
OF THE DISTINCTION BETWEEN NATURAL
AND POLITICAL RIGHTS.

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From the "New Englander" for January, 1864.

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Burke's Reflections on the Revolution in France, 1790.
Burke's Appeal from the New to the Old Whigs, 1791.
Rousseau's Contrat Social, 1762.

DR. JOHNSON'S well known remark concerning Burke, that any one who should chance to meet him under a shed, whither both had run to avoid a shower, would feel him to be an extraordinary man, has an illustration in the intrinsic value and continued popularity of those political essays which related to current events, and were intended to be tracts for the times. Critics may complain of redundant and occasionally extravagant imagery, and statesmen may allege graver faults still; yet, for splendor of style, and for qualities incomparably higher than any rhetorical merit, the *Reflections on the French Revolution* will always command the admiration of the students of political science. No doubt serious defects in

doctrine as well as in temper, have been pointed out in this treatise; but these, since our design is not to criticise the work, we have no occasion to set forth at length. It must be admitted that Burke nowhere brings out, but rather labors to cover up, the fearful misgovernment which caused the Revolution in France, and occasioned, though it did not excuse, the crimes that accompanied it. All historical students now, who are not subject to a violent prejudice, understand how the turn which history had given to events in France, left the power of the feudal nobility to be absorbed in the King, instead of being divided, as in England, with the people; how the honors and advantages of society were engrossed by the privileged orders; how the government, wasting its treasure upon long, and frequently useless wars, and upon the shameless vices of the court, which recall the worst days of the later Roman Empire, had long been upon the verge of bankruptcy, notwithstanding delusive and fraudulent schemes for replenishing the public coffers; and how the body of the people were laden with burdens too grievous to be borne, while exposed to insults and injuries from the superior class, for which it was impossible to obtain redress.

We may lament that France could not stop with reforming her institutions, without proceeding to obliterate, in fire and blood, the old order of things; but the frightful excesses of the revolution were the natural result of accumulated disorders and wrongs. Burke allows, to be sure, the urgent need of some change in the political system of France, but fails to appreciate the extent of the evils that gave rise to the great social convulsion.

Another defect of the "Reflections," is the exaggerated statement of what we consider one of the noblest, as it is the continually recurring point, in the discussion. We refer to the perpetual warning against theories, abstract principles, and metaphysical speculation upon liberty and government, and to the doctrine that we are to abide by existing institutions, adopting no change aside from the line of what has been already established. This position, which is sound as against visionaries and radicals, and which the growth of English

liberty has vindicated, is pushed to an extreme in the "Reflections," where all ideals of a perfect society, and all consideration of the bearing of abstract principles on the constitution of government, seem often to be excluded, and even derided, as an unprofitable dream. Some of the most powerful invectives and keenest sarcasms of Burke, are hurled at the "sophisters" and metaphysic doctors who would reconstruct society from the foundations, according to theoretical standards, the product of their own invention. We can sympathize with the general view, which bids us consult the actual state of things, and follow slowly and cautiously, in every change, the suggestions of the existing, providentially ordained system, and yet find a place for political philosophy. This feature of the "Reflections" has provoked the censure of Robert Hall. "It is pretended," says Hall, "that the moment we quit a state of nature, as we have given up the control of our actions in return for the superior advantages of law and government, we can never appeal again to any original principles, but must rest content with the advantages that are secured by the terms of the society." These are the views which distinguish the political writings of Mr. Burke, an author whose splendid and unequalled powers have given a vogue and fashion to certain tenets which, from any other pen, would have appeared abject and contemptible.* The truth is, that in this closing period of his life, when Burke, deeply and justly alarmed by the drift of events in France, and anxious for the stability of the English Constitution, parted company with Fox and his old party associates, he was determined to throw his whole strength against the tide of innovation, and hence spoke with less discrimination and less temperately than he would otherwise have done. He laid hold of all the weapons within his reach for the purpose of combating the dogmas of the French political philosophers, which he honestly deemed false and mischievous. Probably the explanation of the unqualified character of many of his assertions, and of the vehemence of his tone, is implied in the eloquent closing

* Hall's "Christianity Consistent with a Love of Freedom," Section IV.

paragraph of the "Reflections," in which, having described his own career as that of one "who has been no tool of power, no flatterer of greatness," but the industrious enemy of "opulent oppression," he professes that "when the equipoise of the vessel in which he sails may be endangered by overloading it upon one side, he is desirous of carrying the small weight of his reasons to that which may preserve its equipoise."*

There is another part of the "Reflections" with which American readers cannot be expected to sympathize. It is what Sir James Mackintosh, in his Reply to Burke, fitly styled his predilection for Aristocracy. We do not allude, of course, to the vigorous passages where Burke assaults that

* We subjoin here a remark or two on a side point of some literary and historical interest. Buckle, in his History of Civilization, (Vol. I., p. 334), puts forth the surprising assertion that Mr. Burke, in his last years, was actually deranged—under "a complete hallucination." Such a rumor, grounded partly on the touching circumstance of his weeping on the neck of the horse which had belonged to his deceased son, and partly on his vehemence in the debates relating to the French Revolution, was set afloat during his lifetime, and is explained and exposed in the fourteenth chapter of Prior's Life. We were not aware that any one, from that day to this, had given the slightest credence to this transient rumor. That Burke, during these last years, was overwhelmed with grief at the death of his son, that he was profoundly excited by the political changes of the time, that he suffered much from bodily infirmities, everybody knew. Buckle refers to the Laurence correspondence—in which we have vainly sought any support for his charge. He also refers to the later writings of Burke—as if the Letters on a Regicide Peace, impassioned though they often are, afforded the slightest countenance for the imputation of insanity to their author! Sir James Mackintosh, who passed the last Christmas of the great statesman's life with him at Beaconsfield, speaks of "the astonishing effusions of his mind in conversation," of his gleeful participation in the sports and gambols of the children, of his anticipating "his approaching dissolution with due solemnity but perfect composure," of his being "minutely and accurately informed, to a wonderful exactness, with respect to every fact relative to the French Revolution." (Life of Mackintosh, Am. Ed. 1825. Vol. I., p. 62). In the face of the monuments of intellectual vigor which Burke presents in his later works and in his correspondence, and in view of the force of personal testimony to the retention of his mental power to the last, it is extraordinary that Buckle should make a statement of this nature, adducing in favor of it proofs of so little weight.

