

## AN ENQUIRY CONCERNING POLITICAL JUSTICE

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### CHAPTER V / RIGHTS OF MAN

The question stated. -- Foundation of society. -- Opposite rights impossible. -- Conclusion from these premises. -- Discretion considered. -- Rights of kings. -- Immoral consequences of the doctrine of rights. -- Rights of communities. -- Objections: 1. The right of mutual aid. -- Explanation. -- Origin of the term, right. -- 2. Rights of private judgment and the press. -- Explanation. -- Reasons of this limitation upon the functions of the community: 1. The inutility of attempting restraint. -- 2. Its pernicious tendency. -- Conclusion.

{109} There is no subject that has been discussed with more eagerness and pertinacity than the rights of man. Has he any rights, or has he none? Much may plausibly be alledged on both sides of this question; and in the conclusion those reasoners appear to express themselves with the greatest accuracy who embrace the negative. There is nothing that has been of greater disservice to the cause of truth, than the hasty and unguarded manner in which its advocates have sometimes defended it: and {110} it will be admitted to be peculiarly unfortunate, if the advocates of one side of this question should be found to have the greatest quantity of truth, while their adversaries have expressed themselves in a manner more consonant to reason and the nature of things. Where the question has been so extremely darkened by an ambiguous use of terms, it may at any rate be desirable to try, whether, by a patient and severe investigation of the first principles of political society, it may be placed in a light considerably different from the views of both parties.

Political society, as has already been observed, is founded in the principles of morality and justice. It is impossible for intellectual beings to be brought into coalition and intercourse, without a certain mode of conduct, adapted to their nature and connection, immediately becoming a duty incumbent on the parties concerned. Men would never have associated, if they had not imagined that in consequence of that association they would mutually conduce the advantage and happiness of each other. This is the real purpose, the genuine basis of their intercourse; and, as far as this purpose is answered, so far does society answer the end of its institution.

There is only one postulate more, that is necessary to bring us to a conclusive mode of reasoning upon this subject. Whatever is meant by the term right, for it will presently appear that the sense of the term itself has never been clearly understood, {111} there can neither be opposite rights, nor rights and duties hostile to each other. The rights of one man cannot clash with or be destructive of the rights of another; for this, instead of rendering the subject an important branch of truth and morality, as the advocates of the rights of man certainly understand it to be, would be to reduce it to a heap of unintelligible jargon and inconsistency. If one man have a right to be free, another man cannot have a right to make him a slave; if one man have a right to inflict chastisement upon me, I cannot have a right to withdraw myself from chastisement; if my neighbour have a right to a sum of money in my possession, I cannot have a right to retain

it in my pocket. It cannot be less incontrovertible, that I have no right to omit what my duty prescribes.

From hence it inevitably follows that men have no rights. By right, as the word is employed in this subject, has always been understood discretion, that is, a full and complete power of either doing a thing or omitting it, without the person's becoming liable to animadversion or censure from another, that is, in other words, without his incurring any degree of turpitude or guilt. Now in this sense I affirm that man has no rights, no discretionary power whatever.

It is commonly said, 'that a man has a right to the disposal of his fortune, a right to the employment of his time, a right to the uncontrolled choice of his profession or pursuits.' But this {112} can never be consistently affirmed till it can be shewn that he has no duties, prescribing and limiting his mode of proceeding in all these respects. My neighbour has just as much right to put an end to my existence with dagger or poison, as to deny me that pecuniary assistance without which I must starve, or as to deny me that assistance without which my intellectual attainments or my moral exertions will be materially injured. He has just as much right to amuse himself with burning my house or torturing my children upon the rack, as to shut himself up in a cell careless about his fellow men, and to hide 'his talent in a napkin.'

If men have any rights, any discretionary powers, they must be in things of total indifference, as whether I sit on the right or on the left side of my fire, or dine on beef today or tomorrow. Even these rights are much fewer than we are apt to imagine, since before they can be completely established, it must be proved that my choice on one side or the other can in no possible way contribute to the benefit or injury of myself or of any other person in the world. Those must indeed be rights well worth the contending for, the very essence of which consists in their absolute nugatoriness and inutility.

In reality nothing can appear more wonderful to a careful enquirer, than that two ideas so incompatible as man and rights should ever have been associated together. Certain it is, that one {113} of them must be utterly exclusive and annihilatory of the other. Before we ascribe rights to man, we must conceive of him as a being endowed with intellect, and capable of discerning the differences and tendencies of things. But a being endowed with intellect, and capable of discerning the differences and tendencies of things, instantly becomes a moral being, and has duties incumbent on him to discharge: and duties and rights, as has already been shewn, are absolutely exclusive of each other.

It has been affirmed by the zealous advocates of liberty, 'that princes and magistrates have no rights;' and no position can be more incontrovertible. There is no situation of their lives that has not its correspondent duties. There is no power intrusted to them that they are not bound to exercise exclusively for the public good. It is strange that persons adopting this principle did not go a step farther, and perceive that the same restrictions were applicable to subjects and citizens.

Nor is the fallacy of this language more conspicuous than its immoral tendency. To this inaccurate and unjust use of the term right we owe it, that the miser, who accumulates to no end that which diffused would have conduced to the welfare of thousands, that the luxurious man, who wallows in indulgence and sees numerous families around him pining in beggary, never fail to tell us of their rights, and to silence animadversion and quiet the censure of their own mind by reminding us, 'that they {114} came fairly into possession of their wealth, that they owe no debts, and that of consequence no man has authority to enquire into their private manner of disposing of that which is their own.' A great majority of mankind are conscious that they stand in need of this sort of defence, and are therefore very ready to combine against the insolent intruder, who ventures to enquire into 'things that do not concern him.' They forget, that the wise man and the honest man, the friend of his country and his kind, is concerned for every thing by which they may be affected, and carries about with him a diploma, constituting him inquisitor general of the moral conduct of his neighbours, with a duty annexed to recall them to virtue, by every lesson that truth can enable him to read, and every punishment that plain speaking is competent to inflict.

