular use it has been framed.

The word men, I observe to be all along coupled in the language of the Assembly itself, with the word citizen. I lay it, therefore, out of the question, and consider the declaration in the same light in which it is viewed by M. Turgot, as that of a declaration of the rights of all men in a state of citizenship or political society.

I proceed, then, to consider it in the three points of view above announced: —

1. Can it be of use for the purpose of setting bounds to the power of the crown? No; for that is to be the particular object of the Constitutional Code itself, from which this preliminary part is detached in advance.

2. Can it be of use for the purpose of setting bounds to the power of the several legislative bodies established or to be established? I answer, No.

(1.) Not of any subordinate ones: for of their authority, the natural and necessary limit is that of the supreme legislature, the National Assembly.

(2.) Not of the National Assembly itself:— Why? 1. Such limitation is unnecessary. It is proposed, and very wisely and honestly, to call in the body of the people, and give it as much power and influence as in its nature it is capable of: by enabling it to declare its sentiments whenever it thinks proper, whether immediately, or through the channel of the subordinate assemblies. Is a law enacted or proposed in the National Assembly, which happens not to be agreeable to the body of the people? It will be equally censured by them, whether it be conceived, or not, to bear marks of a repugnancy to this declaration of rights. Is a law disagreeable to them? They will hardly think themselves precluded from expressing their disapprobation, by the circumstance of its not being to be convicted of repugnancy to that instrument; and though it should be repugnant to that instrument, they will see little need to resort to that instrument for the ground of their repugnancy; they will find a much nearer ground in some particular real or imaginary inconvenience.

In short, when you have made such provision, that the supreme legislature can never carry any point against the general and persevering opinion of the people, what would you have more? What use in their attempting to bind themselves by a set of phrases

of their own contrivance? The people's pleasure: that is the only check to which no other can add anything, and which no other can supersede.

In regard to the rights thus declared, mention will either be made of the exceptions and modifications that may be made to them by the laws themselves, or there will not. In the former case, the observance of the declaration will be impracticable; nor can the law in its details stir a step without flying in the face of it. In the other case, it fails thereby altogether of its only object, the setting limits to the exercise of the legislative power. Suppose a declaration to this effect:—no man's liberty shall be abridged in any point. This, it is evident, would be an useless extravagance, which must be contradicted by every law that came to be made. Suppose it to say—no man's liberty shall be abridged, but in such points as it shall be abridged in, by the law. This, we see, is saying nothing: it leaves the law just as free and unfettered as it found it.

Between these two rocks lies the only choice which an instrument destined to this purpose can have. Is an instrument of this sort produced? We shall see it striking against one or other of them in every line. The first is what the framers will most guard against, in proportion to their reach of thought, and to their knowledge in this line: when they hit against the other, it will be by accident and unawares.

Lastly, it cannot with any good effect answer the only remaining intention, viz. that of a check to restrain as well as to guide the legislature itself, in the penning of the laws of detail that are to follow.

The mistake has its source in the current logic, and in the want of attention to the distinction between what is first in the order of demonstration, and what is first in the order of invention. Principles, it is said, ought to precede consequences; and the first being established, the others will follow of course. What are the principles here meant? General propositions, and those of the widest extent. What by consequences? Particular propositions, included under those general ones.

That this order is favourable to demonstration, if by demonstration be meant personal debate and argumentation, is true enough. Why? Because, if you can once get a man to admit the general proposition, he cannot, without incurring the reproach of inconsistency, reject a particular proposition that is included in it.

But, that this order is not the order of conception, of investigation, of invention, is equally undeniable. In this order, particular propositions always precede general ones. The assent to the latter is preceded by and grounded on the assent to the former.

If we prove the consequences from the principle, it is only from the consequences that we learn the principle.

Apply this to laws. The first business, according to the plan I am combating, is to find and declare the principles: the laws of a fundamental nature: that done, it is by their means that we shall be enabled to find the proper laws of detail. I say, no: it is only in proportion as we have formed and compared with one another the laws of detail, that our fundamental laws will be exact and fit for service. Is a general proposition true? It is because all the particular propositions that are included under it are true. How, then, are we to satisfy ourselves of the truth of the general one? By having under our eye all the included particular ones. What, then, is the order of investigation by which true general propositions are formed? We take a number of less extensive — of particular propositions; find some points in which they agree, and from the observation of these points form a more extensive one, a general one, in which they are all included. In this way, we proceed upon sure grounds, and understand ourselves as we go: in the opposite way, we proceed at random, and danger attends every step.

No law is good which does not add more to the general mass of felicity than it takes from it. No law ought to be made that does not add more to the general mass of felicity than it takes from it. No law can be made that does not take something from liberty; those excepted which take away, in the whole or in part those laws which take from liberty. Propositions to the first effect I see are true without any exception: propositions to the latter effect I see are not true till after the particular propositions intimated by the exceptions are taken out of it. These propositions I have attained a full satisfaction of the truth of. How? By the habit I have been in for a course of years, of taking any law at pleasure, and observing that the particular proposition relative to that law was always conformable to the fact announced by the general one.

So in the other example. I discerned in the first instance, in a faint way, that two classes would serve to comprehend all laws: laws which take from liberty in their immediate operation, and laws which in the same way destroy, in part or in the whole, the operation of the former. The perception was at first obscure, owing to the difficulty of ascertaining what constituted in every case a law, and of tracing out its operation. By repeated trials, I came at last to be able to show of any law which offered itself, that it came under one or other of those classes.

What follows? That the proper order is —first to digest the laws of detail, and when

they are settled and found to be fit for use, then, and not till then, to select and frame *in terminis*, by abstraction, such propositions as may be capable of being given without self-contradiction as fundamental laws.

What is the source of this premature anxiety to establish fundamental laws? It is the old conceit of being wiser than all posterity — wiser than those who will have had more experience, — the old desire of ruling over posterity — the old recipe for enabling the dead to chain down the living. In the case of a specific law, the absurdity of such a notion is pretty well recognised, yet there the absurdity is much less than here. Of a particular law, the nature may be fully comprehended — the consequences foreseen: of a general law, this is the less likely to be the case, the greater the degree in which it possesses the quality of a general one. By a law of which you are fully master, and see clearly to the extent of, you will not attempt to bind succeeding legislators: the law you pitch upon in preference for this purpose, is one which you are unable to see to the end of.

Ought no such general propositions, then, to be ever framed till after the establishment of a complete code? I do not mean to assert this; on the contrary, in morals as in physics, nothing is to be done without them. The more they are framed and tried, the better: only, when framed, they ought to be well tried before they are ushered abroad into the world in the character of laws. In that character they ought not to be exhibited till after they have been confronted with all the particular laws to which the force of them is to apply. But if the intention be to chain down the legislator, these will be all the laws without exception which are looked upon as proper to be inserted in the code. For the interdiction meant to be put upon him is unlimited: he is never to establish any law which shall disagree with the pattern cut out for him — which shall ever trench upon such and such rights.

Such indigested and premature establishments betoken two things: — the weakness of the understanding, and the violence of the passions: the weakness of the understanding, in not seeing the insuperable incongruities which have been above stated — the violence of the passions, which betake themselves to such weapons for subduing opposition at any rate, and giving to the will of every man who embraces the proposition imported by the article in question, a weight beyond what is its just and intrinsic due. In vain would man seek to cover his weakness by positive and assuming language: the expression of one opinion, the expression of one will, is the utmost that any proposition can amount to. Ought and ought not, can and can not, shall and shall not, all put together, can never amount to anything more. "No law ought to be made, which will lessen upon the whole the mass of general felicity." When I, a legislator or private citizen, say this, what is the simple matter of fact that is expressed? This, and this only, that a sentiment of dissatisfaction is excited in my breast by any such law. So again — "No law shall be made, which will lessen upon the whole the mass of general felicity." What does this signify? That the sentiment of dissatisfaction in me is so strong as to have given birth to a determined will that no such law should ever pass, and that determination so strong as to have produced a resolution on my part to oppose myself, as far as depends on me, to the passing of it, should it ever be attempted — a determination which is the more likely to meet with success, in proportion to the influence, which in the character of legislator or any other, my mind happens to possess over the minds of others.

"No law *can* be made which will do so above. What does this signify? The same will as before, only wrapped up in an absurd and insidious disguise. My will is here so strong, that, as a means of seeing it crowned with success, I use my influence with the persons concerned to persuade them to consider a law which, at the same time, I suppose to be made, in the same point of view as if it were not made; and consequently, to pay no more obedience to it than if it were the command of an unauthorized individual. To compass this design, I make the absurd choice of a term expressive in its original and proper import of a physical impossibility, in order to represent as impossible the very event of the occurrence of which I am apprehensive: — occupied with the contrary persuasion, I raise my voice to the people — tell them the thing is impossible; and they are to have the goodness to believe me, and act in consequence.

A law to the effect in question is a violation of the natural and indefeasible rights of man. What does this signify? That my resolution of using my utmost influence in opposition to such a law is wound up to such a pitch, that should any law be ever enacted, which in my eyes appears to come up to that description, my determination is, to behave to the persons concerned in its enactment, as any man would behave towards those who had been guilty of a notorious and violent infraction of his rights. If necessary, I would corporally oppose them — if necessary, in short, I would endeavour to kill them; just as, to save my own life, I would endeavour to kill any one who was endeavouring to kill me.

These several contrivances for giving to an increase in vehemence, the effect of an increase in strength of argument, may be styled *bawling* upon paper: it proceeds from

the same temper and the same sort of distress as produces bawling with the voice.

That they should be such efficacious recipes is much to be regretted; that they will always be but too much so, is much to be apprehended; but that they will be less and less so, as intelligence spreads and reason matures, is devoutly to be wished, and not unreasonably to be hoped for.

As passions are contagious, and the bulk of men are more guided by the opinions and pretended opinions of others than by their own, a large share of confidence, with a little share of argument, will be apt to go farther than all the argument in the world without confidence: and hence it is, that modes of expression like these, which owe the influence they unhappily possess to the confidence they display, have met with such general reception. That they should fall into discredit, is, if the reasons above given have any force, devoutly to be wished: and for the accomplishing this good end, there cannot be any method so effectual — or rather, there cannot be any other method, than that of unmasking them in the manner here attempted.

The phrases *can* and *can not*, are employed in this way with greater and more pernicious effect, inasmuch as, over and above physical and moral impossibility, they are made use of with much less impropriety and violence to denote legal impossibility. In the language of the law, speaking in the character of the law, they are used in this way without ambiguity or inconvenience. "Such a magistrate cannot do so and so," that is, he has no power to do so and so. If he issue a command to such an effect, it is no more to be obeyed than if it issued from any private person. But when the same expression is applied to the very power which is acknowledged to be supreme, and not limited by any specific institution, clouds of ambiguity and confusion roll on in a torrent almost impossible to be withstood. Shuffled backwards and forwards amidst these three species of impossibility — physical, legal, and moral — the mind can find no resting-place: it loses its footing altogether, and becomes an easy prey to the violence which wields these arms.

The expedient is the more powerful, inasmuch as, where it does not succeed so far as to gain a man and carry him over to that side, it will perplex him and prevent his finding his way to the other: it will leave him neutral, though it should fail of making him a friend.

It is the better calculated to produce this effect, inasmuch as nothing can tend more powerfully to draw a man altogether out of the track of reason and out of sight of utility, the only just standard for trying all sorts of moral questions. Of a positive assertion thus irrational, the natural effect, where it fails of producing irrational acquiescence, is to produce equally irrational denial, by which no light is thrown upon the subject, nor any opening pointed out through which light may come. I say, the law cannot do so and so: you say, it can. When we have said thus much on each side, it is to no purpose to say more; there we are completely at a stand: argument such as this can go no further on either side, — or neither yields, — or passion triumphs alone — the stronger sweeping the weaker away.

Change the language, and instead of *cannot*, put *ought not*, — the case is widely different. The moderate expression of opinion and will intimated by this phrase, leads naturally to the inquiry after a reason: — and this reason, if there be any at bottom that deserves the name, is always a proposition of fact relative to the question of utility. Such a law *ought not* to be established, because it is not consistent with the general welfare — its tendency is not to add to the general stock of happiness. I say, it ought not to be established; that is, I do not approve of its being established: the emotion excited in my mind by the idea of its establishment, is not that of satisfaction, but the contrary. How happens this? Because the production of inconvenience, more than equivalent to any advantage that will ensue, presents itself to my conception in the character of a probable event. Now the question is put, as every political and moral question ought to be, upon the issue of fact; and mankind are directed into the only true track of investigation which can afford instruction or hope of rational argument, the track of experiment and observation. Agreement, to be sure, is not even then made certain: — for certainty belongs not to human affairs. But the track, which of all others bids fairest for leading to agreement, is pointed out: a clue for bringing back the travellers, in case of doubt or difficulty, is presented; and, at any rate, they are not struck motionless at the first step.

Nothing would be more unjust or more foreign to my design, than taking occasion, from anything that has been said, to throw particular blame upon particular persons: reproach which strikes everybody, hurts nobody; and common error, where it does not, according to the maxim of English law, produce common right, is productive at least of common exculpation.

A CRITICAL EXAMINATION

OF THE

DECLARATION OF RIGHTS.

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 the 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!

In the British Houses of Parliament, more especially in the most efficient house for business, there prevails a well-known jealousy of, and repugnance to, the voting of abstract propositions. This jealousy is not less general than reasonable. A jealousy of abstract propositions is an aversion to whatever is beside the purpose — an aversion to impertinence.

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 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 conceits, 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.*

In this article are contained, grammatically speaking, two distinct sentences. The first is full of error, the other of ambiguity.

In the first are contained four distinguishable propositions, all of them false — all of them notoriously and undeniably false: —

1. That all men are born free.
2. That all men remain free.

3. That all men are born equal in rights.

4. That all men remain (*i. e.* remain for ever, for the proposition is indefinite and unlimited) equal in rights.

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 — betwen 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.

Whatever is, is, — was the maxim of Des-Cartes, who looked upon it as so sure, as well as so instructive a truth, that everything else which goes by the name of truth might be deduced from it. The philosophical vortex-maker—who, however mistaken in his philosophy and his logic, was harmless enough at least — the manufacturer of identical propositions and celestial vortices — little thought how soon a part of his own countrymen, fraught with pretensions as empty as his own, and as mischievous as his were innocent, would contest with him even this his favourite and fundamental maxim, by which everything else was to be brought to light. *Whatever is, is not* — is the maxim of the anarchist, as often as anything comes across him in the shape of a law which he happens not to like.