The incident of Burke's weeping aloud on the neck of his son's favorite horse, and the folly of the charge of insanity grounded upon it, are the subject of an eloquent allusion by Mr. Everett in a speech delivered by him a few years ago at an exhibition of horses in Springfield, Mass.

caricature of the doctrine of equality which overlooks the natural, just, and inevitable ascendancy belonging to real superiority in talents, knowledge, and character. We refer to his arguments in behalf of a titled and hereditary Aristocracy, constituting a privileged class, and especially to his romantic admiration of such an Order—"the Corinthian capital of polished society," as he calls it. Such feelings have, for the most part, passed away from the hearts of modern men, and cannot be again revived. We may lend ourselves for the moment to the pathetic eloquence of this great writer, whose imagination runs parallel with his wisdom, while he deplores the decline of the ancient sentiments of chivalric homage to Prince and Noble; but sentiments of this nature will not bear the scrutiny to which the reason of the present age has subjected the institutions of society. All that the moderate and conservative can say now is: let the noble retain his privilege; at least, let it not be violently wrested from him; but he is a man like ourselves, to be respected only for what he is, and for what he does for others. He can no longer be invested with a halo, because of long descent and inherited advantages.

But after allowing that these blemishes belong to Burke's discussion, it would be unjust to forget certain liberal principles which he distinctly avows.

In the first place, Burke fully admits the lawfulness of a Republican form of government. Such a form is not less legitimate, in his view, than monarchy, by however much the latter is to be preferred. Indeed, the doctrine of the "Reflections" would condemn a revolutionary movement where Republican institutions are established, equally with the attempted overthrow of monarchy. What Burke is contending for is the sacredness of the existing form of society, whatever that form may be which history has established. Holding that institutions are a growth, and not the mere product of human contrivance, independently of underlying causes and a controlling Providence, he repels the notion that they are to be torn up by the roots in order to make room for some new fabric which philosophers have planned.

Secondly, Burke expressly allows a right of Revolution. This right is the offspring of necessity alone. It is not founded on any theory of a social compact, implying that the people (in whatever way the term "people" is defined) are endowed with the right at any time, and simply because they are so inclined, to revolutionize the institutions of society. The continuance of an established government is not left by the law of God to the mere option of the people who live under it. Necessity is the only justification of a violent change. And this necessity Burke appears to limit to the case where the civil constitution is threatened with overthrow, or where corruption has perverted it from its true design and operation. In this way, the Revolution of 1688 is defended, in consistency with the author's principles,—that being only a restoration of the British Constitution, when the monarchical element was threatening to swallow up every other. So Burke explains the favor he had shown to the American Revolution; on the ground that the American patriots were struggling to *preserve* what was theirs,—the ancient, chartered rights of Englishmen. To be sure, it is natural to ask if there may not be evils necessitating a political change not provided for by law, even though the existing form of government has not been corrupted. In other words, the application of this extraordinary remedy may be warranted in other cases than the particular one considered by Burke. But the fact that he expressly admits a right of Revolution should not be overlooked.

Thirdly, Burke explicitly recognizes the rights of man. He opposes with argument and ridicule the dogmas on this subject propounded by the French school and their supporters in England; but he fully admits the existence of inherent and inviolable rights.

On this subject we shall avail ourselves of a paragraph in "the Reflections," as a text for brief comments upon a distinction familiar to educated persons, the frequent neglect of which, however, in our popular discussions, breeds great confusion and is in various ways a source of mischief. The distinction of which we speak, is that between Natural and Political Rights. The following is the passage from Burke:

“Far am I from denying in theory; full as far is my heart from withholding in practice (if I were of power to give or to withhold) the *real* rights of men. In denying their false claims of right, I do not mean to injure those which are real, and are such as their pretended rights would totally destroy. **If civil society be made for the advantage of man, all the advantages for which it is made become his right.** It is an institution of beneficence; and law itself is only beneficence acting by a rule. Men have a right to live by that rule; they have a right to justice; as between their fellows, whether their fellows are in politic function or in ordinary occupation. They have a right to the fruits of their industry; and to the means of making their industry fruitful. They have a right to the acquisitions of their parents; to the nourishment and improvement of their offspring; to instruction in life, and to consolation in death. **Whatever each man can separately do, without trespassing upon others, he has a right to do for himself;** and he has a right to a fair portion of all which society, with all its combinations of skill and force, can do in his favor. In this partnership all men have equal rights; but not to equal things. He that has but five shillings in the partnership, has as good a right to it, as he that has five hundred pounds has to his larger proportion. But he has not a right to an equal dividend in the product of the joint stock; and **as to the share of power, authority, and direction which each individual ought to have in the management of the state, that I must deny to be amongst the direct original rights of man in civil society;** for I have in my contemplation the civil, social man, and no other. It is a thing to be settled by convention.” (Vol. III, p. 79, Boston, 1839).

The main point to which we call attention is the proposition that political power, or a share, either direct or indirect, in the management of the government, is not to be placed among the Natural Rights of men. **No person on the score of Natural Rights can claim an office, or claim to be eligible to an office, or claim to take part in the selection of those who shall hold office in the state.** Whatever Natural Rights are, they are *not* a title to a participation in the government. But let us mark some of the more important statements in the paragraph above quoted.

