

Rights of Man: Part One

Thomas Paine's most famous book *Rights of Man* was published in two parts. Each of them is short, the first, dedicated to George Washington, running to 112 pages in the Penguin Classics edition, and the second, dedicated to M. de Lafayette, to 127 pages in the same edition, including a short appendix. As in the case of *Common Sense* the brevity of these works, priced at three shillings or less, stimulated rather than retarded their sale. The population of Great Britain was then about ten million. M. D. Conway, still the best and most thorough of Paine's biographers, though his *Life of Paine* was published as long ago as 1892, estimated that the two parts of *Rights of Man* had sold 200,000 copies in Britain by 1793. Eric Foner, in his introduction to the Penguin Classics edition, puts the number at 250,000. We shall see, however, that for all its popularity, the book came nowhere near to matching *Common Sense* in its political effect.

The first part of *Rights of Man* was published in a small edition by Joseph Johnson in February 1791. Though he remained a friend of Paine's and was associated with the sale of the second part a year later, Johnson took fright and allowed the publication to be taken over in March 1791 by J. S. Jordan, who also published the second part in February 1792.

The interval between November 1790 when Burke's *Reflections* was published and February 1791 is so short and the topic of the French Revolution so congenial to Paine that I think it quite likely that he had already gone so far as to make some notes upon it, before Burke's book appeared. Nevertheless the first part of *Rights of Man*, while it contains other matter of more positive interest, is mainly presented as a rejoinder to Burke, and is so described in Paine's preface to it.

Having begun his book with some personal abuse of Burke and condemnation of his style of writing, Paine passes to the defence of Dr Price and the proceedings of the Revolution Society. In fact, he has hardly anything to say about the rights proclaimed by the Society and roughly dismissed by Burke, beyond making the point that the rights in question were not ascribed to this or that person but to the nation as a whole. This is not, however, a distinction that he takes the trouble to elucidate. Instead, he sets out to destroy Burke's objections to any attempt to connect the French Revolution with the English 'revolution' of 1688. The members of the Parliament which sanctioned the deposition of James II in favour of William III and Mary were anxious that this should not set a precedent; they did not wish to undermine the principles of hereditary succession to the English throne. Accordingly they issued the following declaration:

The lords spiritual and temporal, and commons, do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterities for ever; and do faithfully promise, that they will stand to, maintain, and defend their said majesties, and also the limitation of the crown, herein specified and contained, to the utmost of their powers.

Burke quotes this declaration with approval but draws no further inference from it than that it denies to all future generations of British subjects the constitutional right to depose their monarchs if their fancy so takes them. He does not maintain that there are no circumstances in which such action could be justified. He requires only that in a matter of this sort 'occasional will' should be subjected 'to permanent reason, and to the steady maxims of faith, justice, and fixed fundamental policy'.¹ In reply, Paine denies the right and the power of 'a parliament, or any description of men, or any generation of men, in any country . . . to bind all posterity for ever'.² He admits that laws remain in force beyond the lifetime of those who first enact them but that is only because the living still consent to them. He concludes his argument rhetorically: 'That which may be thought right and found convenient in one age, may be thought wrong and found inconvenient in another. In such cases, Who is to decide, the living, or the dead?'³

¹ *Reflections on the Revolution*, p. 104.

² *Rights of Man*, pp. 41-2.

³ *ibid.*, p. 45.

I do not see this as a serious dispute. Burke's was an argument *ad hominem*. He was concerned to show that Dr Price and his friends were misrepresenting the political intentions of those who brought about the English revolution of 1688, if they treated them as a precedent for the overthrow of the French monarchy more than a hundred years later. Even Burke would not have argued that the declaration of rights, imposed on William III by the Whigs, should have prevented their Liberal descendants from curbing the power of the House of Lords by forcing through the Parliament Act of 1911. Nor would he have denied that something describable as consent, on the part of those who comply with it, is necessary for a law to remain effectively in operation. It is, indeed, obvious that consent does not here imply approval. At the same time lack of approval does not imply a rejection of right. A thief who steals property need not agree with Proudhon that property is theft. Whether a law is held to be legitimate, not only by those who respect it but also by those who violate it, depends chiefly, though not entirely, upon its provenance. In certain forms of society, a law may fail to be sustained because it offends the moral sense of a necessary section of those who are needed to enforce it. An example would be the refusal of English juries in the early nineteenth century to convict persons who were proved to have committed minor offences for which the penalties inflicted were excessively severe. The roots of the English legal system remained intact. For them to have been demolished, there would have to have been a wholesale rejection of the pretensions of those who, in one way or another, had acquired the authority to mould and administer the law. In short, we come upon another instance of the dependence of rights upon power.