"Cruel is the judge," says Lord Bacon, "who, in order to enable himself to torture men, applies torture to the law." Still more cruel is the anarchist, who, for the purpose of effecting the subversion of the laws themselves, as well as the massacre of the legislators, tortures not only the words of the law, but the very vitals of the language.

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.

So, again, in the case of husband and wife. Amongst the other abuses which the oracle was meant to put an end to, may, for aught I can pretend to say, have been the institution of marriage. For what is the subjection of a small and limited number of years, in comparison of the subjection of a whole life? Yet without subjection and inequality, no such institution can by any possibility take place; for of two contradictory wills, both cannot take effect at the same time.

The same doubts apply to the case of master and hired servant. Better a man should starve than hire himself; — better half the species starve, than hire itself out to service. For, where is the compatibility between liberty and servitude? How can liberty and servitude subsist in the same person? What good citizen is there, that would hesitate to die for liberty? And, as to those who are not good citizens, what matters it whether they live or starve? Besides that every man who lives under this constitution being equal in rights, equal in all sorts of rights, is equal in respect to rights of property. No man, therefore, can be in any danger of starving — no man can have so much as that motive, weak and inadequate as it is, for hiring himself out to service.

Sentence 2. *Social distinctions cannot be founded but upon common utility.* — This proposition has two or three meanings. According to one of them, the proposition is notoriously false: according to another, it is in contradiction to the four propositions that preceded it in the same sentence.

What is meant by *social distinctions?* what is meant by *can?* what is meant by *founded?*

What is meant by *social distinctions?* — Distinctions not respecting equality?— then these are nothing to the purpose. Distinctions in respect of equality? — then, consistently with the preceding propositions in this same article, they can have no existence: not existing, they cannot be founded upon anything. The distinctions above exemplified, are they in the number of the social distinctions here intended? Not one of them (as we have been seeing,) but has subjection — not one of them, but has inequality for its very essence.

What is meant by *can*—can not be founded but upon common utility? Is it meant to speak of what *is* established, or of what *ought to be established?* Does it mean that no social distinctions, but those which it approves as having the foundation in question, are established anywhere? or simply that none such *ought to be* established anywhere? or that, if the establishment or maintenance of such dispositions by the laws be attempted anywhere, such laws ought to be treated as void, and the attempt to execute them to be resisted? For such is the venom that lurks under such words as *can* and *can not*, when set up as a check upon the laws,—they contain all these three so perfectly distinct and widely different meanings. In the first, the proposition they are inserted into refers to practice, and makes appeal to observation — to the observation of other men, in regard to a matter of fact: in the second, it is an appeal to the approving faculty of others, in regard to the same matter of fact: in the third, it is no appeal to anything, or to anybody, but a violent attempt upon the liberty of speech and action on the part of others, by the terrors of anarchical despotism, rising up in opposition to the laws: it is an attempt to lift the dagger of the assassin against all individuals who presume to hold an opinion different from that of the orator or the writer, and against all governments which presume to support any such individuals in any such presumption. In the first of these imports, the proposition is perfectly harmless: but it is commonly so untrue, so glaringly untrue, so palpably untrue, even to drivelling, that it must be plain to everybody it can never have been the meaning that was intended.

In the second of these imports, the proposition may be true or not, as it may happen, and at any rate is equally innocent: but it is

such as will not answer the purpose; for an opinion that leaves others at liberty to be of a contrary one, will never answer the purpose of the passions: and if this had been the meaning intended, not this ambiguous phraseology, but a clear and simple one, presenting this meaning and no other, would have been employed. The third, which may not improperly be termed the *ruffian-like* or threatening import, is the meaning intended to be presented to the weak and timid, while the two innocent ones, of which one may even be reasonable, are held up before it as a veil to blind the eyes of the discerning reader, and screen from him the mischief that lurks beneath.

Can and *can not*, when thus applied — *can* and *can not*, when used instead of *ought* and *ought not* — *can* and *can not*, when applied to the binding force and effect of laws — not of the acts of individuals, nor yet of the acts of subordinate authority, but of the acts of the supreme government itself, are the disguised cant of the assassin: after them there is nothing but *do him*, betwixt the preparation for murder and the attempt. They resemble that instrument which in outward appearance is but an ordinary staff, but which within that simple and innocent semblance conceals a dagger. These are the words that speak daggers—if daggers can be spoken: they speak daggers, and there remains nothing but to use them.

Look where I will, I see but too many laws, the alteration or abolition of which, would in my poor judgment be a public blessing. I can conceive some, — to put extreme and scarcely exampled cases, — to which I might be inclined to oppose resistance, with a prospect of support such as promised to be effectual. But to talk of what the law, the supreme legislature of the country, acknowledged as such, *can* not do! — to talk of a *void* law as you would of a *void* order or a *void* judgment! — The very act of bringing such words into conjunction is either the vilest of nonsense, or the worst of treasons: — treason, not against one branch of the sovereignty, but against the whole: treason, not against this or that government, but against *all* governments.

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 1. 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 com-

mencement 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 undistinguishable 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. Nature, say some of the interpreters of the pretended law of nature — nature gave to each man a right to everything; which is, in effect, but another way of saying—nature has given no such right to anybody; for in regard to most rights, it is as true that what is every man's right is no man's right, as that what is every man's business is no man's business. Nature gave — gave to every man a right to everything: — be it so — true; and hence the necessity of human government and human laws, to give to every man his own right, without which no right whatsoever would amount to anything. Nature gave every man a right to everything before the existence of laws, and in default of laws. This nominal universality and real nonentity of right, set up provisionally by nature in default of laws, the French oracle lays hold of, and perpetuates it under the law and in spite of laws. These anarchical rights which nature had set out with, democratic art attempts to rivet down, and declares indefeasible.

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 — in-

capable 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 every thing. 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. Under the head of security, liberty might have been included, so likewise property: since security for liberty, or the enjoyment of liberty, may be spoken of as a branch of security: — security for property, or the enjoyment of proprietary rights, as another. 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. But against everything that can come under the name of oppression, provision has been already made, in the manner we have seen, by the recognition of the three preceding rights: since no oppression can fall upon a man which is not an infringement of his rights in relation to liberty, rights in relation to property, or rights in relation to security, as above described. Where, then, is the difference? — to what purpose this fourth clause after the three first? To this purpose: the mischief they seek to prevent, the rights they seek to establish, are the same; the difference lies in the nature of the remedy endeavoured to be applied. To prevent the mischief in question, the endeavour of the three former clauses is, to tie the hand of the legislator and his subordinates, by the fear of nullity, and the remote apprehension of general resistance and insurrection. The aim of this fourth clause is to raise the hand of the individual concerned to prevent the apprehended infraction of his rights at the moment when he looks upon it as about to take place.

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. If a constable call upon you to serve in the militia, shoot the constable and not the enemy; — if the commander of a press-gang trouble you, push him into the sea — if a bailiff, throw him out of the window. If a judge sentence you to be imprisoned or put to death, have a dagger ready, and take a stroke first at the judge.

ARTICLE III.

The principle of every sovereignty [government] resides essentially in the nation. No body of men — no single individual — can exercise any authority which does not expressly issue from thence.

Of the two sentences of which this article is composed, the first is perfectly true, perfectly harmless, and perfectly uninstructive. Government and obedience go hand in hand. Where there is no obedience, there is no government; in proportion as obedience is paid, the powers of government are exercised. This is true under the broadest democracy: this is equally true under the most absolute monarchy. This can do no harm — can do no good, anywhere. I speak of its natural and obvious import taken by itself, and supposing the import of the word principle to be clear and unambiguous, as it is to be wished that it were, that is, taking it to mean *efficient cause.* Of power on the one part, obedience on the other is most certainly everywhere the efficient cause.

But being harmless, it would not answer the purpose, as delivered by the immediately succeeding sentence: being harmless, this meaning is not that which was in view. It is meant as an antecedent proposition, on which the next proposition is grounded in the character of a consequent. No body of men, no individual, can exercise any authority which does not issue from the nation in an express manner. *Can* — still the ambiguous and envenomed *can.* What cannot they in point of fact? Cannot they exercise authority over other people, if and so long as other people submit to it? This cannot be their meaning: this cannot be the meaning, not because it is an untrue and foolish one, but because it contributes nothing to the declared purpose. The meaning must be here, as elsewhere, that of every authority not issuing from the nation in an express manner, every act is void: consequently ought to be treated as such — resisted, risen up against, and overthrown. Issuing from the nation in an express manner, is having been conferred by the nation, by a formal act, in the exercise of which the nation, *i. e.* the whole nation, joined.

An authority issues from the nation in one sense, in the ordinary implied manner, which the nation submits to the exercise of, having been in the habit of submitting to it, every man as long as he can remember, or to some superior authority from which it is derived. But this meaning it was the evident design of the article to put a negative upon; for it would not have answered the disorganizing purpose, all along apparent, and more than once avowed. It is accordingly for the purpose of putting a negative upon it, that the word *expressément — in an express way or manner* — is subjoined. Every authority is usurped and void, to which a man has been appointed in any other mode than that of popular election; and popular election made by the nation — that is, the whole nation (for no distinction or division is intimated,) in each case.

And this is expressly declared to be the case, not only in France, under the government of France, but *everywhere*, and under every government whatsoever. Consequently, all the acts in every government in Europe, for example, are void, excepted, perhaps, or rather not excepted, two or three of the Swiss Cantons;—the persons exercising the powers of government in these countries, usurpers — resistance to them, and insurrection against them, lawful and commendable.

The French government itself not excepted: — whatever is, has been, or is to be, the government of France. Issue from *the* nation: that is, from the *whole* nation, for no part of it is excluded. Women consequently included, and children — children of every age. For if women and children are not part of the nation, what are they? Cattle? Indeed, how can a single soul be excluded, when all men—all human creatures—are, and are to be, equal in regard to rights—in regard to all sorts of rights, without exception or reserve?

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.

ARTICLE V.

The law has no right to forbid any other actions than such as are hurtful to society. Whatever is not forbidden by the law, cannot be hindered; nor can any individual be compelled to do that which the law does not command.

Sentence 1. The law has no right (*n'a le droit*) to forbid any other actions than such as are hurtful to society. The law has no right (*n'a le droit*, not *ne peut pas.*) This, for once, is free from ambiguity. Here the mask of ambiguity is thrown off. The avowed object of this clause is to preach constant insurrection, to raise up every man in arms against every law which he happens not to approve of. For, take any such action you will, if the law have no right to forbid it, a law forbidding it is null and void, and the attempt to execute it an oppression, and resistance to such attempt, and insurrection in support of such resistance, legal, justifiable, and commendable.

To have said that no law ought to forbid any act that is not of a nature prejudical to society, would have answered every good purpose, but would not have answered the purpose which is intended to be answered here.

A government which should fulfil the expectations here held out, would be a government of absolute perfection. The instance of a government fulfilling these expectations, never has taken place, nor till men are angels ever can take place. Against every government which fails in any degree of fulfilling these expectations, then, it is the professed object of this manifesto to excite insurrection: here, as elsewhere, it is therefore its direct object to excite insurrection at all times against every government whatsoever.

Sentence 2. Whatever is not forbidden by the law, cannot be hindered, nor can any individual be compelled to do what the law does not command.

The effect of this law, for want of the requisite exceptions or explanations, is to annihilate, for the time being and for ever, all powers of command: all power, the exercise of which consists in the issuing and inforcing obedience to particular and occasional commands; domestic power, power of the police, judicial power, military power, power of superior officers, in the line of civil administration, over their subordinates If I say to my son, Do not mount that horse, which you are not strong enough to manage; if I say to my daughter, Do not go to that pond, where there are young men bathing; they may set me at defiance, bidding me show them where there are anything about mounting unruly horses, or going where there are young men bathing, in the laws. By the same clause, they may each of them justify themselves in turning their backs upon the lesson I have given them; while my apprentice refuses to do the work I have given him; and my wife, instead of providing the meals I had desired her to provide for ourselves and family, tells me she thinks fit to go and dine elsewhere. In the existing order of things, under any other government than that which was here to be organized, whatever is commanded or forbidden in virtue of a power which the law allows of and recognises, is virtually and in effect commanded and forbidden by the law itself, since, by the support it gives to the persons in question in the exercise of their respective authorities, it shows itself to have adopted those commands, and considered them as its own before they are issued, and that, whatever may be the purport of them, so long as they are confined within the limits it has marked out. But all these existing governments being fundamentally repugnant to the rights of man, are null and void, and incapable of filling up this or any other gap in the texture of the new code. Besides, this right of not being hindered from doing anything which the law itself has not forbidden, nor compelled to do anything which it has not commanded, is an article of natural, unalienable, sacred, and imprescriptible right, over which political laws have no sort of power; so that the attempt to fill up the gap, and to establish any such power of commanding or forbidding what is not already commanded and forbidden by the

law, would be an act of usurpation, and all such powers so attempted to be established, null and void. How also can any such powers subsist in a society of which all the members are free and equal in point of rights?

Admit, however, that room is given for the creation of the powers in question by the spirit, though not by the letter of this clause — what follows? That in proportion as it is harmless, it is insignificant, and incapable of answering its intended purpose. This purpose is to protect individuals against oppressions, to which they might be subjected by other individuals possessed of powers created by the law, in the exercise or pretended exercise of those powers. But if these powers are left to the determination of succeeding and (according to the doctrine of this code) inferior legislatures, and may be of any nature and to any extent which these legislatures may think fit to give them, — what does the protection here given amount to, especially as against such future legislatures, for whose hands all the restraints which it is the object of the declaration to provide are intended? Mischievous or nugatory is still the alternative.

The employment of the improper word *can*, instead of the proper word *shall*, is not unworthy of observation. Shall is the language of the legislator who knows what he is about, and aims at nothing more: — can, when properly employed in a book of law, is the language of the private commentator or expositor, drawing inferences from the text of the law — from the acts of the legislator, or what takes the place of the acts of the legislator — the practice of the courts of justice.

ARTICLE VI.

The law is the expression of the general will. Every citizen has the right of concurring in person, or by his representatives, in the formation of it: it ought to be the same for all, whether it protect, or whether it punish. All the citizens being equal in its eyes, are equally admissible to all dignities, public places, and employments, according to their capacity, and without any other distinction than that of their virtues and their talents.

This article is a *hodge-podge*, containing a variety of provisions, as wide from one another as any can be within the whole circuit of the law: some relating to the constitutional branch, some to the civil, some to the penal; and, in the constitutional department, some relating to the organization of the supreme power, others to that of the subordinate branches.