1. Men have an equal right to the advantages for which society was created. The state is not an end in itself, but a means to an end. The state is a divinely ordained, indispensable instrument, for securing to the human beings who compose it, certain advantages. And the benefits, define them as you will, which the state is intended to secure, are not the property of a class or a part. They are intended to flow out impartially to all. If the state is constituted in such a way that a part of the community are excluded from these benefits,

there is a violation of Natural Rights. Aristotle held that slaves are merely tools, to be used to promote the interests of a superior class; and assigns them this place in the state. He could not have better defined the falsehood and injustice of slavery, which refuses to recognize the title of a part of the community to an equal share in the benefits of the state, and degrades them into a mere instrument for securing the interests of their pretended owners. A set of individuals, by the exercise of force, absorbs and monopolizes the advantages of society, which belong equally to all its members. In the Declaration of American Independence, "life, liberty, and the pursuit of happiness," are set down among the Natural Rights of men; and the enumeration of Natural Rights, in the passage from Burke, is substantially equivalent. The term liberty is, indeed, a vague one, and may not be easy to fix and define. "Whatever each man can separately do, without trespassing upon others, he has a right to do for himself," is a remark in the paragraph we have quoted. The power allowed to the individual of doing as he pleases, with the qualification (and therefore restriction) that this power belongs, in an equal degree, to every other, is a similar definition of liberty. Nearly coincident with this description of liberty, which is adopted by recent writers, is a fine passage in one of Burke's letters to a French correspondent in 1789.* Of liberty, he says, "I certainly think that all men who desire it, deserve it. It is not the reward of our merit, or the acquisition of our industry. It is our inheritance. It is the birth-right of our species." "It is not solitary, unconnected, individual, selfish liberty. It is social freedom. *It is that state of things in which the liberty of no man, and no body of men, is in a condition to trespass on the liberty of any person, or any description of persons, in society.* This kind of liberty is, indeed, but another name for justice, ascertained by wise laws, and secured by well constructed institutions." Liberty, signifying as it does, exemption from constraint, seems to be not so properly called a particular right, as the comprehensive term under which all

* Quoted in Prior's Life of Burke, p. 309. (Philadelphia, 1825).

human rights are summed up,—freedom being involved in the realization of every right. It is worthy of notice that Burke declares against the pretension to give out precise, metaphysical definitions in these matters, and treats it as a sign of the quackery of that class whom he styles the “amateurs and even professors of revolutions.” “The rights of men are in a sort of *middle*, incapable of definition, but not impossible to be discerned.”

2. The management of the State not being among the original rights of man, does not belong equally to all. It is no violation of Natural Rights when political power is lodged with a few, or with one man, provided the great ends of government are accomplished. In saying that the management of the State is “a thing to be settled by convention,” and in using the terms “compact of the state,” the social “partnership” and the like, Burke has no intention, we need hardly say, of giving sanction to the doctrine that a formal, explicit consent of the people, or of the major part of them, to the creation of a particular government and the selection of those who administer it, is necessary in order to bind the subject to obedience. The obligations of the subject do not depend on any such voluntary, formal act of consent on his part. We cannot forbear to transcribe one of the finest passages in which Burke sets forth this truth:

“Though civil society might be at first a voluntary act, (which, in many cases, it undoubtedly was), **its continuance is under a permanent standing covenant, co-existing with the society; and it attaches upon every individual of that society, without any formal act of his own.** This is warranted by the general practice, arising out of the general sense of mankind. Men, without their choice, derive benefits from that association; without their choice they are subjected to duties in consequence of these benefits; and without their choice they enter into a virtual obligation as binding as any that is actual. Much the strongest moral obligations are such as were never the results of our option. I allow, that **if no Supreme Ruler exists, wise to form and potent to enforce the moral law, there is no sanction to any contract, virtual or even actual, against the will of prevalent power.** On that hypothesis, let any set of men be strong enough to set their duties at defiance, and they cease to be duties any longer. We have but this one appeal against irresistible power—

‘Si genus humanum et mortalia temnitis arma,
At sperate Deos memores fandi atque nefandi.’

Taking it for granted that I do not write to the disciples of the Parisian philosophy, I may assume that the awful author of our being is the author of our place in the order of existence; and that having disposed and marshaled us by a divine tactic, not according to our will, but according to his, he has, in and by that disposition, virtually subjected us to act the part which belongs to the place assigned us. We have obligations to mankind at large which are not in consequence of any special voluntary pact. They arise from the relation of man to man, and the relation of man to God, which relations are not matters of choice. On the contrary, the force of all the pacts which we enter into with any particular person or number of persons among mankind, depends upon those prior obligations. In some cases the subordinate relations are voluntary, in others they are necessary; but the duties are all compulsive. When we marry, the choice is voluntary, but the duties are not matter of choice. They are dictated by the nature of the situation. Dark and inscrutable are the ways by which we come into the world. The instincts which give rise to this mysterious process of nature are not of our making. But out of physical causes, unknown to us, perhaps unknowable, arise moral duties which, as we are able perfectly to comprehend, we are bound indispensably to perform. Parents may not be consenting to their moral relation; but, consenting or not, they are bound to a long train of burthensome duties towards those with whom they have never made a convention of any sort. Children are not consenting to their relation, but their relation, without their actual consent, binds them to its duties; or rather it implies their consent, because the presumed consent of every rational creature is in unison with the predisposed order of things. Men come in that manner into a community with the social state of their parents, endowed with all the benefits, loaded with all the duties of their situation. If the social ties and ligaments spun out of those physical relations which are the elements of the commonwealth, in most cases begin, and always continue, independently of our will, so without any stipulation on our part, are we bound by that relation called our country, which comprehends (as it has been well said) 'all the charities of all.*' Nor are we left without powerful instincts to make this duty as dear and grateful to us as it is awful and coercive. Our country is not a thing of mere physical locality. It consists, in a great measure, in the ancient order into which we are born. We may have the same geographical situation, but another country; as we may have the same country in another soil. The place that determines our duty to our country is a social, civil relation." Vol. III., p. 460.

