

**The Influence of the French Revolution  
on Political Ideas:**

**The Declaration of the Rights of Man  
and  
its Application in Revolutionary France,  
1789-99**

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**To**

**REV. HANNA KHABBAZ**

**My teacher and friend,**

**Whose acquaintance was a turning  
point in my life,**

**This Thesis is gratefully  
Dedicated.**

## P R E F A C E

The scope of this thesis was intended to be much bigger than what it is at present. The reasons for the change could be reduced to three: the original topic was too vast for a Master's dissertation; lack, in the available libraries, of essential original works on the subject; and, the limitations of time.

The narrowing of the topic, however, did not remove completely the above-mentioned difficulties. The subject is still enormous; and all the essential sources of information were not available. This justifies, it is hoped, the abundance of secondary texts in the bibliography, and my reliance on them.

The work has been carried under the supervision of Professors Roger Soltan, J. Michael Hageopian, Charles J. Miller and Zeine N. Zeine respectively. I am greatly indebted to all four for their kind guidance and help. My deep gratitude is also due to all those who were of help, in one way or another, in the achievement of this thesis.

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of Beirut,  
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E. M. Ilbawi.

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## A B S T R A C T

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The Declaration of the Rights of Man  
and  
its Application in Revolutionary France,  
1789-99

The legend which grew around the French declaration of the rights of man of 1789 has been a misleading factor for a right understanding of this document. It was rarely perceived that the application of the declaration in revolutionary France ran short of a reasonable fulfilment of the tenets of that document. It was seldom realized also that the principles of the declaration were applied mostly in the interest of the French bourgeoisie of 1789 -- to whose philosophy the declaration gave expression.

The principles enunciated in the French declaration were as follows: Men originally lived in a state of nature. They were then free and equal, and enjoyed the natural rights of liberty, property, security and resistance to oppression. In order to preserve these rights the state was formed by means of a contract. In this way natural rights were transformed into civil rights. To guarantee the enjoyment of these rights a written constitution, which provided for the separation of powers, was deemed necessary. It was also for the preserva-

tion of individual rights that a due process of law was insisted upon. Sovereignty belonged to the people; and citizens had an equal right to share in law-making, to consent to taxes and to be admitted to public employment.

The French declaration of '89 was of a mixed origin; it was partly French and partly Anglo-American. The idea of drawing up the declaration together with its text were largely borrowed from America; and its concrete rights were mostly taken from the Anglo-American bills of rights. However, the concepts underlying the common principles of the French and American declarations were derived and understood differently on both sides of the Atlantic. The concepts of the American bills were based mostly on the heritage of Anglo-American philosophers; the principles of the French declaration were inspired primarily by the philosophes of the enlightenment and the concrete needs of the French revolutionists.

By proclaiming the principle of equality in the declaration, the French revolutionists aimed at removing the unjustifiable inequalities which prevailed in pre-revolutionary France. These inequalities were mostly felt in the political, legal, social and economic fields. Important offices were filled mainly by the privileged; and the people had no say in the conduction of public affairs. At the same time the Third Estate had to pay most of the taxes and its members were brought before different laws and courts. Furthermore, the people were considered as socially inferior to the nobility and the clergy

and were treated as such.

The contract theory was invoked in the declaration in order to stress the artificial character of the state and to prove that the end of the state was the preservation of individual rights. The element of consent in the theory of contract, together with the doctrines of a state of nature and of a right of resistance, were the strongest arguments of the declaration in justification of the Revolution.

The French revolutionists concept of liberty differed from that which prevailed in England and America. Those revolutionists expected to enjoy liberty through, not from, the state. This could be achieved, they thought, by the destruction of all intermediate bodies which stood between the individual and the state. What made liberty desirable to the French revolutionists was primarily the restriction, under the ancient regime, of economic, political, juridical and personal liberties. They wanted to establish in France laissez-faire, a constitutional regime, the separation of powers, a due process of law and man's freedom and security to enjoy his rights.

The doctrine of popular sovereignty was appealed to in justification of the revolutionists' assumption of power. It was inspired by Rousseau's version of the theory and was substituted for the *ci-devant* theory of the divine right of kings.

The proclamation in the French declaration of the sacredness and inviolability of property, and of men's equality

in rights only, gave this document, more than anything else, its middle class character. These two provisions made of this document a declaration of the rights of the 1789 French bourgeoisie, rather than a universal declaration of the Rights of Man and the Citizen.

The application of the declaration in revolutionary France was a failure rather than a success. The revolutionists' success in the establishment of laissez-faire in France was more than counter-balanced by their failure to establish political, juridical and personal liberty. Constitutionalism and the separation of powers were only nominally established; juridical liberty was much of a fraud; and personal liberty was a chimera.

Concerning equality, social equality and equality in taxation were achieved in general; but not equality before the law, economic equality or even political equality. The revolutionary courts which functioned during the Revolution were a new device of exceptional justices; and all French citizens were not treated equally by revolutionary law. The division of church and emigres property made the differences in land ownership less marked; but this measure did not establish the amount of economic equality claimed by the Babouvists. The enfranchisement of the active citizens only established political equality in part only in France.

The French revolutionists achievement in the matter of popular sovereignty was not more remarkable than their achievement



in liberty and equality. Sovereignty was dislocated, displaced, but not decisively transferred to the people. Power came to reside neither in an absolute king nor in the whole body of the people -- it remained fluctuating between the two contending parties for many decades to come.

That most of the principles enunciated in the French declaration of rights were similar to those advocated, at various times, in England and America did not mean that the principles were applied the same way in all three countries. The abstract character of the French declaration, together with the fact that it was not an expression of a traditional French heritage, made the application of those principles in France difficult. Influenced by French traditions, institutions, circumstances and temperament, these principles acquired a new, and sometimes a different, meaning in France. They were understood in a peculiarly French way, and applied in a peculiarly French manner. The attempts to apply these principles in revolutionary France resulted in the establishment of formal, rather than real, liberty; of equality only for the authors of the Revolution; and in the transfer of sovereignty not to the people but to the French middle class. These achievements, however, in view of the awkward conditions which prevailed in pre-revolutionary France, helped greatly to improve the lot of the mass of the French people.

E. M. Ilbawi

## I. - I N T R O D U C T I O N

The legend which grew around the French declaration of the rights of man of 1789 was not less fantastic, perhaps, than the Napoleonic legend. What gave rise to it was partly the abstract character of the declaration, and partly the semi-mystical atmosphere of propaganda which surrounded that document. But it was also due to a common confusion between the theory of the declaration and the practice to which it was put; between what the declaration said and the extent to which it was applied. The application of the declaration in revolutionary France, it was rarely perceived, ran short of a reasonable fulfilment of the tenets of that document. It was seldom realized also that the principles of the French declaration were applied in a way, and to an extent, which served not so much the ideals of the declaration itself, as the immediate aims of the real authors of the Revolution.

Even the philosophy underlying the French declaration was not always rightly understood. It was often ignored that this document was more of a declaration of the rights of a specific group of men -- the French bourgeoisie of 1789 -- than a universal declaration of the "Rights of Man and the Citizen."

The Third Estate middle class representatives,<sup>(1)</sup> who dominated the National Assembly, dreaded the possibility of the dissolution of their Assembly and the failure of their movement.<sup>(2)</sup> Consequently, they deemed it necessary to formulate their articles of faith in a document which might preserve the fundamental principles of their creed.<sup>(3)</sup> The declaration was thus intended to be a proclamation of faith which would embody their philosophy which was, at that time, the philosophy of the Revolution.<sup>(4)</sup>

Should the Revolution succeed, on the other hand, the declaration would serve, it was thought, another purpose. It would proclaim the "eternal truths" on which institutions must be built, and would guide the French representatives in their work of destruction and reconstruction,<sup>(5)</sup> already started by the National Assembly. This view was presented by more than one distinguished leader in the Assembly.<sup>(6)</sup> It was also claimed by the declaration itself. The preamble of this document clearly stated that the declaration was intended, among other things, to set forth the aim of political institutions so as to guide the legislature and executive.

The declaration was further designed, stated its preamble, to deter the citizens from making demands which would upset the constitution and be contrary to the welfare of the people. The constitution in question, it is hardly necessary to point out, was that which the authors of the

declaration themselves were about to frame for France. As for the meaning of the welfare of the people, or the "welfare of all," as it was put in the preamble, considerable explanation must be made.

The members of the National Assembly, it might be necessary to point out, were not unanimous about the advisability of framing the declaration of rights. Some of them were opposed to the idea. Champion de Ciceé suspected that declarations were of no real value. <sup>(7)</sup> Malouet affirmed that suffering men would appreciate reforms more than proclamations of rights. <sup>(8)</sup> Delandine reminded his fellow-legislators that they were not there to proclaim principles, but to put those principles into laws. <sup>(9)</sup>

Students of the Revolution, who observed the turn <sup>that</sup> events took in revolutionary France, could not help being impressed by the prudence of these observations. It was not denied that the declaration set a standard, an ideal, not merely for Frenchmen but for peoples in many countries. It was also acknowledged that this ideal helped the French visualize their goal. But one must always keep in mind that to proclaim an ideal without implementing it is of little value. It must also be realized that unless ideals have a root in the history, traditions, habits, temperament and the general disposition of the people among whom they were proclaimed, they will bear no fruit. Unless people are prepared,

willing and capable to apply the ideals they proclaim,  
those ideals <sup>can</sup> could not achieve miracles by themselves.

The Assembly, however, decided on August 4 to have the constitution preceded by a declaration of rights. More than fifty projects were submitted, but it was the draft of the sixth bureau which was chosen on August 19. After introducing certain amendments to it, it was adopted on August 26, 1789. <sup>(10)</sup> It was later prefixed to the constitution of 1791 when that constitution was completed.

## I.- N O T E S

1. The Third Estate representatives in the States-general were almost completely middle class men. Half of them were lawyers and the others were men of letters, publicists, industrialists, merchants, etc..... The presence of few nobles like La Fayette and Mirabeau and clergymen like Sieyès among the ranks of the Third Estate was due to their popular sympathies. In fact, the election of so small a number of the other orders as Third Estate representatives showed a certain amount of class solidarity (Mathiez, A., La Révolution française, I, 45 f).

The nobility and the clergy, the two other orders who were represented in the States-general, formed a minority in the self-established National Assembly. That was partly due to the withdrawal of many nobles from that Assembly, and partly due to the fact that most of the lower clergy joined the ranks of the Third Estate.

2. The Count d'Artois had formed, early in July 1789, a plot to destroy the Assembly. With the help of the Queen he convinced his brother, Louis XVI, to lend support to the scheme. The king responded favorably, dismissed Necker and called in the foreign regiments. The news of the plot, and of the arrival of the troops, reached the Assembly.

3. This explanation was given by La Fayette who was, at the time he gave it, the virtual president of the Assembly (Paine, T., Rights of Man, Pt. I, p.27). One might consider it, therefore, an official explanation. It was not, however, the only explanation given by La Fayette for the formulation of the declaration. See below, p.2.

4. In the various phases of the Revolution different, and sometimes contradictory philosophies were adopted. Thus, if no qualification was to be made, it would be more accurate to talk of the philosophies (individualist, authoritarian, socialist, etc...), rather than of the philosophy of the French Revolution. For the purpose of this monograph, however, we were primarily concerned with the individualist middle class philosophy of the early period to which the declaration of '89 gave expression. This philosophy, the writer believes, was the real philosophy of the Revolution.

5. This explanation was also given by La Fayette (Scherger, G., The Evolution of Modern Liberty, p.223). It did not contradict his previous explanation since he had in mind two different circumstances. Furthermore, on no occasion that I knew of did La Fayette claim that the declaration was designed to serve one single aim.

6. Barnave, for instance, insisting on the necessity of the declaration, said: "This Declaration has two useful purposes: first, to determine the spirit of legislation in order that it may not be changed in the future; second, to guide the mind in completing this legislation, which cannot foresee every case" (Quoted in Penman, J.S., The Irresistible Movement of Democracy, p.249. The original source from which the quotation was taken is not available).

7. Scherger, G., The Evolution of Modern Liberty, p.226.

8. Ibid., pp.226 ff.

9. Ibid., p.228.

10. Ibid., pp.229-47.

II. - THE DECLARATION OF  
THE RIGHTS OF MAN  
AND CITIZEN

The main principles enunciated in the declaration may be summarized as follows: before the body politic was instituted men lived in a state of nature. In that primitive and pre-political condition men were free and equal. They enjoyed the natural rights of liberty, property, security and resistance to oppression. These rights belonged to the individual as such, and were sacred and inalienable. In order to preserve them and keep them intact the state was formed by means of a contract. What was in the state of nature a natural right became thus transformed into a civil right. The extent to which civil rights might be enjoyed was to be determined by law not by man. Hence a written constitution, in which powers were separated, was essential. It was equally essential that no accusation, arrest, or detention take place except in conformity to law. Sovereignty resided in the people -- of whose will law was the formal declaration. Consequently all citizens were equal before the law, had the right to share in its formation, and to be admitted, if qualified, to public employments. Taxes must be distributed in proportion to wealth, and it was the people's right to consent to their amount and the way in which they were to be employed.



The declaration reflected the general feeling of optimism which prevailed in France on the eve of the Revolution. (1) It also reflected the inclination of the French mind towards simplicity, clarity and logic. (2)

The complete text of the declaration reads as follows:

The representatives of the French people, organized in National Assembly, considering that ignorance, forgetfulness or contempt of the rights of man, are the sole causes of the public miseries and of the corruption of governments, have resolved to set forth in a solemn declaration the natural, inalienable, and sacred rights of man, in order that this declaration, being ever present to all the members of the social body, may unceasingly remind them of their rights and their duties; in order that the acts of the legislative power and those of the executive power may be each moment compared with the aim of every political institution and thereby may be more respected; and in order that the demands of citizens, grounded henceforth upon simple and incontestable principles, may always take the direction of maintaining the constitution and welfare of all.

In consequence, the National Assembly recognizes and declares, in the presence and under the auspices of the Supreme Being, the following rights of man and citizen.

Art. 1. - Men are born and live free and equal as regards their rights. Social distinctions can be based only on the common interest.

Art. 2. - The end of every political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

Art. 3. - The principle of all sovereignty resides essentially in the nation. No office and no individual can exercise an authority not expressly emanating from it.

Art. 4. - Liberty consists essentially in being able to do whatever is not harmful to others; thus the exercise of the natural rights of each individual has no limits, except those which ensure to other members of society the enjoyment of these same rights. These limits can be determined only by the law.

**Art. 5. - The law has the right to prohibit actions harmful to society. Whatever is not forbidden by the law cannot be prevented, and no one can be constrained to do what the law does not command.**

**Art. 6. - The law is the expression of the general will. All citizens have the right to take part, either personally or through their representatives, in its formation.**

**The law must be equal for all, whether it protects or punishes. Since all citizens are equal before it, all are equally admissible to all dignities, offices, and public employments, according to their capacities and without any other distinction but those of virtue and intellect.**

**Art. 7. - No man may be accused, arrested, or detained, except in cases contemplated by the law and according to the forms which it prescribes. Those who promote, transmit, carry out, or cause others to carry out arbitrary orders must be punished; but every citizen summoned or arrested in pursuance of the law must instantly obey. In resisting he renders himself culpable.**

**Art. 8. - The law must only establish penalties strictly and obviously necessary; and no one must be punished except in pursuance of a law passed and promulgated previously to the offence and legally applied.**

**Art. 9. - Since every one is presumed innocent until he has been declared guilty, if it is considered necessary to arrest him, all severity except what is necessary in order to secure his person must be repressed by the law in the most determined manner.**

**Art.10. - No one must be disturbed in his opinions, whether religious or other, provided their expression does not disturb the public order established by law.**

**Art.11. - The free communication of thought and opinion is one of the most precious rights of man. Every citizen may accordingly speak, write, and publish freely, except that he shall be answerable for the abuse of this freedom in cases contemplated by the law.**

**Art.12. - To guarantee the rights of the man and the citizen, public force is necessary; this is therefore instituted for the advantage of all, and not for the private interest of those to whom it is entrusted.**

**Art.13. - For the maintenance of the public force, and for the expenses of administration, a general contribution is indispensable. It ought to be divided among all citizens in proportion to their wealth.**

Art. 14. - All citizens have the right to examine for themselves, through their representatives, the necessity of the public contribution, to consent freely to its imposition, to watch over its employment, and to determine its amount, its distribution, its exaction, and its duration.

Art. 15. - Society has the right to demand from every public official an account of his administration.

Art. 16. - Any society in which rights are not securely guaranteed, and the separation of powers is not determined, has no constitution.

Art. 17. - Property, being an inviolable and sacred right, can in no case be taken away except where public necessity, legally determined, clearly demands it, and always on condition of a preceding indemnity.

This declaration was the first of its kind in France. Before the Revolution the rights of specific men, guilds, cities or sects were acknowledged in that country by special charters, edicts or similar documents, but not the Rights of Man and the Citizen.

The French declaration of '89, however, was not the first of its kind in the world. As early as 1215 Magna Carta was proclaimed in England. That famous document guaranteed to the English barons a certain protection from royal absolutism: new taxes were to be consented to by the Great Council of the Realm (assembly of nobles and bishops); fines on litigants were to be imposed according to the gravity of the offence, not the arbitrary will of the king; an offence could not be punished more than once; no freeman could be imprisoned without trial; persons under arrest must be tried, within a reasonable time, by their peers; and the liberties (liberties & privileges) of the lords and church were made secure. (3)

Four hundred and seventy five years later (1689) the Bill of Rights reaffirmed the rights of Englishmen which were threatened under the reign of James II: laws could not be dispensed with, suspended, or executed without the consent of parliament; taxes must also be consented to by parliament; the subjects had the right to petition the King, and could not be prosecuted for such a practice; parliamentary elections were to be free; freedom of speech, debates and proceedings in parliament could not be questioned outside that House; excessive bail, fines or cruelty in punishment were not permissible; no person could be fined before conviction; and, the meetings of parliament must be periodical. (4)

These two English documents, it is true, were not abstract proclamations of the rights of man, but proclamations of certain concrete rights of Englishmen. It must be remembered, however, that most of the concrete rights enunciated in the French declaration (such as Habeas Corpus, consent to taxes, freedom of thought, speech and the press) were borrowed either directly, or through the American bills of rights, from these two documents. (5) It seemed possible that, as in the case of their American predecessors, (6) had the French revolutionists been able to obtain a recognition of their concrete rights, and felt secure in these rights, they probably would not have taken the trouble to formulate a declaration of rights of a universal character.

In the American colonies, where the idea of a  
 declaration of the rights of man probably originated,<sup>(7)</sup>  
 the revolutionists claimed at first that they were entitled  
 to enjoy the same rights and liberties - - which were  
 granted by the constitution and common law - - as their  
 fellow English subjects in the mother country. They claimed  
 for themselves the rights granted in Magna Carta and the  
 Bill of Rights, and particularly in the latter. Failing to  
 obtain their rights as Englishmen, they severed their rela-  
 tions with the mother country, and claimed their rights as  
 men in bills of rights.<sup>(8)</sup> The universal character of these  
 bills, however, did not transform them into predominantly  
 metaphysical declarations; these bills gave expression  
 primarily to concrete needs - - not few of which were con-  
 tained in Magna Carta and the Bill of Rights of 1689.

The first bill of rights of a universal character  
 was adopted by the state of Virginia on June 12, 1776.  
 This bill was a model for the other American states. It in-  
 fluenced, not slightly perhaps, the preamble of the  
 Declaration of Independence (July 4, 1776). Even the first  
 ten amendments introduced in 1791 to the American federal  
 constitution of 1787, and which came to be known as the  
 American Bill of Rights, were possibly influenced by that  
 classical document.<sup>(9)</sup>

The idea of drawing up declarations of a universal  
 character, therefore, received its breath of life in the  
 revolting American colonies; and from there it was carried to

France by whatever political literature could get through into the hands of the French people about the American Revolution. <sup>(10)</sup> That idea was also carried to France by the French volunteers who fought in the American War of Independence. <sup>(11)</sup> As a matter of fact, a comparison of the French declaration with the Virginia bill of rights would show clearly that some of the stipulations of the former were taken from the latter. Of these were the stipulations dealing with popular sovereignty, the responsibility of public agents, consent to taxes by the national representatives, the separation of powers, a due process of law, and the like.

The French declaration, however, in spite of the fact that some of its stipulations were borrowed from the Virginia bill of rights, was not a literal translation from that bill - - as was held by authorities like Fay, Janet and others. <sup>(12)</sup> In fact, there were many significant differences between the two. The Virginia bill did not claim, as the French declaration, that men were equal, neither in rights nor otherwise. It laid the emphasis, instead, on man's liberty and independence. The omission of the factor of independence in man's freedom in the French declaration reflected a fundamental difference in the American and French concepts of liberty - - which will be discussed later in this chapter. One need merely point out here that for the Americans, but not for the French, man's liberty implied, among other things, man's independence from state interference no less than from the interference of his fellow men. Among the rights

of man enumerated in the Virginia bill were life and happiness; these did not figure in the French declaration. In their place figured an unrestricted right of resistance to oppression. The right of resistance was stated in the Virginia bill, true enough, but it could be exercised only by a majority of the people - - which helped the Americans save much bloodshed, and enjoy a stable political life.