Proposition 1. The law is the expression of the general will. The law? What law is the expression of the general will? Where is it so? In what country?—at what period of time? In no country — at no period of time — in no other country than France — nor even in France. As to *general*, it means universal; for there are no exceptions made, — women, children, madmen, criminals — for these being human creatures, have already been declared equal in respect of rights: nature made them so; and even were it to be wished that the case were otherwise, nature's work being unalterable, and the rights unalienable, it would be to no purpose to attempt it.

What is certain is, that in any other nation at any rate, no such thing as a law ever existed to which this definition could be applied. But that is nothing to the purpose, since a favourite object of this effusion of universal benevolence, is to declare the governments of all other countries dissolved, and to persuade the people that the dissolution has taken place.

But anywhere—even in France—how can the law be the expression of the universal or even the general will of all the people, when by far the greater part have never entertained any will, or thought at all about the matter; and of those who have, a great part (as is the case with almost all laws made by a large assembly) would rather it had not taken place.

Sentence 2. Every citizen has the right of concurring in person, or by his representatives, in the formation of it.

Here the language changes from the enunciation of the supposed practice, to the enunciation of the supposed matter of right. Why does it change? After having said so silly a thing as that there is no law anywhere, but what was the expression of the will of every member of the community, what should have hindered its going on in the same silly strain, and saying that everybody did concur — did join in the formation of it? However, as the idea of right is, in this second sentence at any rate, presented by its appropriate term, the ambiguity diffused by the preceding sentence is dissipated; and now it appears beyond a doubt, that every law in the formation of which any one citizen was debarred from concurring, either in person or by his representatives, is, and ever will be, here and there and everywhere, a void law.

To characterize proxies, the French language, like the English, has two words — representatives and deputies: the one liable to misconstruction, the other not, — to misconstruction, and such misconstruction as to be made expressive of a sense directly opposite to that which appears here to have been intended; the one tainted with fiction as well as ambiguity, the other expressing nothing but the plain truth. Being so superior to imitation — so free to choose — not tied down by usage as people in Britain are — how come they to have taken the English word representatives, which has given occasion to

so many quibbles, instead of their own good word deputies, which cannot give occasion to anything like a quibble? The king of Great Britain is acknowledged to be the representative of the British nation, in treating with foreign powers; but does the whole nation ever meet together and join in signing an authority to him so to do? The king of Great Britain is acknowledged, in this instance, to represent the British nation; but, in this instance, is it ever pretended that he has been deputed by it? The parliamentary electors have been said to represent the non-electors; and the members of parliament to represent both; but did anybody ever speak of either members or electors as having been deputed by the non-electors? Using the improper word representatives, instead of the proper word deputies, the French might be saddled with the British constitution, for anything there is in this clause to protect them from so horrible a grievance. Representatives sounded better, perhaps, than deputies. Men who are governed by sounds, sacrifice everything to sound: they neither know the value of precision, nor are able to attain it.

Sentence 3 It [the law] ought to be the same for all, whether it protect or whether it punish — [*i. e.* as well in respect of the protection it affords, as in respect of the punishment it inflicts.]

This clause appears reasonable in the main, but in respect to certain points it may be susceptible of explanations and exceptions, from the discussion of which it might have been as well if all posterity had not been debarred.

As to protection, English law affords a punishment, which consists in being put out of the protection of the law; in virtue of which a man is debarred from applying for redress from any kind of injury. For my own part, I do not approve of any such punishment: but perhaps they do, who having it in their power to abrogate it, yet retain it. In France, I suppose it is approved of, where, in a much severer form than the English, it has been so much practised. This species of punishment is inhibited for ever, by the letter at least of this clause. As to the spirit of it, one of the ruling features of this composition from end to end is, that the spirit of it is incomprehensible.

Under the English law, heavier damages are given in many instances to the ministers of justice, acting as such, in case of ill-founded prosecutions against them, for supposed injuries to individuals, than would be given to private individuals aggrieved by prosecutions for the same injuries. The notion evidently is, that the servants of the public, not having so strong an interest in defending the rights of the public as individuals have in defending their own, the public man would be apt to be deterred from doing his duty if the encouragement he have to do it were no greater than the encouragement which the individual has to defend his right. These examples, not to plunge further into details, appear sufficient to suggest a reasonable doubt, whether, even in this instance, the smack-smooth equality, which rolls so glibly out of the lips of the rhetorician, be altogether compatible with that undeviating conformity to every bend and turn in the line of utility which ought to be the object of the legislator.

As to punishment, a rule as strictly subordinate to the dictates of utility, as the doctrine of undeviating equality is congenial to the capricious play of the imagination, is, not in any instance to employ more punishment than is necessary to the purpose. Where, as between two individuals, the measure of sensibility is different, a punishment which in name—that is, according to every description which could be given of it in and by the law, would be equal in the two instances—would in effect be widely different. Fifty lashes may, in the estimation of the law, be equal to fifty lashes; but it is what no man can suppose, that the suffering which a hard-working young man, or even a young woman of the hard-working class, would undergo from the application of fifty lashes, could be really equal in intensity to that which must have been endured from the same nominal punishment (were even the instrument and force applied the same) by the Countess Lapuchin, till then the favourite, and one of the finest ornaments of the court of a Russian empress. Banishment would, upon the face of the law, be equal to banishment: but it will not readily be admitted, that to a servant of the public, who happens to have nothing to live upon but a salary, the receipt of which depends upon attendance at his office, it would be no greater punishment than to a sturdy labourer, who in one country as well as in another, may derive an equal livelihood from the labour of his hands.

Those, if any such there are, to whom distinctions such as these would appear consonant to reason and utility, might perhaps regard them as not irreconcilable with the language of this clause. But others might think them either not reasonable, or, though reasonable, not thus reconcilable. And were any such distinctions to be ingrafted into the law by any succeeding legislators, those who did not approve of the alteration would, if at all actuated by any regard to the tenor and spirit of this declaration, raise a cry of aristocracy, and pronounce the alteration void: and then comes resistance and insurrection, and all the evils in their train.

Sentence 4. All the citizens being equal in its eyes, are all of them admissible to all dignities, public places, and employments,

according to their capacity, and without any other distinction than that of their virtues and their talents.

This is one of the few clauses, not to say the only one, which does not seem liable to very serious objection: there is nothing to object to in its general spirit and meaning, though perhaps there is something as to the expression. In general, it were to be wished that no class of men should stand incapacitated with regard to any object of competition by any general law: nor can anything be said in favour of those hereditary incapacitations which suggested and provoked this clause. Yet as governments are constituted, and as the current of opinion runs, there may be cases where some sorts of incapacitation in regard to office seem called for by the purpose which operated as the final cause in the institution of the office. It seems hardly decent or consistent, for example, to allow to a Jew the faculty of presenting to a Christian benefice with cure of souls: though, by a judgment of no very ancient date, the law of England was made to lend its sanction to an appointment of this sort. As inconsistent does it appear to admit a Catholic patron to appoint to a Protestant, or a Protestant to a Catholic benefice; at least so long as diversities in matters of religious profession continue to have ill-will for their accompaniment. Ecclesiastical patronage in the hands of individuals, is indeed one of the abuses, or supposed abuses, which it was the object of this code to eradicate: and since then, the maintenance of an ecclesiastical establishment of any kind at the expense of the state, has, in France, been added to the catalogue of abuses. But at the time of the promulgation of this code, the spirit of subversion had not proceeded this length: ecclesiastical offices were still kept up; though, in relation to all these, together with all other offices, the right of nomination was given to assemblies of the people. The incongruity of admitting the professor of a rival religion to the right of suffrage, would therefore be the same in this instance as in the case where the nomination rested in a single breast, though the danger would seldom be of equal magnitude.

Madmen, and criminals of the worst description, are equally protected against exclusion from any office, or the exercise of any political right. As to offices which under this system a man cannot come into possession of but by election, the inconvenience, it may be said, cannot be great; for though not incapable of being elected, there is no danger of their being so. But this is not the case with regard to any of those political privileges which this system gives a man in his own right, and as a present derived from the hands of nature—such as the right of suffrage with regard to offices. Were an assassin, covered with the blood of the murdered person, and ordered for execution on the second of the month — or, which is doubtless esteemed worse, a royalist convicted of adherence to the government under which his country had existed for so many hundred years — to put in his claim for admittance to give his suffrage in the election of a deputy to the convention, or of a mayor of the Paris municipality, I see not how his claim could be rejected without an infringement of this clause. Indeed, if this right, like all the others, be, as we are told over and over again, a present of the goddess Nature, and proof against all attacks of law, what is to be done, and what remedy can be administered by the law? Something, it is true, is said of talents and of virtues; and the madman, it may be said, is deficient in talents, and the criminal in point of virtues. But neither talents nor virtues are mentioned otherwise than as marks of pre-eminence and distinction, recommending the possessors to a proportionable degree of favour and approbation with a view to preference: nothing is said of any deficiency in point of talent or virtue as capable of shutting the door against a candidate: distinction is the word, not exception, — distinction among persons all within the list, not exception excluding persons out of the list.

So far from admitting the exclusion of classes of men, however incompetent, the provision does not so much as admit of the exclusion of individuals from any office. An individual, or a knot of individuals, bent upon affording a constant obstruction to all business, and selected perhaps for that very purpose, might be returned to the supreme assembly, or any other; nor could they be got rid of without a breach of the natural and inviolable rights of man, as declared and established by this clause.

What makes the matter still the clearer is, that the particular provision is given in the character of a consequence of, that is, as being already included in the preceding article, declaring the perfect and unchangeable equality of mankind in respect of all manner of rights:— "The citizens being all of them equal in its sight, are all of them equally admissible," and so forth. As the general proposition, therefore, admits of no exception to it, no more can this particular application of it have one. Virtues and talents sound prettily, and flatter the imagination, but in point of clearness, had that been the object, the clause, such as it is, would have been all the better had it ended with the words public places and employments; and had all that is said about capacity, and distinction, and virtues, and talents, been left out.

ARTICLE VII.

No one can be accused, arrested or de-

tained, but in the cases determined by the law, and according to the forms prescribed by the law. Those who solicit, issue, execute, or cause to be executed, arbitrary orders, ought to be punished; but every citizen, summoned or arrested in virtue of the law, ought to obey that instant: he renders himself culpable by resistance.

Sentence 1. No one can be accused, arrested, or detained, but in the cases determined by the law, and according to the forms prescribed by the law.

Here again we have the improper word *can*, instead of *ought*. Here, however, the power of the law is recognized, and passes unquestioned: the clause, therefore, is in so far not mischievous and absurd, but only nugatory, and beside the purpose. The professed object of the whole composition is to tie the hands of the law, by declaring pretended rights over which the law is never to have any power,—liberty, the right of enjoying liberty:—here this very liberty is left at the mercy and good pleasure of the law. As it neither answers the purpose it professes to have in view, so neither does it fulfil the purpose which it ought to have had in view, and might have fulfilled,—the giving the subject, or, to speak in the French style, the citizen, that degree of security which, without attempting to bind the hands of succeeding legislators, might have been given him against arbitrary mandates.

There is nothing in this article which might not be received, and without making any alteration, into the constitutional codes of Prussia, Denmark, Russia, or Morocco. It is or is not law—(no matter which, for I put it so only for supposition sake)—it is law, let us say, in those countries, that upon order signed or issued by any one of a certain number of persons—suppose ministers of state—any individual may be arrested at any time, and detained in any manner and for any length of time, without any obligation on the part of the person issuing the order to render account of the issuing or of the execution of it to anybody but the monarch. If such were the law in these countries respectively, before the establishment of such a law as this clause imports, such may it remain, and that without effecting any abridgment of the powers of the ministers in question, or applying any check to the abuses of those powers, or affording the subject any security or remedy against the abuses of those powers, after the introduction of such article.

The case in which it is determined by the law, that a man may be so arrested and detained, is the case of an order having been issued for that purpose by any one in such a list of ministers; and the form in which the order for that purpose must be conceived, is the wording in the form in which orders to the purpose in question have been in use to be worded, or, in short, any other form which the ministers in question may be pleased to give it. If to this interpretation any objection can be made, it must be grounded on the ambiguity of the word *the law*—an ambiguity resulting from the definition above given of it in this declaratory code. If the laws are all of them *ipso facto* void, as this manifesto has, by the preceding article, declared them to be in all countries where the laws are made by other authority than that of the whole body of the people, then indeed the security intended to be afforded is afforded; because in that case no arrest or detention can be legal, till the ground and form of it have been preordained by a law so established. On the contrary, if that article be to be explained away, and countries foreign to France are to be left in possession of their laws, then the remedy and security amounts to nothing, for the reason we have seen. Nugatory or mischievous: such is the option every where else—such is the option here.

Sentence 2. Those who solicit, issue, execute or cause to be executed, arbitrary orders, ought to be punished.

Yes, says a Moullah of Morocco, after the introduction of this article into the Morocco code,—yes, if an order to the prejudice of the liberty of the subject be illegal, it is an arbitrary order, and the issuing of it is an offence against the liberty of the subject, and as such ought to be, and shall be punished. If one dog of an infidel presume to arrest or detain another dog of an infidel, the act of arrest and detention is an arbitrary one, and nothing can be more reasonable than what the law requires, viz that the presuming dog be well bastinadoed. But if one of the faithful, to every one of whom the sublime emperor, crowned with the sun and moon, has given the command over all dogs, think fit to shut up this or that dog in a strange kennel, what is there of arbitrariness in that? It is no more than what our customs, which are our laws, allow of everywhere, when the true believers have dogs under them.

The security of the individual in this behalf depends, we see, upon the turn given to that part of the law which occupies itself in establishing the powers necessary to be established for the furtherance of justice. Had the penners of this declaration been contented with doing what they might have done consistently with reason and utility, in this view they might have done thus:—they might have warned and instructed them to be particular in the indication of the cases in which they would propose to grant such powers, and in the indication of the forms according to which the powers so granted should be exercised;—for instance, that no man should be arrested but for some one in the list of cases enumerated by the law as capable of warranting

an arrest; nor without the specification of that case in an instrument, executed for the purpose of warranting such arrest; nor unless such instrument were signed by an officer of such a description; and so on: — not to attempt to exhibit a code of such importance, extent, and nicety, in the compass of a parenthesis. In doing so, they would have done what would at least have been innocent, and might have had its use: — but in doing so, they would not have prosecuted their declared purpose; which was not only to tutor and lecture their more experienced and consequently more enlightened successors, but to tie their hands, and keep their fellow-citizens in a state of constant readiness to cut their throats.