This explains the sense in which Burke employs the terms, which, it must be confessed, are more properly used by the adherents of the antagonistic theory of the social compact.†

* Omnes omnium charitates patria una complectitur. Cicero.

† In agreement with Burke's definition of the terms referred to, are the observations of Blackstone on the same topic, in his Commentaries, (Introduction, section 2). "But though society," says Blackstone, "had not its formal beginning from any convention of individuals, actuated by their wants and their fears; yet

It is obvious that the question how widely in a given country political power shall be diffused, must depend for its answer on a variety of circumstances. In considering this question, we go beyond the sphere of natural, unalienable rights. We have to inquire what arrangement is, on the whole, most expedient, or what system is likely to yield, in the largest measure, the advantages for which the state is established. This would be the point to determine, had we to settle the organization of society *de novo*. The administering of government is a work of the most difficult character, requiring special and unusual qualifications. Who shall be the Ruler, or who shall be empowered to designate the Ruler, must be decided—provided the matter were left to our decision—with sole reference to the results to be expected from a proposed system. Let political power be distributed to the few or to the many, or to all, or be concentrated in the hands of one person, it is conceivable that every Natural Right may be left intact and be safe under the ægis of government, whose office is to preserve it from infraction. It is conceivable likewise that under every system, the most popular alike with the absolute, Natural Rights should be violated. A Republic may hold a part of its population in bondage; or if not, by the tyrannical edicts of a majority, may trample upon the rights of conscience or rob the individual of some portion of his inborn liberty. It is entirely possible for a democracy to dishonor the sacredness of humanity, and cast down in the dust the heaven-given prerogatives of man.

Besides the distinguishing mark of Natural Rights that they do not, like Political Rights, include a direct or indirect share in the government, a *formal* definition (to use the language of the schools) may be given as follows: (a) Natural Rights are essential; Political Rights are accidental; hence (b) Natural Rights are universal, belonging to all; while Political Rights

it is a *sense* of their weakness and imperfection that *keeps* mankind together; and that, therefore, is the solid and natural foundation, as well as the cement of civil society. And this is what we mean by the original contract of society." The author proceeds to say that protection of the rights of the individual by society, and submission to the laws by him in return, are the parts of the compact.

may be limited to a part; and (c) Natural Rights are prior to the existence of society, in the sense that society does not confer them, but has for its function the protection of them; Political Rights are conferred by society.

In homely phrase, we may compare society to a machine. The products—the benefits of it—belong impartially to all; but *not the right to work it*.

Natural Rights, in the concrete, are to be ascertained by a study of the *destination* of man, (the *lebens-zweck*, the Germans term it,)—the divine *idea* of man and design concerning him; the maxim of the natural equality of the human race (which is implied in the golden rule) being taken for granted, so that the rights of one are the rights of every other.

Utterly antagonistic to the principles and the spirit of Burke, is the famous treatise of Rousseau, the *Social Contract*, which more than any other work was the text-book of the French Revolution. It is significant that the whole discussion is reared upon speculations relative to the origin of civil society. Rights and obligations must all be inferred with mathematical exactitude from the fundamental theory adopted at the start. This theory assumes that the existence of society is optional with men, and is due to their voluntary consent. Individuals are bound by the social bond only because, and so far as, they have agreed to be bound. This false dogma of a mutual contract is laid at the foundation of the edifice. It is further held that the individual in entering society surrenders all his rights to the community, and through this common act of all, there instantly arises the body politic. To the community thus formed, belongs sovereignty. The general will is now the supreme law. To this general will the entire frame-work of government is subject. The idea of “institutional” freedom, of freedom secured and assured to the individual by constitutional safeguards, against the haste or deliberate tyranny of majorities, is discarded. Representative government itself is derided as a product and sign of the decay of public spirit.*

* Rousseau explicitly says that every law which is not expressly ratified by popular vote, is no law; and that the English, through their adherence to Rep-

Of course the State must be restricted to narrow territorial limits. But what is this general will which is omnipotent in the State? It turns out to be merely the majority of suffrages. When the vote of a citizen upon any measure is called for, the question really answered by him is, what in his opinion is the general will in reference to this measure. The result of the ballot decides the point, and thus if he finds himself in the minority, he is not really overruled, but simply mistaken in his judgment as to what the general will is.* It is impossible to imagine a more frightful despotism than Rousseau's sovereignty of the people, under which the individual has literally given up everything to the unchecked will of the majority. Equality, which more than liberty is the idol of Frenchmen, is the key-note of Rousseau's entire work. Views akin to those expressed in this ingenious but superficial essay, have fascinated the French mind, and led to the sacrifice of both stable government and substantial freedom. On the warrant afforded by a popular vote, (called for, according to the more approved practice, after the deed has been done), one government is overthrown and a new one set up, and the entire community perhaps, brought, as at present, under the uncontrolled sway of an Imperial Despot. This terrible price is paid for the sake of having a government which is (in theory) of their own making. The protection of Natural Rights, the prime object of society, is, in fact, given up, in consequence of the eager strife for Political Rights; and even these are not attained.†

representative government, are slaves. "Toute loi que le peuple en personne n'a pas ratifiée est nulle; ce n'est point une loi. Le peuple Anglois pense être libre il se trompe fort: il ne l'est que durant l'élection des membres du parlement: sitôt qu'ils sont élus, il est esclave, il n'est rien." Livre III., ch. xv.

* This curious, though puerile, subterfuge for saving (theoretically) the freedom of the individual, when overborne by the vote of the majority, is found in Liv. IV. ch. ii. (Des Suffrages). "Quand donc l'avis contraire au mien l'importe, cela ne prouve autre chose sinon que je m'étois trompé, et que ce que j'estimois être la volonté générale ne l'étoit pas."