In spite of his devoting the greater part of a book to rebutting Burke's strictures on the French Revolution, Paine manages to accuse him of regarding it too lightly. For instance, he complains that Burke makes only three casual references to the capture of the Bastille. He is particularly shocked by Burke's apparent indifference to the plight of those who were imprisoned in it. I quote the passage because it is one of the most conspicuous examples of Paine's forensic style:

Not one glance of compassion, not one commiserating reflection, that I can find throughout his book, has he bestowed on those who lingered out the most wretched of lives, a life without hope, in the most miserable of prisons. It is painful to behold a man employing his talents to corrupt himself. Nature has been kinder to Mr Burke than he is to her. He is not affected by the reality of distress touching

his heart, but by the showy resemblance of it striking his imagination. He pities the plumage, but forgets the dying bird. Accustomed to kiss the aristocratical hand that hath purloined him from himself, he degenerates into a composition of art, and the genuine soul of nature forsakes him. His hero or his heroine must be a tragedy-victim expiring in show, and not the real prisoner of misery, sliding into death in the silence of a dungeon.¹

For all his pity for the prisoners in the Bastille, Paine felt that its capture needed some further justification. He therefore represented the assault as a popular response to the exposure of a plot organized by the King's younger brother, the Count d'Artois, to employ troops to arrest the members of the National Assembly. Writing as he was before the outbreak of the Reign of Terror, he was able to give the National Assembly credit for the fact that it had nobody executed for taking part in this plot. He had to admit that four persons, including the Governor of the Bastille and the Mayor of Paris, succumbed to the fury of the populace. As for their heads being carried around upon spikes, he offers no defence beyond a *tu quoque*. The heads of English criminals were so exhibited at Temple Bar. I must make it clear that this is not presented by Paine as an excuse. On the contrary, it affords him an opportunity of making a general attack upon 'sanguinary punishments which corrupt mankind'.²

Paine's rejoinder to Burke takes a similar form with respect to the events of 5 and 6 October 1789. He claims that the mob were provoked into marching on Versailles by learning that the King's bodyguard, responding to a signal, 'tore the national cockade from their hats, trampled it under foot, and replaced it with a counter cockade prepared for the purpose'.³ He implies that their intention was to convey the King from Versailles to Metz where they would 'set up a standard'. He does not say whether this was known to the mob, though his version of the incident would seem to require that something of that sort was at least suspected by them. What then happened, as Paine relates it, was that M. de Lafayette at the head of twenty thousand of the Paris militia followed the mob, with the intention not of joining forces with them but preventing any outbreak of violence. He was so far successful that no blood was shed during the night of 5-6 October, once the King had been persuaded to sign the Assembly's declaration of the Rights of Man.

¹ *Rights of Man*, p. 51.

² *ibid.*, p. 58.

³ *ibid.*, p. 61.

Such violence as did occur on the morning of 6 October was initiated, according to Paine, by one of the King's bodyguard who appeared at a window of the palace and, instead of withdrawing when the people who had slept in the courtyard started jeering at him, opened fire upon them. This caused them to invade the palace and insist that the King and Queen return to Paris. Paine refers in passing to 'the loss of two or three lives'¹ but so far from confirming Burke's allegation that the Queen was endangered in the Palace and she and the King insulted throughout their journey, he asserts that the King accepted the original demand for his return to Paris as 'the shout of peace' and that thereafter there was no further trouble.

As we shall see later on, Paine felt none of the personal hostility to Louis XVI that he had expressed towards George III. His attack is directed against the institution of monarchy, conceived either as absolute or at least as endowed with a considerable share of power. He would not have had the same ground for objecting to a monarch who fulfilled an almost purely ceremonial function, though it would run counter to his republican principles. He might have treated such a form of monarchy with the same contempt as he displays for titles, which the French at that time abolished though they subsequently restored them. 'Titles,' he says, 'are but nick-names, and every nick-name is a title. The thing is perfectly harmless in itself; but it marks a sort of foppery in the human character, which degrades it.'² For my own part, I am content to let this pass.