Sentence 3 But every citizen summoned or arrested in virtue of the law, ought to obey that instant: he renders himself culpable by resistance.

This clause is mighty well in itself: — the misfortune is, that it is nothing to the purpose. The title of this code is the Declaration of Rights; and the business of it is accordingly, in every other part of it, to declare such rights, real or supposed, as are thought fit to be declared. But what is here declared is for once a *duty;* the mention of which has somehow or other slipt in, as it were through inadvertence. The things that people stand most in need of being reminded of, are, one would think, their duties: — for their rights, whatever they may be, they are apt enough to attend to of themselves. Yet it is only by accident, under a wrong title, and as it were by mistake, and in this single instance, that anything is said that would lead the body of the people to suspect that there were any such things appertaining to them as *duties.*

He renders himself culpable by resistance: Oh yes — certainly, unless the law for the infringement of which he is arrested, or attempted to be arrested, be an oppresive one: or unless there be anything oppressive in the behaviour of those by whom the arrest or detention is performed. If, for instance, there be anything of the insolence of office in their language or their looks, — if they lay hold of him on a sudden, without leaving him time to run away, — if they offer to pinion his arms while he is drawing his sword, without waiting till he have drawn it, — if they lock the door upon him, or put him into a room that has bars before the window, — or if they come upon him the same night, while the evidences of his guilt are about him and all fresh, instead of waiting on the outside of the door all night till he have destroyed them.* In any of these cases, as well as a thousand others that might be mentioned, can there be any doubts about the oppression? but by Article II. of this same code — an article which has already been established and placed out of the reach of cavil, the right of resistance to oppression is among the number of those rights which nature hath given, and which it is not in the power of man to take away.

ARTICLE VIII.

The law ought not to establish any other punishments than such as are strictly and evidently necessary; and no one can be punished but in virtue of a law established and promulgated before the commission of the offence, and applied in a legal manner.

Sentence 1. The law ought not to establish any other punishments than such as are strictly and evidently necessary.

The instruction administered by this clause is not great: so far, however, is well, that the purpose declared in this instrument is departed from, and nothing but instruction is here attempted to be given; and which succeeding legislators may be governed by or not as they think fit. It is well, indeed, that penal laws not conforming to this condition are not included in the sentence of nullity so liberally dealt out on other occasions, since, if they were, it would be difficult enough to find a penal law anywhere that would stand the test, from whatever source — pure or impure, democratical, aristocratical, or monarchical — it were derived.

No rules of any tolerable degree of particularity and precision have ever yet been laid down for adjusting either the quantum or the quality of punishments — none such at least could have been in the contemplation of the framers of this code: and supposing such rules laid down, and framed with the utmost degree of particularity and precision of which the nature of the subject is susceptible, it would

* By a subsequent decree of the Convention, this silly provision was actually made law, under the notion of favouring liberty. The liberty of doing mischief, it certainly does favour, as certainly as it disfavours the liberty of preventing it. Ask for a reason: *a man's house,* you are told, *is his castle.* Blessed liberty! — where the trash of sentiments — where epigrams, pass for reasons, and poetry gives rule to law! But if a man's house be his castle by night, how comes it not to be so by day? And if a house be a castle to the owner, why not to everybody else in whose favour the owner chooses to make it so? By day or by night, is it less hardship to a suspected person to have his house searched, than to an unsuspected one? Here we have the mischief and the absurdity of the ancient ecclesiastical asylums, without the reason.

The course of justice in England is still obstructed to a certain degree by this silly epigram, worthy of the age which gave it birth. Delinquents, like foxes, are to have law given them: that is, are to have chances of escape given them on purpose, as if it were to make the better sport for the hunters — for the lawyers, by and for whom the hunt is made.

still be seen in most instances, if not in every instance, that the offence admitted optionally of a considerable variety of punishments, of which no one could be made to appear to be strictly and evidently necessary, to the exclusion of the rest.

As a mere *memento*, then, of what is fit to be attended to, a clause to this effect may be very well; but as an instruction, calculated to point out in what manner what is so fit to be attended to may be accomplished, nothing can be more trifling or uninstructive: — it is even erroneous and fallacious, since it assumes, and that by necessary implication, that it is possible, in the case of every offence, to find a punishment of which the strict necessity is capable of being made evident,—which is not true. Unfortunately, the existence of a system of punishments of which the absolute necessity is capable of being made evident, with reference to the offences to which they are respectively annexed, is not altogether so clear as the existence of the article by which succeeding legislators are sent in quest of such a system by these their masters and preceptors. One thing is but too evident, that the attention bestowed by the penner of this article, on the subject on which he gives the law to posterity so much at his ease, was anything but strict. It was the Utopia created by the small talk of Paris that was dancing before his eyes, and not the elementary parts of the subject-matter he was treating of — the list of possible punishments, confronted with the list of possible offences. He who writes these observations has bestowed a closer and more minute inquiry into the subject than anybody who has been before him — he has laid down a set of rules, by which, as he conceives, the disproportion but too generally prevalent between punishments and offences, may be reduced within bounds greatly more narrow than it occupies anywhere at present in any existing code of laws — and what he would undertake for is, not to make evident any such list of strictly necessary punishments, but the impossibility of its existence.

Sentence 2. No one can be punished but in virtue of a law established and promulgated before the commission of the offence, and applied in a legal manner.

This clause—if instead of the insurrection-inviting word *can*, the word *ought* had been employed, as in the preceding clause of this same article — would, as far as it goes, have been well enough. As it is, while on the one hand it not only tends to bring in the everlasting danger of insurrection, — on the other hand, it leaves a considerable part of the danger against which it is levelled, uncovered and unprovided against.

Numerous are the occasions on which sufferings as great as any that, being inflicted with a view to punishment, go under the denomination of punishment, may be inflicted without any such view. These cases a legislator who understood his business would have collected and given notice of, for the purpose of marking out the boundaries and confines of the instruction in question, and saving it from misapplication. Laying an embargo, for instance, is a species of confinement, and, were a man subjected to it with a view to punishment, might in many cases be a very severe punishment: yet if the providence of the legislator happen not to have provided a general law empowering the executive authority to lay an embargo in certain cases, the passing of a special law for that purpose, after the incident which calls for it has taken place, may be a very justifiable, and even necessary measure; for instance, to prevent intelligence from being communicated to a power watching the moment to commence hostilities, or to prevent articles of subsistence or instruments of defence, of which there is a deficiency in the country, from being carried out of it.

Banishment must, in a certain sense, be admitted to be equally penal, whether inflicted for the purpose of punishment, or only by way of precaution, — for the purpose of prevention, and without any view to punishment. Will it be said, that there is no case in which the supreme government of a country ought to be trusted with the power of removing out of it, not even for a time, any persons, not even foreigners, from whom it may see reason to apprehend enterprises injurious to its peace? So in the case of imprisonment, which, though in some instances it may be a severer, may in others be a less severe infliction than banishment. Even death, a suffering which, if inflicted with a view to punishment, is the very extremity of punishment, and which, according to my own conception of the matter, neither need nor ought to be inflicted in any instance for the purpose of punishment, may, in some certain instances perhaps, be highly necessary to be inflicted without any view to punishment — for example, to prevent the diffusion of the plague.

Thus it is, that while the clause passing censure on *ex post facto* penal laws (a censure in itself, and, while it confines itself to the cases strictly within its declared subject, so highly reasonable) is thus exhibited with the insurrection-inciting *can* in it, and without the explanations necessary, as we have seen, to guard it against misapplication, the country is exposed to two opposite dangers: one, that an infliction necessary for the purpose of prevention should be resisted and risen up against by individuals, under the notion of its being included in the prohibition given by this clause; the other, that the measure, how necessary soever, should be abstained

from by the legislature through apprehension of such resistance.

As to the concluding epithet, *and legally applied*, it might have been spared without any great injury to the sense. If the law referred to in justification of an act of power have not been legally applied in the exercise of that act of power, the act has not been exercised in virtue of that law.

ARTICLE IX.

Every individual being presumed innocent until he have been declared guilty, — if it be judged necessary to arrest him, every act of rigour which is not necessary to the making sure of his person, ought to be severely inhibited by the law.

This article being free from the insurrection-exciting particle, and confining itself to the office of simple instruction, is so far innocent: the object of it is laudable, though the purport of it might have been expressed with more precision.

The maxim it opens with, though of the most consummate triviality, is not the more conformable to reason and utility, and is particularly repugnant to the regulation in support and justification of which it is adduced. That every man *ought* to be presumed innocent (for "is presumed innocent" is nonsense,) until he have been *declared* (that is, adjudged) guilty, is very well so long as no accusation has been preferred against him, — or rather, so long as neither that nor any other circumstance appears to afford reason for suspecting the contrary — but very irrational, after that ground for supposing he may have been guilty has been brought to light.

The maxim is particularly misapplied and absurd when applied to the case where it has been judged proper (on sufficient grounds we are to suppose) to put him under arrest, to deprive him of his power of locomotion. Suppose him innocent, and the defalcation made from his liberty is injurious and unwarrantable. The plain truth of the matter is, that the only rational ground for empowering a man to be arrested in such a case, is its not being yet known whether he be innocent or guilty: suppose him guilty, he ought to be punished — suppose him innocent, he ought not to be touched. But plain unsophisticated truth and common sense do not answer the purpose of poetry or rhetoric; and it is from poetry and rhetoric that these tutors of mankind and governors of futurity take their law. A clap from the galleries is their object, not the welfare of the state.

As for the expression, *ought to be severely repressed* (by punishment I suppose,) it is as well calculated to inflame (the general purpose of this effusion of matchless wisdom) as it is ill calculated to instruct. A rather more simple and instructive way of stating it would have been to say, in relation to every such exercise of rigour which goes beyond what appears necessary to the purpose in question — that of making sure of the person, that not coming within the ground of justification taken from that source, it remains upon the footing of an offence of that description of delinquency, whatever it be, of an injury of the species in question, whatever it may be. The satisfaction and punishment annexed to it will come of course to be of the same nature and extent as for an injury of the same nature and extent having no such circumstance to give occasion to it. Should the punishment in such case be greater or less than the punishment for the same injury would be if altogether divested of the justification which covers the remainder of the unpleasant treatment? Should the punishment of the minister of justice exceeding his authority, be greater or less than that of the uncommissioned individual doing the same mischief without any authority? On some accounts (as would be found upon proper inquiry,) it should be greater: on other accounts, not so great. But these are points of minute detail, which might surely as well have been left to the determination of those who would have had time to give them due examination, as determined upon at random by those who had no such time. The words of this article seem to intimate, that the punishment for the abuse of power by the minister of justice ought to be the greater of the two. But why so? You know better where to meet with the minister of justice than with an offending individual taken at large: — the officer has more to lose than the individual: — and the greater the assurance you have that a delinquent, in case of accusation, will be forthcoming, in readiness to afford satisfaction in the event of his being sentenced to afford it, the less the alarm which his delinquency inspires.

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 streets: — 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!

I give the preference, for the purpose of exemplification, to one of those points of all others, in relation to which it would give me pleasure to see liberty established for ever, as it could be established consistently with security and peace. My persuasion is, that there is not a single point with relation to which it can answer any good purpose to attempt to tie the hands of future legislators; and so, that as there is not a single point, not even of my own choosing, in relation to which I would endeavour to give any such perpetuity to a regulation even of my own framing, it is still less to say — strong as it may appear to say — that were it to depend upon me, I would sooner, were the power of sanctioning in my hands, give my sanction to a body of laws framed by any one else, how bad soever it might appear to me, free from any such perpetuating clause, than a body of laws of my own framing, how well soever I might be satisfied with it, if it must be incumbered with such a clause.

ARTICLE XI.

The free examination of thoughts and opinions is one of the most precious rights of man: every citizen may therefore speak, write, and print freely, provided always that he shall be answerable for the abuse of that liberty in the cases determined by the law.

The logic of this composition is altogether of a piece with its policy. When you meet with a *therefore* — when you meet with a consequence announced as drawn from the proposition immediately preceding it, assure yourself that, whether the propositions themselves, as propositions, are true or false — as ordinances, reasonable or unreasonable, expedient or inexpedient — that the consequent is either in contradiction with the antecedent, or has nothing at all to do with it.

The liberty of communicating opinions is one branch of liberty; and liberty is one of the four natural rights of man, over which human ordinances have no power. There are two ways in which liberty may be violated: by physical or bodily coercion, and by moral coercion or demonstration of punishment; — the one applied before the time for exercising the liberty — the other to be applied after it, in the shape of punishment, in the event of its not producing its intended effect in the shape of prohibition.

What is the boon in favour of the branch of liberty here in question, granted by this article? It saves it from succeeding legislators in one shape — it leaves it at their mercy in the other. Will it be said, that what it leaves exposed to punishment is only the abuse of liberty? Be it so. What then? Is there less of liberty in the abuse of liberty than in the use of it? Does a man exercise less liberty when he makes use of the property of another, than when he confines himself to his own? Then are liberty and confinement the same thing — synonymous and interchangeable terms.

What is the abuse of liberty? It is that exercise of liberty, be it what it may, which a man who bestows that name on it does not approve of. Every abuse of this branch of liberty is left exposed to punishment; and it is left to future legislators to determine what shall be regarded as an abuse of it. What is the security worth, which is thus given to the individual as against the encroachments of government? What does the barrier pretended to be set up against government amount to? It is a barrier which government is expressly called upon to set up where it pleases. Let me not be mistaken: — what I blame these constitution-makers for, is, not the having omitted to tie the hands of their successors tight enough, but the suffering themselves to entertain a conceit so mischievous and so foolish as that of tying them up at all; and in particular for supposing, that were they weak enough to suffer themselves to be so shackled, a phrase or two of so loose a texture could be capable of doing the business to any purpose.

The general notion in regard to offences — a notion so general as to have become proverbial, and even trivial — is, that *prevention*

is better than punishment. Here prevention is abjured, and punishment embraced in preference. Once more, let me not be mistaken. In the particular case of the liberty of communicating opinions, there most certainly are reasons, for giving up the object of prevention, and in the choice of the means of repression, confining the repressive operations of the legislator to the application of punishment, which do not apply to other offences. A word or two to this purpose, and to justify the seeming inconsistency, would have been rather more instructive than most of those other instructions of which the authors of this code have been so liberal.