In the Virginia bill, furthermore, it was provided that no laws could be executed or suspended without the consent of the national representatives - - which made it imprudent for ambitious people to contemplate coup d'états. A check to an extension of the powers of the legislative and executive branches of government was also provided for - - by means of regular, frequent and free elections. The French declaration proclaimed law to be a manifestation of the general will - - thus promising by implication universal suffrage. In the Virginia bill, the right of suffrage was limited to those who had "permanent common interest with, and attachment to, the community."<sup>(13)</sup> In this bill, also, unrestricted religious liberty and freedom of the press were provided for,<sup>(14)</sup> and "justice, moderation, temperance, frugality, and virtue" were insisted upon.

The foregoing comparison and contrast of the French declaration with the Virginia bill might have shown that these two documents were not identical in all respects. The French declaration, like any other declaration of principles, was necessarily of a mixed origin. Thus, whereas the idea of drawing

up that declaration, its form, and some of its provisions were probably borrowed from America, the writer was inclined to believe that the principles enunciated in the American and French declarations were derived, for the most part, from different sources, and that they were understood, for the most part also, differently by the French and Americans. The concepts of the American bills of rights were based, mainly, on the political ideas of men like Grotius, Harrington, Hoaker, Milton, Pufendorf, Sydney and, more particularly, Locke; (15) whereas the ideas of the French declaration were mostly inspired and influenced by the teachings of the philosophes (16) and more particularly Rousseau. (17)

The ideas of the French declaration were also inspired (18) by the concrete needs of the French revolutionists, which were exclusively French, and which differed largely from the needs of the American revolutionists and, for the same reason, from those of the English revolutionists of 1688.

Thus the French declaration, in spite of all that it owed to the concrete declarations of England and to the universal stipulations of the American bills of rights, had peculiar characteristics of its own. Those characteristics will become more evident after one acquaints himself with the concepts of the key articles of the declaration.

What was exactly meant by the abstract stipulations of the French declaration could not be positively and definitely affirmed, since one was dealing with ideas capable of different interpretations. The following analysis of the key articles



of the declaration, therefore, has no claim to finality; it was merely an exposition of what probably was the intended meaning of those articles.

Article 1 of the declaration reads as follows:

"Men are born and live free and equal as regards their rights. Social distinctions can be based only on the common interest."

The first sentence of this article implied the revolutionists' doctrine that a state of nature, in which men were free and equal, preceded the formation of civil society. This doctrine was common to all of the English (1688), American (1776) and French (1788) Revolutions. John Locke, the greatest philosopher of the Glorious Revolution, held that in the state of nature men enjoyed complete freedom; they could act and dispose of their persons and property as they pleased - - the only limit to their actions being the law of nature. They were equal because none of them had more power or jurisdiction than another. (19)

Locke's doctrine of the state of nature was also held by the American revolutionists, (20) and was incorporated in the American bills of rights. (21) The French revolutionists, however, adopted Rousseau's version of the doctrine. In fact, the declaration's expression might have been largely influenced by Rousseau's dramatic statements: "Man is born free; and everywhere he is in chains," (22) and "[Man], being born free and equal, ...." (23)

According to Rousseau man's liberty was derived from his nature - -, whose first care was self-preservation.

He was to decide, not others for him, how to preserve himself and, consequently, no one could have a "natural" authority over him; he was the sole master of his person and possessions. <sup>(24)</sup> Concerning equality, Rousseau did not claim that men were absolutely equal in the state of nature - - he admitted that they did not all have the same strength or intelligence - - <sup>(25)</sup> what he had in mind was more of what is called to-day "equality of opportunity." They were equal because none of them was master of his fellows; they were all in a state of independence the one from the others. They were also equal because none of them enjoyed any privileges from which others were excluded. <sup>(26)</sup>

The doctrine of the state of nature was probably adopted by the French revolutionists, originally, out of conviction. At the outbreak of the Revolution, however, they found in this doctrine a ready-made instrument which would give some justification to their claims. They were claiming for themselves rights which had no sanction in French law, customs or precedents, within historical memory; thus they resorted to the "state of nature." Since no records were to be found about the state of nature, those revolutionists could claim any right, which they wanted to enjoy themselves, to have existed in those pre-historical ~~times~~. X All that could be said about, or ascribed to, the state of nature was a matter of pure speculation which could neither be definitely proved by its claimants nor, what was more

important, be decisively disproved by their opponents. The doctrine could help save the revolutionists from the charge of being outlaws or usurpers; and could give their claims, no matter how fantastic those claims might have been, the semblance of legality or, at least, quasi legality.

Besides the doctrine of the state of nature article 1 embodied two other important doctrines of the declaration: liberty and equality. What was meant by liberty will be discussed shortly; attention need only be centered here on equality, which was one of the most living and persisting aims of the French revolutionists.

The abundant literature written about the concept of equality might have made it popular and desirable in France; but the middle class legislators of the Constituent (National) Assembly, in claiming it, did not have in mind so much the splendid writings of Rousseau and the other philosophes on the subject,<sup>(27)</sup> as the concrete, gross and unjustifiable inequalities from which the French people in general, and their own class in particular, were suffering on the eve of the Revolution.<sup>(28)</sup>

Those inequalities -- unlike the ones in the New World, which was at the time in the formation, with equal opportunities to everyone -- extended to all spheres of French life: political, legal, social and economic. In the political field the high positions in the state were filled almost completely by courtiers and statesmen recruited from the ranks of the privileged.<sup>(29)</sup> The people, moreover, had no say

in the affairs of the state neither directly, as in the case of Switzerland, nor indirectly, through parliament or other representative institutions, as in the cases of England and the United States - - no matter how imperfect representation was in these two countries at that early period. Under the ancient regime France was governed according to the divine right theory, and as such all authority was vested in the King. (30) The French parliaments could not limit that authority, because they had no more than the right of remonstrance. They were reduced to the function of registering the laws of the king, and acted primarily as high courts of justice. Law was, therefore, the expression of the king's will; and the people - - the non-privileged - - could share neither in its formation, nor in shaping the policy of the state.

In the legal sphere privilege was a formally acknowledged institution in pre-revolutionary France. The privileged orders, who possessed by far the largest amount of landed property, were almost exempted from taxation, the main burden of which fell on the people. (31) The share of the middle class was not a small one.

Taxation, however, was not the only legal inequality which made the non-privileged Frenchmen restless; to it must be added the judicial inequalities which brought the different orders before different laws and courts, with all the inconveniences and disadvantages resulting therefrom to the non-privileged.

Not less irritating than the political and legal inequalities were the social inequalities to which the French middle-class, in particular, was sensitive. The Americans of that period did not suffer from this kind of inequalities because they were all new comers to the New World. In England social inequalities were not as irritating because there was no rigid distinction between the different classes; the ranks of the nobility having been open to the upper middle class men. In France, however, where the real social power was already in the hands of the middle class, the members of that class were considered as socially inferior to the nobility and the clergy, and were treated as such. (32) They could not easily become nobles, because of the rigid class distinctions; nor were they treated as equals with those who were inferior to them in all respects, except in the matter of titles. (33)

These were the main political, legal and social inequalities from which the French revolutionists suffered, and which articles 1, 6 and 13 were meant to redress. Article 6 affirmed that "law is the expression of the general will," and consequently gave the people the right to share in its formation. It also proclaimed that "law must be equal for all," and opened offices to talent. Article 13 extended the burden of taxation to the privileged, by announcing that taxation would be proportional to wealth.

It might seem strange and curious that the declaration, in spite of its universal and humanitarian character, did not have anything to say about economic inequalities. The French people of 1789 did not suffer less from the economic inequalities of the ancient regime than from the political, legal or social ones; it might even be safely affirmed that they suffered more from those inequalities. It is only reasonable to inquire, therefore, how was it that no adequate provision had been made to lighten the burden of these inequalities?

The reason, it seems, was the following. The French declaration was a Third Estate document; and the Third Estate did not sponsor the Revolution in order to introduce economic equality into France. The Third Estate neither aimed at absolute equality, nor wanted to have it established in France. What the French middle class aimed at was a general improvement in the conditions of the non-privileged Frenchmen in general, and in the conditions of its own class in particular. They desired a general amelioration, not an absolute levelling, of conditions. This might explain why men were proclaimed to be equal "as regards their rights"<sup>(34)</sup> only - - not in fact.<sup>(35)</sup> This might explain also why social distinctions, from which the French people suffered so much, and which they wanted to eliminate, were preserved by the declaration.<sup>(36)</sup> They were preserved on the condition of being based on the "common interest;" and since the

privileged were not performing any more the distinguished services which they used to perform in the Middle Ages, (37) but were largely replaced in this respect by members of the French middle class, those "social distinctions" were bound to be conferred mainly on the members of this newer class.

The analysis of article 1 has consumed a far larger space than could be consecrated to each article of the declaration; but this was done consciously because this article, together with articles 2 and 3, contained most of the important principles of the declaration. It will be seen, after all three articles have been analyzed, that little would be left to be said about the others.

Article 2 of the declaration reads as follows:

"The end of every political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression."

The first sentence of this article, in assigning a definite end for every political association, reflected the revolutionists' belief that the state was deliberately formed by means of a contract, (38) not as a result of organic growth or historical evolution. This belief was common among the English (1688), American (1776) and French (1789) revolutionists.

The doctrine of contract was mostly in vogue in the period of growing revolutionary ferment which covered most of the seventeenth and eighteenth centuries, and was

held by many a distinguished political philosopher of that period. These philosophers, however, did not put forward identical versions of the theory; their versions were sometimes similar and sometimes radically different. A review of the various versions would take us a long way from our subject, and is clearly besides the point. It seemed sufficient to consider briefly, what the writer believed to have been the most important versions of the theory; namely, those of Habbes, Locke and Rousseau.

Thomas Habbes, the great English philosopher of the seventeenth century, held that though men were in the state of nature equal in body and mind, they were in a state of war everyone against another. Their enmity arose from three qualities in man's nature: competition, diffidence, and desire for glory. They enjoyed no security except what each of them could procure for himself by his own strength or inventions, and their lives were "solitary, poor, nasty, brutish and short."<sup>(39)</sup> In order to put an end to that unbearable condition, men formed a contract between themselves to transfer all their powers to a sovereign whose only responsibility was to protect them. Once made, claimed Habbes, this social contract became irrevocable. It was irrevocable because it was the first of its kind, because the sovereign was not a party to it, and because it was made by the will of the majority. The contract was also irrevocable because the sovereign could do no wrong and, consequently, could not be justly executed. Other factors which made the contract per-



manent were the powers of the sovereign to control opinions, make laws, declare war, conclude peace, appoint, dismiss, reward and punish. The contract was irrevocable, lastly, because the sovereign was the head of the judiciary, and the commander-in-chief of the military forces. (40)

Hobbes's version of the contract theory was a wise piece of foolery intended to justify the absolute power of the Stuart kings. A few decades after its publication Locke's theory was proclaimed, and it was meant to justify the supremacy of the legislature - - the main issue of the English Revolution of 1688. According to Locke, men consented to make a contract, and to form civil society, "for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it." (41) This contract was binding merely on those who entered into its formation; the others remaining in the state of nature. Once the body politic was formed, everyone of its members came under the obligation of obeying, not the sovereign as in Hobbes but, the will of the majority. Whatever the majority decided was binding on everyone, no matter what the minority, or part of it, might think of those decisions. (42).

Locke's version of the contract theory inspired, more than any other, that of the American revolutionists. What the colonists particularly emphasized was Locke's concept of the consent of the governed as an essential element for the legitimacy of government. (43)

The French revolutionists, however, adopted Rousseau's version of the theory. What this theory had in common with those of Habbes and Locke was the belief that the contract was made between the members of the community; not between the people, as one party to the contract, and the government, as the other party. Locke's element of consent, which was not deemed necessary in Habbes's version except at the time of the formation of the contract, was much stressed by Rousseau. People were to manifest their consent generation after generation. (44)

Another difference between the three versions was that whereas Habbes located sovereignty in the monarch, and Locke located it in parliament, Rousseau transferred sovereignty, completely and absolutely, to the people as a whole. (45) He claimed that the contract provided for "the total alienation of each associate, together with all his rights, to the whole community," (46) not to any one person or group of persons.

The social contract was not formed, according to Rousseau, because men were in the state of nature in a condition of war every man against another (Habbes); or to become more secure (Locke); men made this contract in order to be able, as a group, to overcome the difficulties and obstacles which were becoming too powerful for them as individuals. The question of alienating their liberty, because of the contract, was out of the question; since

liberty was essential for their self-preservation.

The fundamental problem which the framers of the contract had to solve was

... to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before. (47)

Consequently, Rousseau found that the essence of the contract could be reduced to the following formula:

Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole. (48)

The French revolutionists adopted Rousseau's doctrine of contract not because they thought it was a historical reality - - though some of them might have believed it was so. The French revolutionists invoked the theory of contract in order to stress the artificial character of the state. They believed that the state was not formed as a result of organic growth, historical evolution, or of a divine command, but rather because men thought the state would better preserve their individual rights. In fact, the same sentence in article 2 of the declaration, which reflected a belief in the social contract theory, affirmed that the state was instituted for "the conservation of the natural and imprescriptible rights of man."

The assertion that the preservation of the rights of man, not those of the community or of the body politic, was the end of the state showed that the philosophy of the declaration, and consequently of the early revolutionists, was predominantly individualistic. These rights were designated as "natural and imprescriptible" in article 2, and "inalienable, and sacred" in the preamble. Articles 4, 6, 11 and 17 reflected also, in varying degrees, the individualistic spirit of the declaration. (49)

The individualistic concept of man having "natural" rights (i.e. rights conferred on man by nature, not by laws or conventions, and which were enjoyed in the state of nature) was not proclaimed for the first time in the history of political ideas in the French declaration; it had been held a century earlier - - to say nothing of the Greek philosophers, the Roman legists or the medieval thinkers - - by the English revolutionists of 1688. John Locke, the philosopher par excellence of that Revolution, held that "life, liberty, and property" were the cardinal natural rights of man. (50) In the American Declaration of Independence (1776) the "pursuit of happiness" was substituted for Locke's right of property, so that the rights proclaimed in the preamble of that document were "life, liberty and the pursuit of happiness." (51) Locke's natural rights, among others, were also incorporated by the American patriots in their bills of rights. (52) In

article 2 of the French declaration, however, the natural rights of man were proclaimed to be "liberty, property, security, and resistance to oppression;"<sup>(53)</sup> and on these attention must now be centered.

The right of resistance proclaimed in this article, combined with the essential element of consent in the revolutionists' theory of contract and with the doctrine of an original state of nature, formed the basic arguments of the declaration in justification of the Revolution.<sup>(54)</sup> Without these principles the Revolution could not have been carried out with even a myth of legality; the revolutionists would have appeared as outlaws violating some of the most sacred elements in a civilized society, i.e., peace and order.

The insertion of property among the natural rights of man indicated the importance the middle class legislators of the Assembly attached to the right of property - - particularly since no restrictions or limitations on its holding and use were provided for. The importance laid by these legislators on this right was made more evident still by their consecrating one whole article in the declaration to assert the sacredness and inviolability of property. The article (17) reads as follows:

Property, being an inviolable and sacred right, can in no case be taken away except where public necessity, legally determined, clearly demands it, and always on condition of a preceding indemnity.

It is probably safe to affirm that had the framers of the declaration been found in a situation in which they had to sacrifice all the rights proclaimed in the declaration except one, they would probably have retained the right of property. Whether or not the property of everyone (the émigrés and the church for example) was believed to be "an inviolable and sacred right," as was affirmed in this article, will be seen in the following chapter on the application of the declaration.

The right of "security" need not receive a separate treatment here; it will be discussed in connection with the natural right of liberty which will be analyzed presently, and of which it might be viewed as one aspect.

Liberty was one of the most popular battle-cries of the French Revolution; it figured first in the revolutionary trinity "liberty, equality, fraternity," and was the first natural right enumerated in article 2 of the declaration. What was exactly meant by liberty could not be easily discerned, partly because the term was not understood the same way by everyone, and partly because the inexperience of the French in the matter of liberty was such as to make them not quite clear what the concept meant. (55) It would be possible, however, to ascertain the probably intended meaning of the term if one acquainted himself with the conditions which prevailed in France on the eve of the Revolution, with the writings of the philosophes. (56) (particularly Voltaire and Rousseau), (57) and with the revolutionary philosophy embodied

in the declaration. In fact, many of the articles of the declaration were, as will be seen shortly, mere explanations of, commentaries on, and stipulations providing for, liberty.

It might be necessary to point out, from the beginning, that the French revolutionists' concept of liberty was, and consequently remained, different from that which prevailed in England and America. (58)

To the Anglo-Americans liberty meant, in general, individual independence. It meant the ability of each person to develop his talents, to make use of his capacities, and to perfect his personality, uninterfered with by governor or neighbour. Government was viewed mostly as a necessary evil; and liberty meant, consequently, liberty from the state. This kind of liberty was gradually obtained in England by limiting the prerogatives of the crown, by increasing the authority of parliament, and by widening the scope of action of local government. This kind of liberty was also obtained in the States by the separation of powers, by the creation of the supreme court, by founding the state on a federal system, (59) and by similar other devices.

Liberty for the ~~early~~ French revolutionists meant, on the contrary, liberty through the state. The state was viewed as one's better self. The more freedom of action government had, it was thought, the more the liberty of individuals would be. The French revolutionists thought largely in terms of

the sentence, ascribed to Louis XIV, "l'état, c'est moi." Thus they expected to enjoy liberty by removing all intermediate bodies which existed between the individual and the state, and by making the state omnipotent and all powerful.

This concept of liberty was partly due to the oppression of the people by the nobility and church in pre-revolutionary France. This oppression had brought about, on the one hand, the alliance between the crown and the people against the privileged since early French history. On the other hand, since the nobility and the church - - intermediate bodies - - were the main source of this oppression, the erroneous idea that the existence of intermediate bodies between the people and the government helped preserve oppression was created in the minds of the French people. Hence the existence of these and similar other bodies (judicial corporations, trade guilds, etc....), which proved to be excellent means for the preservation of liberty, as the example of England had shown, were identified in France with oppression. It was thought that by clearing these bodies away, oppression would largely cease and, liberty would consequently be obtained.

This French revolutionary concept of liberty was largely due, also, to the influence of Rousseau's theories of social contract <sup>(80)</sup> and popular sovereignty. <sup>(61)</sup> Rousseau's latter theory will be discussed later; it seemed sufficient



to point out here that the French revolutionists -- with their belief that sovereignty resided in the people, that government was the agent of the people, and that laws were only expressions of the general will -- did not find sense in restricting the authority of government: if sovereignty belonged to the people, and government was the people, why limit the people's power? They did not conceive of the possibility of one section of the people getting hold of government, and using it as an instrument of oppression against the other sections of the people, in the service of its own ends and interests.

What was meant by liberty could also be discerned by acquainting oneself with the conditions which prevailed in pre-revolutionary France; i.e. with the essential liberties which were withheld from the people, which changed conditions and circumstances in France had rendered extremely desirable. Under the ancient regime the French people, and particularly the middle class, suffered from restriction of economic, political, juridical, personal and other liberties. It was probably safe to affirm that the framers of the declaration had these grievances more in mind, when they drew up that document, than the philosophical writings about liberty. (62)

Those legislators might have made use of the concepts, and even the expressions, of the philosophes; but that was done merely when those concepts or expressions coincided with the needs felt, and were believed to make the stipulations more

(63)  
 popular. In fact, a few articles of the declaration were intended, as will be pointed out, to provide for the previously withheld liberties in France.

Economic liberty was one of the vital liberties which the early French revolutionists desired to obtain. Their concept of this kind of liberty, however, was not similar to the Marxian - - which denied the possibility of enjoying freedom as long as there were differences in the amount of wealth and property between individuals. Nor was it the same as President Franklin B. Roosevelt's "freedom from want" - - which implied the necessity of guaranteeing a sufficient and somehow permanent income to every individual. What the early French revolutionists understood by economic liberty was more of what the Physiocrats had called "laissez-faire." (64) In other words, they wanted to be freed from economic regulations, from the different monopolies, from customs duties on the frontiers of the various French provinces, from the cumbersome variety of feudal laws which prevented the expansion of trade and commerce, and which kept the French peasants in a condition of quasi - serfdom, and from other similar obstacles which hindered the prosperity of the people, and particularly of the rising middle class.

The declaration contained no stipulations as to how economic liberty was to be obtained; but the case was different with political liberty, by which was meant, mostly, to have a share in the affairs of government. Articles 3, which

proclaimed popular sovereignty, 6, which gave the people the right to take part in the formation of law, 14, which assigned to the people's representatives the function of controlling the public purse, and 15, which made public agents responsible for their acts, were for the most part provisions destined to make political liberty a reality. They were the remedies for the political abuses of the ancient regime, namely: absence of a legislature through which the middle class (the people) could shape the policy of the state; and, the concentration of political power in the hands of the king and privileged - - mainly in the interest of those in power, not the excluded, well understood.