Paine is not seriously concerned with what could be taken, or could once have been taken, as an outward sign of aristocracy. Here again, it is the institution of aristocracy that he seeks to abolish and the reason why he seeks to abolish it is that he associates it with what he regards as two major evils: primogeniture and hereditary power.

Paine's objection to primogeniture is that the automatic transference of property to the eldest son, irrespective of the hardship which this may inflict upon his siblings, is a manifestation of 'tyranny and injustice'. He goes on to draw the rather dubious inference that anybody who has profited by such injustice is thereby unfitted to legislate for a nation.

With regard to the idea of hereditary legislation, I have already quoted his comments on its absurdity in the course of my examination of his *Common Sense*.³

¹ *Rights of Man*, p. 63.

² *ibid.*, p. 80.

³ see above p. 41.

The three further charges that Paine brings against the maintenance of an aristocracy appear less substantial. They are, respectively, that 'a body of men holding themselves accountable to nobody, ought not to be trusted by anybody',¹ that 'it is continuing the uncivilized principle of governments founded in conquest',² with the corollary that aristocrats have servants whom they 'govern by personal right',³ and that aristocrats tend to degenerate, like Jews, as the result of their intermarrying.

The trouble with the first two of these arguments is that their picture of the aristocracy is feudal. No doubt there are still some English peers who resent the fact that their measures can be rejected by the House of Commons but this does not add to their political influence. Probably all the governments of which Paine knew, including America, were founded in conquest, but this would not be an objection to finding room for an aristocracy, if its existence were defensible on other grounds. Nor is there any evidence that Paine objected to the employment of domestic, as opposed to feudal, servants, so long as they chose their occupation freely and were not exploited. As for the degeneracy of either the aristocracy or the Jews towards the end of the eighteenth century, I do not know that they were any worse than their forebears. Later on the aristocracy, in England at least, was to gain strength by its readiness to incorporate new blood.

I am not saying that any of this invalidates Paine's principal objections to hereditary offices. On the contrary, I think that they are cogent. I have already remarked that as an out-and-out Republican Paine would have taken exception even to the mild form of monarchy that we still possess in England but if our snobbery is ineradicable, as it appears to be, I suppose that it might as well play upon the royal family as upon television personalities or pop-stars. So far as this goes, it does not seem to me to matter that our monarchy should be hereditary.

Whatever arguments there may be for or against hereditary offices, they can surely not be claimed as natural rights. But is there anything that can? I have already suggested that natural rights are fictions. At best, the invocation of them is a disguise for some moral judgement, which may very well be acceptable.

As we have seen, this is not Paine's view, though his position would not be weakened if it were. It might even be strengthened since he would then be required to give some tenable account of the provenance

¹ *ibid.*, p. 83.

² *ibid.*

³ *ibid.*

of civil rights, instead of making 'natural rights' do all the work. The following is a clear statement of his theory:

Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. – Civil rights are those which appertain to man in right of his being a member of society. Every civil right has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.¹

The question whether one has a right to one's own opinions is not so simple as it would at first appear. One is tempted to say that a man is free to think what he pleases, so long as the expression of his thoughts or the actions to which they lead him do not cause excessive injury to others. But should not the disposition to have such thoughts be in any way controlled? A child does not come into the world with a set of ready-made opinions. In a liberal society, he will be encouraged to think for himself, but his method of thinking and the conclusions which he reaches will be causally dependent, to a considerable extent, upon his upbringing and education. One may in fact strongly disapprove of both, but can one reasonably expect of those who train the child that they make no effort to induce him to believe what they think true or act in the ways that they think right? Unfortunately, the number of fanatics more than keeps pace with those who are ready to admit that they are fallible. It is not even universally the case, though undoubtedly it should be, that men are not caused to suffer through the mere suspicion of their entertaining thoughts, which they do not venture to express.

What if they do express them? The right of free speech is on a par with what Paine and Jefferson deem the natural right to the pursuit of happiness. In both cases, there is the proviso that some account must be taken of the effect upon others. In both cases also the answer is platitudinous. In view of the ruthlessness which many men and women display in their pursuit of happiness, there is a strong case for subjecting it to greater restrictions than apply to freedom of speech. This is not, however, to say that so far as freedom of speech goes there

¹ *Rights of Man*, p. 68.

should be no restrictions at all. I should indeed be happy to discover a cogent argument in favour of complete tolerance, but I am not able to do so. As to where the limits should be set, I have nothing more helpful to say than that it is only in very exceptional circumstances that they should be narrowed.