Not only is the consequent of these two propositions, clogged with the proviso at the tail of it, repugnant to the antecedent, but in itself it is much more extensive — it extends a vast way beyond what is intended as a covering for it. The free communication, of thoughts, and of opinions, I presume are here put as synonymous terms: the free communication of opinions, says the antecedent, is one of the most valuable of the rights of man — of those unalienable rights of man. What says the consequent of it? Not only that a man may communicate opinions without the possibility of being prevented, but that he is to be at liberty to communicate what he will, without the possibility of being prevented, and in any manner, — false allegations in matters of fact, and known to be such—for true, false allegations to the prejudice of the reputation of individuals — in a word, slander of all sorts — and that in all manner of ways, — by speech, by writing, and even in the way of printing, without the possibility of stopping his mouth, destroying his manuscript, or stopping the press.

What then? Does it follow, that because a man ought to be left at liberty to publish opinions of all sorts, subject not to previous prevention, but only to subsequent punishment, that therefore he ought to be left at equal liberty to publish allegations of all sorts, false as well as true — allegations known by him to be false, as well as allegations believed by him to be true — attacks which he knows to be false, upon the reputation of individuals, as well as those which he believes to be true? Far is it from my meaning to contend in this place, especially in a parenthesis, much more to take for granted, that the endurance of even these mischiefs, crying as they are, may not be a less evil than the subjecting the press to a previous censure, under any such restrictions on the exercise of that power as could be devised — at any rate, under any such as have ever hitherto been proposed. All I mean to say is, that whether a man ought or ought not to be left at liberty to publish private slander without the application of anything but subsequent punishment to stop the progress of it, it does not follow that it ought to be left in his power to publish such allegations, because it ought to be left in like manner in his power to publish whatever can come under the denomination of opinions. As for the word thoughts, which is put in a line with the word opinions, as if thoughts were something different from opinions, I shall lay it out of the question altogether, till I can find somebody who will undertake to satisfy me, in the first place, that it was meant to denote something in addition to opinions, and in the next place, that that something was meant to include allegations, true and false, in relation to matters of fact.

Is it, or is it not, a matter to be wished, in France for example, that measures were taken by competent authority—whatever authority be deemed competent, to draw the line between the protection due to the useful liberty, and the restraint proper for the pernicious licence of the press? What a precious task would the legislator find set for him by this declaration of sacred, inviolable, and imprescriptible rights! The protectors of reputation on one side of him: the idolators of liberty on the other: each with the rights of man in his mouth, and the dagger of assassination in his hand, ready to punish the smallest departure from the course marked out in his heated imagination for this unbending line.

ARTICLE XII.

The guarantee of the rights of the man and of the citizen necessitates a public force: this force is therefore instituted for the advantage of all, and not for the particular utility [advantage] *of those to whom it is intrusted.*

The general purpose of the whole performance taken together, being mischievous and pestilential, this article has thus much to recommend it, that it is nothing to the purpose — no declaration of inviolable rights — no invitation to insurrection. As it stands, it is a mere effusion of imbecility — a specimen of confused conception and false reasoning. With a little alteration, it might be improved into a common-place memento, as stale, and consequently as useless, as it is unexceptionable: to wit, that the employment given to the public force, maintained as it is at the expense of the public, ought to have for its object the general advantage of the whole body of the public taken together, not the exclusive private advantage of particular individuals.

This article is composed of two distinct propositions. In the first, after throwing out of it as so much surplusage, the obscure part about the guarantee or maintenance of the rights of the man and the citizen, there will remain a clear and intelligible part, a declaration of opinion asserting the necessity of a public force: to this, hooked on in the shape

of an inference, of a logical conclusion, a vague assertion of an historical matter of fact, which may have been true in one place, and false in another — the truth of which is incapable of being ascertained in any instance — an operation, the labour of which may be spared with the less loss, from its being nothing to the purpose.

This matter of fact is neither more nor less than the main end in view which happened to be present in the minds of the several persons to whose co-operation the public force was respectively indebted for its institution and establishment in the several political communities in the world, and which officiated in the character of a final cause in every such instance. This final cause, the penner of the article — such is his candour and good opinion of mankind — pronounces without hesitation or exception to have been the pure view of the greatest good of the whole community — public spirit in its purest form, and in its most extensive application. Neither Clovis, Pepin, nor Hugh Capet, had the smallest preferable regard to the particular advantage of themselves or their favourites, when they laid the foundations of the public force in France, nor any other consideration in view than what might be most conducive to the joint and equal advantage of the Franks, Gauls, and Gallo-Romans upon the whole. As little partiality existed in the breast of William the Conqueror, in favour of himself, or any of his Normans, on the occasion of his sharing out England among those Normans, and dividing it into knight's fees: freemen and villains, barons and yeomen, Normans, Danes, and English, collectively and individually, occupying one equal place in his affections, and engaging one equal portion of his solicitude.

According to this construction, the inference, it must be confessed, may be just enough. All you have to suppose is, that the greatest good of the whole community taken together was in every instance the ruling object of consideration in the breast of the institutors of the public force: the pursuit of that greatest good, in a certain shape not perfectly explained, being the ruling object with these worthy men. As they did institute this public force, it seems to follow pretty accurately that the attainment of that general advantage was the end in view, in each instance, of its being instituted.

Should the two propositions, the antecedent and the consequent, in this their genuine signification, appear too silly to be endurable, the way to defend it may be to acknowledge that the man who penned it knew no difference between a declaration of what he supposed was or is the state of things with regard to this or that subject, and a declaration of what he conceived ought to have been, or ought to be that state of things; and this being the case, it may be supposed that in saying such was the end in view upon the several occasions in question, what he meant was, that such it ought to have been. If this were really his meaning, the propositions are such, both of them, as we may venture to accede to without much danger. A public force is necessary, we may say; and the public is the party for whose advantage that force ought to be employed. The propositions themselves are both of them such, that against neither of them, surely, can any objection be produced: as to the inference by which they are strung together, if the application made of it be not exactly of the clearest nature, you have only to throw it out, and everything is as it should be, and the whole article is rendered unexceptionable.

ARTICLE XIII.

For the maintenance of the public force, and for the expenses of administration, a common contribution is indispensable: it ought to be equally divided among all the citizens in proportion to their faculties.

In the first part of this article two propositions are contained. One is, that a common contribution is indispensable for the maintenance of the public force. If by this be meant, that raising money upon all, for the maintenance of those whose individual forces are employed in the composition of the public force, is proper, I see no reason to dispute it: if the meaning be, that this is the only possible way of maintaining a public force, it is not true. Under the feudal system, those whose individual forces composed the public force, were maintained, not at the expense of the community at large, but at their own expense.

The other proposition is, that a common contribution is indispensable for the expenses (meaning the other expenses) of administration. Indispensable? Yes, certainly: so far as these other branches of administration cannot be carried on without expense — if they are carried on, the defraying of that expense is indispensable. But are these nameless branches of administration necessary? for if they are not, neither is a common contribution for the defraying of the expense. Are they then necessary? — these unnamed and unindicated branches of administration, which in this mysterious manner are put down on the list of necessary ones, is their title to be there a just one? This is a question to which it is impossible to find an answer: yet, till an answer be found for it, it is impossible to find a sufficient warrant for admitting this proposition to be true. From this proposition, as the matter stands upon the face of it, it should seem that one of these sacred and inviolable and imprescriptible rights of a man consists in the obligation of contributing to an unknown mass of expense employed upon objects not ascertained.

Proposition 3. It (the common contribution in question) ought to be equally divided amongst all the citizens, in proportion to their faculties.

Partly contradiction—a sequel to, or rather repetition of preceding contradictions: partly tyranny under the mask of justice.

By the first article, human creatures are, and are to be, all of them, on a footing of equality in respect to all sorts of rights. By the second article, property is of the number of these rights. By the two taken together, all men are and are to be upon an equal footing in respect of property: in other words, all the property in the nation is and is to be divided into equal portions. At the same time, as to the matter of fact, what is certain is, that at the time of passing this article, no such equality existed, nor were any measures so much as taken for bringing it into existence. This being the case, which of the two states of things is it that this article supposes?—the old and really existing inequality, or the new and imaginary equality? In the first case, the concluding or explanatory clause is in contradiction to the principal one: in the other case, it is tautological and superfluous. In the first case, the explanatory clause is in contradiction to the principal one; for, from unequal fortunes if you take equal contributions, the contributions are not proportional. If from a fortune of one hundred pounds you take a contribution of ten pounds, and from a fortune of two hundred pounds, ten pounds and no more, the proportion is not a tenth in both cases, but a tenth in the one, and only a twentieth in the other.

In the second case — that is, if equality in point of property be the state of things supposed—then, indeed, equality of contribution will be consistent with the plan of equalization, as well as consonant to justice and utility; but then the explanatory clause, *in proportion to their faculties*, will be tautologous and superfluous, and not only tautologous and superfluous, but ambiguous and perplexing: for proportionality in point of contribution is not consistent with equality in point of contribution, on more than one out of an infinity of suppositions, viz. that of equality in point of fortune: nor, in point of fact, was the one consistent with the other in the only state of things which was in existence at the time.

Men's *faculties* too! What does that word mean? This, if the state of things represented as actually existing, as well as always having existed, and for ever about to exist, had been anything more than a sick man's dream, would have required to be determined, had it been at all a matter of concern to prevent men from cutting one another's throats, and must have been determined before this theory could have been reduced to practice. In the valuation of men's faculties, is it meant that their possessions only, or that their respective wants and exigencies, as well as their ways and means, should be taken into account? In the latter case, what endless labour! in the former case, what injustice!

In either case, what tyranny! An inquisition into every man's exigencies and means, — an inquisition which, to be commensurate to its object, must be perpetual, — an inquisition into every man's circumstances, one of the foundation stones in this plan of liberty!

To a reader who should put an English construction upon this plan of taxation — (masked by the delusive term contribution, as if voluntary contributions could be a practicable substitute for compulsory,) — to a reader who should collect from the state of things in England the construction to be put upon this plan of taxation, the system here in view would not show itself in half its blackness. To an English reader it might naturally enough appear, that all that was meant was, that the weight of taxation should bear in a loose sense as equally, or rather as equitably — that is, as proportionably, as it could conveniently be made to do; — that taxes, a word which would lead him directly and almost exclusively to taxes upon consumption, should be imposed — for example, upon superfluities in preference to the necessaries of life. Wide indeed would be his mistake. What he little would suspect is, that taxes on consumption, the only taxes from which arise the contributions that in plain truth, and not in a sophistical sense, are voluntary on the part of the contributor, are carefully weeded out of the book of French finance. Deluded by the term *indirect*, imposed as a sort of term of proscription upon them by a set of muddy-headed metaphysicians — little does he think that the favourite species of taxation in that country of perfect liberty, is a species of imposition and inquisition, which converts every man who has any property into a criminal in the first instance, which sends the tax-gatherer into every nook and corner of a man's house, which examines every man upon interrogatories, and of which a double or treble tithe would be an improved and mollified modification.

ARTICLE XIV.

All the citizens have the right to ascertain by themselves, or by their representatives, the necessity of the public contribution — to give their free consent to it — to follow up the application of it, and to determine the quantity of it, the objects on which it shall be levied, the mode of levying it and getting it in, and the duration of it.

Supposing the author of this article an enemy to the state, and his object to disturb

the course of public business, and set the individual members of the state together by the ears, nothing could have been more artfully or more happily adapted to the purpose. Supposing him a friend, and his object to administer either useful instruction or salutary controul, nothing more silly or childish can be imagined.

In the first place, who is spoken of—who are meant, by all the citizens? Does it mean all, collectively acting in a body, or every citizen, every individual, that is, any one that pleases? This right of mine, — is it a right which I may exercise by myself at any time whenever it happens to suit me, and without the concurrence of anybody else, or which I can only exercise if and when I can get everybody else, or at least the major part of everybody else, to join me in the exercise of it? The difference in a practical view is enormous; but the penners of this declaration, by whom terms expressive of aggregation, and terms expressive of separation, are used to all appearance promiscuously, show no symptoms of their being aware of the smallest difference. If in conjunction with everybody else, I have it already by the sixth article. Laws imposing contributions are laws: I have already, then, a right of concurring in the formation of all laws whatever: what do I get by acquiring the right of concurring in the formation of the particular class of laws which are employed in imposing contributions? As a specification, as an application of the general provision to the particular subject, it might be very well. But it is not given as a specification, but as a distinct article. What marks the distinction the more forcibly, is the jumbling in this instance, and in this instance only, acts of another nature with acts of legislation — the right of examining into the necessity of the operation, and of following up such examination with the right of performing the operation — the right of observing and commenting on the manner in which the powers of government are exercised, with the right of exercising them.

Make what you will of it, what a pretty contrivance for settling matters, and putting an end to doubts and disagreements! This, whatever it is, is one of the things which I am told I have a right to do, that is, either by myself, or by certain persons alluded to under the denomination of my representatives, —either in one way or the other; but in which? This is exactly what I want to know, and this is exactly what I am not told. — Can I do it by myself, or only by my representatives; that is to say, in the latter case by a deputy in whose election I have perhaps had a vote, perhaps not — perhaps given the vote, perhaps not — perhaps voted for, perhaps voted against; and who, whether I voted for or against him, will not do either this, or any one other act whatsoever, at my desire? Have I, an individual — have I in my individual capacity — a right when I please, to ascertain, that is, to examine into the necessity of every contribution established or proposed to be established? Then have I a right to go whenever I please, to any of the officers in the department of the revenue, — to take all the people I find under my command, — to put all the business of the office to a stand, — to make them answer all my questions, — to make them furnish me with as many papers or other documents as I desire to have? — You, my next neighbour, who are as much a citizen as I am, have as much of this right as I have. It is your pleasure to take this office under your command, to the same purpose at the same time. It is my pleasure the people should do what I bid them, and not what you bid them; it is your pleasure they should do what you bid them, and not what I bid them: — which of us is to have his pleasure? The answer is, — he who has the strongest lungs, or if that will not do, he who has the strongest hand. To give everything to the strongest hand is the natural result of all the tutoring, and all the checking and controuling of which this lecture on the principles of government is so liberal: but this is the exact result of that state of things which would have place, supposing there were no government at all, nor any such attempt as this to destroy it, under the notion of directing it.

The right of giving consent to a tax, — the right of giving consent to a measure, — is a curious mode of expression for signifying assent or dissent as a man thinks proper? It is surprising that a man professing and pretending to fix words — to fix ideas — to fix laws—to fix everything — and to fix them to all eternity, should fix upon such an expression, and should say the right of giving consent, instead of the right of giving a vote— the right of giving consent, and consent only, instead of the right of giving consent or dissent, or neither, as a man thinks proper.

