

TWO HUNDRED YEARS OF MYTH

WHAT THE “DÉCLARATION DES DROITS DE L’HOMME ET DU CITOYEN” REALLY SAID

ANTOINE CLARKE

In August 1789, the Constituent Assembly in Paris voted for a set of principles which were later to form the Preamble to the Constitution of September 3rd 1791 which established a constitutional monarchy. This document was the “Déclaration des Droits de l’Homme et du Citoyen”, which I translate as the “Declaration of the Rights of Man and Citizen”. It contains seventeen articles, making it one of the shortest documents of its kind. On page 1 of this, I offer a translation of all seventeen articles of the Declaration. On page 2, I comment on them, and on their intellectual ancestry.

DECLARATION OF THE RIGHTS OF MAN AND CITIZEN

- 1st Article:** Men are born and remain free and equal in rights. Social distinctions can only be based on social utility.
- 2nd Article:** The goal of any political association is the conservation of the natural and imprescriptible rights of man. These rights are: liberty, property, security and resistance to oppression.
- 3rd Article:** The principle of all sovereignty essentially resides with the nation. No body, no individual, may exercise an authority which doesn't expressly emanate from the nation.
- 4th Article:** Liberty consists of being empowered to do anything that doesn't harm another. Therefore the existence of the natural rights of every man is subject only to those restrictions which assure to the other members of society the enjoyment of those same rights. These restrictions can only be determined by law.
- 5th Article:** The law may only forbid actions which are detrimental to society. All that is not forbidden by law cannot be prevented, and no one can be compelled to do what the law doesn't require.
- 6th Article:** The law is the expression of the general will. All citizens have the right to act personally or through their representatives, towards its formation. It must be the same for all, whether it protects, whether it punishes. All citizens, being equal in the eyes of the law, are equally admissible to all dignities, public places and employment, according to their capacity and with no other distinction than that of their virtues and their talents.
- 7th Article:** No man can be accused, arrested or detained, except in cases determined by the law and according to its prescribed forms. Those who solicit, send out, execute or cause the execution of arbitrary orders, must be punished; but any citizen called or seized in virtue of the law must instantly obey: he renders himself guilty by resistance.
- 8th Article:** The law can establish only such penalties as are strictly and evidently necessary, and one can only be punished in virtue of law established and promulgated prior to the offence and legally applied.
- 9th Article:** Every man being presumed innocent until found guilty, if it is considered essential to arrest him any rigour which wasn't necessary to assure his person must be severely repressed by law.
- 10th Article:** No one may be troubled for their opinions, even religious, provided their manifestation does not trouble the public order established by the law.
- 11th Article:** The free communication of ideas and opinions is one of the most precious rights of man; any citizen may therefore speak, write, publish freely, except to answer for the abuse of this freedom in cases determined by law.
- 12th Article:** The guarantee of the rights of man and citizen necessitates a public force; this force is therefore instituted for the advantage of all, and not for the personal conveniences of those to whom it is entrusted.
- 13th Article:** For the maintenance of the public force and for administrative expenses, a common contribution is indispensable, it must be equally distributed among all citizens, within the limits of their abilities.
- 14th Article:** All citizens have the right to scrutiny, by themselves or through their representatives, of the necessity of public contribution, to give free consent, to verify its use and to determine what percentages are to be used, the items that are taxable, the method of collection and its duration.
- 15th Article:** Society has the right to demand account from any public agency of its administration.
- 16th Article:** Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no constitution.
- 17th Article:** Property being an inviolate and sacred right, none may be deprived of it, except when public necessity, legally established, obviously requires, and then under the condition of a fair and prior indemnity.

Historical Notes No. 7

ISSN 0267 7105 ISBN 1 870614 25 9

An occasional publication of the Libertarian Alliance, 25 Chapter Chambers, Esterbrooke Street, London SW1P 4NN
www.libertarian.co.uk email: admin@libertarian.co.uk

© 1989: Libertarian Alliance; Antoine Clarke. Antoine Clarke is a student at London University.

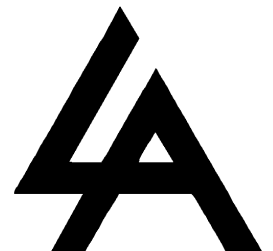
The views expressed in this publication are those of its authors, and not necessarily those of the Libertarian Alliance, its Committee, Advisory Council or subscribers.

Director: Dr Chris R. Tame

Editorial Director: Brian Micklethwait

Webmaster: Dr Sean Gabb

FOR LIFE, LIBERTY AND PROPERTY



I am convinced - from the irrelevant verbiage of Michael Foot and Melvyn Bragg on Channel 4's coverage of the 'Paris 200' celebrations - that very few people (least of all the "experts") actually take the trouble to read the Declaration.

This is demonstrated by the spurious arguments about its 'socialist' origin or the intended 'socialist' results. One only has to read articles 2 and 17 to realise that a socialist would probably be regarded by the Declaration's authors, not merely as subversive, but contradictory to nature and a criminal act against humanity.