Paine's assertion that every civil right grows out of a natural right is rather surprising, since he has not included the acquisition and retention of property in his own list of natural rights though we shall see that he acquiesces in its inclusion in the French Declaration of them. Perhaps he meant it to be comprised in 'all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others,' but this description is so vague and its range so extensive that there is no saying what civil rights might be represented as growing out of the 'natural right' to which it refers. There is also the problem that they would not be the same in all forms of society or at every stage of a society's development. This problem does, indeed, become less serious for Paine through his denial of the legitimacy of any government that does not satisfy his strict conditions for being genuinely representative; but even among the governments that do come up to his standards, the unavoidable differences in the societies which they govern will make for diversity in the measures which they would be best advised to take in promoting the happiness of their electors.

Without bothering, or perhaps being equipped, to delve into anthropology, Paine distinguishes successive stages in the emergence of government out of society. In his own words:

They may be all comprehended under three heads. First, Superstition. Secondly, Power. Thirdly, The common interest of society, and the common rights of man.

The first was a government of priestcraft, the second of conquerors, and the third of reason.¹

At this point Paine appears to be caught in a contradiction. On the one hand, we have found him holding that society precedes any form of government; on the other, he now goes on to say that only governments of reason 'arise out' of society. There seem to me to be two ways in which the contradiction could be shown to be merely apparent. We might construe the expression 'arise out of' as implying only a

¹ *ibid.*, p. 69.

legitimate process. Alternatively, we might assume that Paine regarded the social contract not as responsible for the formation of society out of 'the state of nature' but as the necessary condition for the emergence of any rational form of government. I favour the second option, both because the first seems rather the more strained, and also, irrationally, because the second diminishes Paine's commitment to a fiction.

Lest my choice should seem altogether biased, I shall argue that it has some slight textual support. Without mentioning Locke, Paine rejects Locke's theory of the social contract as being a contract between a sovereign, whether it be a single person or an assembly, and the persons who voluntarily put themselves under the sovereign's rule. The ground on which Paine rejects this theory is that

it is putting the effect before the cause; for as man must have existed before governments existed, there necessarily was a time when governments did not exist, and consequently there could originally exist no governors to form such a compact with. The fact therefore must be, that the *individuals themselves*, each in his own personal and sovereign right, *entered into a compact with each other* to produce a government: and this is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist.¹

Paine's argument is fallacious, since Locke's theory is consistent with the parties' to the contract choosing a sovereign from among themselves, rather than agreeing to acknowledge a sovereign who already existed as such. Neither is it conclusive on the question at issue, since it does not explicitly reject Locke's view of the individuals who participate in the social contract as only thereby emerging from the state of nature. There are, however, three points that seem to me to tell in my favour. One is that Paine would have no good reason for distinguishing, as he firmly does, between society and government if he agreed with Hobbes and Locke that the same act brought them both into existence. Another is his referring to his version of the social contract in the conclusion of the passage which I have just quoted as the only mode and principle on which governments have a right to exist, as opposed to saying that it is the only way in which they do originate. The third is his asserting in the following paragraph that 'governments must have arisen, either *out* of the people, or *over* the people'.² In the

¹ *Rights of Man*, p. 70.

² *ibid.*, p. 71.

second case, there need be no social contract. Yet it would not follow from this that the unfortunate people who were governed by priests and conquerors did not count as a society.

A fact which might be adduced against me is Paine's saying that 'a government is only the creature of a constitution',¹ which is antecedent to it; for plainly this need not be true of governments other than those of reason. It is, however, soon made clear that Paine has only governments of this third sort in mind, since he goes on to tease Burke by finding it doubtful whether there is an English Constitution, surely without intending to imply that there was no English government.

Paine then proceeds to list a series of items in the new Constitution of France to each of which he challenges Burke to find a satisfactory English equivalent.

The first is that whereas in England the qualifications for being a parliamentary elector were arbitrary and capricious, as indeed they very largely were in 1791, in France every man who pays a small tax is qualified. What is still surprising here is that Paine consents to there being any financial qualification at all. In fact he was soon to declare himself in favour of universal male suffrage. Unlike Mary Wollstonecraft, who also published a rebuttal of Burke's *Reflections*, Paine never went so far as to advocate votes for women.