Another grievance which made political liberty desirable to the French revolutionists was the arbitrary and despotic rule which prevailed in pre-revolutionary France. Before the Revolution France did not have a written constitution to regulate and restrict the power of the Bourbon kings; and the traditions of the French monarchs, such as Louis XIV, were such as to make the government of the kingdom as despotic as could be in a civilized country like France. The relative insecurity of the French frontiers, due to continuous threats of foreign attacks, helped strengthen absolutism; and the unification of all three powers (executive, legislative and judicial) in the person of the monarch rendered political liberty under the ancient

regime precarious. That was why a written constitution, after the example of the Americans, was insisted upon; it was indirectly provided for in the declaration (preamble and articles 4, 5, 16), and was meant to substitute the rule of law for that of man.

The arbitrary and despotic rule under the ancient regime was such as to make the framers of the declaration seek political liberty in principles most contrary to the tendencies of French history, traditions and inclinations -- such as the separation of powers. Article 16 of the declaration bluntly stated that "any society in which ... the separation of powers is not determined, has no constitution."

The greatest political philosopher who had advocated the principle of the separation of powers was Montesquieu -- one of the most distinguished eighteenth century French philosophes. While in France, Montesquieu must have observed the iniquities and injustices committed as a result of the concentration of the executive, legislative, and judicial powers in the hands of the king -- on a national scale -- and of the feudal lords -- each in the domains under his jurisdiction. His visit to England created in him the belief that powers were separated in that country, and that this separation was the cause and guarantee of the liberties enjoyed at the time by Englishmen. (65) He found political liberty to consist in the tranquility of spirit

obtained by, what might be described by President Franklin D. Roosevelt's expression, "freedom from fear."<sup>(66)</sup>

Montesquieu did not believe that this sense of security was possible if the legislative power was united with the executive in the same person, or group of persons, "because one might fear that the same monarch or the same Senate will make tyrannical laws in order to execute them tyrannically."<sup>(67)</sup> He also believed that liberty would wither away if the judiciary was not separated from the legislative and executive powers, because

If it is joined to the legislative, the power over the life and liberty of the citizens will be arbitrary; since the judge becomes legislator. If it is joined to the executive power, the judge might have the power of an oppressor. (68)

Montesquieu fully realized the fact that power corrupts and that it was likely to be abused; hence his proposed solution of the separation of powers as an effective means for the preservation of liberty, and his insistence that power must be made a check to power.<sup>(69)</sup>

Montesquieu's doctrine of the separation of powers was adopted by the American revolutionists; it was made, and continued to be, one of the basic principles of the United States government. It was also adopted by the early French revolutionists, as article 16 of the declaration clearly showed. The amount of success, or rather of failure, which this principle met in its country of origin will be seen in

the following chapter.

It was evident, from what has been stated above, that, unlike economic liberty, the declaration contained several stipulations dealing with political liberty. The same was true for juridical and personal liberty. Articles 7, 8 and 9 provided for, what was commonly known in England and in the English speaking countries as, a due process of law. In fact, the contents of these articles were probably borrowed directly from England<sup>(70)</sup> - - possibly through the American bills of rights.<sup>(71)</sup>

Concerning personal liberty, men were declared free to enjoy their rights (article 1) and were to feel secure in the enjoyment of those rights (article 2). That was why the institution and the existence of a public force was deemed necessary (article 12). Liberty was defined as the power "to do whatever is not harmful to others" (article 4), and man's actions were to have no limit except that defined by law (articles 4 and 5). On this basis, and with the sole condition that man's actions must receive the sanction of law, religious toleration, freedom of thought, of speech and of the press were guaranteed (articles 10 and 11).

The above mentioned stipulations of the declaration, providing for juridical and personal liberty, were meant to remedy the abuses of the ancient regime: the right of security, and a due process of law reflected the French people's disgust from the Bastille and the Lettres de Cachet; religious liberty, freedom of thought, speech and the press

were expected to prevent a repetition of the persecutions committed by the French established church against non-catholics -- culminating in the Revocation of the Edict of Nantes (1685) -- and of the persecutions committed by both church and state against writers and free thinkers such as Voltaire and Rousseau. <sup>(72)</sup> That the stipulations in question of the declaration were influenced to some extent by the writings of Voltaire, Montesquieu, Rousseau and other philosophes was evident; but one should always keep in mind the fact that the writings of the philosophes were largely inspired by the abuses of the ancient regime.

The declaration's definition of liberty <sup>(73)</sup> was a negative rather than a positive one. It did not grant absolutely any specific kind of liberty; but restricted man's liberty and his rights to what law permitted. In other words, since law was enacted by those who were in power, it was to be expected that, in the absence of an ancient and firmly rooted heritage of liberty, the people would be granted the kind and amount of liberty desired by the governing group -- no more and no less. Should government, at any time, suppress those liberties, in part or as a whole, the alternatives open before the people were either forced submission or armed resistance. The view of liberty expressed in article 4 of the declaration largely explained why the enjoyment of liberty varied so much in France in the various stages of the Revolution, to say nothing of later times.

With this brief analysis of the concept of liberty,

as well as of the other concepts contained in article 2 of the declaration, completed, attention must now be centered on article 3, which was the third and last key article of the declaration, and which dealt with the principle of popular sovereignty. This article reads as follows: "The principle of all sovereignty resides essentially in the nation. No office and no individual can exercise an authority not expressly emanating from it."

The principle of popular sovereignty was only indirectly insisted upon by the English revolutionists of 1688, since the main issue of that Revolution was to locate sovereignty in parliament rather than in the king. This might explain why stress was laid by Locke on the sovereignty of the legislature, rather than that of the people. <sup>(74)</sup> The case, however, was not the same with the American revolutionists, whose aim, in this respect, was radically different from that of their English predecessors. The American revolutionists could not claim that sovereignty resided in the king, because that would have meant that the English monarch had the last word in the affairs of the colonies. They could not have invoked the doctrine that parliament was sovereign, because one of their main grievances was precisely the fact that legislation for the colonies was done by the English parliament. Thus they had recourse to the doctrine that sovereignty resided in the people. <sup>(75)</sup>

The position in France was not greatly different.



from that in America. To appeal to the divine right of kings would have resulted in the rejection of any claim, made by the French revolutionists, deemed unfavorable by the French monarch. Sovereignty could not have been found to reside in the States-general<sup>(76)</sup> because this body was a dead institution for hundred and seventy five years before the outbreak of the Revolution. Consequently, the National Assembly appealed to the theory of popular sovereignty as a justification for taking power into its own hands.

Rousseau was the greatest French theorist of the doctrine of popular sovereignty; and the French revolutionists' belief in this doctrine was mainly shaped by his version of the theory. In fact, even the terminology of certain statements in the declaration dealing with popular sovereignty was, as will be observed immediately, adopted from the Social Contract.

According to Rousseau, sovereignty was the "exercise of the general will;"<sup>(77)</sup> and the framers of the declaration, influenced by Rousseau's theory, and considering the passing of laws an act of sovereignty, proclaimed law to be "the expression of the general will."<sup>(78)</sup> What was precisely meant by the "general will" Rousseau did not make quite clear. It was not the same as popular will; because the latter might be the expression of a collection of particular interests and might favour measures conducive to the happiness of a part of the community, not that of all the members of the body politic. In this respect popular will had more in common,

and was more closely connected, with what Rousseau called the "will of all," <sup>(79)</sup> than with the general will. The general will was not, either, the same as national will; because national will implied, generally, the will of a particular nation in relation to other nations, whereas the general will was concerned with both the internal and external affairs of the state. The only differentiation made by Rousseau was between the "will of all" (volonté de tous) and the "general will" (volonté générale); and this differentiation would help one better understand Rousseau's concept.

The general will, Rousseau informed us,

considers only the common interest, while the former [will of all] takes private interest into account, and is no more than a sum of particular wills: but take away from these same wills the pluses and minuses that cancel one another, and the general will remains as the sum of the differences. (80)

Rousseau claimed, furthermore, that

will either is, or is not, general; it is the will either of the body of the people, or only of a part of it. In the first case, the will, when declared, is an act of sovereignty and constitutes law: in the second, it is merely a particular will, or act of magistracy - - at the most a decree. (81)

It was not essential, according to Rousseau, that the general will be always unanimous: <sup>(82)</sup> it might, and was likely to be in most cases, the will of a majority. The important characteristic of the general will was that it "alone can direct the State according to the object for which it was instituted, i.e. the common good." (83)

Rousseau held that sovereignty could neither be alienated nor divided; it necessarily resided in a collective being, i.e. in the people. (84)

Article 3 of the declaration was largely inspired by Rousseau's theory of the sovereignty of the people. By proclaiming the people to be the source of power it implied that the use of this power must be for the common welfare of the people. Articles 6, 14 and 15 were among other things, confirmations of the doctrine enunciated in article 3: article 6 by defining law as "the expression of the general will;" article 14 by giving the people an effective control over the public purse; and article 15 by holding public officials responsible to society for their acts.

The revolutionary doctrine of popular sovereignty was the antithesis of the divine right theory which prevailed in pre-revolutionary France, and which located sovereignty in the monarch. It replaced the divine right of kings by the natural right of the people, and substituted the ancient formula "le roi le veut" by the modern formula "le peuple le veut."

With this brief analysis of article 3 completed, the analysis of the key articles of the declaration would come to an end; the remaining fourteen articles being, as might have been observed, mere explanations and commentaries on the first three articles. (85)

The French declaration of '89 was of a mixed origin; it was neither completely French, nor totally Anglo-American.

The idea of drawing up the declaration, as well as its text, were largely borrowed from America; and its concrete rights were largely adopted from the Anglo-American bills of rights. But, whereas the form of the French and American declarations was almost identical, the concepts underlying the common principles of those declarations were derived, in most cases, from different sources, and were understood, in most cases also, differently on both sides of the Atlantic. The American concepts were mostly shaped by the heritage of Anglo-Saxon philosophers, and the French concepts were mainly inspired by the heritage of the French philosophes.

But, the writings of the philosophes were not the only, nor even the predominant, factor which gave shape to the declaration. The French declaration was not mainly a philosophical document -- giving expression to certain abstract, eternal, and universal principles -- as a superficial consideration of it might lead one to believe; it was more of a middle class document giving philosophical expression to the needs of the French people in general, and the French middle class in particular, on the eve of the Revolution.

The proclamation of the sacredness and inviolability of property, and of men's equality in rights, not in fact, were the stipulations which gave the declaration, more than  
(86)  
anything else, its middle class character. . . They made of

this document a declaration of the rights of the '89 French middle class men, rather than a declaration of the Rights of Man and the Citizen. Robespierre, criticizing this aspect of the declaration, told its framers:

You have ... afford[ed] the largest possible latitude to the right to one's property, and yet you have not added a word in limitation of this right, with the result that your Declaration of the Rights of Man might make the impression of having been created not for the poor, but for the rich, the speculators, for the stock exchange jobbers. (87)

Whether the declaration was a middle class document prima facie only, as Robespierre's criticism seemed to suggest, or whether it actually was so, as one might be inclined to believe, was a disputable problem. It could also be claimed, as was suggested by Professor C.J. Miller, that the declaration was put in the form it took because its authors could not see beyond themselves, or because they saw what popular government had done in America. Which of these explanations was nearer to the truth will become more evident in the following chapter, where an attempt will be made to describe how, and to what extent, the stipulations of the declaration were implemented in France.

## II. - NOTES

1. The preamble claimed that misery and corruption were due, not to the viscious elements in human nature and the imperfect state of civilization but, to "ignorance, forgetfulness, or contempt of the rights of man." This optimistic attitude prevailed mostly among the French middle class and peasants, and more particularly among the former. It was partly due to Rousseau's teachings about the natural goodness of man, and partly to the increased economic prosperity and bright prospects which were daily opening to the class which was rising quickly to power in France. (The views that the sentence quoted in this note reflected an optimism in the declaration, and that this optimism was due to Rousseau, will be found expressed also in Deslandres, M., Histoire constitutionnelle, I, 72).
2. Observe the lucid language of the declaration, the form in which it was arranged, and its attempt (preamble) to ground the complicated desires and wishes of human beings upon simple doctrines.
3. These were the main provisions, relevant to our subject, as summarized in the section on Magna Carta in the article "English History," Encyclopaedia Britannica, IX, 489 - 90.
4. These were the main provisions of the Bill of Rights (An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown), relevant to our subject (See "Bill of Rights," in the Encyclopaedia Britannica, III, 943 - 4).
5. See Scherger, G., The Evolution of Modern Liberty, pp. 200. f. The fact that certain French philosophes, such as Voltaire (See: Bayet, A. & Albert, F., Les écrivains politiques du XVIIIe siècle, pp. 60-66; and Introduction to Contemporary Civilization in the West, I, 331 - 44), advocated these rights, or part of them, does not change the truth of this statement; those philosophes were largely inspired by the example of England, either through personal visits to that country, or because they were familiar with the conditions which prevailed in it.
6. See Scherger, G., Modern Liberty, pp. 179 - 200.
7. This view was held both by contemporaries (such as La Fayette, Champion de Cicé, Mirabeau, Rabaut de Saint Etienne) and by modern authorities on the subject (like Janet, Scherger and Stahl). See: Janet, P., Histoire de la science politique, I, xi ff, xxxv; Scherger, G., Modern Liberty, pp. 150 ff,

165-78, 225, 225, 235, 235, 257.

8. Note 6 above. I owed this information to Scherger.

9. See: Janet, P., Histoire de la science politique, I, xi ff; Scherger, G., Modern Liberty, pp.194-200; the text of the Virginia Bill of Rights in the Appendix (A) below; the text of the American Declaration of Independence in Spahr, M., Readings in Recent Political Philosophy, pp.3-6; and the text of the American Bill of Rights in Birley, R., Speeches and Documents in American History, I, 171-3. Although the American Bill of Rights of 1791 was, on the whole, similar to the other American bills, the writer, in discussing these bills, did not have it in mind. That was due mostly to the fact that the American Bill of Rights of 1791 was framed two years after the French declaration of '89 was adopted.

10. See: Aulard, A., Histoire politique de la Révolution française, pp.80 f; Fay, E., L'esprit révolutionnaire en France et aux États-Unis à la fin du XVIIIe siècle, pp. 173-80; and Scherger, G., Modern Liberty, pp.207-21.

11. As early as 1783 La Fayette, having returned to his home in Paris from the New World, decorated his room with a frame which contained in one part the American Bill of Rights, and in the other part an empty space reserved for a future French Declaration (See Aulard, A., Histoire politique, p.28; and Scherger, G., Modern Liberty, p.222). It was a significant fact that Lafayette should have been the first person to suggest in the National Assembly the idea of a declaration of rights (see Rigby, E., "Crisis at Versailles," in Thompson, J.M., English Witnesses of the French Revolution, pp. 47 f.).

12. See: Fay, E., L'esprit révolutionnaire, p. 181; and Janet, P., Histoire de la science politique, I, xiii, xl. Aulard, A. held in his Histoire politique, p.21, that the Virginia bill was "almost the future French declaration of rights." Scherger, G., preferred in his Modern Liberty, pp.241-47, to compare certain articles of the French declaration with those articles which corresponded to them most, not in any particular American bill but, in the various American bills of rights. A discussion of the minor differences which were found between the different American bills of rights will be found in Janet, P., Histoire de la science politique, I, xviii - xxviii.

Janet, P., in order to give some credit to his country of origin (France), claimed that the Americans borrowed the theory of the rights of man from the eighteenth century French philosophy (Histoire de la science politique, I, xxxv f). This view, however, need not be taken seriously since, as was rightly pointed out by Merriam, C.E., American Political Theories, pp. 91 f, the American theorists were not influenced primarily by the writings of the French philosophes.

13. Section 6. The text of the Virginia bill will be found in Appendix A/ below.

14. Section 15.

15. See: Gettall, R.G., History of American Political Thought, pp. 21-3, 88, 98; Merriam, C.E., American Political Theories, pp. 88-94; Scherger, G., Modern Liberty, pp. 179 ff.

16. One must acknowledge that many of the most important philosophes, such as Voltaire, Montesquieu and Rousseau, were influenced by the English political philosophy, which was at the same time the main foundation of the American revolutionary philosophy. This influence was partly due to the fact that these philosophes were acquainted with the writings of the English political philosophers, and partly due to their stay in England. Nevertheless, their writings were, predominantly, of a distinct French character.

17. Rousseau was the philosopher, if any one single philosopher could be pointed out, of the French Revolution. The immense influence of his writings, especially the Social Contract, on the political ideas of the French revolutionists could hardly be exaggerated. This overwhelming influence had been recognized by all competent authorities, that I know of, on the subject. G.D.H.Cole, to quote just one authority, described Rousseau's influence on the French Revolution (in the Introduction to his translation of the Social Contract and other Discourses, pp. vii f.) in the following words: "He [Rousseau] is still revered or hated as the author who, above all others, inspired the French Revolution .... The statesmen of the French Revolution, from Robespierre downwards, were throughout profoundly affected by the study of his works .... The Social Contract, then, may be regarded ... as a document of the French Revolution ...".



Among the contemporaries of the Revolution Edmund Burke, one of the greatest British political philosophers, wrote the following passage (in his Letter to a Member of the National Assembly, 1791) describing Rousseau's influence on the French revolutionists: "Rousseau is their canon of holy writ. Him they study; him they meditate; him they turn over in all the time they can spare from the debauches of the night, or the laborious mischief of the day."

The writer shared the above mentioned views and believed that the French declaration was influenced by the political philosophy of Rousseau more than by that of any other. That is why the Social Contract will be consulted so frequently in the present chapter, and will be used, in certain cases, as an explanatory text of the French declaration.

18. This view will also be found expressed in Janet, P., Histoire de la science politique, I, xlv ff. See, for an example of the concrete needs of the French people in general, and the French middle class in particular, the "Cahier of the Grievances, Complaints and Remonstrances of the Members of the Third Estate of the Baillage of Versailles," in Introduction to Contemporary Civilization, I, 1066-75. Part of these grievances were also expressed by Sieyès, J.E., "What is the Third Estate," in the same book cited, I, 1077-82. The grievances of the Third Estate were pointed out in a large number of secondary texts, e.g.: Elton, G., Revolutionary Idea, pp.5-25; Mathiez, A., La Revolution Française, I, 47-8.

19. The Second Treatise of Civil Government, ch.2, sections 4-15.

Other English philosophers besides Locke, such as Hobbes, held the doctrine of the state of nature (Leviathan, pt.I, ch.13). The reason why their doctrines have not been pointed out was partly due to the fact that the scope of this thesis did not permit the writer to transform it into a history of political theories, ancient and modern, and partly because Locke was the greatest philosopher of the Revolution of 1688 -- which was similar in many respects, in the matter of doctrines, to that of France, though those doctrines meant often different things on both sides of the Channel.

Another reason why Locke has been chosen was the fact that he might be considered, not only as the apologist of the English Revolution of 1688 but, as the philosopher of

the American Revolution of 1776 as well. Until then most of the American colonists believed themselves to be English subjects and were inspired by his philosophy, more than any other, in the formation of their revolutionary theories. (See Miller, J.C., Origins of the American Revolution, pp.170 ff.). He might therefore be considered as the philosopher par excellence of both the English (1688) and American (1776) revolutions.

That Locke's Treatise was written in 1690, i.e. after the Glorious Revolution took place, did not alter the fact that it embodied the philosophy of that Revolution, since it was written mainly in justification of that event.

20. See, for a discussion of the American revolutionists' concept of the state of nature; Gattall, R.G., History of American Political Thought, pp.68-9, 88, 92-94; Merriam, C.E., A History of American Political Theories, pp. 46 f.

21. See section 1 of the Virginia bill of rights in appendix A, below. The reason why the Virginia bill has been selected for reference was because, it has already been pointed out, it was a standard document. It was also selected because, except for differences in the matter of wording and other minor details, it was the same as the other bills of rights adopted by the other American states.

22. Social Contract, Bk. I, ch.1.

23. Ibid., Bk. I, ch.2.

24. Ibid., Bk. I, chs 2-3.

25. Ibid., Bk. I, ch.9.

26. Note 23 above.

27. See: Bayet, A. & Albert, F., Les écrivains politiques du XVIII<sup>e</sup> siècle, passim; Rousseau, J.J., The Social Contract and other Discourses, passim.

28. See Tocqueville, Alexis de, Ancien régime, Liv.III, ch.8. For a complete account of these inequalities, see Mathiez, A., La Révolution française, I, 20-26; Taine, H., Origines de la France contemporaine, I, 3-132.

29. See: Elton, G., Revolutionary Idea in France, pp. 8 f; Taine, H., Origines de la France contemporaine, II, 176 f. The cases of Necker, Turgot and few others were exceptions to the general rule.

30. See Louis XVI's speech to the parlement of Paris, November 19, 1787, in which were exposed the principles by which the French monarchs ruled in France. An extract of this speech was quoted in a footnote by Sorel, A., L'Europe et la Révolution française, I, 187-8. The original source from which it was quoted was not available to me. See Sorel's reliable survey, in the same book cited, I, passim, on the general conditions which prevailed in France before and during the Revolution.