ARTICLE XV.

Society has a right to demand from every agent of the public, an account of his administration.

Society? What is the meaning—what is the object here? Different, where it ought to be identical — identical, where it ought to be different— ever inexplicit— ever indeterminate, using as interconvertible, expressions which, for the purpose of precision and right understanding, require the most carefully to be set and kept in opposition: such is the language from the beginning of this composition to the end!

Is it, that superiors in office have a right to demand such an account of their subordi-

nates? Not to possess such a right, would be not to be a superior: — not to be subject to the exercise of it, would be not to be a subordinate. In this sense, the proposition is perfectly harmless, but equally nugatory. Is it, that all men not in office have this right with respect to all men, or every man in office? Then comes the question as before — each in his individual capacity, or only altogether in their collective? If in their collective, whatever this article, or any other article drawn up in the same view, does or can do for them, amounts to nothing: whatever it would have them do, it gives them no facilities for doing it, which they did not possess without it. Whatever it would have them do, if one and all rise for the purpose of doing it, bating what hindrance they may receive from one another, there will be nobody to hinder them. But is there any great likelihood of any such rising ever taking place? and if it were to take place, would there be any great use in it?

If the right be of the number of those which belongs to each and every man in his individual capacity, then comes the old story over again of mutual obstruction, and the obstruction of all business, as before.

The right of demanding an account? What means that, too? The right of simply putting the question, or the right of compelling an answer to it — and such an answer as shall afford to him that puts it, the satisfaction he desires? In the former case, the value of the right will not be great; in the latter case, he who has it, and who, by the supposition, is not in office, will in fact be in office; and, as everybody has it, and is to have it, the result is, that everybody is in office; and those who command all men are under the command of every man.

Instead of meaning stark nonsense, was the article meant after all simply to convey a memento to those who are superiors in office, to keep a good look-out after their subordinates? If this be the case, nothing can be more innocent and unexceptionable. Neither the child that is learning wisdom in his horn-book, nor the old woman who is teaching him, need blush to own it. But what has it to do in a composition, the work of the collected wisdom of the nation, and of which the object is, throughout and exclusively, to *declare rights?*

Silly or pestilential — such, as usual, is here the alternative. In the shape of advice, a proposition may be instructive or trifling, wholesome or insipid. But be it the one or the other, the instant it is converted, or attempted to be converted, into a law, of which those called legislators are to be the objects, and those not called legislators to be the executors, it becomes all sheer poison, and of the rankest kind.

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.

ARTICLE XVII.

Property being an inviolable and sacred right, no one can be deprived of it, unless it be when public necessity, legally established, evidently requires it [i. e. *the sacrifice of it,*] ***and under the condition of a just and previous indemnity.***

Here we have the concluding article in this pile of contradictions; it does not mismatch the rest. By the first article, all men are equal in respect of all sorts of rights, and so are to continue for evermore, spite of everything which can be done by laws. By the second article, property is of the number of those rights. By this seventeenth and last article, no man can be deprived of his property — no, not of a single atom of it, without an equal equivalent paid — not when the occasion calls for it, for that would not be soon enough, but beforehand: all men are equal in respect of property, while John has £50,000 a-year, and Peter nothing: all men are to be equal in property, and that for everlasting; at the same time that he who has a thousand times as much as a thousand others put together, is not to be deprived of a single farthing of it, without having first received an exact equivalent.

Nonsense and contradiction apart, the topic touched upon here is one of those questions of detail that requires to be settled, and is capable of being settled, by considerations of utility deducible from quiet and sober investigation, to the satisfaction of sober-minded men; but such considerations are far beneath the attention of these creators of the rights of man.

There are distinctions between species of property which are susceptible, and species of property which are not susceptible, of the *value of affection;* between losses in relation to which the adequacy of indemnification may be reduced to a certainty, and losses in respect of which it must remain exposed to doubt: there may be cases in which a more than equivalent gain to one individual will warrant the subjecting another individual, with or without compensation, to a loss. All these questions are capable of receiving a solution to the satisfaction of a man who thinks it worth his while to be at the pains of comparing the feelings on one side with the feelings on the other, and to judge of regulations by their effect on the feelings of those whom they concern, instead of pronouncing on them by the random application of declamatory epithets and phrases.

Necessity? What means necessity? Does necessity order the making of new streets, new roads, new bridges, new canals? A nation which has existed for so many ages with the stock of water-roads which it received from Nature, — is any addition to that stock *necessary* to the continuation of its existence? If not, there is an end to all improvement in all these lines. In all changes there are disadvantages on one side, there are advantages on the other: but what are all the advantages in the world, when set against the *sacred* and inviolable rights of man derived from the unenacted and unrepealable laws of Nature?

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;—though 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.

Ex uno, disce omnes—from this declaration of rights, learn what all other declarations of rights—of rights asserted as against government in general, must ever be,—the rights of anarchy—the order of chaos.

It is right I should continue to possess the coat I have upon my back, and so on with regard to everything else I look upon as my property, at least till I choose to part with it.

It is right I should be at liberty to do as I please—it would be better if I might be permitted to add, whether other people were pleased with what it pleased me to do or not. But as that is hopeless, I must be content with such a portion of liberty, though it is

the least I can be content with, as consists in the liberty of doing as I please, subject to the exception of not doing harm to other people.

It is right I should be secure against all sorts of harm.

It is right I should be upon a par with everybody else—upon a par at least; and if I can contrive to get a peep over other people's heads, where will be the harm in it?

But if all this is right now, at what time was it ever otherwise? It is now naturally right, and at what future time will it be otherwise? It is then unalterably right for everlasting.

As it is right I should possess all these blessings, I have a right to all of them.

But if I have a right to the coat on my back, I have a right to knock any man down who attempts to take it from me.

For the same reason, if I have a right to be secure against all sorts of harm, I have a right to knock any man down who attempts to harm me.

For the same reason, if I have a right to do whatever I please, subject only to the exception of not doing harm to other people, it follows that, subject only to that exception, I have a right to knock any man down who attempts to prevent my doing anything that I please to do.

For the same reason, if I have a right to be upon a par with everybody else in every respect, it follows, that should any man take upon him to raise his house higher than mine, —rather than it should continue so, I have a right to pull it down about his ears, and to knock him down if he attempt to hinder me.

Thus easy, thus natural, under the guidance of the selfish and anti-social passions, thus insensible is the transition from the language of utility and peace to the language of mischief. Transition, did I say? — what transition?—from right to right? The propositions are identical — there is no transition in the case. Certainly, as far as words go, scarcely any: no more than if you were to trust your horse with a man for a week or so, and he were to return it blind and lame: — it was your horse you trusted to him — it is your horse you have received again: — what you had trusted to him, you have received.

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.

It must be so: — Shakspeare, whose plays were filling English hearts with rapture, while the drama of France was not superior to that of Caffraria, — Shakspeare, who had a key to all the passions and all the stores of language, could never have let slip an instrument of delusion of such superior texture. No: it is not possible that the rights of man — the natural, pre-adamitical, ante-legal, and anti-legal rights of man — should have been unknown to, have been unemployed by Shakspeare. How could the Macbeths, the Jaffiers, the Iagos, do without them? They present a cloak for every conspiracy — they hold out a mask for every crime; — they are every villain's armoury — every spendthrift's treasury.

But if the English were the first to bring the rights of man into the closet from the stage, it is to the stage and the closet that they have confined them. It was reserved for France — for France in her days of degradation and degeneration — in those days, in comparison of which the worst of her days of fuscied tyranny were halcyon ones — to turn debates into tragedies, and the senate into a stage.

The mask is now taken off, and the anarchist may be known by the language which he uses.

He will be found *asserting rights*, and acknowledging them at the same time not to be recognised by government. Using, instead of *ought* and *ought not*, the words *is* or *is not* — *can* or *can not*.

In former times, in the times of Grotius and Puffendorf, these expressions were little more than improprieties in language, prejudicial to the growth of knowledge: at present, since the French Declaration of Rights has adopted them, and the French Revolution displayed their import by a practical comment, — the use of them is already a *moral crime*, and not undeserving of being constituted a legal crime, as hostile to the public peace.

DECLARATION OF THE RIGHTS AND DUTIES

OF THE

MAN AND THE CITIZEN,

ANNO 1795.

RIGHTS. — ARTICLE I.

The rights of man in society are liberty, equality, security, and property.

Comparing this declaration with its predecessor, we may observe, that it opens with a specimen of legislative shuffling: on the one hand, a sense of the absurdity of its predecessor, and the mischief that had been the fruit of it: on the other hand, a determination not to acknowledge these things.

The sorts of rights which this second declaration, as well as the first, sets out with the intention of declaring, are of two sorts: those of the man, and those of the citizen: those which it immediately proceeds to declare are neither the one nor the other, but something between both, — *the Rights of Man in Society.*

The difference is not a mere affair of words. The rights declared by the first declaration, were declared to be natural, inalienable, and

imprescriptible — such rights, against which all laws that should at any time presume to strike, would become *ipso facto* void. If no distinction were to be recognised between the rights of the man and the rights of the citizen, one of the expressions must be acknowledged to be unmeaning, and the insertion of it a dangerous impertinence: if a distinction between them be to be recognised, it must be this, that the rights of the man — the rights of the man as existing in a state antecedent to that of political society — antecedent to the state of citizenship — are the only one of the sorts to which the character of inalienable and imprescriptible can be understood to belong: — those of the citizen, growing out of the laws by which the state of citizenship is constituted, are the produce of the law itself, and may be conceived to remain at the disposal of the law which gave them birth, and may continue to depend for their existence on the law from which they received it.

This second declaration, — leaving the doubt in its full force, whether there are or are not a certain description of rights over which laws have no power — a description of rights which, as we have seen, covers the whole field of legislation, shutting the door against everything that can present itself under the name of law? — consequently, whether such laws as they are about to create are or are not capable of possessing any binding force, — varnishes over the ambiguity by a subterfuge. Obliterating the distinction so carefully made, and so recently recognised between the man and the citizen, at the next step they produce, instead of the two, a sort of neutral double man, who is neither one nor the other, or else both in one.

Comparing the list of rights, whoever they belong to, whether to the man or the citizen, or the man in society, we shall find, that between the year 1791 and the year 1795, inalienable as they are, they have undergone a change. Indeed, for a set of inalienable rights they must be acknowledged to have been rather unstable. At the time of the passing the first article of the declaration of 1791, there were but two of them — liberty and equality. By the time the second article of that same declaration was framed, three new ones had started up in addition to liberty; viz. property, security, and resistance to oppression: total, four sorts of rights — not five; for in the same interval an accident had happened to equality, and somehow or other it was not to be found. In the interval between 1791 and 1795, it has been found again: accordingly, in the list of 1795, we may observe equality occupying a station elevated above everything but liberty, with security and property lying at its feet. Looking for resistance against oppression, we shall find it kicked out of doors; but, like the images of the two illustrious Romans mentioned by Tacitus, not the less regarded for not being seen. To account for this exclusion, we must recollect, that between 1791 and 1795 — in short, from the moment of his naturalization (for it was in America that he had his birth) Citizen Resistance - against - oppression had been playing strange tricks: he had been constantly flying in the face of the powers in being, whatever they were — he had rendered himself a perfect nuisance, and so great a nuisance, that it was high time for him to be sent to Coventry. Thither he has accordingly been sent, though ready to present himself at the call of patriotism, whenever a king is to be assassinated, or a riot to be kicked up. By the sagacity of the constitutionalist of 1795, he had been at length discovered to be a most dangerous enemy to security, after a four years' experience of his activity in that line. Two years before his naturalization in France, I had denounced him as such in a book* which found its way into the hands of Condorcet and others; but my denunciation was not heard.

As to the rest, the nonsensicalness and mischievousness of this article has been pointed out in the observations on the corresponding article of the declaration of 1791.

ARTICLE II.

Liberty consists in the power of doing that which hurts not the rights *of others.*

The same as the commencement of Article IV. in the Declaration of 1791, except as to the insertion of the words — *the rights.*

ARTICLE III.

Sentence 1. *Equality consists in this — that the law is the same for all, whether it protect or whether it punish.*

Sentence 2. *Equality admits not any distinction of births — any hereditary succession of powers.*

In article 6 of the Declaration of 1791, we saw this given in the character of a maxim; in which character the propriety of it has been discussed: the maxim is now turned into a definition of equality. This is equality, certainly, as far as it goes; but is it to be understood as stopping here, or is it to go any further, and how much further? These questions are not answered, apparently because the declaration-makers were afraid to answer them. Thus much is certain, there is nothing in this declaration of rights to stop it: therefore, on it must go in its own course; which course can never have found its end, till it has laid everything smack smooth, not leav-

* *Introduction to the Principles of Morals and Legislation*, first published 1789. See Vol. I. p. 154.

ing any one stone in the whole fabric of property upon another.*

That equality should leave no hereditary succession of powers, is natural and consistent enough. But how does it contrive to leave any powers at all? Where is the equality between him who has powers, and him who has none? The exclusion of the hereditary succession of powers excepted, it turns out, then, that people are not the more upon a par for the possession of this right; and that, in short, to speak correctly, equality and inequality are the same things.

No distinction of births — no distinction in point of birth? How is that managed? Are all the men in France born of the same father and mother? Will democratic omnipotence prevent the Montmorencies from being descended from a known line of ancestors, beginning under the Capets? or, I forget what other family, from a line beginning under Clovis? What they probably meant to say is, that no distinction in point of rights should be suffered to depend on any distinction in point of birth: but as epigrams are at least as necessary in a French book of legislation as laws, the paradoxical turn of expression was preferred, as being the most natural.

ARTICLE IV.

Security results from the concurrence of all in securing the rights of each.

An epigram upon security — a definition imitated from *le malade imaginaire*. The property which opium has of laying men to sleep, results from its soporific quality. Now, citizen, if you do not know what security is, you deserve to have your house knocked down about your ears.

Concurrence of all on one hand — rights of each on the other. From this antithesis we learn, that whatever security happens to be conferred by the exertions of any number less than all, is no security at all.

ARTICLE V.

Property is the right of enjoying and disposing of one's goods — of one's revenues — of the fruit of one's labour and one's industry.

Another definition in the soporific style, but perhaps not quite so innocent. Property is the right of enjoyment and disposal. Let a man, then, have ever so much of either right, yet if he have not the other, he has no property. It is perhaps owing to this definition of property, that what the *ci-devant* clergy of France had to live upon, was not their property, and consequently there was no harm in robbing them of it. In England, tenant for life of a settled estate conceives himself to be a man of property: this article informs him that he knows nothing about the matter. In England, a woman who has an advowson, conceives the advowson to be her property. let her consult these French legislators, they will tell her it is no such thing, since she cannot give herself the living.