† Burke has left on record his opinion of the *Social Contract* and its author. In a letter to a French correspondent, (in 1789), quoted in Prior's *Life of Burke*, (Am. Ed. 1825, p. 313), he says: "I have read long since the *Contrat Social*. It has left very few traces upon my mind. I thought it a performance of little

We are more apt to connect the theory of the Social Compact with the name of a true lover of liberty, John Locke—a man, in all that constitutes human excellence, immeasurably elevated above Rousseau. The negative part of Locke's treatise on government, wherein he demolishes the arguments of Filmer in favor of absolute monarchy as a legitimate inheritance from Adam and from the dominion of the Patriarchs, is fully successful. His task was here comparatively easy. So the Second Book of Locke's treatise is marked by signal merits. The sentiment of hostility to tyranny that inspires the work, is characteristic of the author. The Natural Rights of men, as the right of property, are declared to be not the creatures of civil society, but the end of society is properly defined to be the protection of them—though the error is committed of making the prime object of the commonwealth to be the security of property. The function of government, also, is limited to the furthering of the end for which government is established. The state, however it may be constituted, must keep to its design. There is no general will omnipotent over the individual. But Locke falls into the great error of supposing that the consent of the individual is necessary in order to his

or no merit; and little did I conceive that it could ever make revolutions and give law to nations. But so it is." In Burke's "Letter to a Member of the National Assembly," (1791), we find a dissection of Rousseau, whom he calls "the great founder and professor of the philosophy of vanity." Burke's satire upon the sentimental philanthropy which tramples under foot particular duties, is excellent. Rousseau is the father of the sentimental school of poets (not excepting Byron and Goethe) and novelists, who seek to make a criminal interesting by weaving round him a veil of sentiment—aiming to excite sympathy where reprobation is the proper feeling. There is a very curious fact concerning Rousseau, which Burke brings forward in the "Reflections." "Mr. Hume told me that he had from Rousseau himself the secret of his principles of composition. That acute, though eccentric observer, had perceived that to strike and interest the public, the marvelous must be produced; that the marvelous of the heathen mythology had long since lost its effect; that giants, magicians, fairies, and heroes of romance which succeeded, had exhausted the portion of credulity which belonged to their age; that now nothing was left to a writer but that species of the marvelous, which might still be produced, and with as great an effect as ever, though in another way; that is, the marvelous in life, manners, in characters, and in extraordinary situations, giving rise to new and unlooked for strokes in politics and morals."

transference from the state of nature within the fold, and under the obligations of civil society. Every man, says Locke, is naturally free, and nothing is "able to put him into subjection to any earthly power but only his own consent."* "Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another without his own consent."† Compelled by his theory, Locke affirms that every one actually though tacitly, gives his consent to the social compact when he comes of age, by the very act of inheriting property in a country! Every generation, by these separate acts of individuals, renews the compact,—otherwise society would be dissolved! Moreover, Locke assumes (for he fails to prove) that the assent to the social compact implies a promise to be governed by the majority. "When any number of men, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of

* Locke's Works, (London, 1794), Vol. IV., p. 409. † *Ib.* p. 394. The sentence quoted above is an example of similarity in thought and phrase between the theoretical part of the Declaration of Independence and passages in Locke's treatise. Locke and Sidney were favorite authors with John Adams and the other young lawyers who led in the movement for Independence. Jefferson wrote at first—"that all men are created equal and independent,"—afterwards erasing the last two words. Compare also the following passages, the first being from the Declaration: "Prudence, indeed, will dictate that governments long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security." Locke writes, (p. 472): "Revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty, will be borne by the people without mutiny or murmur. But if a long train of abuses, prevarications and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under, and see whither they are going; it is not to be wondered that they should then rouse themselves, and endeavor to put the rule into such hands which may secure to them the ends for which government was first erected."

the majority.”* Instead of founding society with Burke, upon a divinely ordained, “predisposed order of things,” with which the will of every rational being is *assumed* to agree, Locke makes the mistake of requiring, as a condition of the validity of government, an explicit act and the voluntary consent of every one who is born in a country. In taking this ground, he advances beyond any statements of Hooker, whose authority he is able to bring in support of the principle that society owes its origin to an express or secret agreement, and that no human government is binding without the previous consent of the governed. Hooker avoids the necessity of getting the consent of every new generation to the existing form of society, by falling back upon the notion of the continued life of a corporation. We lived, he says, in our remote predecessors, and they live in us their successors; so that the original agreement is binding until it be revoked.† The motive of Locke, we may add, was the honorable one of defending the rightfulness of the change of dynasty, by which the Stuarts were expelled and the Prince of Orange raised to the throne. He desired to present a theory of society that would justify this change. It were better, however, to rest it upon the simple right of revolution.

The genesis of the Social Compact theory is a point of much historical interest. To investigate the rise and progress of this doctrine does not fall, however, within our present purpose. Leo, in his *Universal History*,‡ finds the germ of the theory, which was developed by subsequent writers, in the sentence of Grotius: “*civilis juris mater est ipsa ex consensu obligatio.*” This ripened, in the hands of Hobbes, into the distinct conception of an Original Contract—of a state of nature as preceding civil society,—which, though acknowledged by him to be a fiction, as far as actual history is concerned, is, nevertheless, the basis of his reasoning. Locke differs from Hobbes

* Locke's Works, (London, 1704), Vol. IV., p. 395.

† These remarkable statements are in the *Ecclesiastical Polity*, (I. x. 8). The “judicious” Hooker was the forerunner of Locke and the advocates of the Social Compact.