31. See: Dickinson, G.L., Revolution and Reaction, p. 19; Rose, J.Holland, "The Revolutionary Era in France", in Hearnshaw, F.J.C., The Social and Political Ideas of some Representative Thinkers of the Revolutionary Era, pp. 51 ff. Rose, J.H. had already referred, in the same place cited, to Taine, H's appendix, in the Origines de la France contemporaine, II, 321-5, which gives the figures of the direct tax under the ancient regims.

32. See Dorset, Lord, "Deadlock," in Thompson, J.M., English Witnesses of the French Revolution, p. 33.

33. See: Dickinson, G.L., Revolution and Reaction, pp. 18 - 20; Sieyès, J.E., "What is the Third Estate," in Introduction to Contemporary Civilization, I, 1077 - 82.

34. Declaration of rights of 1789, art. 1.

35. This view could be confirmed by the following two articles, quoted from a draft submitted by the "Sixth Bureau" to the National Assembly, and considered by the members of that Assembly as a most satisfactory definition of equality:

Article V. "...each man did not receive from nature the same means to use his rights. This is what gives birth to inequality among men. Inequality is therefore in nature itself."

Article VI. "Society is formed by the need of maintaining equality of rights, among the inequality of means (See, for the French text of these two articles, as well as for the information given about them in the beginning of this note, Barakat, A., Le Chapelier's Law, pp. 39 f. The original text from which they were quoted by Barakat [Buche et Roux, Histoire parlementaire] was not available.).

It will be observed that the above-mentioned articles -- by asserting the natural inequality of men, and by assigning as an end of society the preservation of equality of rights among inequality of means -- were in conformity with the middle class character of the declaration, though they were against the spirit of the concept of equality. By affirming this, the writer did not have in mind so much the socialist concept of equality as he had in mind the moderate concept of equality which was taught by Rousseau: "...by equality," stated Rousseau in the Social Contract, Bk. II, ch. 11, "we should understand, not that the degrees of power and riches are to be absolutely identical for everybody; but that power shall never be great enough for violence, and shall always be exercised by virtue of rank and law; and that, in respect of riches, no citizen shall ever be wealthy enough to buy another, and none poor enough to be forced to sell himself: which implies on the part of the great, moderation in goods and position, and, on the side of the common sort, moderation in avarice and covetousness."

36. Declaration of rights of 1789, art. 1.

37. See Elton, G., Revolutionary Idea, pp. 18 ff. This was due mainly to changed economic, scientific, military and social conditions.

38. The view that the French revolutionists believed in the contract theory has been pointed out in several books; e.g. Willert, P.F., "Philosophy and the Revolution," in Acton, Lord, The French Revolution, p. 3.

39. This quotation, as well as the exposition of Hobbes' views which preceded it, were taken from Hobbes, T., Leviathan, Pt. I, ch. 13.

40. Leviathan, Pt. II, ch. 18.

41. The Second Treatise of Civil Government, ch. 8, section 95.

42. *Ibid.*, ch. 8, sections 96-99.

43. See, about the contract theory of the American revolutionists: Gettell, R.G., History of American Political Thought, pp. 69-71, 88, 89-90; Merriam, C.E., American Political Theories, pp. 49-52.

44. Social Contract, Bk. I, ch. 4.

45. *Ibid.*, Bk. I, chs. 6-8.

46. Ibid., Bk. I, ch. 6.

47. Ibid., Bk. I, ch. 6.

48. Ibid., Bk. I, ch. 6. See Cole, G.D.H.'s admirable discussion of the theory of contract in the Introduction to his translation of Rousseau, J.J., The Social Contract and other Discourses, pp. xviii-xxiv. I was indebted to this discussion.

49. See these articles in the text of the declaration above. See also, on the individualism of the early revolutionary philosophy; Vaughan, C.E., History of Political Philosophy, II, 38-43, 124.

50. The Second Treatise of Civil Government, Passim.

51. See the text of the Declaration of Independence in Spahr, H., Readings in Recent Political Philosophy, pp.3-6.

52. See, for example, the Virginia declaration, section 1, in appendix A/ below. On the American revolutionists theory of natural rights, see Giddell, R.G., History of American Political Thought, pp. 67-8, 88-92; Merriam, C.E., American Political Theories, pp. 47-49.

53. Compare with section 1 of the Virginia declaration.

54. The view that the right of resistance was meant to justify the Revolution has been expressed in Mathiez, A., La Révolution française, I, 77.

55. See Young, Arthur, "Revolution Foreseen," in Thompson, J.M., English Witnesses of the French Revolution, p. 21.

56. See: Bayet, A. & Albert, F., Les écrivains politiques du XVIIIe siècle, passim; Mornet, D., Les origines intellectuelles de la Révolution française, passim.

57. See Social Contract, Bk. I. chapters 4-8, Bk.II, ch.11.

58. In England until the latter part of the nineteenth century. In the United States of America to the present day.

59. With different constitutions for the various States which could not be modified by the central government.

60. Which provided for the "total alienation of each associate, together with all his rights, to the whole community" (Social Contract, Bk. I, ch. 6). See the discussion of the theory of contract above.

61. "It is ... essential, if the general will is to be able to express itself, that there should be no partial society within the state ..." (Social Contract, Bk. II, ch. 3). This view recurred in more than one passage of the Social Contract: "The ... relation ... of the members [of the body politic] one to another, or to the body as a whole ... should be in the first respect as unimportant, and in the second as important as possible. Each citizen would then be perfectly independent of all the rest, and at the same time very dependent on the city; ... as the strength of the State can alone secure the liberty of its members". (Bk. II, ch. 12).

62. Mirabeau's assertion, that "... liberty was not the fruit of a doctrine arrived at by philosophical deductions, but of every-day experience, and of the simple arguments raised by facts ...", may be cited in confirmation of this view, though it is one sided. The French text of this quotation will be found in Barakat, A., Le Chapelier's Law, p. 15. Mirabeau's original work, in which the quotation was found, was not available.

63. It was realized that the philosophes were predominantly middle class men -- either by birth or by sympathy. It was also realized that the concepts of the philosophes were shaped to no small an extent by the same concrete needs which were felt by the revolutionists. Nevertheless, it must be remembered that the philosophes did not hold identical views on all subjects. In some cases, contradiction could be discerned even in the writings of one single philosophe, like Rousseau. This might explain why Rousseau's writings were taken by some to be essentially individualistic, and by others to be essentially authoritarian. Whatever might have been the case, it was certain that some of the concepts of the philosophes were not adopted in the declaration. Enlightened despotism for example, which was admired by some philosophes like Voltaire, did not figure in the declaration. Nor did the type of economic equality advocated by Rousseau, and which was believed by this same writer to have been an essential pre-requisite for the full enjoyment of liberty (see note ~~22~~ 30 above).

64. The economic liberty of the eighteenth century school of Physiocrats. See Bayet, A. & Albert, F., Les écrivains politiques du XVIIIe siècle, pp. 330-34.

65. It is obvious that this belief was wrongly arrived at if one was to understand the separation of powers in its modern sense, i.e. as it is practiced in the United States of America; but Montesquieu was not absolutely wrong if one contrasted the eighteenth century French and English forms of government in the matter of the concentration of powers.
66. The sense of security from foreign aggression, which was implied in President Roosevelt's statement, was lacking from Montesquieu's concept.
67. Esprit des lois, Liv. XI, ch. 6.
68. Ibid., Liv. XI, ch. 6.
69. See, for this exposition of Montesquieu's doctrine of the separation of powers, Esprit des lois, Liv. XI, chs.4,6. In few cases I have taken the liberty to use some of Montesquieu's expressions.
70. See the summaries of Magna Carta and the Bill of Rights above.
71. See Virginia declaration, sections 8, 9 and 10.
72. See Janet, P., Histoire de la science politique, I, xlv ff.
73. Article 4. See above.
74. Second Treatise of Civil Government, ch. 11, sections 134-142.
75. See: Virginia declaration, section 2, in the appendix A. below; and the Declaration of Independence, in Spahr, M., Readings in Recent Political Philosophy, pp.3-6. For a discussion of the American revolutionists' theory of popular sovereignty see: Gettall, R.G., History of American Political Thought, pp.66-9, 88, 92-4; Merriam, C.E., American Political Theories, pp. 53 ff.
76. A rough equivalent in ancient France of the English Parliament. It was convoked for the last time in 1614, before it was re-convoked in 1789.
77. Social Contract, Bk. II, ch. 1.
78. Article 6.
79. See below.
80. Social Contract, Bk. II, ch. 3.

81. Ibid., Bk. II, ch. 2.
82. Ibid., Bk. II, ch. 2. Footnote.
83. Ibid., Bk. II, ch. 1. See also, on Rousseau's concepts of sovereignty and the general will, G.D.H.Cole's masterly treatment in the Introduction to his translation of the Social Contract and other Discourses, pp. xxiv ff.
84. Social Contract, Bk. II, chs. 1-2.
85. This view was also held by Thomas Paine: "The first three articles," he wrote in the Rights of Man, Pt. I, p. 97, "comprehend in general terms the whole of a Declaration of Rights; all the succeeding articles either originate from them or follow as elucidations."
86. See Mathiez, A., La Révolution française, I, 77.
87. Quoted in Introduction to Contemporary Civilization, I, 1085. Italics are not mine, The original source of the quotation was not available to me.



### III. THE EXTENT TO WHICH THE DECLARATION WAS APPLIED IN REVOLUTIONARY FRANCE, 1789 - 99

The discussion in the foregoing chapter might have made it sufficiently clear that the dominant principles of the declaration, and consequently of the French revolutionists, were liberty, equality and popular sovereignty. That the declaration was intended primarily to guide the French legislators in their construction of the new edifice of revolutionary France has also been pointed out, in chapter 1 above. The extent to which the three great principles of the declaration were applied in France must naturally, therefore, be sought in the revolutionary legislation of the period under consideration in general, and in the constitutions of 1791, 1793 and 1795 in particular.

To limit oneself in the study of the topic of the present chapter, however, to constitutions, laws and decrees would give, it was realized, only one side of the picture; it would be a study of the legal implementation of the declaration, rather than of both the legal and the actual. At the same time, should a study of the application of the declaration in the everyday life of the people be undertaken as well, the result would not be anything less than turning this chapter into a history of the French Revolution. <sup>(1)</sup> That is why attention will be drawn on the following pages merely to what seemed absolutely essential and relevant to the theme of this dissertation in both fields of legislation and daily life. The general

way in which the topic will be studied, it has been thought advantageous, will be to discuss separately the extent to which each of the three giant principles of the declaration were applied. Before undertaking that, however, it might be necessary to point out, as a general background of the discussion, the main characteristics of the three constitutions which were framed during the period under consideration; namely, those of 1791, 1793 and 1795.

The constitution of 1791 was the first written constitution France ever had. It was meant to embody and give shape to the principles enunciated in the declaration of 1789 -- which was prefixed to it. <sup>(2)</sup> Consequently, this constitution proclaimed abolished the feudal system, together with all its aspects of nobility, hereditary distinctions, orders, titles and prerogatives. It also proclaimed abolished privileges, exceptional justices, guilds and corporations. <sup>(3)</sup> Individual liberty, as well as freedoms of thought, of the press and religious toleration were guaranteed, and due process of law was promised. <sup>(4)</sup> The separation of powers was equally provided for, <sup>(5)</sup> and sovereignty was declared to belong to the people. <sup>(6)</sup>

The constitution of 1791 was a compromise between the ancient and the modern regimes of France. It vested power in a single chamber legislature <sup>(7)</sup> and gave the king the right of a suspensive veto. <sup>(8)</sup> It established a constitutional monarchy. The grave defect of this constitution, however, was the property qualification it imposed on the electorate; it established, not universal suffrage but, restricted manhood suffrage in France. <sup>(9)</sup>

The agitation which this measure caused contributed, among other factors, to the rise of the Jacobins to power, and to the substitution of the constitution of 1793 for that of 1791. (10)

The constitution of 1793 was prefaced, like its predecessor, by a declaration of rights. This declaration gave expression once more to the principles of liberty, equality and popular sovereignty which were enunciated in the declaration of 1789. What was mostly new in this declaration was its assertion that society was under the obligation of providing work, or means of subsistence, to its members (art.21).

The constitution of 1793 was framed after monarchy was abolished in France; consequently, it set the frame for a unitary republic. (11) Sovereignty was proclaimed to reside in the whole body of the people, (12) and universal manhood suffrage was established. (13) The legislature was to be made up of one single chamber, renewable every year, (14) and its members were to be elected directly, not in two degrees as in the previous constitution, by the people. (15) In order that a bill became law it had to be submitted first to the people for approval. If a majority of the people did not object to it within forty days of its submission, it was considered ratified and became law. (16) The executive power was vested in an executive council of 24 members. Each department was to nominate one candidate; and the legislature was to choose from the various candidates the members of the council. Half the members forming the council were to be renewed annually. (17)

The constitution of 1793 was infinitely more democratic than the constitution of 1791; but it was never given the chance of a trial. (18) The exigencies of the moment resulted in the decree of October 10, 1793 which proclaimed "the provisional government of France to be revolutionary until peace." (19) Virtual authority continued to be exercised by the Committee of Public Safety and other revolutionary agencies until the constitution of 1795 was put into force.

The constitution of 1795 was a reactionary document. Like its predecessors, it was prefaced by a declaration; but this time it was a declaration of duties as well as of rights. The rights proclaimed in this declaration were essentially the same as the corresponding ones in the previous declarations; the outstanding feature of the part dealing with the duties of man was its insistence on the necessity of submission to law and of respect to the established government. (20)

In the main body of the constitution itself, the republican and unitary form of government was retained, and sovereignty was once again proclaimed to reside in the people. (21) But, as in the constitution of 1791, the French were again divided into active and passive citizens. The property qualification of the constitution of '95 was less rigid than that of '91 and, consequently, suffrage was less restricted in the former than in the latter. (22) The legislature provided for was of two houses: an upper chamber made up of 250 members; and a lower chamber made up of 500 members. (23) One third of the number of both houses was to be renewed annually; (24) but the upper chamber was vested

(25)  
with more authority than the lower.

As to the executive power, it was confided to a Directory of 5 members, one of whom was to be renewed every year. The lower chamber was to nominate the directors, and the upper chamber was to choose from the candidates. The Directory was given the right to choose the ministers of the state, and could dismiss them at will. Those ministers were not to form a council of ministers, but were to be respectively responsible to the Directory. (26) Concerning the judiciary, it was to be independent from both the legislative and executive powers. (27)

The foregoing analysis, of the three constitutions which were framed in France during the period under consideration, (28) was by no means exhaustive; more will have to be said about these constitutions later in this chapter. The foregoing analysis of the constitutions of 1791, '93 and '95 was meant to serve primarily, it has already been pointed out, as a general basis for the discussion of the specific stipulations of those constitutions relating to liberty, equality and popular sovereignty. The discussion will be centered, hereafter, on the extent to which each of the three central principles of the declaration was applied in France.

It has been seen in the previous chapter that the main liberties the revolutionists wanted to establish in France were the economic, political, juridical and personal. Concerning economic liberty or, to be more correct, laissez - faire, the revolutionists were rather successful. The main obstacle which

stood in France in the way of free trade was the feudal system; and the destruction of this system was one of the most decisive achievements of the Revolution. (29)

The abolition of feudalism in France started with the decree of August 4, 1789 and was virtually achieved in 1793. The decree of August 4, as well as subsequent decrees dealing with feudalism, was incorporated in the decree of August 11, 1789. This latter decree stipulated (art.1) that

the rights and duties, as much feudal as taxed, those appertaining to real or personal mortmain and to personal servitude as well as those which represent them are abolished without indemnity; all the others are declared redeemable. (30)

This decree abolished also hunting rights, seigneurial justices and the dîmes; but proclaimed perpetual property rents to be redeemable.

The destruction of the feudal system was carried one step further by the Legislative Assembly. On June 18, 1792 a decree was passed which abolished without indemnity all contingent rights (droits casuels), unless their original titles could be produced -- in which case those rights were proclaimed redeemable. (31) (32) The last blow on the feudal system, however, was dealt by the Convention. The decree of July 17, 1793 (art.1) abolished without indemnity all feudal dues and rights without exception. This decree wiped virtually the last traces of the feudal system in France. (33)

The above-mentioned decrees, however, extremely important as they were for the destruction of feudalism, were not the only measures undertaken by the French revolutionists to secure

economic liberty in France. The preamble of the constitution of 1791, besides the sanction and confirmation it gave to the destruction of the feudal system, declared abolished all "corporations of professions, crafts and trade." That was the end of the guild system in France. The decree of June 5, 1791, concerning agriculture and cultivators, affirmed that "the territory of France ... is free as the persons who inhabit it." (34) This same decree declared also the land proprietors free

to vary at will the cultivation and exploitation of their lands, to preserve at will their crops, and to dispose of all the productions of their properties in the interior of the kingdom and abroad (art. 2).

The declaration of rights of 1793 retained the principle of economic liberty. Article 16 of this declaration defined the right of property as the right of every citizen "to enjoy and to dispose at will of his goods and of his revenues, of the fruit of his work and of his industry." Article 17 guaranteed that "no kind of work, of cultivation, of commerce, can be interdicted to the industry of the citizens." The ability of Frenchmen to engage their time and their services was acknowledged in article 18. This last article recurred (35) also in the declaration of rights and duties of 1795. and, in the main body of the constitution of 1795, unrestricted (36) liberty of industry and of commerce was guaranteed.

To the above-mentioned stipulations, which directly provided for the change of the ancient economic organization of France, were joined indirect measures -- such as the division of France into departments -- which helped the establishment of laissez - faire in that country. The decree of February 26, 1790 virtually wiped away the historical provinces of France, and substituted for these provinces the somewhat arbitrary division of France into departments. <sup>(37)</sup> The cumbersome and varying customs duties of the ancient provinces were eliminated and the new departments came to have free-from-duty frontiers. This measure helped not a little the founding on firm foundations of economic laissez - faire in France.

A discussion of the Revolution's re-making of the French economic organization would be incomplete, however, without a consideration of the law of June 14, 1791 -- the so-called Le Chapelier's law. The importance of this law lay primarily in the fact that it helps one visualize the kind of economic liberty the middle class legislators of the Revolution established in France.

Before this law was meditated, a number of French workers formed "assemblies", or what might be called by modern terminology trade-unions, and started a correspondence among themselves. Their aim was to raise the wages of the workers of their respective professions, and to procure for these workers help in case of sickness or lack of work. That the money collected for the purpose proved useful Le Chapelier, the



reporter of the committee of constitution, acknowledged in the introduction to the bill. He also acknowledged, in the name of the committee of constitution, that the workers' wages must be increased,

because in a free nation, the salaries must be sufficiently considerable so that the one who receives them be free from that absolute dependence which is produced by the deprivation of the needs of first necessity, and which is almost that of slavery. (38)

Le Chapelier claimed, furthermore, that citizens must be permitted the right to meet; but he proposed, always as the reporter, and in the name, of the committee of constitution, that "it should not be permitted to citizens of certain professions to assemble for their pretended common interests," (39) because that would be "a contravention to the constitutional principles which suppress corporations." (40) These assemblings must also be forbidden, he claimed, because they would create "great dangers to public order;" (41) because "no corporations exist any more in the state; there exists no more except the particular interest of each individual, and the general interest;" (42) and, lastly, because "no one is permitted to inspire the citizens with an intermediate interest, to separate them from the public thing by a spirit of corporation." (43) Le Chapelier's conclusion was that it was up to the individuals concerned to agree freely and individually upon the daily wage, and that the worker was bound to maintain the agreement he made with his employer.

Le Chapelier's arguments were found plausible and convincing by the Assembly -- though his recommendation that wages must be raised was received with murmurs. (44)

Consequently, the bill he presented was passed and became a law. Article 1 of this law reads as follows:-

The annihilation of all kinds of corporations of citizens of the same state and profession, being one of the fundamental bases of the French constitution, it is forbidden to re-establish them in fact, under any pretext and under any form that might be. (45)

Should such corporations be formed, however, they were declared "unconstitutional, threatening liberty and the declaration of the rights of man, and of no effect" (art.4). The persons responsible for the activities of these corporations were to be heavily punished (art.4). Gatherings of workers intended to interfere with "the free exercise of industry and of work" were also considered "seditious gatherings," and were to be punished as such (art.8).

Le Chapelier's law might have reflected, genuinely and sincerely, the French revolutionists' distrust of intermediate bodies; but this fact did not help much in making the law any more just or equally beneficial to the two parties affected by it. It was certainly more in the interest of the employer -- usually middle class men -- than in the interest of the employed. Collective bargaining is almost universally acknowledged at present to be an essential element of economic liberty; and the Revolution, by adopting Le Chapelier's law,

taboos collective bargaining. What the Revolution achieved in the matter of economic liberty was mainly the destruction of the feudal and guild systems. The consequence of that destruction, imperative as it might have been, was that the employed became less secure in their work, and therefore more exposed to uncertainty. The destruction of the feudal and guild systems by the revolutionary assemblies, and the interdiction of the formation of corporations, resulted in the establishment in France of a kind of laissez-faire which was more in the interest of the French middle class than in that of the other sections of the people. And that was primarily what the Revolution achieved in the matter of economic liberty.