The next item in which the French clearly had the advantage was the establishment of a ratio between the number of electors in a given constituency and the number of its parliamentary representatives. The extreme disproportion that obtained in England in this matter was mitigated, though not wholly removed, by the passage of the Reform Bill of 1832.

A more dubious item was the rule that the National Assembly should be elected every two years. While this is clearly preferable to a state of affairs in which the duration of a parliament is subject to no fixed rules at all, the shortness of its life would surely lead, among other disadvantages, to a surfeit of electioneering.

The next mark of superiority that Paine discovers in the French Constitution is a conjunction of its abolition of the game laws, leaving the farmer free to take any game that he finds on his land, and the rule 'That there shall be no monopolies of any kind – that all trade shall be free, and every man free to follow any occupation by which he can procure an honest livelihood, and in any place, town or city throughout the nation.'² About the game laws there need be no argument but I

¹ *ibid.*

² *ibid.*, p. 74.

confess that it is not clear to me what Paine regarded as coming under the heading of monopolies. The only example he gives, apart from a further reference to electoral anomalies, is that of a 'chartered town'. Possibly he was referring to privileges which were relics of the mediaeval guilds. Later on he was to pronounce himself in favour of the trade unions, but he may not have envisaged the growth of their commitment to restrictive practices.

I can see no objection to the statement, quoted with approval by Paine, that 'the right of war and peace is in the nation', except that it is redundant. Obviously except in the case of civil war, which is not here in question, the decision to go to war or to make peace is always going to be taken by the government, so that the attribution of it to the nation is no more than a way of repeating the claim that the government, which conforms to the French Constitution, properly represents the nation.

There remains one item in Paine's summary of the French Constitution that seems to me controversial. It is that 'to preserve the national representation from being corrupt,' no member of the National Assembly shall be an officer of the government, a place-man, or a pensioner'.¹ While I am willing to let the cases of place-men and pensioners, that is to say, persons paid for their covert services to the government, go by default, I am not convinced that the separation between the legislature and the executive should be so wide as this article of the Constitution makes it. Such a separation still exists in the United States, and the recent examples of the way in which it operates are not encouraging. In fact the difficulties which the members of the legislature encounter in finding out what the Chief Executive and his lieutenants are actually doing are not much of a safeguard against corruption. Even if there is less to be gained by bribing legislators, the greater opportunity afforded for bribing members of the executive, whose identity may not even be known, is likely to cause greater mischief and to bring the nation into greater disrepute.

After an historical excursion into the cause of the summoning of the Third Estate, leading to a description of the manner in which the National Assembly came to power, Paine turns to consider the Assembly's *Declaration of the Rights of Man and of Citizens*. The number of articles in the Declaration is seventeen but Paine remarks that fourteen of them do no more than elucidate or follow from the first three which comprehend the whole Declaration in general terms. As usual, the preamble to the Declaration acknowledges the rights which it enunciates

¹ *Rights of Man*, p. 76.

as 'natural, imprescriptible, and inalienable'. In this instance, they are also said to be sacred.

The three articles on which Paine takes the rest to depend run as follows:

I Men are born, and always continue, free, and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.

II The end of all political associations, is, the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.

III The nation is essentially the source of all sovereignty; nor can any INDIVIDUAL, or ANY BODY OF MEN, be entitled to any authority which is not expressly derived from it.¹

In discussing these assertions I have little to add to what I have already written on the subject of the American Declaration of Independence. The only new problems that arise out of the first of them are those of divining what Paine understood by 'civil distinctions' and 'public utility'. In default of any elucidations to be found in the remainder of the French Declaration, I venture to take 'civil distinctions' as comprising not only differences in the amount and type of authority that is entrusted to different citizens, but also in the amount and type of property to which they are severally held to be legally entitled. Paine's Republicanism bore only on the forms of government; he was not an economic leveller. We shall see, in a moment, that he was very greatly concerned with the welfare of the poorer members of society, but he never thought it possible, or perhaps even desirable, to do away with all disparities in wealth.

So far as I know there is no evidence that Paine ever met Jeremy Bentham or that he had read Bentham's *An Introduction to the Principles of Morals and Legislation*, though it would have been possible for him to have done so, since Bentham's book was published in 1780. Nevertheless I think it reasonable to equate his concept of 'public utility' with Bentham's principle of utility, which is a summarization of his dictum: 'The right and proper end of government in every political community is the greatest happiness of all the individuals of which it is composed,

¹ *ibid.*, p. 110.

say, in other words, the greatest happiness of the greatest number.' There are well-known objections to this formula, including the objection that it is impossible for anyone to estimate all the consequences of any given action. This is usually met by confining the application of Bentham's principle to those consequences of his actions that an agent can reasonably be expected to foresee.