‡ B. III., S. 717.

in placing the sovereignty, conceded by man on passing from the state of nature into society, in the community, instead of an absolute Prince. We have had occasion previously to observe how strongly Locke was affected by the writings of Hobbes,—more often, to be sure, in the way of repulsion than attraction. A leading doctrine in Locke's Reasonableness of Christianity, is the same that Hobbes endeavors to establish in the Leviathan,—the doctrine that the substance of Christianity, as preached by the Apostles, is the proposition that "Jesus of Nazareth is the Messiah." Before Locke, however, Algernon Sidney, in his Discourses concerning Government, had broached the theory of a contract. Montesquieu, though a friend of limited monarchy after the English model, is considered by Leo (who is a hater of free government) to have paved the way for the revolutionary philosophy of Rousseau, by making *virtue* a defining characteristic and only support of government.* The word *Contract*, in a special application to the relation of king and people in the English Constitution, is found in the great vote of the Houses of Parliament, which declared vacant the throne of James I., and made room for the accession of William. In the medley of reasons (for all writers acknowledge it to be a medley) given for their act, James is charged with "having endeavored to subvert the Constitution of this kingdom by breaking the original contract between king and people." Such a contract is thus declared to be involved in the English Constitution. Here a nice and interesting question arises, whether the reference was to a primary, unwritten contract, implied in the existence of a government of law,—a social compact,—or to some positive feature and

* It is amusing to notice, by the by, how most German writers undervalue Locke, not seeing the noble points of his character in their dislike of his philosophical tendencies. Speaking of his general views, Leo says: "Experience to him is everything. It is a special retribution (*ganz besondere Strafe*) inflicted by God upon the sins of the English nation in the seventeenth century, that their foremost minds must sink down to this wretchedness." S. 730. Most persons having English blood in their veins, will not be disposed to complain of such 'retributions' as John Locke.

express provision of the English system. Hallam would seem to incline to the former interpretation. He says that this position was "rather too theoretical, yet necessary at that time, as denying the divine origin of monarchy, from which its absolute and indefeasible authority had been plausibly derived."* He also remarks: "they proceeded not by the stated rules of the English government, but the general rights of mankind. They looked not so much to Magna Charta as the original compact of society, and rejected Coke and Hale, for Hooker and Harrington."† Macaulay, speaking of the inconsistent statements of the great vote, there being one reason put in for each section of the majority who were relied on to pass it, says that "the mention of the original contract gratified the disciples of Sidney."‡ Macaulay defends the inexact and confused character of the vote, on grounds of expediency, as the proper way to secure unanimity; remarking that the "essence of politics is compromise." But Mackintosh, with more reason, declares that it would have been manlier to fall back openly upon the right of revolution, instead of mixing up the pretense of an abdication.§ In the trial of Sacheverell, the sense of this vote and the character of the Revolution, of which it was a part, were deliberately expounded by the managers of the impeachment. Sacheverell had coupled with his doctrine of absolute submission the assertion that the revolution was not a case of resistance. But the managers of the prosecution did not allow him to shield himself by this mode of approving of the revolution. They affirmed that it *was* a case of forcible resistance, and that his principle of non-resistance, being a virtual condemnation of it, would overthrow the title of the reigning sovereign. Yet the ambiguity of the clause about the contract between king and people, is not cleared away. A leading manager, Sir Joseph Jekyl, said: "to make out the justice of the revolution, it may be laid down, that as the law is the only measure of the Prince's authority,

* Hallam's Constitutional History, (Harper's Edition), p. 544.

† Hallam, p. 546.

‡ Macaulay's History of England, (Harper's Edition), Vol. II., p. 580.

§ In his History of the English Revolution.

and the people's subjection, so the law derives its being an efficacy from common consent; and to place it on any other foundation than common consent, is to take away the obligation this notion of common consent puts Prince and people under to observe the laws.* This sounds like the Lockian Social Compact. The revolution, the same manager said occurred in "a case that the law of England could never suppose, provide for, or have in view."† Said another manager Sir John Hawles: "when a government is brought out of frame by the extraordinary steps of a Prince, it is a vain thing to hope that it can ever be set right by regular steps."‡ "The reformation," it was said, "cannot be urged as an instance of the lawfulness of anything, but of resisting the supreme executive power acting in opposition to the laws."§ But when challenged to produce the contract between king and people, Sir Joseph Jekyl refers to the history of the coronation oath, of the oath of allegiance, to ancient customs and forms, which involve such a contract. That is to say, he makes his appeal to usages and peculiarities interwoven with the Constitution, as if the contract were a positive thing, a feature of the English system of government, rather than the underlying basis of all civil society, at least where there is monarchy. This is insisted upon—that there was no law providing for the revolutionary action. It was an exercise of power not provided for by any existing statute. But it was an act of the community, having for its end the *recovery* of the Constitution and Laws. The right to perform such an act is not extended beyond the case in question, where there was an actual necessity of restoring the government and of saving the Constitution from being overthrown. It is only this right of conservative revolution that is claimed. There is nothing, therefore, in their mode of stating the English right of resistance to determine with certainty whether the managers held that the contract between king and people is a positive and special characteristic of English insti-

* State Trials, Vol. XV., p. 98.

† *Ib.* p. 123.

‡ *Ib.* p. 110.

§ *Ib.* p. 333.

tutions, or a fundamental part of all monarchical society. At the time of the revolution, when the question of the condition in which things were left, by the departure of James, was under debate in Parliament, some one suggested that they were left in a state of nature. But it was immediately replied that such a view would dissolve all laws and abolish all franchises. The truth appears to be, that so far as the act of dethroning James and enthroning William is concerned, they could properly plead only the right of revolution. The *precise* meaning when they spoke of the breach of contract between king and people, was probably apprehended by few, if any of the actors themselves.