Let us pass on to the Declaration of the Duties of Man.

Right being one of the fruits of law, and duty another, it occurred to the second set of constitution-makers, that a *declaration of rights* would be but a *lop-sided job*, without a *declaration of duties* to match it on the other side. The first declaration of rights having driven the people mad, a declaration of duties, it was hoped, might help to bring them to their senses. Whatever were their notions about the matter, thus much must be admitted to be true, that if poison *must* be taken, an antidote may have its use; but what would be still better would be, to throw both together, poison and antidote, into the fire. Every medicine that is good for anything, say the physicians, is a poison. The political medicine we have now to analyze, forms no exception to the rule.

What seems to have been no better understood by the second set of constitution-makers than by the first, is, that rights and duties grow on the same bough, and are inseparable; that so sure as rights are created, duties are created too; and that though you may make duties without making rights (which is in fact the result of the alas! but too numerous catalogue of laws by which nobody is the better,) yet to make rights without making duties is impossible. As deep judges of legislative composition as Monsieur Jourdan, who talked prose without knowing it, it seems to have escaped their observation, that in making rights (under pretence of dealing them out ready made) they were making duties without knowing anything about the matter.

ARTICLE I., OR PREAMBLE.

The Declaration of Rights contains the obligations of legislators: — the maintenance of society requires that those who compose it, know and fulfil equally their *duties.*

Whether by *duties*, in the latter part of the sentence, were meant exactly the same things as by *obligations* in the first, I will not take upon me absolutely to determine: — if it were, it will furnish one amongst so many other proofs, how insensible these masters of legislation are of the value of useful precision, in comparison with fancied elegance.

ARTICLE II.

All the duties of the man and the citizen are derived from these two principles, engraven by nature in all breasts, in the hearts of all men, —

Do not to another that which you would not men should do to you.

* See *Essay on the Levelling System*, Vol. I. p. 358.

Do constantly to others the good which you would receive from men.

The known source of this double-headed precept is the New Testament: "Whatsoever ye would that men should do unto you, do ye even so unto them." Do as you would be done by, says the abridged expression of it, as given by the English proverb. What improvement the precept has received from the new edition given of it by the anti-christian hand, will presently appear.

A division is here made of it into two branches, a negative and a positive: — the tendency of the negative, placed where it is, is pernicious; — the tendency of the positive branch, worded as it is, absurd, and contrary to the spirit of the original: — the former, for want of the limitations necessary to the application here made of it, is too ample; the latter, by the tail clumsily tacked on to it, is made too narrow.

In what country is it, that it is the wish of accusers to be accused — of judges to be condemned — of guillotiners to be guillotined? In Topsyturvy-land, where cooks are roasted by pigs, and hounds hunted by hares; in that same land, a law thus worded might do no harm; and government might go on as well with it as without it. In France, thus much is clear, that whatsoever individual prosecutes a delinquent — whatsoever judge condemns him — whatsoever subordinate minister of justice executes the sentence of the judge, is a transgressor of this law—this fundamental law—given without reservation or exception — said to be engraven, just as we see it, in all hearts, and placed first in the list of duties.

Morality, not affecting precision, addresses itself to the heart: law, of which precision is the life and soul, addresses itself to the head.

The positive branch of the precept, under the necessity, it should seem, of rounding the period and making the line run well, is so worded as to shut the door against generosity. Do to a man that good. What good? Why, exactly and constantly just that very good which you want him to do to you. And if you happen not to want anything of him, what then? why then let him want, and welcome. There is nothing in this rule of law that can afford him a handle to take hold of, should he be inclined to accuse you of a breach of this fundamental duty. If you want a twopenny loaf, for example, go to the baker, and give him either a twopenny loaf or twopence: — in the first case, you fulfil the letter — in the latter, the spirit of the law. Should you see a man starving for want of such a loaf, let him starve, and welcome: — you want nothing of him, not you, — neither the twopenny loaf nor the twopence: let him starve on; there is nothing he can indict you upon in this law.

ARTICLE IV.

No one is a good citizen if he be not a good son, a good father, a good brother, a good friend, a good husband.

Good — as good as any other good thing that has been said a thousand times over in a novel or a play — silly as a law — scarcely reconcilable to the next preceding article, and not altogether reconcilable to the interests of the community at large.

The word *civil* gives name to one class of duties — the word *domestic*, to another. Is it impossible to violate one law without violating another? Does a man, by beating his wife, defraud the revenue? Does a man, who smuggles coffee, beat his wife? Brutus—the elder Brutus—who under a government where the father had the powers of life and death over the child, put his sons to death for conspiracy against the government, — he a bad citizen? or does goodness in a father consist in putting his children to death?

A friend of Lord Monteagle's was engaged with Guy Fawkes and others in a conspiracy for blowing up the legislature. Under this fourth article and the third, what should Monteagle have done? The third bids him discover the plot; for it bids him defend and serve the society and the laws, thus threatened with destruction by the plot: — the fourth bids him say nothing about the matter; for what could he say about it that would not endanger the safety of his friend. If Monteagle had happened to be a well-wisher to the conspiracy, and desirous of concealing it, what could he have desired for his security better than such a clause?

ARTICLE V.

No man is a good man if he be not frankly and religiously an observer of the laws.

Of the laws? — of what laws? — of all laws? — of all laws present and to come, whatsoever they may forbid, whatsoever they may enjoin? A religious observer of the laws which proscribe his religion—the only religion he thinks true — and bid him drag to judicial slaughter those who exercise it? To talk of religion — except in the way of rhetorical flourish—in the style which is here conceived to be the proper style for law, may perhaps be deemed on this occasion an abuse of words. Well, then: the men of September, or, since they are out of power, the men of the 10th of August, or the conquerors of the Bastile were they good men? — were they frank and religious observers of the law, declaring and enacting the inviolability of the king? The question may seem puzzling; but a former passage will help us to a solution. By articles XVIII. and XX. of the Declaration of Rights, a law is no law unless made by democracy run mad — made by men, women, and chil-

dren,—convicts, madmen, and so on,—mediately or immediately. Here, then, we have a clue:—in a democracy run mad, goodness means submission to the laws: under every other sort of government, goodness means rebellion.

ARTICLE VI.

He who openly violates the law, declares himself in a state of war with society.

More very decent *clappable* matter for the stage: in a book of law, preciously absurd, and not a little dangerous.

To be in a state of war is to be in that state in which the business of each party is to kill the other.

In kindness to one set of button-makers, we have a silly law in England, condemning the whole country to wear now and for everlasting a sort of buttons they do not like. A more silly law can scarcely be imagined: but laws of a similar stamp are but too plentiful in Great Britain; and France will have good luck indeed, if laws of similar complexion do not, in spite of every exertion of democratic wisdom, find their way into France. In London you may see every day, in any street, men, women, and children, violating these and other such wholesome laws, knowingly or unknowingly, with sufficient openness. Since all these wicked uncivic button-wearers have declared war against society, what say you, Citizen Legal-epigram-maker, the penner of this declaration—what say you to a few four-and-twenty pounders filled with grape-shot, to clear the streets of them?

ARTICLE VII.

He who, without openly infringing the laws, eludes them by cunning or address, wounds the interests of all; he renders himself unworthy of their benevolence and their esteem.

As to the truth of this proposition, whether the eluding the observance of a law be or be not prejudicial to anybody, depends upon the nature of the law: if the law be one of those which are of no use to anybody, the eluding of it does no harm to anybody; if it be one of those which are of use to this or that description of persons, and that only, the eluding of it may be a prejudice to them, but does no harm to anybody else.

Were the law of libel, as it stands in England, to be obeyed without infraction, there would be no more liberty of discussion, publication, or discourse on political subjects, in England, than there is on religious subjects in Spain: were it executed in every instance of its being infringed, there would not be a man or a woman in England, who had eyes or ears, out of jail. The law of England, taking it with all its faults, is probably at least as near perfection upon the whole as the law of any other country: at the same time, were any good to come of it, I would engage to find laws in it, by dozens and by scores, any one of which, if generally obeyed, or at least if constantly executed, would be enough to effect the destruction of the country, and render it miserable.

Things being in this state, there seems unhappily no help for it, but that it must be left to each man's conscience in respect to what laws he shall be forward, and to what backward, to pay obedience, and lend his hand to execute. While matters are in this imperfect state, indiscriminate obedience is no more to be insisted on with regard to laws in any country, than, under a limited monarchy, passive obedience is with regard to kings.

To judge by these three last articles of the Declaration of Duties of the Man and the Citizen, the compositor seems to have been rather hardly put to it to fill up the requisite quantity of paper. Rights of man present themselves in sufficient plenty; but when he comes to duties, it becomes apparent that when a man has said it is your duty to obey the laws, he has said all that is to be said about the matter. Accordingly, the contents of these three articles are not any addition to the list of duties, but observations on the subject, consisting of a string of epigrams and fine speeches fit for plays.

In regard to offences, the great difficulty is, and the great study ought to be, to distinguish them from one another: the business of this article is to confound them. In England, simple disobedience is one thing—rebellion (technically, but rather improperly, called treason) another: the punishment of the one, where no special punishment is appointed, is a slight fine, or a short imprisonment; that of the other, capital. In France, under the auspices of this declaration, these trifling differences are not thought worth noticing:—disobedience and rebellion are discovered to be the same thing. The state of the laws in France must be superior not only to what it has ever been during the revolutionary anarchy, but to what it ever has been during the best times of French history, or of the history of any other country of considerable extent, if there be a single day in any year in which scores of laws have not been transgressed, and that openly, by thousands and tens of thousands of individuals. If this be true, the effect of this single article must be, that after the restoration of peace, and the perfect establishment of the best of all possible constitutions, the habitual state of France will be a state of civil war.

In the codes of other countries, the great end of government is to quiet and repress the dissocial passions: in France, the great study is to inflame and excite them; it is so when declaring rights . it is so when declaring

duties. Under this code, to be a true Frenchman, a man must be for ever in a passion: — ever ready to cut either his own or his neighbour's throat. Whatever may be the subject with which this constitution commences, it ends in anarchy. Under this régime, there appears no difference between a tragedy and a law, in respect to style: fine sentiments, epigrams, *chaleur mouvement*, are equally indispensable in both. Every tragedy must be levelled at some law — every law must read like a tragedy — every law must end in a tragedy.

ARTICLE VIII.

On the maintenance of property rests the cultivation of the lands, all the productions, every means of labour, and the whole fabric of social order.

The article, as thus worded, reads bold enough, and if it were less so, it would not be faithful. It presents a striking picture of the penman. His budget of duties emptied, his subject exhausted, and what is more, even his stock of fine speeches, yet he cannot persuade himself to stop. He would fain persuade his fellow-citizens to pay respect to property, by appealing to their love of country work and its productions; and if they have no regard for these things, to their love of work in general, and if labour have no charms for them, as a last resource, to their love of social order.

ARTICLE IX.

Every citizen owes his services to his country, to the maintenance of liberty, equality, and property, as often as the law calls upon him to defend them.

This is the last in this list of duty-declaring articles; and the conclusion of this short but superfluous composition is of a piece with the beginning,—full of uncertainty, obscurity, and danger.

Every citizen owes his services to his country, &c. Owes services? What services? for what time? and upon what terms? Military services? for soldier's pay, and for life? If this were *not* meant, nothing can be easier than for any legislature—any administration—any administrator — any recruiting sergeant, to give it that meaning. *Property* we have seen already secured by double and treble tether: *Liberty* is here secured by a system of universal *cramping*. In England, pressing is still looked upon as a hardship, though no man is liable to be pressed, who has not voluntarily engaged in a profession which he knows will subject him to it. What should we say in England, were an act of Parliament to be passed, in virtue of which all individuals without exception, all ages and professions, sick and well, married and single, housekeepers and lodgers, lawyers, clergymen, and quakers, were liable to be pressed for soldiers—women perhaps into the bargain? — since in France, women's necks have been found to fit the guillotine as well as men's, and in England, thanks to the sages of the law, women make good constables.

Equality also is to be maintained, as well as property. Equality without limitation, and that by everybody, at the call of anybody. The distribution of property being at the time of issuing this declaration, prodigiously unequal — as much at least as in many a monarchy. — how are equality and property to be there at the same time?

The maintenance of both being incompatible, — to choose which of the two shall be maintained, since both cannot be maintained together, seems to be left to the wisdom of the citizens, rich and poor, industrious or idle, full or fasting, as occasion may arise. To a considerable majority, the maintenance of equality will probably be the pleasanter task of the two, as well as the more profitable.

OBSERVATIONS

ON

PARTS OF THE DECLARATION OF RIGHTS,

AS

PROPOSED BY CITIZEN SIEYES.

ONE general imperfection runs through the whole of this composition. The terms employed leave it continually in doubt whether it be meant to be prospective merely, or retrospective also, — whether it mean solely to declare what shall be the state of the law after the moment of the enactment of this declaration, or likewise what has been its state previous to that moment. To judge from the words, it should seem almost everywhere to include this retrospect. The objections to such retrospective declaration are — 1. That it is notoriously untrue; — 2. That the untruth of it is supposed by the very act of enacting the declaration; since if what is there established were already established, there would be no use for establishing it anew; — 3. That the declaration of the past existence of the provisions in question would be of no use, though the matter of fact were true.

"*Every society cannot but be the free work of a convention entered into between all the associated* [members.]"

Hence it appears that there never has yet been such a thing as a society existing in the world. This is the first and most fundamental of all the fundamental truths, for the discovery of which the blind and obstinate world is indebted to Citizen Sieyes. Here live we, somehow or other, in Great Britain. It seems to us that we are living in society; but Citizen Sieyes, who knows everything, and everything in his own way, knows it is no such thing. What sort of a state is it we are living in, if we really do live? To know this, we must wait till a word has been assigned as suited to our wretched condition, adapted to express the miserable state we live in, by the grace and ingenuity of Citizen Sieyes. But do we live, after all? Whether we do or no, is at least as doubtful as whether we are in society; whether the state we are in, living or not living, be a state of society.

Is Citizen Sieyes living? To judge by Bickerstaff's test, this were matter of serious doubt. The argument, however, does not seem conclusive. A man in Bedlam, or in the French Convention, might be writing such stuff — stuff altogether of a piece with this, and that not only with perfect fluency, but with perfect consistency of character between the composition and the situation that gave birth to it. From a man's being known to write such stuff, it follows, therefore, not that a man is not living, but that he is living either in Bedlam, or in the French Convention.