Concerning political liberty, it has already been pointed out in the previous chapter that what was meant by it was mainly popular sovereignty, a constitutional regime and the separation of powers. To what extent popular sovereignty was established in France will be discussed at the end of this chapter; attention need only be centered here on the constitutional regime and the separation of powers.

What need be pointed out about constitutionalism is that ever since the Tennis Court Oath was taken, June 20, 1789, France suffered from an excess, rather than from an absence, of written constitutions. That oath was the first collective, and somewhat official, move

undertaken by the French revolutionists to establish a constitutional regime in France. In it the representatives of the Third Estate swore "never to separate and to reassemble wherever the circumstances will demand it, until the constitution of the kingdom be established and fastened upon solid foundations." (46)

After this oath was taken, constitution-making became one of the main pre-occupations of the National Assembly. Much valuable time was spent in endless arguments, discussions and deliberations as to the various provisions of the future constitution of the country. The time spent might not have been a waste, and the discussions about the provisions of the constitution might not have been in vain, had a normal constitutional life been established in France after the constitution was framed. But that was far from being the case. Hardly was the constitution of '91 ratified when changed circumstances, and increased dissatisfaction with some of its contents, turned the members of the Convention to constitution-making.

More debates and more time were spent; and the constitution of 1793 was produced -- but never to be enforced. Revolutionary government and the reign of terror were in full swing. Before two years elapsed, since the constitution of '93 was framed, the Convention had another

opportunity for constitution-making, and it came forward with the constitution of '95. This constitution was put aside after the coup d'état of 18 Brumaire (1799), and was replaced by Napoleon's pseudo-constitution of the same year. Four constitutions were then framed in a period of ten years and, ever since, constitution-making continued in France. (47)

The French revolutionists expected to enjoy political liberty through a written constitution, it has already been pointed out, because they thought, rightly perhaps, that a written constitution would help them regulate their life according to a definite standard they had in mind. They also aimed at political liberty through a written constitution on the assumption that such a document would inevitably put an end to the arbitrary and despotic rule of their monarchs. This was also pointed out in the previous chapter. But they largely failed to enjoy either one of these two advantages. They failed to attain the first objective because life under the nominal constitutions of the Revolution was, on the whole, more anarchical, and less regulated, than under the ancient regime. And they failed to attain the second objective because the authority exercised by the National Assembly, the Legislative Assembly, the Convention, the Representatives on Mission, the Committee of Public Safety,

the Committee of General Security, the Paris Commune, and the rest of them, was hardly less absolute than that of the ancient monarchs of France, or even of Napoleon himself. ✓

Of course, the French revolutionists could not be held totally responsible for the failure of constitutionalism in France during the period under consideration. One should always keep in mind the fact that this period was the gravest revolutionary period France ever experienced; and to talk of revolutionary constitutionalism is somehow a contradiction in terms. It must also be borne in mind that while France was leading a revolutionary life at home it was carrying out, or threatened by, war abroad; and a normal constitutional development under these circumstances was not natural. One further point should not be overlooked. The constitutional<sup>al</sup> regime was introduced to France for the first time during the Revolution; and it must be expected that it would not function smoothly from the beginning. Constitutional life gets perfected largely through trial and error; and the Revolution was the period when the French committed some of their gravest errors, and experienced times most "trying to men's souls."

The French revolutionists should not, therefore, be wholly blamed for their failure to lead a normal and healthy constitutional life during the Revolution; but this would not alter the fact that they did fail in this

respect. It was to their credit to have established in France the principle of a limited constitutional government; but they were responsible for placing undue weight on the importance of written constitutions -- while neglecting the most important element in the problem, i.e. the true spirit of a constitutional life.

The amount of success the Revolution achieved in the matter of the separation of powers was not radically different from that it achieved in the matter of constitutionalism. The constitution of 1791 provided for the separation of powers by delegating the legislative power to the national assembly, <sup>(48)</sup> the executive power to the king <sup>(49)</sup> and the judicial power to judges; <sup>(50)</sup> but all three powers were not vested with an equal authority. A predominant position was retained for the legislature. This body was vested with the powers to pass laws, veto taxes, decide on military, economic and administrative affairs, hold public officials to account, declare war, <sup>(51)</sup> conclude peace, and ratify treaties. <sup>(52)</sup> The king could not dissolve the legislature; <sup>(52)</sup> and was given merely the right of a suspensive veto on the decrees of that body. <sup>(53)</sup>

In the constitution of 1793 the separation of powers was much less marked than in that of 1791. In fact, the expression was not used in the constitution of '93 and, had this document not provided for a legislative (art.39),

executive (art.62) and judicial (art.91) bodies, one could safely affirm that it ignored the separation of powers completely.

The constitution of 1795, however, reverted to the principle of the separation of powers<sup>(54)</sup> but, as in the constitution of '91, it did not balance powers equally among the three main organs of government. The executive (Directory) was given more authority than in the constitution of '93, but was subordinated to the legislature (the Councils of Ancients and Five Hundred)<sup>(55)</sup>. This latter body, the legislature, reserved for itself the rights of proposing bills,<sup>(56)</sup> of choosing the members of the Directory,<sup>(57)</sup> of determining the attributions of ministers,<sup>(58)</sup> of voting taxes,<sup>(59)</sup> of declaring war,<sup>(60)</sup> of concluding peace and of ratifying treaties.<sup>(61)</sup> In short, sovereignty was to be exercised mainly by the legislature. ✓

The separation of powers the Revolution attempted to establish, therefore, was not the American system of checks and balances, with power and authority almost equally divided among the three organs of government. It was more similar to the English system which was characterized, if one could use the expression, by a distribution of functions rather than a balance of powers. The English system functioned smoothly, and proved its excellence, in its country of origin; but it was far less successful in France.



Ancient France suffered from an all powerful executive, and the French revolutionists swung to the other extreme and established, as in England, an all powerful legislature -- without possessing the qualities and institutions of the English people, which served as an effective check on parliamentary absolutism. The French revolutionists provided, in all three constitutions just considered, for a weak executive -- at a time of Revolution and war which required an energetic one. That was one reason why "revolutionary government" was established; <sup>(62)</sup> and the French revolutionary government was a negation of the separation of powers.

Thus, the French revolutionists failed in their aim to establish the separation of powers in two ways. They failed, on the one hand, because what they were suffering from, the concentration of powers in the hands of one organ of government, the executive, was not eliminated; they themselves caused powers to be concentrated in the hands of one organ of government -- the legislature. That was the case at the time when the separation of powers provided for in the three above-mentioned constitutions functioned at its best. On the other hand, the French revolutionists failed to establish the separation of powers in revolutionary France because, by providing for a weak executive at a time of a tremendous upheaval re-

quiring an extension of executive powers, they paved the way for the appointment of the Representatives en Mission -- with extensive legislative, executive and judicial powers -- at first, and for the institution of "Revolutionary Government" subsequently. What the Revolution achieved in the matter of the separation of powers at best, therefore, was rather what might be loosely called a division of functions; i.e. an unequal distribution of the legislative, executive, and judicial powers among different persons or bodies.

As for juridical liberty, legal provisions were not spared by the revolutionists in order to have it established in France. In the constitution of 1791 a whole chapter (tit.III, ch.5) was consecrated to the establishment of due process of law. This same chapter provided for the institution of the judiciary as a separate and independent body (art.1). It also provided for gratuitous justice (art.2), for judges of peace (art.7), for a jury in criminal cases (art.9), for habeas corpus (arts.10,11 and 12), for a high court of appeal (art.19) and for a national high court (art.25) to deal with the offenses of high public agents. Most of these provisions figured again in the constitutions of 1793 and '95.

These constitutional provisions were supplemented by a large number of laws dealing with juridical liberty.

A decree of August 4, 1789 abolished the sale of juridical offices. <sup>(64)</sup> Another decree of August 11, 1789 suppressed seigneurial justices. <sup>(65)</sup> The decree of November 3, 1789 dismissed the parlements and the superior councils <sup>(66)</sup> -- the high courts of the ancient regime. These measures had already paved the way for the establishment of one single and uniform system of courts all over France. The decree of August 16, 1790 confirmed the suppression of judicial offices by purchase, stipulated that justice would be rendered gratuitously by government-paid judges (Tit.II,art.2) and provided for civil and criminal cases to be heard, and judgement given, publicly (Tit.II,art.14). This same decree proclaimed abolished all privileges in the matter of jurisdiction (Tit.II,art.16) and provided for a uniform system of courts for all Frenchmen all over France (passim). Magistrates were divided into judges of peace (Tit.III,art.1), judges of first instance (Tit.IV,arts.1 and 4) and judges of appeal. <sup>(67)</sup> As for criminal courts, they were regulated by a later decree of January 20, 1791, which created a criminal tribunal in each department. <sup>(68)</sup> The method of procedure in these tribunals was specified in the decree of September 16, 1791 -- whose main characteristic was the provision for a jury in all criminal cases. <sup>(69)</sup>

The above-mentioned decrees, as well as less important ones, might have better served the purpose for which they were passed, had they not been accompanied by other decrees

which made juridical liberty in revolutionary France a chimera. As early as October 9, 1792 "military commissions" were instituted, by a decree of the same date, to judge the émigrés. The jurisdiction of these commissions was extended later on to include the Vendean rebels, armed insurgents in general, and mail brigands. (70) Another decree of March 10, 1793 created an "extraordinary criminal tribunal" in Paris, to

acquaint itself with all counter-revolutionary enterprises, with all attempts against liberty, equality, unity, the indivisibility of the Republic, the internal and external security of the State, and with all plots tending to re-establish monarchy, or to establish any other authority which threatens liberty, equality, and the sovereignty of the people. (71)

The five judges of this tribunal were to be nominated by the Convention (Tit.I, arts.2 and 5), and their verdicts could not be brought before the court of appeal (Tit.I,art.13). The stipulation in this decree, that the crimes of conspiracy and offence against the nation could not be heard by this tribunal without a decree of accusation issued by the Convention (Tit.I, art.10), was suppressed on April 5, 1793. (72)

The extraordinary criminal tribunal was enlarged by a decree of September 5, 1793; (73) it was divided into four sections (art.1), and the number of judges brought up to sixty (art.3). That was the "revolutionary tribunal." It was to judge, among other cases, all the counter-revolutionary crimes enumerated in the decree of March 10, 1793. (74)

The revolutionary tribunal was re-organized by a decree of June 10, 1794.<sup>(75)</sup> This decree stipulated that the revolutionary tribunal was created "to punish the enemies of the people" (art.4); i.e. "those who seek to annihilate public liberty either by force, or by cunning" (art.5). The enemies of the people, as further specified in the decree, were

those who would have seconded the projects of the enemies of France, by persecuting and calumniating patriotism ... those who would have sought to inspire discouragement ... to vitiate morals ... to alter the purity and energy of the revolutionary principles ..., all these who ..., by whatever means that may be and under whatever cover, would have made an attempt against the liberty, the unity, the security of the Republic, or endeavored to prevent its consolidation (art.6).

The revolutionary tribunal had one penalty only to punish with: the death penalty (art.7). "Conspirators" and "counter-revolutionaries" could be arrested and brought before the magistrates by any citizen (art.9). All the tribunal needed to pass its sentence was a proof which would convince "any just and reasonable spirit" of the guilt of the accused (art.8). The aim of the sentences was to be "the triumph of the Republic and the ruin of its enemies"<sup>(76)</sup> (art.8). Even though the accusation brought against an individual was obviously insufficient to have him appear before the court, he could not be released before his case had been "examined" by the committees of public safety and general security<sup>(77)</sup> (art.18).

The French revolutionists found in the exceptional courts of ancient France an obstacle which hindered their

enjoyment of juridical liberty; but they certainly did not avoid the re-establishment of such irregular courts by instituting the military commissions, the extraordinary criminal tribunal and the revolutionary tribunal. The creation of these, and other, <sup>(78)</sup> tribunals might have been justifiable; it might have helped consolidate the position of all, or part of, the revolutionists; it might have favored the cause of the Revolution in general; but it certainly neither increased, nor helped establish juridical liberty in revolutionary France.

Juridical liberty, however, was not the only element of liberty which the revolutionists failed to establish in revolutionary France; they likewise failed to establish personal liberty, the enjoyment of which was dependent to an appreciable extent on the condition of juridical liberty.

As in the case of the other elements of liberty, the revolutionary legislators spared neither time nor energy to procure legal enactments providing for personal liberty. The constitution of '91 guaranteed to Frenchmen the liberty,

to go, to stay, to leave, without being liable to arrest, nor detention, except according to the forms determined by the constitution; ... to speak, to write, to print and publish one's thoughts, without having the writings submitted to any censure or inspection before their publication, and to exercise the religious cult to which one belongs; the liberty of the citizens to assemble peacefully and without arms ...; ... to address to the constituted authorities petitions signed individually (Titre I).

The declaration of rights of '93 re-affirmed the liberties proclaimed in the declaration of '89, and guaranteed the rights of each to express his thoughts, to join others in peaceful meetings and to exercise his cult freely (art.7). This declaration stipulated, furthermore, that men could accept any employment they pleased; but they could not alienate their persons (art.18). Many of the above-mentioned provisions dealing with personal liberty were repeated in the constitution of '95. (79)

These constitutional stipulations were supplemented by a number of laws of the same nature. The decrees of August 4-11, 1789, by abolishing the feudal system, abolished personal servitude as well. (80) By a series of decrees, between October 14, 1789 and September 27, 1791, Protestants and Jews were granted their political, civic and religious rights. (81) Another decree, of September 28, 1791, abolished slavery in France. (82) The decree of September 3, 1792 charged the authorities in Paris to do all that was necessary to preserve the security of persons and property. (83)

These and other similar decrees concerned with personal liberty were, as in the case of those on juridical liberty, neutralized and rendered ineffective by contradictory laws and measures. The extensive powers delegated to the representatives on mission could not have preserved intact personal liberty in France; nor could martial law, (84) or the laws against suspects, (85) the émigrés (86) and the royalists. (87)

The decree of March 27, 1793 outlawed "all the enemies  
of the Revolution,"<sup>(88)</sup> purely and simply.

The above-mentioned stipulations were not favorable to the liberties of thought and speech; and religious liberty did not fare any better during the Revolution. The National Assembly officially expressed its attachment to the "apostolic, catholic and Roman cult."<sup>(89)</sup> The granting of political and civil rights to French non-Catholics contributed little to their enjoyment of religious liberty. Religious liberty did not merely mean the ability of non-Catholic Frenchmen to belong to non-Catholic cults; it meant also their ability to exercise publicly their beliefs -- and this latter element was scarcely possible in revolutionary France.<sup>(90)</sup> The Protestants and Jews could not act according to their religious beliefs because "public order" might be disturbed.<sup>(91)</sup> Even Catholics could not worship freely, at one time during the Revolution, because the cult of the Supreme Being was in official vogue.<sup>(92)</sup> The king was not left undisturbed to attend mass celebrated by refractory priests, or to keep himself surrounded by those priests,<sup>(93)</sup> because that gave offence to the revolutionists. The Catholic clergy could not, in conformity with their religious belief, refuse taking the oath of adherence to the civil constitution of the clergy -- because such an act would have submitted them to the fury of the constituted authorities. The persecutions committed against the refractory clergy were



(94)  
 too well known to be repeated. What the Revolution achieved, therefore, in the matter of religious liberty was rather religious toleration to Protestants and Jews, and not even that much to the refractory clergy.

The achievement of the Revolution in the matter of the liberty of the press was hardly any better than that concerning religious liberty. Even before the fall of monarchy, when the Revolution was following a comparatively normal course, the liberty of the press enjoyed was of a restricted kind. The constitution of 1791 granted the liberty of publication provided "it does not intentionally provoke disobedience to law, disgrace to the constituted authorities, resistance to their acts, or any of the actions declared crimes or offenses by law" (Tit. III, ch. 5, art. 17). The decree of December 4, 1792 stipulated that those who proposed the monarchical form of government in France were to suffer the death penalty. (95) This penalty was also prescribed, March 29, 1793, to those who advocated the dissolution of the legislature and the violation of property. (96) The last traces of the liberty of the press were wiped out, however, by the law of April 16, 1796. This law decreed the death penalty against

all those who, by their speeches or by their printed writings, whether distributed or posted, provoke the dissolution of the national representation, or of the executive Directory, or the murder of all or any of the members of whom it is composed, or the re-establishment of monarchy, or that of the constitution of 1793, or that of the constitution of 1791, or of any government other than that established by the constitution of the year III, accepted by the French people,

or the invasion of public properties, or the pillage and partition of particular properties, under the name of agrarian law, or in any other manner. (97)

The above-mentioned legal provisions restricting political, juridical and personal liberty were by no means, however, the most serious handicaps which prevented the enjoyment of liberty in revolutionary France; part of the actions and behaviour of the revolutionists themselves was not of a less serious character. To undertake an enumeration of the acts committed during the Revolution in violation of liberty would consume a far larger space than could be afforded. In fact, one need not cite more than a few outstanding examples. There was little respect shown to the principle of liberty, for instance, when two men, suspected of intending to blow up the Autel de la Patrie in the Champ de Mars, were massacred by the people on the spot. The suspicion was, evidently, unfounded. What gave rise to it was the fact that these two unfortunates, one of whom was an invalid, had taken refuge in a hole under the stairs of the altar. The reasons why they did so, as seemed probable, were that they wanted to avoid being crowded, and to have, in Lord Palmerston's words, "a good prospect of the women's legs who might come up the steps." (98) Not much attachment to liberty was shown, neither, when on the approach of the Prussian army towards Verdun, some 1200 royalist prisoners, so-called traitors, some of whom were refractory priests, were cold-bloodedly massacred in their prisons in Paris by the mob. (99) Perhaps worse than the massacres

themselves was the general satisfaction manifested by  
 the people on the news of these atrocities. <sup>(100)</sup> Nor was  
 liberty proved to be deeply ingrained in revolutionary  
 France when freely made elections in certain French pro-  
 vinces were nullified because they sent monarchist de-  
 puties to the legislature. <sup>(101)</sup> Or when a person like  
 Thomas Paine should have felt it was better for him to  
 lay aside his pen, to shut his mouth, and to abstain,  
 though he was a deputy to the Convention, from writing  
 and from sharing in the debates of that body, because it  
 was "useless and dangerous" to have done so. <sup>(102)</sup> Or when  
 another deputy, Manuel, resigned his seat in the Convention  
 because he could not act freely as a representative of the  
 nation. Manuel's resignation cost him, eventually, his life. <sup>(103)</sup>  
 Or, when one was liable to be arrested at any moment by the  
 authorities, or be instantly killed by an enraged mob, for  
 an imprudent statement uttered. <sup>(104)</sup> Or when people in  
 general felt that a sword was hanging over their heads, <sup>(105)</sup>  
 and that it was better for them not to meddle in public affairs.

There were generally two ways in which liberty is  
 established in a country: by natural development and by im-  
 position. By natural development when liberty was in the  
 nature of the people. This liberty was usually accompanied,  
 or rather gave birth, to free institutions -- as the examples  
 of England and America have shown. This kind of liberty, it

was hardly necessary to point out, was the one which could most safely and surely be enjoyed. On the other hand, liberty might get established by imposition from above, i.e. by government-made laws and regulations. This latter kind of liberty was usually precarious, because it aimed at nothing short of modifying human nature -- and that was what the French revolutionists attempted to do. The circumstances of France under the ancient regime permitted the French people neither liberty, nor, partly because of that, the possibility of developing free institutions. That was why liberty had to be imposed in 1789. But liberty was a dangerous thing to handle; and the Revolution furnished a sad example of how despotism could be established in the name of liberty, and how liberty could degenerate into anarchy and license.

The liberty which the Revolution established in France was, therefore, an imposed liberty; and it was accompanied by the instrument of imposition: centralization -- which was a strong impediment preventing liberty. (106)

Centralization meant that the central government was the organ which was to think and direct, while the people assumed the role of passive creatures; whereas liberty meant the people's power to think and to do things on their own. Centralization and liberty were therefore incompatible; and the Revolution had chosen centralization. (107) Paris was

not willing to loose its authority over the rest of France; <sup>(108)</sup>  
 the Mountaineers were not willing to let the departments  
 escape their control; <sup>(109)</sup> the republicans were not willing  
 to let the monarchists alone; <sup>(110)</sup> federalism was proscribed. <sup>(111)</sup>

Another grave obstacle which prevented the enjoyment of liberty in revolutionary France was, what might be called, the disposition of the French revolutionists. The French people did not possess, in normal times, the Anglo-Saxon tradition in moderation and compromise; and this essential faculty for the enjoyment of liberty was lacking to a far greater extent during the Revolution. The French revolutionists failed to realize that the art of accommodation was an essential element of a civilized political life; that the essence of a liberal democracy was a sense of respect and toleration to the beliefs and acts of others; that politics was competition, opposition, and even struggle between the contending parties -- but not war. <sup>(112)</sup> Unfortunately, the disposition of the French revolutionists was the negation of this healthy attitude. Moderation and compromise scarcely <sup>(113)</sup> had a place in their vocabulary; they were fanatics, and they were extremists. The fact that they were the disciples of a new social, political and economic religion might have given their attitude some justification; but this did not help the cause of liberty in any way. They thought in terms of abelition, annihilation, ruin, destruction; but

scarcely in terms of preservation, evolution, gradual improvement, gradual reform, gradual change, and the like. (114) They proclaimed the "abolition" of the feudal system; (115) the "annihilation" of corporations; (116) the "ruin" of the enemies of the republic; (117) and the "destruction" of Lyons, La Vendée, Bedoin, and other dissatisfied towns or districts. These terms, and other similar ones, were key words which would greatly help one understand the French revolutionists' pattern of thought. They would also help one visualize why the French failed to enjoy liberty during the Revolution.