It is scarcely necessary to add, that, if individuals have no rights, neither has society, which possesses nothing but what individuals have brought into a common stock. The absurdity of the common opinion, as applied to this subject, is still more glaring, if possible, than in the view in which we have already considered it. According to the usual sentiment every club assembling for any civil purpose, every congregation of religionists assembling for the worship of God, has a right to establish any provisions or ceremonies, no matter how ridiculous or detestable, provided they do not interfere with the freedom of others. Reason lies prostrate under their feet. They have a right to trample {115} upon and insult her as they please. It is in the same spirit we have been told that every nation has a right to choose its form of government. A most acute, original and inestimable author was probably misled by the vulgar phraseology on this subject, when he asserted, that, 'at a time when neither the people of France nor the national assembly were troubling themselves about the affairs of England or the English parliament, Mr. Burke's conduct was unpardonable in commencing an unprovoked attack upon them<sup>1</sup>.'

There are various objections that suggest themselves to the theory which subverts the rights of men; and if the theory be true, they will probably appear in the result to be so far from really hostile to it, as to be found more fairly deducible from and consistent with its principles, than with any of those with which they have inadvertently been connected.

In the first place it has sometimes been alledged, and seems to result from the reasonings already adduced under the head of justice, that 'men have a right to the assistance and co-operation of their fellows in every honest pursuit.' But, when we assert this proposition, we mean something by the word right exceedingly different from what is commonly understood by the term. We do not understand something discretionary, which, if not voluntarily fulfilled, cannot be considered as a matter of claim. {116} On the contrary every thing

adduced upon that occasion was calculated to show that it was a matter of strict claim; and perhaps something would be gained with respect to perspicuity, if we rather chose to distinguish it by that appellation, than by a name so much abused, and so ambiguous in its application, as the term right.

The true origin of this latter term is relative to the present state of political government, in which many of those actions which moral duty most strictly enjoins us are in no degree brought within the sphere of legislative sanction. Men uninfluenced by comprehensive principles of justice, commit every species of intemperance, are selfish, hard-hearted, licentious and cruel, and maintain their right to all these caprices, because the laws of their country are silent with regard to them. Philosophers and political enquirers have too frequently adopted the same principles with a certain degree of accommodation; though in fact men have no more right to these erroneous propensities in their most qualified sense, than they had to them originally in all their extravagance. It is true, that, under the forms of society now existing in the world, intemperance and the caprices of personal intercourse too frequently escape without animadversion. But in a more perfect form, though they may not fall under the cognisance of law, the offender will probably be so unequivocally reminded by the sincerity of his neighbours of the error he has {117} committed, as to be in no danger of running away with the opinion that he had a right to commit it.

A second and more important objection to the doctrine I am maintaining is derived from the rights as they are called of private judgment, and the liberty of the press. But it may easily be shewn, that these, no more than the articles already mentioned, are rights of discretion. If they were, they would prove, that a man was strictly justifiable in publishing what he believed to be pernicious or false, and that it was a matter of perfect moral indifference whether he conformed to the religious rites of Confucius, of Mahomet, or of Christ. The political freedom of conscience and of the press so far from being as it is commonly supposed an extension, is a new case of the limitation of rights and discretion. Conscience and the press ought to be unrestrained, not because men have a right to deviate from the exact line that duty prescribes, but because society, the aggregate of individuals, has no right to assume the prerogative of an infallible judge, and to undertake authoritatively to prescribe to its members in matters of pure speculation.

One obvious reason against this assumption on the part of the society is the impossibility by any compulsory method of bringing men to uniformity of opinion. The judgment we form upon topics of general truth, is or is imagined to be founded upon evidence: and, however it may be soothed by gentle applications {118} to the betraying its impartiality, it is apt to repel with no little pertinacity whatever comes under the form of compulsion. Persecution cannot persuade the understanding, even when it subdues our resolution. It may make us hypocrites; but cannot make us converts. The government therefore, which is anxious above all things to imbue its subjects with integrity and virtue, will be the farthest in the world from discouraging them in the explicit avowal of their sentiments.

But there is another reason of a higher order. Man is not, as has been already shewn, a perfect being, but perfectible. No government, that has yet existed, or is likely presently to exist upon the face of the earth, is faultless. No government ought therefore pertinaciously to resist the change of its own institutions; and still less ought it to set up a standard upon the various topics of human speculation, to restrain the excursions of an inventive mind. It is only by giving a free scope to these excursions, that science, philosophy and morals have arrived at their present degree of perfection, in comparison of which all that has already done will perhaps appear childish. But a proceeding, absolutely necessary for the purpose of exciting the mind to these salutary excursions, and still more necessary in order to give them their proper operation, consists in the unrestrained communication of men's thoughts and discoveries to each other. If every man have to begin again at the point from which his {119} neighbour set out, the labour will be endless, and the progress in an unvarying circle. There is nothing that more eminently contributes to intellectual energy, than for every man to be habituated to follow without alarm the train of his speculations, and to utter without fear the conclusions that have suggested themselves to him. But does all this imply that men have a right to act any thing but virtue, and to utter any thing but truth? Certainly not. It implies indeed that there are points with which society has no right to interfere, not that discretion and caprice are more free, or duty less strict upon these points, than upon any others with which human action is conversant.