The modern concern about 'civil liberties' does originate from this document - it results from a certain ambiguity in the text, and the perverted intentions of the proponents of 'true liberty'. In 1789, the concern against decrees was largely to do with the unpredictable nature of law. No businessman could plan intelligent investment timetables if he didn't know whether a new tax could be levied *retrospectively*, or on goods exempt the week before, or even worse, his enterprise could find itself banned by a royal monopoly.

The question of rehabilitating criminals, protecting the rights of terrorists and political associations advocating the enslavement of mankind - quite rightly - didn't arise.

A minimum wage, food for all, land for the people and redistributive taxes were regarded as insane before the Terror truly got under way in 1793.

What the Declaration did stand for was a rational balance between the individual and the state.

ENGLISH AND AMERICAN INFLUENCES

The influences that are noticeable in this document include the French Enlightenment, as well as English and American influences. Those articles dealing with 'Nation', 'Society' and 'General Will' are based on Rousseau's 'Social Contract', articles 1, 3 and 6 being most typical of Rousseau's thinking. It is surprising, though, given all the propaganda about this document, how little credit Rousseau deserves for having inspired it.

The hand of Diderot, editor of the *Encyclopédie Universelle* (published in 1751) and spreader of English liberal ideas, is very strong, especially in article 1. Articles 1 and 4 can be seen as an adaption of Hobbes to a liberal society with rather more confidence in human nature than had the author of *Leviathan*. The list of rights of man is straight out of Locke's *Second Treatise on Government*, widely read by the 'Encyclopediste' movement.

Montesquieu, the advocate of tolerance and common sense, might have drafted article 5, the second part of article 6, article 8 and article 10.

The last five articles owe a debt to the English Revolution of 1625 and the American War of Independence of 1775. The scrutiny of taxation is the English basic function of Parliament and the legitimisation of taxation, the origin of American democracy.

Both Cromwell and Washington were accepted in France by the Kings, and indeed, allies at war - in both cases to the detriment of the French king involved. Nevertheless, the free communication of ideas was associated with England, a land of refuge from oppression in France even today (if you count draft dodgers), and taxation with representation had been noted down by Lafayette.

WHY TERROR?

There is amazement, in the United Kingdom, at how this document could lead to the Terror and to Napoleon, and in France at how little it addresses the popular mythological cause of the Revolution: food shortages. The massacre of 300,000 in Vendée and tens of thousands in Paris between 1793 and 1795 seems impossible, given the rights of man listed under article 2 and protected under Article 9.

The ideas in the Declaration were not clearly defined, as is shown by such statements as "Society has the right to *call to/demand* account ..." (Article 19). Article 2 lists all the liberal rights of importance except life! The events of 1791 to 1873 constitute an attempt to clear up the ambiguity of some parts of this text, suppress the inconvenient parts and abuse the favourable conditions.

In 1789 absolutism was, alas, the pervasive French ideology of the time. There was either to be absolute monarchy, or absolute democracy. This left little room for fudging, in other words for not executing the guilty.

There was no credible 'moderator' in the manner of Cromwell, England's anti-radical regicide, although Lafayette did try to perform this role. Lafayette organised the "Festival of the Federation" on the first anniversary of Bastille Day. Everybody who was anybody was there, the King, Robespierre, Danton, St Juste, and Lafayette tried to get everyone to unite, and set up a constitutional monarchy. The Declaration was part of this process. But the more inspiring leaders were the ones who wanted no compromise, and if they later decided that they *did* want compromise they got executed for being reactionary. This fate even overtook Robespierre.

Famine has been quite rightly identified as a source of instability. Queen Marie Antoinette was a notorious spendthrift, nicknamed "Madame Deficit". Her famous remark about the populace having to eat brioche, although possibly invented, summed up what was thought to be her attitude.

Nor did it help that Marie Antoinette was Austrian. France and Austria were constantly at war throughout this period, and war with Austria erupted yet again in 1790. The Queen corresponded with her father, Emperor Joseph of Austria, which was obviously wide open to "interpretation".

In general, rumour was rampant, encouraged by the primitiveness of communications and widespread illiteracy. At one point three hundred thousand armed monks were supposed to be attacking southern France, and that was fairly typical.

And finally, a mob is a mob. It really doesn't matter what the educated classes are telling each other in another part of town.



THE UNIVERSAL POSSIBILITIES OF THE DECLARATION

The Declaration does provide a fair summary of the philosophical debate of the seventeenth and eighteenth centuries, when the question of freedom was first asked in terms of the freedom from the whim of the Juggernaut State, from God's Vicar, from the Lord's Anointed, and so on, instead of the socialist freedom from reality: hunger, poverty, wealth, materialism, inferiority complexes.

The declaration provides a framework for the constitution of any nation at any time. It wasn't *intended* to be universal, but unlike English constitutional declarations, it turned out that this document could be introduced into any country, at any moment, with similar results. It didn't seem universal in 1789, or when Napoleon used it as an excuse for conquest, but these ideas had a life of their own, way beyond mere *realpolitik*. Italy was particularly influenced, with its tricolour flag, its unity in 1871 after 1461 years of fracture, and has generally followed the lead of the Declaration of the Rights of Man and Citizen.

It is the universal possibilities of the Declaration that explain why I sit here, in London, in August 1989, re-reading a two hundred year old text.