Even when it is restricted in this way it may be objected that the principle cannot be applied with anything approaching mathematical exactitude. Nevertheless I do think it possible to attach at least a high probability to the judgement that the general observance in some society of a given set of rules will spread more happiness throughout the society than the neglect of those rules or the substitution for them of some other set; and this seems to me all that Bentham and Paine require.

Bolder than Jefferson, the authors of the French Declaration, as we have just seen, include property among man's natural rights, asserting in their final article that no one ought to be deprived of his property 'except in cases of evident public necessity, legally ascertained, and on condition of a previous just indemnity'.¹ Unfortunately, they do not explain with what amount or kind of property man is naturally endowed, or what he is permitted to do with it. For instance, it seems to me quite probable that they would have allowed a natural right of barter, but would not have extended it to usury. Yet they make no attempt to justify or even trouble to draw any such distinction. The fact is, as I have already argued, that one's right to possess and dispose of property is a civil right, and what a political theorist calls a natural right to property is no more than the distribution of property which is endorsed by the political system of which he morally approves.

The question how the concept of liberty is to be interpreted is the only one that is thoroughly elucidated in the declarations that follow the first three. Political Liberty is said to consist in 'the power of doing whatever does not injure another'. The trouble with this definition is not only that there is no authoritative way of delimiting the bounds of injury, but that people injure one another in ways that have nothing to do with politics. This would apply, for example, to many family quarrels and other social contexts in which one person hurts another's feelings, or even does him physical injury in the course of some sporting event, possibly without infringing the rules of the game. Not even the most authoritarian regime could extend its mastery over all such

¹ *Rights of Man*, p. 112.

occurrences. Besides, the purpose of the definition was to extend the range of political liberty, not diminish it. Not but what the fifteenth declaration strikes an alarming note. 'Every community has a right to demand of all its agents, an account of their conduct.' Even bearing in mind that the word 'agents' here refers only to the minority of citizens who are entrusted by their fellows with some public office, one might think this an excessive encroachment of the State upon personal liberty. This objection might, however, be removed if one took the word 'conduct', as the authors of the declaration most probably intended, to refer only to the agents' performance of their official duties. Even so, admittedly with hindsight, one can perceive the seeds of the Reign of Terror being sown.

That 'the law ought to prohibit only actions hurtful to society'¹ is a principle that suffers, once again, from the difficulty of determining what is or is not 'hurtful to society'. There is, however, the point, to which I have already alluded, that it is easier to make a rough estimate of what is hurtful to a given society in general, than to measure the harm likely to be suffered by its members individually. There is also the difficulty, with which I have not yet dealt, that actions which are not directly hurtful to society, may be so indirectly. One is inclined to say that a man ought to be allowed, at least in private, to drink when and what and how much he pleases, and also to take whatever drugs he can obtain, if they give him satisfaction. On the other hand, there is abundant evidence that addiction to alcohol and certain sorts of drugs is not only a source of harm to the addict's family and friends but frequently conducive to crime, and surely it is the duty of any government to prevent crime if it can.

Let me say at once that we need to be wary of this last assertion. I admit that so far as political liberty is concerned, the position of the average citizen in this country compares favourably with that of the average member of an Eastern European or Latin American State. All the same I hold it to be true of England at the present time that the power of the police 'has increased, is increasing and ought to be diminished'. Consequently, I am opposed to any measure that gives the police the authority, which they are already prone to assume, to harass any citizen, of whatever colour, on the mere suspicion that he is likely to commit a criminal offence. I am equally chary of allowing them the right to search people's houses, except under strict legal conditions, and am unmoved by the rubbish that politicians talk about national

¹ *ibid.*, p. 111.

security. Nevertheless the police must clearly be allotted some more useful function than those of controlling motor traffic, directing tourists to Madame Tussaud's and escorting elderly persons across the streets.