Another defect in the revolutionists' way of thought, which gravely prejudiced the cause of liberty in revolutionary France, was the revolutionists' failure to grasp fully what liberty meant, or what it entailed. They failed to realize that liberty was not license, and that in order for liberty to be enjoyed by everyone, restraint on one's emotions and desires was vital. Otherwise the master on one day might become the slave on another. Liberty was mostly understood in revolutionary France to mean liberty for one's self and one's party -- not for one's opponents (118) as well. Liberty was desired almost by everyone; but massacres, summary trials, fusillades, noyades, and similar other devices were not uncommon during a large part of the period under consideration. (119) Liberty was almost universally acclaimed in France; but it was denied by the "ins" to the

"cuts"; by those who were in power to those who were not.  
 The republicans denied liberty to the royalists; <sup>(120)</sup> the  
 Girondins denied liberty to the Jacobins; <sup>(121)</sup> the Jacobins  
 denied liberty to the Girondins; <sup>(122)</sup> the Thermidorians denied  
 liberty to the Jacobins; <sup>(123)</sup> and so on.

The worst aspect of this denial of liberty, however, was its contradiction to the letter and the spirit of the declaration of rights of '89. This declaration, for instance, enumerated the right of resistance -- which was considered, rightly or wrongly, an essential element of liberty -- among the natural rights of man; and yet, the constitution of '91 itself, to which the declaration was prefixed, denied the right of resistance and declared it to be a "crime." <sup>(124)</sup> On July 4 - 5, 1792 it was decreed that <sup>(125)</sup> whoever attempted rebellion would be punished by death. The constitution of 1795 ignored the right of resistance <sup>(126)</sup> completely, and outlawed its defenders. The French revolutionists proclaimed the right of resistance before they were securely installed in power. This right was also <sup>(127)</sup> proclaimed in the constitution of '93 -- which responded to the claims of the "passive" citizens who were excluded from sharing in the political affairs of the country. But when, after the Thermidorian reaction, the middle class regime was re-established (1795), that "natural" right was denied to others. Not contented, seemingly, with this denial, the middle class Convention of '95 even attempted to prevent any

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future change in the form of government it established.

In other words, resistance was a natural right in order to overthrow the ci-devant regime of aristocracy and feudalism; but it ceased to be so if it were to be used against the newer middle class regime instituted by the Revolution.

Liberty in one's favor, therefore, was what the French revolutionists generally understood and practiced; not liberty for all. This wrong attitude had two main important results. On the one hand it resulted in the enjoyment of liberty, whenever, it was enjoyed, by the predominant group in revolutionary France. That group, it was hardly necessary to point out, was largely, except during the Jacobin ascendancy, the French middle class. On the other hand, liberty in one's favor resulted in the establishment of liberty in theory, rather than in practice; in the enjoyment, at best, of liberty by legal provisions -- rather than actual and real liberty.

It is evident, from what has been said above, that the amount of liberty established or enjoyed in revolutionary France was restricted and limited to no small a degree. It was hardly any more than the laying of certain legal foundations which could be dwelt upon by later French generations. Concerning equality, however, the case was somehow different. How far different it was, and in what ways, an attempt will be made on the following pages to reveal.



The movement for the establishment of equality in France, during the Revolution, was ushered in the refusal of the Third Estate to meet in the States-general as a separate order. That refusal resulted in the merging of all three orders in one assembly -- the first equalitarian achievement of the Revolution. The second important move took place on August 4 - 11, when the destruction of the feudal system was proclaimed. In fact, the justification of the destruction of that system was claimed officially to be the full enjoyment of liberty and equality. (129)

That the constitution of '91 abolished nobility, hereditary distinctions, orders, titles, prerogatives, privileges and exceptional justices has already been mentioned at the beginning of this chapter. This constitution in its preamble also abolished the distinctions of hereditary knight-hood and of hereditary public offices. All were to enjoy the same common right (droit) without exception (preamble). These stipulations provided directly, not merely for the destruction of feudalism but, for the establishment of equality in France. The stipulations in question, however, were not all what that constitution had to offer in the matter of equality. (130)

In addition to its provision for a uniform system of courts, it provided (Tit.I) for the codification of a common civil law for all Frenchmen -- the future Civil Code. This constitution

also provided for deputies to be recruited in proportion to the territory, population, and direct contributions of the country. (131)

These equalitarian tendencies of the constitution of '91 were marred, it has been pointed out, by a flaw: the non-equalitarian property qualification for suffrage. This point was of such an importance that more will have to be said about it later on.

The equalitarian tendencies of the constitution of '93 were more marked than those of the constitution of 1791. Besides preserving the equalitarian provisions of the constitution of '91, the constitution of '93 removed any property qualification for voting, provided for a more democratic form of government and held society responsible for the well-being of its members. These novelties were ignored by the constitution of '95, whose equalitarian character was more restricted than that of 1791. After the right of all French citizens to share in law-making was affirmed in the declaration of '95 (rights, art.20), which was prefixed to the constitution, a heavy property qualification for voting was imposed.

The equalitarian constitutional stipulations pointed out above involved all four spheres of French life: the legal, the social, the economic and the political. But all four spheres were not affected in the same way or to the same extent.

In the legal field, the destruction of orders, of the ancient privileges, and of hereditary rights helped greatly the establishment of equality in taxation in France. This equality was partly realized in the decrees of August 4, 1789, and almost fully in the decrees of November 23, 1790 (Tit.I,art.1) and January 13, 1791 (art.3).<sup>(132)</sup> The constitution of 1795<sup>(133)</sup> sanctioned equality in taxation also, and the establishment of this kind of equality was probably one of the most decisive achievements of the Revolution.

Equality before the law, however, which was another aspect of the legal equality desired by the French revolutionists, the Revolution largely failed to establish. Seigneurial justices and privileges in the matter of jurisdiction, it has been seen, were done away with; but the revolutionary courts were exceptional justices of another type. That the necessities of Revolution and war made the creation of those courts expedient cannot be ignored; nevertheless, it was no equality before the law to treat one section of the people one way, and to treat the other sections another. It was no equality before the law to permit one part of the people to advocate and consolidate the republican form of government and, at the same time, outlaw those who even propose monarchy. It was no equality before the law to pass special laws for one section of the people, the émigrés, and to submit the other sections of the people to other laws. It was no equality before the law to treat the constitutional clergy one way, and the refractory clergy another. It was no equality before the law

to consider the property of the revolutionists a natural, sacred and inviolable right and at the same time confiscate, without compensation, church and émigrés property. It was no equality before the law, and the list could be made a long one, that all kinds of schemes concerning property be permitted, and the mere suggestion of agrarian laws be punished by death.

The foregoing argument should not be taken as a verdict against the revolutionists for not retaining monarchy, for the mistreatment of the émigrés and refractory priests, for the confiscation of church and émigrés property, or for abstaining from nationalizing the land. Whether it was, or was not, desirable to have done so was a disputable question. What was objectionable, from our point of view, was the arbitrariness, the partiality and the inconsistency manifested in the tackling of these problems. The policy followed by the revolutionists in relation to these problems could be claimed to have achieved important results; but hardly anything in favor of equality before the law.

The equality achieved as a result of the destruction of the feudal system, of orders, hereditary titles, distinctions, personal servitude and slavery affected not merely legal equality in France, but helped the cause of social equality as well. The cause of social equality was consolidated, furthermore, by a number of decrees which supplemented the constitutional provisions just mentioned. A decree of June 19, 1790

abolished hereditary nobility (art.1) as well as all  
 nobiliary titles (art.2).<sup>(134)</sup> The orders of knighthood were  
 suppressed on July 30, 1791<sup>(135)</sup> and, on August 23, 1794, it  
 was decreed that no Frenchman was to have, or add, any  
 name or title which did not appear in his birth certificate.<sup>(136)</sup>  
 The hatred of titles made the revolutionists disregard the  
 non-aristocratic titles of monsieur and madame (or mademoiselle)  
 and to use, for a substitute, citizen and citizeness. Even the  
 dress of the people became almost completely uniform.<sup>(137)</sup>

That the French revolutionists should have concerned themselves with trivial matters, as titles and dress, might have given the impression that those revolutionists concerned themselves mainly with superficial, rather than vital, matters; that they were interested in appearances rather than in reality. It was not denied that the French revolutionists did concern themselves sometimes in trivialities; it might have been prudent, in certain cases, to do so. The important thing to be born in mind, about the legal provisions concerned with names, titles and the like, was that these provisions showed how certain legal stipulations were applied, not merely thoroughly but, in excess when they reflected a genuine desire of the large majority of the people. The French revolutionists, middle class men as well as others, wanted genuinely and sincerely to wipe away all social barriers from French society; and this fact largely explained why they were so successful in this matter. Social intercourse between

the various categories of the French people became much more extensive than before, and no undue importance was attached any more to social relations between individuals of different social classes.

The French revolutionists' success in the matter of social equality, however, was counterbalanced in their failure to establish economic equality in France. The declaration's statement "men are born and live ... equal as regards their rights" did not mean, it has been pointed out, that men were equal in their natural faculties. At the same time, it could not have been understood to imply that men were equal in their legal, social and political rights only -- but not in their economic rights. The French revolutionists held that there were two sources from which rights could be derived: they could be derived from nature, in which case they would be natural; and they could be derived from the body politic, in which case they would be civil, or political, rights. Now, the declaration of '89 proclaimed property to have been a natural right, and as such this right could not be questioned or disputed by orthodox revolutionists. Orthodox revolutionists were bound to recognize man's right to own property because that right figured in the declaration of '89. But to recognize man's right to own property was one thing, and to recognize his right to own more property than his fellow-men was something else. The silence of the declaration on this sensible point

gave rise to different interpretations and, consequently, to a grave dispute between the revolutionists themselves. On the one hand there were those who advocated an absolute right of property; i.e. everyman's right to own as much property as he liked and could afford to. This view was held mostly by the Girondins -- mostly middle class men -- and their supporters. On the other hand there were those who, while recognizing the right of property, advocated a restriction of that right; i.e. a limitation of ownership. This latter group was formed mainly from the Jacobins, and had for representatives men like Robespierre. (138)

The comparatively moderate views of men like Robespierre on the subject of economic equality were far from satisfactory to a third, and an extremist, revolutionary group -- the so-called Babeuvists. The leader of this group, François Noel (or Gracchus) Babeuf, found in economic inequality the cause of all evils. Consequently, he advocated a kind of communism not unlike that advocated by modern Marxists. The nationalization of landed and industrial property, the creation of national stores for the distribution of products, and equality of income formed an integral part of his program. Men were not to get more than what was essential to satisfy their legitimate needs; because any surplus possessed was a "social theft." The economic organization of society was to be entrusted to a "common administration" which was to take from each person what he produced,

and distribute the whole products of society, in absolutely equal shares, to the members of that society. The "common administration" was to be, at the same time, the government of the country; and this government alone, claimed Babeuf, could establish "the common happiness, aim of society."<sup>(139)</sup>

Babeuf's dissatisfaction with the achievement of the Revolution in the matter of equality caused him to found, in 1795, the Society of the Equals (Pantheon Society). The aims of this society, it was stated in the Manifesto of the Equals, was to establish the "Republic of the Equals," in which "real equality," or "equality of fact," was to prevail.<sup>(140)</sup> The French Revolution, it was held,<sup>(141)</sup> did not achieve all that was expected from it; it was merely, stated the Manifesto of the Equals, "the precursor of another, and a greater and more solemn revolution, and which will be the last."<sup>(142)</sup>

The Babouvist movement failed almost entirely at the time; and its failure was not less significant than the doctrines it preached. The execution of Babeuf, and the persecution of the other leaders of the movement, was quite intelligible and natural, after they conspired to overthrow the government (1796). But what was inconsistent with the revolutionary principles was the dissolution of their society. This dissolution took place before the conspiracy was made, and was the main reason for their meditated coup d'état. Besides, the outlawry of the Babouvists was not the only drastic measure taken against economic equalitarians.



Agrarian laws, land reform and other economic projects of the kind were also forbidden during the Revolution. On March 18, 1793 the death penalty was decreed against "anyone who proposes an agrarian law, or any other law subversive of landed, commercial and industrial property." (148)

The failure of the Babouvists was not therefore due so much to their conspiracy, as it was due to the consistent opposition of the authors of the Revolution -- French middle class men and sympathizers -- to any project aiming at economic equality, no matter how moderate it might have been.

Of the whole episode of the "Equals" what seemed of importance was the contrast which that episode would help one make between what the Revolution achieved in the matter of social equality and what it achieved in respect to economic equality. The declaration of '89 specifically provided for neither the one nor the other. In both cases it was the favorable or hostile attitude of the authors of the Revolution which ultimately decided what the outcome would be.

But if the declaration of '89 had nothing specific to say about economic equality, and economic equality was not achieved, that declaration did provide without any ambiguity for political equality, and political equality was not achieved. Article 6 of the declaration, it has been seen, proclaimed the right of "all citizens" to participate in the formation of law but, in spite of this formal

pledge, and in violation of it, a property qualification for voting was imposed and, consequently, only a portion of the citizens were given this right. The French people were divided into two categories: "active citizens" and "passive citizens." The active citizens were those who possessed some property and paid a minimum direct tax on it; they alone could enjoy both civil and political rights; they were given the right to vote and to be candidates for public office. The passive citizens were those who paid in direct taxes less than the minimum; they could enjoy civil rights only; they were given neither the right to vote, nor the right to be candidates for public office. (144)

The conditions for active and passive citizens varied in the various periods of the Revolution. In the decree of December 22, 1789, which was concerned with the organization of primary assemblies, it was stipulated that in order for a Frenchman to be an active citizen he had to pay a minimum direct tax equivalent to three days of work. He also had to be twenty-five years of age, to have taken the civic oath, and not a servant. (145) These were, among less important conditions, the requirements for a citizen to vote in the primary assemblies, (146) i.e. to elect from among the candidates of, what might be called, the electoral college. (147) To become a candidate to the electoral college, however, an active citizen had, in addition to the above-mentioned requirements, to pay a direct tax equivalent

(148)  
 to at least ten days of work. As for the candidates to  
 the legislature, they had to possess, in addition to the  
 requirements for active citizenship, a landed property  
 of some kind, and to pay a minimum direct tax on it  
 equivalent to one marc d'argent. (149)

These were the conditions for the elections  
 during the early period of the Revolution, including those  
 for the Legislative Assembly. They were also the conditions  
 which figured in the first draft of the constitution of '91. (150)  
 In the final draft, however, the property qualification was  
 modified. It became sufficient for the candidate to the  
 legislature to fulfil the requirements of simple active  
 citizenship, (151) i.e. the payment of a minimum direct tax  
 equivalent to the value of three days' work. (152) As for the  
 electors in the second degree, their property qualification  
 was enormously increased. They were now to pay in direct  
 taxes, in place of the minimum ten days' work equivalent which  
 was previously required, a minimum equivalent of between 150  
 to 400 days' work. The amount depended on whether one lived  
 in large or small towns, whether he was a proprietor or a  
 tenant, and whether he lived in towns or in the country. (153)

The severity of the marc d'argent qualification was  
 shifted, therefore, in a modified form, from the national  
 representatives to their electors. (154) But before the new  
 device had a chance of being enforced, the Commune of Paris  
 assumed real power, government passed into the hands of the  
 Jacobins, the constitutional regime was suspended, and the  
 elections to the Convention (September 2 - 19, 1792) were made

(155)  
without any property qualification whatsoever.

In the constitution of 1793, it has already been pointed out, no property qualification whatsoever was required from the electorate. This constitution was the only revolutionary constitution in which political equality was realized. But this constitution, it has also been pointed out, was never applied. The absence of a property qualification for voting in this constitution was of importance largely because it reflected the desire of the passive citizens to share in political affairs. (156)

After the Thermidorian reaction, the fall of the Jacobins, and the re-assumption of the French middle class to power, however, this desire of the passive citizens was once more disregarded. The Convention, on resuming the then recently established French tradition of constitution-making, ignored in 1795, not merely the constitution of 1793 but, even the mare d'argent qualification. It re-established the more conservative property qualification of the final draft of the constitution of '91 in a more lenient form. Electors in the first degree, and candidates to the legislature, had to pay a direct tax of some kind. (157)

The minimum direct tax required from the electors in the second degree was to be equivalent to the value of between 50 and 200 days' work. (158)

It is evident, from what has been stated above, that the Revolution did not remove altogether political inequalities from France. Distinctions between the different orders were

removed, but not between citizens. For the *ci-devant* political distinctions in the matters of order and birth were substituted new distinctions in the matter of property. (159) The net outcome was that under the new regime established by the Revolution, as under the ancient regime, not all French citizens could share in the political life of the country. That the Revolution should have excluded servants from political life might have been justifiable. Even the exclusion of women from a share in political life, and the establishment of manhood suffrage only, instead of universal suffrage, might have been defensible at the time for the evasion of what had been stipulated in the declaration concerning political equality. But the division of Frenchmen into active and passive citizens was a flagrant violation of the declaration of rights of '89. It might have been premature, or inexpedient, to grant all French citizens the right to vote at that period; it might have been believed then, as was and is still believed by some at present in various countries, that the government of the *élite* was the best form of government. But whether it was premature, inexpedient or unwise to establish universal suffrage in France in 1789 the fact still remained unchanged that the Revolution, for the most part, failed to comply with the declaration, and did not establish political equality in France. The owners of a specific amount of property were made politically equal to the *ci-devant* privileged; but

(160)

not the non-proprietor passive citizens.

The effects of the division of Frenchmen into active and passive citizens, however, were not limited to the sphere of equality. They extended that sphere, with far-reaching results, to the field of popular sovereignty.

The outstanding measures by which sovereignty was transferred from the king to the Third Estate were neither numerous nor veiled. The first of these measures was the refusal of the Third Estate to meet in the States-general as a separate order. That refusal was not merely the reaction of a wounded pride, but was meant also to modify the ancient organization of the States-general; it was calculated to bring about not merely equality, but sovereignty as well. Vote by order meant that each of the three orders represented in the States-general had one vote, and that measures could be decided upon by the consent of two orders at least out of the three. That was the ancient practice in the States-general, and the king and privileged orders wanted to revive it in 1789. It would have, in fact, reduced the Third Estate to a minority, and amounted to no vote. <sup>(161)</sup> That was the main reason why the Third Estate advocated vote by head -- which was expected to secure to that Estate an absolute majority of votes in the States-general. <sup>(162)</sup> The persistence of the king and privileged in their attitude, however, caused the representatives of the Third Estate to declare (June 17, 1789) that they were the only legitimate representatives who could interpret the

general will and, consequently, to proclaim themselves  
 National Assembly. (163)

This proclamation was a decisive step by which sovereignty was transferred to the Third Estate; and it was followed by others. The decree of the National Assembly, again on June 17, that, after the National Assembly got separated for the first time, no taxes except those passed or approved by that Assembly were legal, was another important step in this direction. (164)

So were; the Tennis Court Oath (June 20), already referred to in connection to constitutionalism; the decree of July 13, 1789, which held ministers and public agents responsible to the National Assembly; (165) the granting to the king, in the constitution of '91, the right of a suspensive veto only; the king's formal acceptance of the constitution (September 14, 1791); the king's arrest, trial and execution (June 20, 1791 - January 21, 1793); the abolition of monarchy (September 21, 1792); and similar other acts and measures. The constitutions of 1791, 1793 and 1795, it has been pointed out, formally proclaimed that sovereignty belonged to the people. In the constitution of 1791 it was stated that "sovereignty is one, indivisible, inalienable and imprescriptible; it belongs to the nation; no section of the people, nor any individual can attribute himself with its exercise." (166) The same concept was expressed in the constitution of 1793, but more briefly: "The sovereign

people is the universality of French citizens" (art.7). The case was the same in the constitution of 1795. "The universality of French citizens is the sovereign" (art.2), was the formula adopted in this constitution.

The above-mentioned, and other, acts, measures, decrees and constitutional laws created a general belief that the Revolution established popular sovereignty in France. This belief, however, was not altogether, nor even largely, correct. It was an erroneous impression based on a superficial study of the Revolution. Sovereignty was essentially the exercise, or ability to exercise, sovereign power; and the universality of the French people neither exercised, nor were permitted to share in the exercise of, sovereign power. The intermittent influence exercised by the mob on the assemblies <sup>(167)</sup> was anarchy and license, rather than an act of sovereignty. So was the influence of the sections, municipalities, and other similar bodies, in the majority of cases. That the success of the Revolution was due largely to the French people themselves was admitted; but to help succeed a revolution was something, and to retain ultimate authority was something else. A revolution was by definition an upheaval on behalf of the people, unless when it was a military mutiny.