A man turned crazy by self-conceit, takes a word in universal use, and determines within himself that he will use it in such a sense as a man never used it in before. With a word thus poisoned, he makes up a proposition, — any one that comes uppermost; and this he calls ingenuity: — this proposition he endeavours to cram down the throats of all those over whom he has or conceives himself to have power or influence — more especially of all legislators — of the legislators of the present and all future times; — and this he calls *liberty;* and this he call *government.*

"*The object of a political society can be no other than the greatest good of all.*"

This article announces a matter of fact in the form of an universal proposition, which, so far from being universally true, is not, nor perhaps ever was true in any instance.

It exhibits the same silly and unnecessary substitution of *can not* for *ought not* — the same use of an improper word for a proper one at least equally obvious — of an ambiguous for an unambiguous — unless to the original import of the word *can*, be here meant to be added, or rather substituted, its *mischief-making*, and *anarchy-exciting* import, — and that in consequence every society in which, on any point, any notion or notions of the public good were entertained different from those of Citizen Sieyes, shall on every such occasion be regarded as *ipso facto* in a state of dissolution.

One thing may be learned from the order given to the two articles—that happiness in society is an article but of secondary account. A matter of superior importance is—that the society should have been got together upon the never-exemplified and physically-impossible plan of an *original* and *universal* contract.

"*Every man is sole proprietor of his own person, and this property is inalienable.*"

More nonsense — more mischievous nonsense, — tendencies of the most mischievous kind, wrapped up under the cover of a silly epigram: as if a man were one thing, the person of the same man another thing; as if a man kept his person, when he happened to have one, as he does his watch, in one of his pockets. While the sentence means nothing, it is as true as other nonsense: give it a meaning, any meaning whatsoever that the words are capable of bearing, according to any import ever given to them, and it is false. If by the *property* in question, it is meant to include all the *uses* that can be made of the proprietary subject, the proposition is not self-contradictory and nonsensical: it is only a nugatory proposition of the *identical* kind.

If each individual be the only individual that is to be allowed to make any use whatsoever of the faculties of all kinds, active and passive, mental and corporal, of that individual, and this be meant by being *the proprietor of the person* of an individual, then true it is, that the person of each individual can have but one proprietor: — but if the case be, in any instance, that while the individual himself, and he alone, is permitted to make use to certain purposes of the faculties of that individual for a certain time, some other—any other — is permitted to make use of the faculties of the same individual to other purposes for the same time, then the proposition, that no individual can have a property in the person of another individual, is false: — the proposition that no man shall be suffered to have any property in the person of another, would be a mischievous one, and mischievous to a degree of madness.

In what manner is the legal relation of the husband to the wife constituted, but by giving him a right for a certain time, to the use of certain faculties of her's — by giving him, in so far, a property in her person?—and so with respect to the legal relations of the father to the child under age, and of the master to the apprentice or other servant, whatever be the nature of the service.

The present tense *is*, is absurdly put for the future *shall be*. Injustice, and of the most cruel kind, lurks under this absurdity. The effect of the future would only be to cut up domestic power, and thence domestic society, for the future: the effect of the present is to cut it up at the *instant*, and, by necessary inference, as to the *past*, and to put every past exercise of such power upon the footing of a crime; in a word, to have the retroactive effect disclaimed by the constitution of 1795. If no individual have at this present time any property, however limited, in the person of any other individual, it must be in virtue of some cause which has prevented his ever having had any such property in any past period of time: it must be, in a word, in virtue of some such cause as this, viz. its being contrary to the eternal, as well as inalienable and natural rights of man to possess any such property. If it be a crime in a man *now* to send his servant on an errand with a bundle on his back — to dip his ailing infant in a cold bath—or to exercise the rights supposed to be given him by marriage on his wife — it must have always been a crime, and a crime of equal dye, punishable at the mercy of such judges as Citizen Sieyes.

To make the matter worse — the mischief greater—the absurdity more profound, — this property, such as it is, whatever it be — all the property that any individual has in his own person — is to be considered as *inalienable*. No individual is to be suffered to give any other individual a right to make use of his person, his faculties, his services, in any shape. No man shall let himself out to service — no man shall put himself or his son out to serve as an apprentice — no man shall appoint a guardian to his child — no woman shall engage herself to a man in marriage.

Will it be said, that there is no such thing as *alienation for a time*? Or will it be said, in justification of the citizen, that the citizen did not know what he was talking about, and that though he spoke of alienation in general, alienation for all manner of terms, the only sort of alienation he really meant to interdict, in respect of the property in question, was alienation *during life*? and that the meaning of the citizen was not absolutely to forbid marriage — that he meant to allow of marriage for limited terms of years, and meant only to prohibit marriage for life?

But supposing even this to have been the purpose, and that purpose ever so good a one, the provision is still a futile one, and inadequate to that purpose. To what purpose forbid an alienation for *life*, if you admit of it for *years*, without restricting it to such a number of years as shall ensure it against possessing a duration co-extensive with at least the longest *ordinary* term of life? No such limitation has the citizen vouchsafed to give: — possibly as not finding it altogether easy to put any such limitation in years and figures into the mouth of *Queen Nature*, whose prime minister Citizen Sieyes, like so many other citizens, has been pleased to make himself.

The article seems to be levelled at negro

slavery; but I do not see what purpose it is capable of answering in that view. Does it mean to announce what *has been* the state of the law hitherto, or what *shall be* the state of the law in future? In the first case, its truth is questionable, and, true or false, it is of no use. In the latter sense, does it mean to declare, that no person shall have the right of exacting personal service of any other, or producing physical impressions on his passive faculties, without his consent? It reprobates all rights to services of any kind, and all powers of punishment. Does it declare that no such powers shall exist without limitation?—It does not so much as provide against negro slavery, even where the conditions on which it is established are most indefensible; for nowhere has the power of the master over the slave subsisted without limitations.

Does this article mean to set at perfect liberty all negro slaves at once? This would be not more irreconcilable with every idea of justice with regard to the interest of the present master, than with every idea of prudence with regard to the interest of the slaves themselves.

"*Every author may publish, or cause his productions to be published, and he may cause them to circulate freely, as well by the post as by any other way, without having ever to fear any abuse of confidence.*"

I shall make no observations upon the dangers arising from this unlimited liberty; but I cannot refrain from pointing out the silliness of the expression. The author intended to have said, that every abuse of confidence ought to be treated as an offence: but what he has said is, that the offence is impossible, so impossible that there is no reason to fear it; as if this declaration would be sufficient to deprive government and individuals of the power to commit an abuse of confidence.

"*Letters, in particular, ought to be considered as sacred by all the intermediate persons who may be found between the person who writes, and him to whom they are written.*"

What does this word *sacred* mean? Is this the manner in which a legislator ought to speak?

What! if a calumny — a plan of conspiracy — a project of assassination — be put into a letter, is that letter to be sacred? Will the opening it be *sacrilege*? This crime, if it be one, will be ranked in that class of crimes which have commonly been considered the most enormous offences against religion — offences against God himself.

Whilst as to the act itself, is it for the public good that government should open the letters? That is the question. If the law prohibit it, the post would become a terrible engine in the hands of malefactors and conspirators. With the intention of protecting the communications of individuals, this law would expose the public to the greatest dangers. There are some crimes so mischievous, that no means ought to be neglected for their prevention or detection. Will it be said, that the fear of having their letters opened will restrain honest correspondents in the communications of commerce, or the effusions of friendship?

It is true, that if the simple communication of opinions between individuals should be constituted a crime, the opening of letters might become a terrible engine of tyranny. But it is here that the precautions against abuse should be placed. It is this which is done in England, where the secretary of state may open letters upon his responsibility, though it be not allowed to any one else.

"*Every man is equally at liberty to go or stay, to enter or to go out, and even to leave the kingdom and to return into it, as shall seem good to him.*"

This article has reference not to the citizen alone, but to every man, to every stranger, as well as every Frenchman. All are at liberty to go or stay, to enter or to go out, to leave the kingdom or to return into it, as shall seem good to them. Absurdity cannot go farther. Is there to be no police? Cannot intercourse be interdicted — may not public edifices be closed — may not access to fortifications be prevented, &c.? With this unlimited right, how would it be possible to advise the construction of prisons for the detention of malefactors? How could the author of this declaration tolerate the laws against emigrants? Were not these laws a formal denial of the rights of man?

I do not impute these extravagant intentions to the author of the article: he had concluded the preceding article by the words — "*The law alone can mark the limits which ought to be given to this liberty as well as every other;*" and I suppose that the words *in the same manner*, at the head of this, announce that the liberty of going and coming is subject to the same restriction. But then the proposition which seems to say much, would have said nothing — "You may do everything except what the laws prohibit." Dangerous or insignificant, such is the alternative which is without ceasing found in this declaration.

"*In short, every man is at liberty to dispose of his wealth, of his property, and to regulate his expense as he thinks proper.*"

Here there is no legal restriction: the proposition is unlimited. If by *disposing of his wealth*, the author intend that he may do whatever he likes, the proposition is absurd in the extreme. Are there no necessary limits to the employment of his property? Ought a man to have the right of establishing after his death, either religious or anti-religious foundations at the expense of his family?

Ought not the law to hinder an individual from disinheriting his children without cause assigned?

"*To regulate his expense as he thinks proper,*" is a good housekeeping expression. A master may speak in this manner to his steward; but is this the style of a legislator? Minors, madmen, prodigals, ought to be placed under positive restrictions as to their expenses. There are cases in which certain sumptuary laws may be suitable. There may be good reasons for prohibiting games of hazard, lotteries, public entertainments, donations after the manner of the Romans, and a thousand other species of expense.

"*The law has for its object the common interest; it cannot grant any privilege to any one.*"

The first proposition is false in fact. The law *ought* only to have for its object the common interest: this is what is true. This error perpetually recurs in this little work.

But is the consequence which is drawn from this principle just? May there not be some privileges founded upon the common interest?

In one sense, all powers are privileges; in another sense, all social distinctions are so also. A title of honour, an honorary decoration, an order of knighthood — these are all privileges. Ought the legislature to be interdicted from the employment of these means of remuneration?

There is one species of privilege certainly very advantageous: the patents which are granted in England for a limited time, for inventions in arts and manufactures. Of all the methods of exciting and rewarding industry, this is the least burthensome, and the most exactly proportioned to the merit of the invention. This privilege has nothing in common with monopolies, which are so justly decried.

"*And if privileges are established, they ought to be instantly abolished, whatever may be their origin.*"

Here is the most unjust, the most tyrannical, the most odious principle. *Instantly abolished!* This is the order of the despot, who will listen to nothing, who will make everything bend to his will, who sacrifices everything to his caprice.

There are some privileges and rights which have been purchased at great price. Their sudden abolition would throw a great number of families into despair: it would strip them of their property — it would produce the same wrong to them as if a multitude of strangers were admitted to share their revenues, and that instantly.

There are some magisterial offices held by hereditary title. The possessors would be deprived of them without regard to their circumstances, to their welfare, or even to the interests of the state itself — and that instantly.

There are some commercial societies to which the law has granted monopolies. These monopolies are abolished, without regard to the ruin of the associates, to the advances they have made, to the engagements they have formed — and that instantly.

One great merit in a good administration is, that it proceeds gently in the reform of abuses — that it does not sacrifice existing interests — that it provides for the enjoyments of individuals — that it gradually prepares for good institutions — that it avoids all violent changes in condition, establishment, and fortune.

Instantly, is a term suitable to the meridians of Algiers and Constantinople. Gradually, is the language of justice and prudence.

"*If men are not equal in means,—that is to say, in wealth, in mind, in strength, &c. — it does not follow that they ought not all to be equal in rights.*"

Certainly the wife is not equal in rights to her husband; neither is the child under age equal to his father, nor the apprentice to his master, nor the soldier to his officer, nor the prisoner to the jailer, unless *the duty of obedience* should be exactly equal to the right of commanding. Difference in rights is precisely that which constitutes social subordination. Establish equal rights for all, there will be no more obedience, there will be no more society.

He who possesses property possesses rights — exercises rights — which the non-proprietor does not possess and does not exercise.

If all men are equal in rights, there will not exist any rights; for if all have the same right to a thing, there will no longer be any right for any one.

"*Every citizen who is unable to provide for his own wants, has a right to the assistance of his fellow-citizens.*"

To have a right to the assistance of his fellow-citizens, is to have a right to their assistance in their individual or their collective capacity.

To give to every poor person a right to the assistance of every individual who is not equally poor, is to overturn every idea of property; for as soon as I am unable to provide for my subsistence, I have right to be supported by you: I have a right to what you possess — it is my property as well as yours; the portion which is necessary to me is no longer yours — it is mine; you rob me if you keep it from me.

It is true that there are difficulties in its execution. I am poor: to which of my fellow-citizens ought I to address myself, to make him give me what I want? Is it to Peter rather than to Paul? If you confine yourself to declaring a general right, without

specifying how it is to be executed, you do nothing at all: I may die of hunger before I can find out who ought to supply me with food.

What the author has said, is not what he meant to say: his intention was to declare that the poor should have a right to the assistance of the community. But then it is necessary to determine how this assistance ought to be levied and distributed: it is necessary to organize the administration which ought to assist the poor — to create the officers who ought to inquire into their necessities, and to regulate the manner in which the poor ought to proceed in availing themselves of their right.

The relief of indigence is one of the noblest branches of civilization. In a state of nature, when we can form any idea of it, those who cannot procure food, die of hunger. There must exist a superfluity for a numerous class of the society, before it is possible to apply a part of it to the maintenance of the poor. But it is possible to suppose such a state of poverty — such a famine — that it would no longer be possible to supply bread to all who want it. How, then, can we convert this duty of benevolence into an absolute right? This would be to give the indigent class the most false and dangerous ideas: it would not only destroy all gratitude on the part of the poor towards their benefactors — it would put arms in their hands against all proprietors.

I am aware that the author would defend himself against all the consequences which so clearly spring from his principles, by the clause which he has inserted, "*That no one has the right to injure another*," and that the law may put bounds to the exercise of all the branches of liberty. But this clause reduces all his rights to nothing; for if the law may put bounds to them, till these are known, what knowledge can I have of my rights? — what use can I make of them? Nothing can be more fallacious than a declaration which gives me with one hand, what it authorizes the taking from me with the other. Thus cut down, this declaration might be propounded at Morocco or Algiers, and do neither good nor harm.