What does this amount to concretely? To say that the police should not engage in harassment is not to say that they should connive at the harassment of Asians by white hooligans, which there is evidence that they do. I believe also that they should be allowed to judge when an assembly, such as a protest march, is likely to provoke a riot, and then be given the authority to control it, and in extreme cases obtain legal sanction to prohibit it. I think that there is also a case for their being allowed to frustrate criminal conspiracy, though the evidence that it is going forward needs to be very strong.

As regards alcohol and drugs, I take the conventional view that the sale of alcohol should not be a criminal offence, whereas the sale of more noxious drugs, such as heroin, should be. To some extent this judgement may reflect my personal taste. Even in the case of drugs, I do not think that mere possession should be accounted criminal, unless it can be shown to be for the purpose of sale.

A great deal of this may sound platitudinous, but it does not follow that the questions at issue are easy to decide. Neither is there any easy answer to the question whether and in what ways the law should be used to protect a person from himself, even when his actions are not plainly injurious to others. Here the example of cigarette smoking is currently in point. Once more I take the conventional view that the sale of cigarettes should not be prohibited, but that the means adopted by their manufacturers to promote sales should not be unimpeded.

The other articles concerning law in the French Declaration appear to me obviously acceptable. I entirely agree that 'no man should be accused, arrested, or held in confinement, except in cases determined by the law, and according to the forms which it has prescribed'; that 'the law ought to impose no other penalties but such as are absolutely and evidently necessary: and no one ought to be punished, but in virtue of a law promulgated before the offence, and legally applied'; and finally that 'every man being presumed innocent till he has been convicted, whenever his detention becomes indispensable, all rigour to him, more than is necessary to secure his person, ought to be provided against by the law'.

Here too, however, there are problems. For instance, it is not clear that the second of the principles that I have just quoted is consistent with the Nuremberg trial of war criminals. I find this disturbing, though an attempt might be made to justify the Nuremberg proceedings

on the ground that International Law was not at that time sufficiently developed for such principles to be applicable to it. If this sounds rather specious, one might assert more boldly that while Hobbes's version of the state of nature does not explain the origin of all forms of society, it did apply over a long period of time to the relationship between nations; and that the imposing of a legal pattern at Nuremberg on the vengeance taken upon men who had been proved to have been engaged in very evil deeds was an attempt on the part of the victorious nations to show that the state of nature in which they had mutually dwelt was a thing of the past; an attempt which I am sorry to say has not yet proved to be altogether successful.

The other problems to which I referred were that it is not at all obvious when a penalty is 'absolutely and evidently necessary' and that while there are cases in which the probability of a man's guilt and his contriving to avoid being brought to trial are such as to justify his detention before he has been convicted, it is difficult to determine where to draw the line or even enforce a consistent policy. I do not intend to embark upon a further discussion concerning the current deficiencies of this country's penal system. I claim only that they are not likely to be remedied by making a political slogan out of the need for the restoration of law and order.

Though there is no mention of a natural right to free speech in any of the three articles in which Paine takes all the others to be rooted, it is mentioned in two of the subsequent articles.¹ Thus article X runs:

No man ought to be molested on account of his opinions, not even on account of his *religious* opinions, provided his avowal of them does not disturb the public order established by the law.

And article XI:

The unrestrained communication of thoughts and opinions being one of the most precious rights of man, every citizen may speak, write, and publish freely, provided he is responsible for the abuse of this liberty in cases determined by the law.

I have already commented on the difficulty of deciding how far freedom of speech is diminished by such provisos and have nothing further to say which would help to resolve it.

¹ *Rights of Man*, pp. 111-12.

The third of Paine's three main articles can more easily pass without further comment. It reduces to a reaffirmation of the belief, which he shares with the authors of the French Declaration, that only a representative form of government is legitimate.

Following his exposition of the French *Declaration of the Rights of Man and of Citizens*, Paine reverts to his attack on Burke, which occupies the greater part of what he appropriately entitles a 'Miscellaneous Chapter'. He now accuses Burke of crediting the British government with hereditary wisdom and ridicules his political empiricism by saying, unfairly, that it means that the government is governed by no principle whatever, coming, however, closer to the facts when he goes on to equate it with arbitrary power. He reaffirms his contempt for William the Conqueror, describing him as 'the plunderer of the English nation' and on this occasion not merely as a bastard but as 'the son of a prostitute'.¹ In appearing to regard this as a disqualification for kingship he has allowed himself to overlook his objections to the notice taken of heredity.