The Social Compact is a fiction,—convenient as other legal fictions may be, for certain purposes, as a form of representation; leading, however, when taken for anything else than a fiction, to false and mischievous consequences. When we interpret it, with Burke, as a mode of saying that every rational will is presupposed to coincide with the right order of things; or, with Blackstone, as a way of asserting that reciprocal duties are laid upon rulers and the governed, it conveys a truth. When we take another step, and affirm that no government which was not established by general or unanimous consent, can claim allegiance, and further maintain that the assent of every generation, nay, of every individual, is the condition of his obligation to obedience, we introduce a political heresy, the influence of which is very likely to be disastrous. The true view to take is, that the existing form of the state, regarded as a fact, may, or may not, be due to an express agreement at some former epoch. But the obligation of the individual to obedience does not depend on his having had a share in forming the state, or on his having a share at present in the management of it. This, be it observed, is not to approve the denial of political power to those who are capable of exercising it. It is easy to suppose cases where the withholding of all share in the government from those who can safely be trusted with political power, is both arbitrary and inexpedient. What form of government is best, can only be decided by reference to the character and history of the par-

ticular nation. We are speaking now only of what the individual may demand, as a condition of his obeying "the powers that be." For one born under a particular system, it is only necessary to know that the established system secures the great ends of government, and lays upon him no command inconsistent with his duty to God. Yet, in supposable cases, even the withholding of political rights may be so flagrant an evil as to warrant resistance. We require some guaranty that Natural Rights shall not be violated. Such a guaranty may be afforded by the actual possession of a share of political power, especially when the individual is one of a class—the wealthy class for example—who are thus enabled, by uniting their political strength, peacefully to counteract threatened injustice. But when Political Rights are claimed as a guaranty for the secure possession of Natural Rights, the claim is equivalent simply to a demand for a government that shall defend the latter. Political Rights are thus claimed only as a means to an end. The two categories of Rights are properly distinguished.

The fallacy of merging Political under Natural Rights, is most frequently met with in this country, in connection with expressions upon the right of suffrage. The right to vote is tacitly put in the same category with the rights to life, liberty, and the pursuit of happiness. It is forgotten that the limiting of the privilege of voting to the male members of society, with the further condition that they shall have reached the age of twenty-one years, would be a flagrant piece of injustice, provided voting were a natural, inborn, universal right. The extent to which this fallacy prevails and the confusion it induces, are capable of easy demonstration. There is one State, indeed, where the distinction of which we are reminding our readers is definitely apprehended. In Rhode Island, the question whether the right to vote belongs as an original right to every adult male citizen, was brought to an issue in the Dorr rebellion, and the insurgents who renounced their allegiance on account of the limitation of the suffrage, were effectually put down. That movement never could have

acquired the strength it had or the sympathy it won, had the distinction between Natural and Political Rights been clear in the consciousness of the people. The confusion of mind of the Rhode Island insurgents, in reference to the point in question, is shown in their exclusion of minors from the privilege of casting a vote upon their revolutionary measure. Professing to act upon no authority but the rights of Nature, they set up an arbitrary provision of positive law, permitting none but males who had reached a given age to have a voice in the establishment of their new government. Recent discussions upon the subject of Woman's Rights are embarrassed, and the agitators even brought into contempt, by their failure to recognize this distinction. Whether a fair share of the benefits of society is enjoyed by women, in respect, for example, to the opportunity given them to engage in the pursuits of industry, and to the privilege of inheriting and managing property, is *one* question, and a question that deserves consideration. Whether women should be eligible to civil office and be empowered to vote in elections, is another question, and one to be quickly answered in the negative by almost all considerate people. By putting both these questions indiscriminately under the head of "Woman's Rights," the cause of reasonable reform is hindered. Still more dangerous is an alleged right of self-government, which is loosely defined to be sure, but which is held to warrant revolution whenever the people, or a majority of them, choose to make one. A prominent Journal, not to mention other leaders of public opinion, when the Gulf States undertook to break away from the Union, laid down the doctrine that by the American principle of self-government, they had a right to carry out their purpose. No authority, however, can be quoted to establish this monstrous doctrine. As if revolution had ever been legalized in this country! The Declaration of Independence affords no support to this dogma. We read there that "*whenever any form of government becomes destructive of these ends,*" (the preservation of Natural Rights), it is the right of the people to alter or abolish it"—not a legal right of course, but a moral right, resting upon necessity; and, again, we read that "*when a long train of abuses and*

usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security." If this necessity is falsely asserted to exist, the attempt to overthrow the existing government is a causeless and unjustifiable insurrection, to be put down, if possible, by the established authority. There is no legal right of revolution; the phrase involves a contradiction in terms; and no moral right of revolution is claimed in the Declaration of Independence, save in the case of real (not pretended, or imaginary) grievances which had become intolerable. An exaggerated idea of the rights of a majority, is closely connected with the fallacy we are considering. The verdict of the majority is final in those cases where the constitution, or fundamental law, has made it so; and hence the outcry of the Secession leaders on this subject is groundless. But it is not a self-evident truth that the majority have a right to frame the government of a country to suit themselves; nor, under any system of government, save the wildest democracy, has a bare majority the right to alter the Constitution. In this country, a mere majority has no more right to strike out a provision of the Constitution than a minority has. The frame-work of society is not, and ought not to be, subject to the control of a majority "reckoned by the head." The majority may (or may not) have the *power*, but they have not, either by written law or the law of nature, the *right*. For so deep a change, a broader concurrence is necessary. When it is affirmed that the people may change their government, the question immediately arises, who are the people? And the answer to this question must be sought for in the Constitution itself, in the provision authorizing a change. There we learn that the people, so far as this power is concerned, are not a bare majority. "We are so little affected," says Burke, "by things which are habitual that we consider this idea of the decision of a *majority* as if it were a law of our original nature; but such constructive whole, residing in a part only, is one of the most violent fictions of positive law, that ever has been or can be made on the princi-

ples of artificial incorporation. Out of civil society, nature knows nothing of it; nor are men, even when arranged according to civil order, otherwise than by very long training, brought at all to submit to it." In the following passage, he explodes the notion that revolution is optional with the majority:

"The Constitution of a country, being once settled upon some compact, tacit or expressed, there is no power existing of force to alter it, without the breach of the covenant, or the consent of all the parties. Such is the nature of a contract. And the votes of a majority of the people, whatever their infamous flatterers may teach in order to corrupt their minds, cannot alter the moral any more than they can alter the physical essence of things. The people are not to be taught to think lightly of their engagements to their governors; else they teach governors to think lightly of their engagements towards them. In that kind of game, in the end the people are sure to be losers. To flatter them into a contempt of faith, truth, and justice, is to ruin them; for in these virtues consists their whole safety. To flatter any man, or any part of mankind, in any description, by asserting, that in engagements he or they are free, whilst any other human creature is bound, is ultimately to vest the rule of morality in the pleasure of those who ought to be rigidly submitted to it; to subject the sovereign reason of the world to the caprices of weak and giddy men."*

* The two chapters, in De Tocqueville's *Democracy in America*, upon the subject of the majority principle in our political system, like every part of that masterly work, deserve to be studied.