Popular sovereignty did not mean that the whole people were to take an active part in the affairs of government; but the wider the basis of suffrage, the more popular sovereignty could be said to have been realized. Political rights were given by the Revolution, it has been seen, to the active citizens only; and the active citizens formed, if one took French women into account, a minority of the French people. <sup>(168)</sup> What the Revolution did in the matter of sovereignty was mainly, therefore, to transfer power from the king to the active citizens, i. e. primarily to the French middle class.

The concentration of political power in the hands of the active citizens, however, was not the only measure taken by which sovereignty was transferred from the king to the French middle class -- because should this measure have been the only one taken, the nobility and the clergy would have retained no small share of political power. That share would have been retained partly because of the immense landed property the members of those two orders possessed, and partly because the small income of the peasants who worked on that property would not have qualified these peasants for active citizenship. But, besides the division of the French into active and passive citizens, the Revolution took other measures, some of which in open violation of the declaration of rights. Of these measures was the confiscation of the property of the émigrés.

The partial and severe treatment to which the émigrés were subjected was not limited to the sphere of liberty, already discussed in this chapter, but extended it to the economic field. On November 9, 1791 it was decreed that unless the émigrés went back to France before January the first they would be considered conspirators liable to death (art.2), and their revenue confiscated for life (art.5.)<sup>(169)</sup> That was merely a preliminary measure. On July 17, 1792 the property of the émigrés was confiscated and sold.<sup>(170)</sup> The confiscation and sale of this property was frankly and bluntly confirmed in the constitution of 1795. It was asserted in this constitution that "the properties of the émigrés, are irrevocably released to the profit of the Republic,"<sup>(171)</sup> and that those who legitimately bought national property could not be dispossessed of it, no matter what its origin was.<sup>(172)</sup> The property of the émigrés was not considered, it seems, like the property of the revolutionists, a sacred and inviolable right.

The confiscation of the émigrés property was a death blow dealt to the French nobility. The spoliation of their property was, at the same time, a spoliation of their share in sovereign power.<sup>(173)</sup> They were to count, hereafter, for less and less.

It might be argued that the confiscation of the émigrés property was a justifiable measure, since some of the nobility negotiated with foreign powers to restore the ancient

regime in France. That negotiations were carried by the émigrés with foreign powers, to interfere in the internal problems of France, has long been an established fact. It was also admitted that those negotiations, as well as the bitterly hostile behaviour of the émigrés, offered some justification for the drastic measures adopted against those émigrés. But the same argument could not hold equally well, on all points, in relation to the confiscation of church property -- another important measure which helped the transfer of sovereignty to the French middle class. In fact, the confiscation of church property was undertaken as early as November 2, 1789 -- before the confiscation of émigrés property, and before any foreign interference could have been seriously meditated. A decree of that date stipulated that "all ecclesiastical properties are at the disposal of the nation" (art.1).<sup>(174)</sup> This measure, as in the case of those relating to the émigrés, stripped the *ex-avant* order of the clergy from its share in sovereign power. It reduced the members of that order to the condition of helplessness and dependence on the state -- economically and politically.

A verdict as to whether France benefited or not from the confiscation of church and émigrés property, and from the division of that property into small holdings, seemed irrelevant. What must be pointed out, however, is that the

confiscation of church and émigrés property was a flagrant violation of the declaration's natural and sacred rights of property. (175) It must also be pointed out that the confiscation of the property of the ci-devant privileged orders in France largely eliminated the political power of those two orders, and helped transfer sovereignty to the hands, not of the French people in general but, of the French middle class. It also seems necessary to point out that the division of the confiscated lands into small holdings (176) produced the same result; because those holdings were largely acquired, not merely by middle class men but, by peasants -- who were thus won over to the ranks of the French middle class and, consequently, to the cause of the Revolution. (177)

The division of the French into active and passive citizens, and the confiscation of church and émigrés property were not, however, the only reasons why sovereignty was not transferred by the Revolution to the French people. One must keep in mind the fact that during the Reign of Terror France lived under the dictatorship of the Committee of Public Safety -- and dictatorship was the negation of popular sovereignty. It must also be remembered that popular sovereignty was a chimera during the Napoleonic Era (1799 - 1814), when France suffered herself to be ruled by one of the most iron-handed dictators history has ever

known. Even after the overthrow of Napoleon and the re-establishment of monarchy (1814) -- when France reverted to a comparatively normal political life -- (178) Louis XVIII ruled according to the divine right theory, which was the negation of the theory of popular sovereignty.

The foregoing discussion in this chapter might have made it sufficiently clear that, on the whole, if it was <sup>is</sup> ever safe to generalize, the application of the declaration in revolutionary France was a failure rather than a success. In the sphere of liberty, the greatest success the revolutionists met was in the economic field -- since the establishment of laissez-faire in France was one of the most decisive achievements of the Revolution. The revolutionists' success in this respect, however, was more than counter-balanced by their failure to establish political, juridical and personal liberty. Constitutionalism and the separation of powers were only nominally established; juridical liberty was much of a fraud; and personal liberty was a chimera.

Concerning equality, social equality and equality in taxation were achieved in general; but not equality before the law, economic equality, or even political equality. The division of church and émigrés property made the differences in land ownership less marked; but this measure ran short of establishing the economic equality desired by the Babouvists. The case was almost the same with political

equality. The enfranchisement of the active citizens increased not a little the number of Frenchmen who shared in the political life of the country; but that limited enfranchisement did not go the whole way in the establishment of political equality in France.

The French revolutionists' achievement in the matter of popular sovereignty was by no means more remarkable than their achievement in liberty and equality. What was done in this respect was mostly a dislocation, a displacement, of sovereignty, rather than a decisive and final transfer. Power in France resided no more in an absolute executive; nor did it reside completely in the people. It fluctuated between the two contending parties. It was only later on that the turn of events decided the question in favor of the people.

## III. NOTES

1. In fact, Aulard, A., one of the best authorities on the Revolution, had to write all of his Histoire politique, some 800 pages, in an attempt of the same nature. This book of his was written with the conviction that "the Revolution consists in the Declaration of rights written in 1789 and completed in 1793, and in the attempts made to realize this declaration; the counter-revolution, these are the attempts made to divert the French from conducting themselves according to the principles of the Declaration of rights, that is to say, according to reason clarified by history" (p.782). What Aulard attempted to prove in this same book, as stated in its preface, was that the application of the declaration's principle of equality resulted in the establishment of democracy in France, and that the application of the declaration's principle of popular sovereignty gave rise to the republican form of government in the same country.
2. That is why the declaration of 1789 was sometimes called the declaration of 1791. The fact that it was framed in 1789, and that it was meant, ever since, to have been the French revolutionists' guiding star, made me choose the former designation.
3. Constitution of 1791, preamble.
4. Ibid., Titre I.
5. Ibid., Titre III, arts.3,4 and 5.
6. Ibid., Titre III, arts.1 and 2.
7. Ibid., Titre III, ch. 1., art. 1.
8. Ibid., Titre III, ch. 3, sect.3, art. 2.
9. Ibid., Titre III, ch. 1, sects. 2 and 3.
10. The text of the constitution of 1791 will be found in Cahen, L. et Guyot, R., L'oeuvre législative de la Révolution, pp. 21-47. See Gettell, R.G.'s analysis of the constitution of 1791 in his History of Political Thought, p.305. For a complete account and analysis of the constitution of 1791, see Deslandres, M., Histoire constitutionnelle de la France, I, 70-190.
11. Constitution of 1793, art. 1. The text of the constitution of 1793, as well as that of the declaration which was prefixed to it, will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.71-78.

12. Ibid., art. 7.
13. Ibid., arts. 4, 28, 32 and 33.
14. Ibid., arts. 39 and 40 respectively.
15. Ibid., arts. 23 ff.
16. Ibid., arts. 58 and 59.
17. Ibid., arts. 62-64.
18. See Cahen, L. et Guyot, R., Oeuvre législative, p.71, editors' note.
19. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.78. See the editors' comments on the same page cited. See also Gattell, R.G.'s analysis of the constitution of 1793 in his History of Political Thought, p.305. For a complete account and analysis of the constitution of 1793, see: Deslandres, M., Histoire constitutionnelle, I, 256-90; Stephens, H.Morse, A History of the French Revolution, II, 530-35.
20. Declaration of rights and duties of 1795, duties, arts. 3, 5, 6 and 7.
21. Constitution of 1795, arts. 1 and 2 respectively.
22. Ibid., Tit. II.
23. Ibid., Tit.V, art.44.
24. Ibid., Tit. V, art. 53.
25. Ibid., Tit. V.
26. Ibid., Tit. VI.
27. Ibid., Tit. VIII, art. 202. The text of the constitution of 1795, as well as that of the declaration of rights and duties which was prefixed to it, will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.111-46. See Gattell, R.G.'s analysis of this constitution in his History of Political Thought, pp.305 f. For a complete account and analysis of the constitution of 1795, see Deslandres, M., Histoire constitutionnelle, I, 291-343.



28. The constitution of 1799, which was framed after Napoleon's coup d'état, belonged to another period of the Revolution -- the Napoleonic era. This constitution, it may be pointed out, was little better than a mock-constitution; it helped Napoleon consolidate his dictatorship.
29. See Tocqueville, Alexis de, Ancien régime, liv. I, ch. 5.
30. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp. 385 f. Italics are mine. I am indebted for the information I have given about this decree to the note of the editors, in the same book cited, p.385.
31. Such as toll, town dues and taxes on the transfer of judicature and finance offices, which were purchasable, to different titulars.
32. The text of the decree of June 18, 1792 will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.393. See article 1 of this decree.
33. The text of the decree of July 17, 1793 will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.397. Complete information on the destruction of feudalism in France, to which I am indebted, will be found in: Aston, Lord, Lectures on the French Revolution, pp.94-101; Viollet, P., "French Law in the Age of the Revolution," in Aston, Lord, and others, eds., The French Revolution (The Cambridge Modern History, vol.VIII), pp.715 ff; Aulard, A., Histoire politique, pp.259-60; Elton, G., Revolutionary Idea, pp.76-78; Lefebvre, G., Guyot, R., et Sagnac, Ph., La Révolution française, pp.38-39; Mathiez, A., La Révolution française, I, 67-68; Penman, J.S., The Irresistible Movement of Democracy, pp.392 ff.
34. Article 1. The text of this decree will be found in Cahen, L., et Guyot, R., Oeuvre législative, p.398.
35. Rights, art. 15.
36. Constitution of 1795, Titre XIV, art. 355.
37. The text of this decree will be found in Cahen, L., et Guyot, R., Oeuvre législative, pp.9-10.
38. Le Chapelier's law, introduction to the bill. The text of this law, taken from Thompson, J.M., French Revolution, Documents, 1789-94, pp.82-6, will be found in Appendix B. below. For a detailed and useful discussion of this law, see Barakat, A., Le Chapelier's law, passim.

39. Le Chapelier's law, introduction to the bill.
40. Ibid., introduction to the bill.
41. Ibid., introduction to the bill.
42. Ibid., introduction to the bill.
43. Ibid., introduction to the bill.
44. The foregoing survey of Le Chapelier's law was taken from Le Chapelier's introduction to the bill. See Appendix B. below.
45. Appendix B. below.
46. The text of this oath will be found in: Cahen, L. et Guyot, R., Oeuvre législative, pp.2-3 Thompson, J.M., French Revolution, Documents, p.41.
47. For a complete and authoritative treatment of French constitutional development (1789-1870), see Deslandres, M., Histoire constitutionnelle de la France, 2 vols., passim.
48. Constitution of 1791, Tit.III,art.3; Tit.III, ch.3.
49. Ibid., Tit.III,art.4; Tit.III, ch.4.
50. Ibid., Tit.III,art.5; Tit.III, ch.5.
51. Ibid., Tit.III, ch.3, sect.1, arts.1,2 and 3.
52. Ibid., Tit.III, ch.1, art.5.
53. Ibid., Tit.III, ch.3, sect.3, arts.1 and 2.
54. Declaration of rights and duties of 1795, rights, art.22; constitution of 1795, Tit.V, art. 46, Tit.VIII, art.202.
55. On the authority and functions of the Directory, see the constitution of 1795, Tit.VI, passim.
56. Constitution of 1795, Tit.V, art.76.
57. Ibid., Tit.VI, arts. 132 and 133.
58. Ibid., Tit.VI, art. 150.
59. Ibid., Tit.XI, art. 302.
60. Ibid., Tit.XII, art. 328.
61. Ibid., Tit.XII, arts. 331 and 333.

62. On the functions of the revolutionary government, see the text of the decree of December 4, 1793, in Cahen, L. et Guyot, R., Oeuvre législative, pp.83-92. On the principles of this government, see Robespierre, Maximilian, "Report on the Principles of a Revolutionary Government," in Introduction to Contemporary Civilization, I, 1088-93. For a useful treatment of the same subject, see Villat, L., "Le gouvernement révolutionnaire," in Revue d'histoire contemporaine, pp.189-208.
63. See the extracts from the decrees of March 9, April 9, and April 30, 1793, as well as the editors' comments, in Cahen, L. et Guyot, R., Oeuvre législative, pp.68-71. Valuable information on the representatives on mission will also be found, among other places, in Stephens, H. Morse, A History of the French Revolution, II, 548-54.
64. Cahen, L. et Guyot, R., Oeuvre législative, p.178, editors' note.
65. Article 4. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.385-86.
66. Cahen, L. et Guyot, R., Oeuvre législative, p.178, editors' note.
67. Tit.V, art.1. The text of the decree of August 16, 1790 will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.178-83.
68. Article 1. The text of the decree of January 20, 1791 will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.184-85.
69. Tit.VI, art.1. The text of the decree of September 16, 1791 will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.185-89.
70. Cahen, L. et Guyot, R., Oeuvre législative, pp.200-201, editors' note.
71. Tit. I, art. 1. The text of the decree of March 10, 1793 will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.201-203.
72. Decree of April 5, 1793, art. 1. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp. 203-204.
73. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, p. 204.

74. This was stipulated in article 1 of the law of May 18, 1794. The text of this law (of May 18) will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp. 208-209. On the decree of March 10, 1793, see above, p. 75.
75. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp. 209-211.
76. Italics are mine.
77. This survey of the revolutionary tribunal was based on the decree of June 10, 1794. See note 75 above. Concise and valuable information on the revolutionary tribunal will be found in Stephens, H. Morse, A History of the French Revolution, II, 544-8.
78. Such as the criminal tribunals which the law of May 18, 1794 (art. 3) authorized the committee of public safety to establish. The text of this law will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp. 208-209.
79. This constitution guaranteed, Titre XIV, arts. 353, 354, 355, the freedoms of speech, of thought, of the press, as well as religious liberty.
80. See above, p. 61.
81. The text of these decrees will be found in: Cahen, L. et Guyot, R., Oeuvre législative, pp. 359-60; Herriot, E., Aux sources de la liberté, pp. 49-66.
82. Article 1. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, p. 360.
83. Article 1. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp. 61-2.
84. Martial law was decreed on October 21, 1789. This law stipulated that, once the red flag was raised on the window of the municipality, all gatherings, peaceful or otherwise, were considered criminal and subject to dispersion by force (arts. 2 and 3). The text of this law will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp. 192-4. On the suppression of martial law in 1793 and its re-institution in 1795, see the same book cited, p. 196, editors' note.
85. The law of September 17, 1793 designated as suspects, among others, "those who ... have shown themselves to be partisans of tyranny, of federalism, or enemies of liberty" (art. 2), and ordered their arrest (art. 3). The text of this

law will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.80-1.

86. The émigrés were the subject of several laws which gained gradually in severance. The first of these laws, June 21, 1791, attempted simply to prevent Frenchmen from leaving the country, (Cahen, L. et Guyot, R., Oeuvre législative, p.222, editors' note). The law of March 28, 1793, however, was the most notorious. It stipulated that "the émigrés will be banished forever from French territory; they are civilly dead, their goods are released to the Republic" (Tit.I, sect.1, art.1. Italics are not mine). The text of this law will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.227-34. Texts of, and information about, other decrees dealing with the émigrés, will be found in the same place cited, pp.222-37.

87. The decree of December 4, 1792 stipulated that "whoever proposes or attempts to establish in France monarchy or any other power which threatens the sovereignty of the people, under whatever name that may be, will be punished by death." The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.65.

88. Italics are not mine. This decree was suspended by another on April 11, 1795. The text of this latter decree, to which I owe my information about the former, will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.109.

89. Decree of April 13, 1790. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.323-4.

90. See: Aulard, A., Histoire politique, pp.44-5; Mathiez, A., La Révolution française, I, 77-8, 146.

91. Declaration of rights of '89, art. 10. Note 90 above.

92. See Quimper, Major French, "The Revolution in Brittany," in Thompson, J.M., English Witnesses of the French Revolution, pp.257-62.

93. See Gower, Lord, "The Saint-Cloud Affair," in Thompson, J.M., English Witnesses of the French Revolution, pp.114-115.

94. The penalties inflicted by law on the refractory priests, of which deportation was one variety, will be found in the decrees of: November 27, 1790; November 29, 1791; May 27, 1792; and August 26, 1792. The text of these decrees will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.334-6. The text of the civil constitution of the clergy (July 12, 1790) will be found in the same book cited, pp.324-33. On the refractory priests, see Mathiez, A., La Révolution française, I, 151-8, II, 30-9.
95. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.65.
96. Decree of March 29, 1793, arts. 1 and 2. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.365.
97. Law of April 16, 1796, art. 1. The text of this law will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.366. A brief survey of subsequent laws (1797-99), which subjected French papers and periodicals to police inspection and to a stamp tax, will be found in the same book cited, p.367. For a complete account of the liberty of the press during the Revolution, see: Aulard, A., Histoire politique, pp.359-61, 520-21, 609-621; Herriot, E., Aux sources de la liberté, pp.36 ff.
98. This quotation, as well as the account of the story, were taken from Palmerston, Lord, "The Champ de Mars Massacre," in Thompson, J.M., English Witnesses of the French Revolution, pp.138-39.
99. Lindsay, W., and Monro, G., respectively, "The Prison Massacres," in Thompson, J.M., English Witnesses of the French Revolution, pp.189-95. Those massacres took place on September 2-4, 1792, and were followed by similar massacres in the provinces. Reliable surveys of the prison massacres will be found, among other places, in: Mathiez, A., La Révolution Française, II, 21-59; Stephens, H. Morse, A History of the French Revolution, II, 141-50.
100. Stephens, H. Morse, A History of the French Revolution, II, 152-3. On the feeling of the French revolutionists at atrocities in general, see Miles, W.A., "Paris Changed," in Thompson, J.M., English Witnesses of the French Revolution, pp.89-90.
101. Laws of September 5, 1797 and May 11, 1789. The text

of these laws will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.143-4, 145-6, respectively.

102. Paine, Thomas, "Life under the Terror," in Thompson, J.M., English Witnesses of the French Revolution, pp.241-42.

Thomas Paine was prosecuted in his country of origin, England, for his marked sympathies with the French Revolution. His Rights of Man was the most eloquent and well-reasoned book in defence of the revolutionary principles. Paine was granted French citizenship, and was elected a deputy to the Convention, in acknowledgement of the services he rendered to the cause of the Revolution.

103. Stephens, H. Morse, A History of the French Revolution, II, 218.

104. Monro, G., "Invasion and Elections," in Thompson, J.M., English Witnesses of the French Revolution, p.198.

105. Beckford, W., "Beckford in Paris," in Thompson, J.M., English Witnesses of the French Revolution, pp.148-49.

106. Tocqueville, Alexis de, Ancien régime, Liv.III, ch.3.

107. Elton, G., Revolutionary Idea, p.70. For an account of the achievement of the Revolution in the matter of centralization, see Elton, G., the same book cited, pp.65-71.

108. Aulard, A., Histoire politique, pp.402-403; Elton, G., Revolutionary Idea, pp.45-46.

109. Aulard, A., Histoire politique, pp.413-414.

110. See Aulard, A., Histoire politique, pp.327, 414-415.

111. Note 85 above. Twentyone Girondin leaders were summarily sentenced to death because they were found guilty of "conspiracy against the unity, [and] the indivisibility of the Republic...." (This quotation was taken from, and the account of the trial based on, Aulard, A., Histoire politique, p.446).