That this is not a serious lapse is proved by the fact that the passage occurs in the course of a renewed onslaught on the theory and practice of hereditary succession in any form of government. This onslaught, constantly reinforced by forays against Burke, is conducted with relish at considerable length but it adds no further arguments to those that Paine has previously advanced.

Eventually, Paine professes to change the subject by concluding his chapter with 'a concise review of the state of parties and politics in England'. He does not, however, change it very much as the salient points in his concise review are that England does not possess a Constitution, that the popularity unprecedentedly enjoyed by the Hanoverian court in the period following the American Revolution was due to the nation's antipathy to the Coalition Parliament, that in the dispute between Fox and Pitt over the appointment of the Prince Regent, Pitt only appeared to take the parliamentary ground, but in fact took the hereditary ground in an even worse way than Fox, absorbing the rights of the nation into the unrepresentative House of Commons and making the nation itself into a cypher, and finally that England was bound to follow the lead of France in undertaking a constitutional reformation, if only because of the financial troubles which its government was already suffering as a result of its substitution of paper money for honest gold and silver coinage. In his distrust of

¹ *Rights of Man*, p. 118.

the employment of paper money, Paine is for once in agreement with Burke, but he will not allow that it presents the same danger to France, on the grounds that France, with a smaller debt than England, still has a greater quantity of gold and silver in circulation, that it has a much larger population to support the payment of taxes and that it possesses 'an extent of rich and fertile country above four times larger than England'. It is to be remembered that he was writing near the start of the Industrial Revolution before its development had enabled English manufacturers and merchants to enjoy the greater prosperity.

In the fairly short chapter with which Paine brings the first part of his book to its conclusion he equates the difference between government by election and representation and government by hereditary succession with that between reason and ignorance. Having begun by saying that these are the two modes of government that prevail in the world, he proceeds to criticize what he calls mixed governments, of which the government of England is presumably his chief example. His objections to a mixed government are not stated with his usual clarity or supported by his usual profusion of argument. I will, however, quote the paragraph in which they are summarized for what it is worth:

When there is a part in a Government [in England, the Monarch] which can do no wrong, it implies that it does nothing; and is only the machine of another power, by whose advice and direction it acts. What is supposed to be the King in mixed Governments, is the Cabinet; and as the Cabinet is always a part of the Parliament, and the members justifying in one character what they advise and act in another, a mixed Government becomes a continual enigma; entailing upon a country, by the quantity of corruption necessary to solder the parts, the expense of supporting all the forms of Government at once, and finally resolving itself into a Government by committee; in which the advisers, the actors, the approvers, the justifiers, the persons responsible, and the persons not responsible, are the same persons.¹

I have to say that it is not clear to me why a mixed government should be intrinsically more expensive than a representative government, though it might become so owing to the expense of maintaining a royal family and an aristocracy. Nor do I see why a single Assembly should be more liable to corruption than a government in which the

¹ *ibid.*, p. 141.

executive is separated from the legislature. In fact, while the limitations on the English parliamentary electorate did foster corruption, American politicians, operating under a system which was closer to satisfying Paine's criteria, were notoriously more corrupt throughout the nineteenth century than members of the British House of Commons.

The only argument that Paine puts forward on this question is that in 'a well-constituted republic' where the representatives who govern it all have 'one and the same natural source', 'the parts are not foreigners to each other, like democracy, aristocracy, and monarchy' and will therefore be more disposed to reach political agreement without the influence of intrigue or bribery. He could indeed hardly have been expected to foresee how soon the leaders of the French Assembly would be destroying one another, though it might have occurred to him that emergence from the same natural source was not incompatible with murderous differences of principle.

Having fastened on monarchical governments the dubious charge that they favoured wars because they entailed an increase of taxes which added to their revenues, Paine attributes to Henri IV of France, no later than 1610, the proposal to create what amounted to a League of Nations, with delegates appointed to settle all disputes by arbitration. Paine not only hoped but came near to predicting that this proposal would be soon revived. In the light of the history of the past two centuries, his final paragraph makes sad reading:

From what we now see, nothing of reform in the political world ought to be held improbable. It is an age of Revolutions, in which everything may be looked for. The intrigue of Courts, by which the system of war is kept up, may provoke a confederation of Nations to abolish it: and an European Congress, to patronize the progress of free Government, and promote the civilization of Nations with each other, is an event nearer in probability, than once were the Revolutions and Alliance of France and America.¹

¹ *Rights of Man*, pp. 146-7.