Upon the justice and the means of giving *representation* to minorities, there are valuable and ingenious suggestions in Mr. John Stuart Mill's work upon Representative Government. This able writer would have done better, as we humbly conceive, had he more explicitly recognized the distinction we are considering. An advocate of extended suffrage—so extended as to include women among the voters—he appears to put the claim to vote on the ground of natural justice. Every individual, who is not absolutely under tutelage, he says, has the right to have a voice in the determination of affairs which concern himself. He qualifies the proposition, however, very essentially, in the first place, by excepting the cases where the evil resulting is greater than the good gained—a very broad exception; secondly, by applying his proposition only to the *ideal* state, and not to all states actually existing, where he allows other systems of government may be necessary; thirdly, by still further requiring that the voter shall understand reading, writing, and arithmetic, while he admits that the principle which justifies this requirement would warrant the demand of a higher degree of education, were it possible to apply practically a criterion to test its presence or absence; fourthly, by holding that none should be permitted to vote for the assembly which appropriates taxes, save those who pay taxes; and fifthly, by the theory that suffrage should be graduated to the varying intelligence of individuals or classes, in such a way that a plurality of votes, greater or less, should be allowed to those most qualified to judge upon public measures. These qualifications

The frequent ignoring of the distinction between Natural and Political Rights, in the conduct of the Anti-Slavery Reform, has, in our judgment, been productive of evil. The Negroes, as men, made in the image of God, are endowed with every Natural Right that belongs to the Whites. It is a wrong to deprive them of liberty. "They have a right" (to use again the language of Burke) "to justice." "They have a right to the fruits of their industry, and to the means of making that industry fruitful. They have a right to the acquisitions of their parents; to the nourishment and improvement of their offspring; to instruction in life, and to consolation in death. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself; and he has a right to a fair portion of all which society, with all its combinations of skill and force, can do in his favor." In this partnership, as Burke further adds, all men have equal rights. In respect to these natural rights, according to the principle of our Declaration of Independence, all men, whatever their color or physical conformation, are created equal. Society is guilty of injustice, when it infringes upon these natural rights. But all men are not equally entitled to political rights. The Negroes in our Southern States have no just claim to a share in the government of the state, until they are qualified to rule with wisdom. To vote is to rule. Slavery can be abolished, and yet the right of suffrage be withheld, or granted, at the discretion of the community, as a free reward of industry and intelligence. We believe that the want of discrimination upon this point, both among Abolitionists at the North and Slaveholders at the South, has occasioned a wide-spread misunderstanding. The former have sometimes contended, or been supposed to contend, for more than can be reasonably demanded of, or wisely granted by, the masters; while these, in turn, hearing of Negro equality, have

effectually remove the suffrage from the category of natural, unalienable rights which it is a prime function of government to conserve. There *may* be injustice in withholding the suffrage; but this can be determined only by a consideration of circumstances,—the character of the country, the capacity of the individual, etc. Natural Rights are raised above these contingencies.

understood the phrase to include an equal participation, on the part of the blacks, in political power.

In offering these remarks, we have no design to enter at large into the question of the expediency of universal suffrage. We are fully aware of the arguments in favor of it, which are founded on the supposed tendency of the system to educate the mass of the people, to inspire them with self-respect, and to make them content with the laws which they have a hand in making. These arguments are not without their force. Whether or not they be conclusive, as regards this country, (for they are plainly inapplicable to many countries in the world), it is a fact that the party which espoused the more Democratic theory, has carried the day. The experiment, however, has not been tried out. The use that is made of the suffrage by the hordes of Irish emigrants, is not adapted to excite a faith in the wisdom of the act which put this mighty power into the hands of a multitude of ignorant foreigners just landed on our shores. It is yet to be proved whether great cities can be governed, order, and the security of property being maintained, under the present system which opens so inviting a field to unprincipled demagogues. The primary end to be secured is the stability of government and the administering of equal justice, together with the impartial distribution of whatever other benefits the State, in God's great economy, was appointed to procure. For ourselves, we look with increasing apprehension upon the Democratic tendency in American politics. The founders of our national government well understood the distinction which we have just been considering. They were no disciples of the French philosophy, but lovers of the old, Anglican freedom. They established not a Democracy, but a Representative system upon a Constitutional basis, in which the different functions of government are carefully separated, each department kept in place, and the people also restrained, by an arrangement of checks and balances. In the working of the system, their expectations have been, in some respects, disappointed. Thus, the electoral system for the choice of President, has turned out to be a mere form, although the intention was that the

colleges of Electors should exercise their discretion in selecting the Chief Magistrate. A more alarming innovation is the system of electing judges by popular vote. This change has its origin, partly at least, in the influence of the Democratic theory, confounding Natural with Political Rights. "We have a right to a judge of our own choosing," is the substance of the claim; "if we have an inalienable right to choose our governors and legislators, why not, also, our judges?" And admitting the premise, it is difficult to avoid the conclusion. But will not the abuse of the elective franchise, and scenes of riot and disorder in large cities, together with the prostitution of the bench, which has been already witnessed, provoke a conservative reaction, and corresponding changes in our political system? We venture not to prophesy; but this we affirm, that if the Democratic system fails to secure the ends of society, if it do not *work well*, there are no rights of man to be pleaded in support of it.