112. I owe this concept in politics to Professor Roger Soltan.

113. Gower, Lord, "The New Assembly," in Thompson, J.M., English Witnesses of the French Revolution, p.145.

114. Decree of August 4, 1789. See above, p. 61.

115. Le Chapelier's law. See above, p. 65.

116. Decree of June 10, 1794. See above, p. 76.
117. Robespierre, Maximilien, "In Favor of an Armed People, of a War against the Vendée," in Introduction to Contemporary Civilization, I, 1986-8. See also Stephens, H. Morse, A History of the French Revolution, II, 372-404.
118. Young, Arthur, "Pamphleteering," in Thompson, J.M., English Witnesses of the French Revolution, p.35.
119. For a complete account of these measures, see Stephens, H. Morse, A History of the French Revolution, II, 372-404.
120. See above, pp. 75-81.
121. For a complete account of this struggle, see Mathiez, A., La Révolution française, II, 101-122.
122. See Anon, "The Fall of the Girondins," in Thompson, J.M., English Witnesses of the French Revolution, p.239. For a complete account of this struggle, see: Aulard, A. Histoire politique, pp.426-47; Mathiez, A., La Révolution française, II, 202-22; Stephens, H. Morse, A History of the French Revolution, II, 236-80, 337-43, 322-30.
123. See Rowan, A.H., "Paris during the Terror," in Thompson, J.M., English Witnesses of the French Revolution, p.249. For a complete account of this struggle, see: Aulard, A., Histoire politique, pp.494-500; Mathiez, A., La Révolution française, III, 193-225.
124. Tit.III, ch.5, art.17. See above, p. 80.
125. Decree of July 4-5, 1792, art.17. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.50. Another decree of the same nature was passed on March 13, 1794. The text of this latter decree will be found in the same book cited, pp.96-7.
126. Among the duties of man, enumerated in the declaration of rights and duties prefixed to the constitution of '95, were the following:
- Art.3.- "The obligation of each towards society consist in defending it, in serving it, in living submitted to laws, and in respecting those who are its organs."
- Art.5.- "No one is a man of good, if he is not frankly and religiously law-abiding."
- Art.6.- "He who openly violates the laws declares



himself to be in a state of war with society."

In the main body of the constitution of '95 itself, "conspiracies" against the internal security of the state were made illegal (Tit.VI, art.145) and gatherings, armed or peaceful, were forbidden (Tit.XIV, arts.365, 366.)

The French would have saved themselves much unnecessary trouble had they limited the right of resistance, as in America, to a majority of the people. This stipulation would have amounted, in fact, to normal and peaceable change of governments.

127. Declaration of rights of '95, arts. 33, 34 and 35.

128. By decreasing the death penalty against anyone who favored such a change. See the law of April 16, 1796 above, pp. 80-81. Well did Edwards, L.P., observe, in his Natural History of Revolution, p.214, that "revolutionists are not in favor of revolution in general, but only in their own kind of revolution. They do not aim at continuous change, but only at their own amount of change."

129. Constitution of 1791, preamble.

130. Constitution of 1791, Tit, III, ch.5, arts.7,19 and 23.

131. Tit.III, ch.1, sect.1, art.2.

132. The text of the decrees of November 23, 1790 and January 15, 1791, will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.238-40 and 240-42 respectively.

133. Declaration of rights and duties of '95, rights,art.16.

134. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, pp.357-8.

135. Decree of July 30,1791, art.1. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.358.

136. Law of August 23, 1794, arts. 1 and 2. The text of this law will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.358.

137. See, on the matter of dress and titles: Twiss, R., "A trip to Paris," in Thompson, J.M., English Witnesses of the French Revolution, p.165; Mathiez, A. La Révolution Française, II, 41; Stephens, H. Morse, A History of the French Revolution, II, 359-61.

138. I was indebted mostly, for this information about the attitude of the Girondins and Jacobins towards property, to: Laski, H., "The Socialist Tradition in the French Revolution," in Hearnshaw, F.J.G., The Social & Political Ideas of the Revolutionary Era, pp.213-215; Mathiez, A., La Révolution française, II, 67-9, III, 222.

It might be interesting, and astonishing at the same time, to know that a person like La Fayette -- a nobleman by birth and a middle-class man in sympathies -- should have believed that the achievement of the Revolution would remain incomplete until landed property was impartially divided in France. See, on this point, Fitzgerald, "Thurst for War," in Thompson, J.M., English Witnesses of the French Revolution, pp.80-81.

139. This quotation was taken from, and the survey which preceded it was based on, the extract from the "Tribun du peuple," number 35, in Bayet, A. & Albert, F., Les écrivains politiques du XIXe siècle, pp.105-10.

140. The text of the "Manifesto of the Equals" will be found in Introduction to Contemporary Civilization, I, 1095-7.

141. In Babeuf's paper, "Tribun du peuple," number 36. See extract in Bayet, A. & Albert, F., Les écrivains politiques du XIXe siècle, pp.101-2.

142. Note 140 above. This same statement was quoted in Louis, P.'s article "Babouvism," Encyclopaedia of the Social Sciences, II, 375. I am indebted to this article. Other references, on which I relied mostly in my present treatment of Babeuf, the Babouvists, their movement, doctrines and conspiracy, were the following: Bayet, A. & Albert, F., Les écrivains politiques du XIXe siècle, pp.5-7, 100-14; Introduction to Contemporary Civilization, I, 1094-7; Laski, H., "The Socialist Tradition in the French Revolution," in Hearnshaw, F.J.G., Revolutionary Era, pp.219 ff.

143. The text of this law will be found in Cahen, L. et Guyot, R., Oeuvre législative, p.65.

144. See: Aulard, A., Histoire politique, p.29; Elton, G., Revolutionary Idea, pp.30-31.

145. Decree of December 22, 1789, sect.1, art.3. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre législative pp.12-15. It might have been observed that even the age limit (25 years) was a restraint for equality.

The value of a day's work in monetary units varied in the different electoral constituencies; it was to be evaluated in each locality by the municipality. On January 15, 1790, however, it was decreed that the value of a day's work could not be estimated at more than 20 sols. On March 30, 1790, it was also stipulated that the value of a day's work could not be estimated, without the approval of the National Assembly, at less than 10 sols. Thus the value of a day's work was generally fixed at between 10 to 20 sols (Aulard, A., Histoire politique, pp.64-65). The French livre (pound) was equivalent to 20 sols or sous.

146. Decree of December 22, 1789 (already referred to in note 145 above), sect. 1, art.2.

147. Ibid., sect.1, arts.17 and 18. Elections were in two degrees, as these two articles, as well as article 21, clearly indicate.

148. Ibid., sect. 1, art.19.

149. Ibid., sect. 1, arts.31 and 32. The value of the mare d'argent was fifty livres (Elton, G., Revolutionary Idea, p.31). The French livre (pound) was equivalent to 20 sols (see note 145 above).

150. Cahen, L. et Guyot, R., Oeuvre législative, pp.24 and 30, editors' note.

151. Constitution of 1791, Tit.III, ch.1, sect.3, art.3.

152. Ibid., Tit.III, ch.1, sect.2, art.2.

153. Ibid., Tit.III, ch.1, sect.2, art.7.

154. See Aulard, A., Histoire politique, pp.160-61. For a complete account of the introduction of the property qualification by the National Assembly to France, see Aulard, A., the same book cited, pp.60-80, 98-105, 158-63.

155. See the decree of August 11, 1792, arts.2 and 3, in Cahen, L. et Guyot, R., Oeuvre législative, pp.55-6. See also note 150 above.

156. For a complete account of the dissatisfaction of the passive citizens with the property qualification, see Aulard, A., Histoire politique, pp.70-80, 98-105.

157. Constitution of 1795, Tit.II, arts.8 and 11.

158. Constitution of 1795, Tit.II, art.16.

159. See Burke, E., "Thoughts on French Affairs," in Burke E., Reflections on the French Revolution & other Essays, p.291. A similar view was expressed by Loustallot in a sentence quoted by Laski, H., "The Socialist Tradition in the French Revolution," in Hearnshaw, F.J.C., Revolutionary Era, p.208. Loustallot's original work was not available to me. The same view was also held by: Elton, G., Revolutionary Idea, pp.3, 30-2, 80; Mathiez, A., La Revolution Francaise, I, 113 ff.

160. In my treatment of the subject of political equality I have drawn on Aulard, A.'s Histoire politique, *passim*. This scholar held that what the Revolution achieved in the matter of political equality was to make the French middle class a politically privileged class in France (p.70). His treatment supplied me with valuable historical information, and clarified my thought on several points.

161. See Dorset, Lord, "Notables and States-General," in Thompson, J.M., English Witnesses of the French Revolution, pp.21-22.

162. Because the number of the representatives of the Third Estate (600) was equal to that of the two other orders combined. The Third Estate could count on many sympathizers and adherents among the ranks of the two privileged orders, and more particularly the lower clergy. See, Young, Arthur, "The Royal Session," in Thompson, J.M., English Witnesses of the French Revolution, p.41.

163. The text of this resolution will be found in Cahen, L. et Guyot, R., Oeuvre legislative, pp.1-2.

164. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre legislative, p.2. See, in confirmation of this view, Rose, J.R., "The Revolutionary Era in France," in Hearnshaw, F.J.C., Revolutionary Era, p.55. Titre V, art.1 of the constitution of 1791 provided that taxes were to be decided upon annually by the legislature.

165. The text of this decree will be found in Cahen, L. et Guyot, R., Oeuvre legislative, p.3. The responsibility of public agents was also provided for in: the decree of April 27, 1791, art.29; in the constitution of 1791, tit.III, sect.3, ch.5, art.23; and in the decree of July 23, 1792. The text of these provisions will be found in the same book cited, pp.18-21, 43, and 50-1 respectively.

166. Tit.III, art.1. Italics are mine.

167. See Lindsay, W., "Insurrectional Commune," in Thompson, J.M., English Witnesses of the French Revolution, p.184.
168. According to Aulard, A., Histoire politique, p.79 and Mathiez, A., La Revolution francaise, I, 114, the active citizens numbered some 4 millions, and the passive citizens -- women excluded -- some 3 millions. The total population of France was estimated at about 26 millions.
169. The text of the decree of November 9, 1791 will be found in Cahen, L. et Guyot, R., Oeuvre legislative, pp.223-4.
170. Cahen, L. et Guyot, R., Oeuvre legislative, p.226.
171. Constitution of 1795, tit.XIV, art.373.
172. Ibid., tit.XIV, art.374.
173. See Hammond, G., "The Political Situation," in Thompson, J.M., English Witnesses of the French Revolution, p.110.
174. The text of this decree will be found in Cahen, L., et Guyot, R., Oeuvre legislative, p.323. The confiscation of church property was confirmed in Titre I of the constitution of 1791. A brief exposition of the discussion which took place in the Assembly relating to the confiscation of this property will be found in Mathiez, A., La Revolution francaise, I, 128-9.
175. Mathiez, A., La Revolution francaise, I, 77.
176. See extracts from the laws of July 25 and September 13, 1793, in Cahen, L., et Guyot, R., Oeuvre legislative, p.401.
177. See: Elton, G., Revolutionary Idea, p.78; Mathiez, A., La Revolution francaise, I, 142-3, II, 45. The same result was also obtained by the division of communal lands into small holdings (See law of June 10, 1793 in Cahen, L., et Guyot, R., Oeuvre legislative, pp.399 ff).
178. See: Dickinson, G.L., Revolution & Reaction in Modern France, p.74; Dunning, W.A., A History of Political Theories from Rousseau to Spenser, p.173.

#### IV. CONCLUSION

The modern idea of a declaration of rights originated first in the revolting American colonies, and was carried from there to France. The French declaration of rights of '89 derived its concepts from other sources as well. These concepts were partly derived from the Anglo-American political philosophy of the seventeenth and eighteenth centuries, and mostly from the French philosophes of the enlightenment. At the same time, these concepts reflected the concrete needs of the French middle class.

The fact that most of the principles enunciated in the French declaration of rights were the same as those advocated, at one time or another, in England and America did not mean that the principles were applied the same way in all three countries. Those principles were imported to France, if one could use the expression, rather than born and developed in that country. The abstract character of the French declaration, combined with the fact that it was not a genuine expression of a traditional French heritage, made the application of these principles in France difficult. Influenced by French traditions, institutions, circumstances and temperament, these principles acquired a new, and sometimes a

different, meaning in France. They were understood in a peculiarly French way, and applied in a peculiarly French manner. The attempts to apply these principles in revolutionary France resulted in the establishment of formal, rather than real, liberty; of equality only for the authors of the Revolution; and in the transfer of sovereignty not to the people but to the French middle class.

These achievements were by no means slight or negligible, if one took into consideration the awkward conditions which prevailed in pre-revolutionary France; but they fell short from perfect conformity with the stipulations of the declaration. The declaration of '89 embodied the French revolutionists' utopia; it reflected their conception of an ideal state; it gave expression to what they would have liked to achieve; but it did not represent what they did actually achieve. As matters turned out, however, the gradual implementation of the declaration in revolutionary France secured primarily the ascendancy of the French middle class -- the amelioration of whose conditions benefited at the same time the mass of the French people.

## APPENDIX A

THE VIRGINIA DECLARATION OF RIGHTS.  
(June 12, 1776)

A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention: which rights do pertain to them and their posterity, as the basis and foundation of government.

Section 1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Section 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

Section 3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

Section 4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

Section 5. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.



Section 6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

Section 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Section 8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

Section 9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Section 10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

Section 11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

Section 12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic government.

Section 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under

strict subordination to, and governed by, the civil power.

Section 14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of the government of Virginia, ought to be erected or established within the limits thereof.

Section 15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

Section 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

## APPENDIX B

## LOI CHAPELIER

Assemblée Nationale: séance du 14 juin, 1791

M. CHAPELIER. Je viens au nom de votre comité de constitution, vous déferer une contravention aux principes constitutionnels qui suppriment les corporations, contravention de laquelle naissent de grands dangers pour l'ordre public; plusieurs personnes ont cherché à recréer les corporations antécédentes, en formant des assemblées d'arts, métiers, dans lesquelles il a été nommé des présidens, des secrétaires, des syndics et autres officiers. Le but de ces assemblées, qui se propagent dans le royaume, et qui ont déjà établi entr'elles des correspondances, est de forcer les entrepreneurs de travaux, les ci-devant maîtres, à augmenter le prix de la journée de travail, d'empêcher les ouvriers et les particuliers qui les occupent dans leurs ateliers, de faire entr'eux des conventions à l'amiable, de leur faire signer sur des registres l'obligation de se soumettre aux taux de la journée de travail fixé par ces assemblées, et autres réglemens qu'elles se permettent de faire. On emploie même la violence pour faire exécuter ces réglemens; on force les ouvriers de quitter leurs boutiques, lors même qu'ils sont contents du salaire qu'ils reçoivent. On veut dépeupler les ateliers; et déjà plusieurs ateliers se sont soulevés, et différens désordres ont été commis.

Les premiers ouvriers qui se sont assemblés en ont obtenu la permission de la municipalité de Paris. A cet égard, la municipalité paraît avoir commis une faute. Il doit sans doute être permis à tous les citoyens de s'assembler; mais il ne doit pas être permis aux citoyens de certaines professions de s'assembler pour leurs prétendus intérêts communs. Il n'y a plus de corporations dans l'État; il n'y a plus que l'intérêt particulier de chaque individu, et l'intérêt-général. Il n'est permis à personne d'inspirer aux citoyens un intérêt intermédiaire, de les séparer de la chose publique par un esprit de corporation.

Les assemblées dont il s'agit ont présenté, pour obtenir l'autorisation de la municipalité, des motifs spécieux; elles se sont dites destinées à procurer des secours aux ouvriers de la même profession, malades ou sans travail; ces caisses de secours ont paru utiles; mais qu'on ne se méprenne pas sur cette assertion; c'est à la nation, c'est aux officiers publics, en son nom, à fournir des travaux à ceux qui en ont besoin pour leur existence, et des secours aux infirmes. Ces distributions particulières de secours, lorsqu'elles ne sont pas dangereuses par leur mauvaise administration, tendent au moins à faire renaître les corporations; elles exigent la réunion fréquente des individus d'une même profession, la nomination de syndics et autres officiers, la formation de réglemens, l'exclusion de ceux qui ne se soumettraient pas à ces réglemens. C'est ainsi que renaîtraient les privilèges, les maîtrises, etc. Votre comité a cru qu'il était instant de prévenir les progrès de ce désordre. Ces malheureuses sociétés ont succédé

à Paris à une société qui s'y était établie sous le nom de société des devoirs. Ceux qui ne satisfaisaient pas aux devoirs, aux réglemens de cette société, étaient vexés de toute manière. Nous avons les plus fortes raisons de croire que l'institution de ces assemblées a été stimulée dans l'esprit des ouvriers, moins dans le but de faire augmenter, par leur coalition, le salaire de la journée de travail, que dans l'intention secrète de fomenter des troubles.

Il faut donc remonter au principe, que c'est aux conventions libres, d'individu à individu, à fixer la journée pour chaque ouvrier; c'est ensuite à l'ouvrier à maintenir la convention qu'il a faite avec celui qui l'occupe. Sans examiner quel doit être raisonnablement le salaire de la journée de travail, et avouant seulement qu'il devrait être un peu plus considérable qu'il l'est à présent (on murmure), et ce que je dis là est extrêmement vrai; car dans une nation libre, les salaires doivent être assez considérables pour que celui qui les reçoit, soit hors de cette dépendance absolue que produit la privation des besoins de première nécessité, et qui est presque celle de l'esclavage. C'est ainsi que les ouvriers anglais sont payés davantage que les français. Je disais donc que, sans fixer ici le taux précis de la journée de travail, taux qui doit dépendre des conventions librement faites entre les particuliers, le comité de constitution avait cru indispensable de vous soumettre le projet de décret suivant, qui a pour objet de prévenir, tant les coalitions que formeraient les ouvriers pour faire augmenter le prix de la journée de travail, que celles que formeraient les entrepreneurs pour le faire diminuer.

Art. Ier. L'aneantissement de toutes espèces de corporations du citoyens du même état et profession, étant l'une des bases fondamentales de la constitution française, il est défendu de les rétablir de fait, sous quelque prétexte et sous quelque forme que ce soit.

II. Les citoyens d'un même état ou profession, les entrepreneurs, ceux qui ont boutique ouverte, les ouvriers et compagnons d'un art quelconque, ne pourront, lorsqu'ils se trouveront ensemble, se nommer ni président ni secrétaires ni syndics, tenir des registres, prendre des arrêtés ou délibérations, former des réglemens sur leurs prétendus intérêts communs.

III. Il est interdit à tous corps administratifs ou municipaux de recevoir aucune adresse ou pétition sous la dénomination d'un état ou profession, d'y faire aucune réponse, et il leur est enjoint de déclarer nulles les délibérations qui pourraient être prises de cette manière, et de veiller soigneusement à ce qu'il ne leur soit donné aucune suite ni exécution.

IV. Si contre les principes de la liberté et de la constitution, des citoyens attachés aux mêmes professions, arts et métiers, prenaient des délibérations, ou faisaient entre eux des conventions tendantes à refuser de concert, ou à n'accorder qu'à un prix déterminé le secours de leur industrie ou de leurs travaux, lesdites délibérations et conventions, accompagnées ou non du serment, sont déclarées inconstitutionnelles, attentatoires à la liberté et à la déclaration des droits de l'homme, et de nul effet; les corps administratifs et municipaux sont tenus de les déclarer telles; les auteurs, chefs et instigateurs qui les auront provoquées, rédigées ou présidées, seront cités devant le tribunal de police, à la requête du procureur de la commune, et condamnés en 500 liv. d'amende, et suspendus pendant un an de l'exercice de tous leurs droits de citoyens actifs, et de l'entrée dans les assemblées primaires.

V. Il est défendu à tous corps administratifs et municipaux, à peine par leurs membres, d'en répondre en leur propre nom, d'employer, admettre ou souffrir qu'on admette aux ouvrages de leurs professions dans aucuns travaux publics, ceux des entrepreneurs, ouvriers, et compagnons qui provoqueraient ou signeraient lesdites délibérations ou conventions, si ce n'est dans le cas où de leur propre mouvement, ils se seraient présentés au greffe du tribunal de police pour les rétracter ou désavouer.

VI. Si lesdites délibérations ou conventions affichées apposées ou distribuées en lettres circulaires, contenaient quelques menaces contre les entrepreneurs, artisans, ouvriers, ou journaliers étrangers qui viendraient travailler dans le lieu, ou contre ceux qui se contenteraient d'un salaire inférieur, tous auteurs, instigateurs et signataires des actes ou écrits, seront punis d'une amende de 1,000 liv. chacun, et de trois mois de prison.

VII. Ceux qui useroient de menaces ou de violences contre les ouvriers usant de la liberté accordée par les lois constitutionnelles au travail et à l'industrie, seront poursuivis par la voie criminelle, et punis selon la rigueur des lois, comme perturbateurs du repos public.

VIII. Tous attroupemens composés d'artisans, ouvriers, compagnons, journaliers, ou excités par eux contre le libre exercice de l'industrie et du travail appartenant à toutes sortes de personnes, et sous tout espèce de conditions convenues de gré à gré, ou contre l'action de la police et l'exécution des jugemens rendus en cette matière, ainsi que contre les enchères et adjudications publiques des diverses entreprises,

seront tenus pour attroupemens séditieux; et comme tels, ils seront dissipés par les dépositaires de la force publique, sur les réquisitions légales qui leur en seront faites, et punis selon toute la rigueur des lois, sur les auteurs, instigateurs et chefs desdits attroupemens, et sur tous ceux qui aurent commis des voies de fait et des actes de violence.

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The references which appear in this bibliography were cited for three main purposes: 1. To help the reader find further information on the subject of this thesis, if he wished to do so. 2. To cite the essential sources of information which were available to me, and of which I made use in the writing of this dissertation. 3. To acknowledge my debt to the authors of these references.

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