



THE DECLARATION OF THE RIGHTS OF MAN AND THE CITIZEN

The Declaration of the Rights of Man and the Citizen is one of the great documents of European political thought; its principles are embodied in the constitutions of practically all European states and many others. It spelt out, only twelve days after the storming of the Bastille on 14 July, 1789, a certain number of rights and obligations of the citizen in what the French Revolution produced an unabsolutist, all class-based and, in theory, in an egalitarian, secular, but not unsectarian, state.

Any historical constitutional document or statement must be judged against the contemporary background and context of its creation. Thus the Declaration of the rights of Man and the Citizen emerges as a political charter reflecting mainly, but not exclusively, middle class, bourgeois aims and aspirations. It expresses the revolt of the under-privileged third estate against the powerful estates of the Church and the nobility, and against the absolute monarch. The main thrust of the Revolution has been summed up by the historian George Rudé: "These 'principles of 1789', which were later to enthrall and to divide the whole of Europe, were the outcome of hard bargaining between different groups of deputies (of the National Assembly)."⁽¹⁾ He argues that, while Thomas Jefferson was in Paris at the time and that the principles were close to the Virginia Declaration of 1776, 'it is more sensible to conclude that both Americans and Frenchmen acknowledge a common debt to the "natural law" school of philosophy, in particular, to Locke, Montesquieu and Rousseau. The Declaration of Rights is remarkable in that it neatly balances a statement of universal principles and human rights with an evident concern for the interests of the bourgeoisie.'⁽²⁾

The articles of the Declaration only allowed for limited political rights. But the use of the work 'citizen' is significant. The representatives of the politically conscious and relatively comfortable middle classes of French society were asserting that all citizens (i.e. all inhabitants of the state, undifferentiated by wealth, status, profession, privilege or lineage) should enjoy certain rights in the



The Revellion riots were the first serious clash between the Parisian unemployed and the army. In protest against high bread prices, a wallpaper factory was burned down and there were many casualties.

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new order. This document gave Frenchmen (and Frenchwomen to a lesser degree) the common name of citizen and thus implied their equality before the law.

The preamble of the Declaration makes this clear:

The representatives of the French people, assembled in the National Assembly, considering that ignorance, omission and contempt for the rights of man are the only causes of the public malady and the corruption of governments, have resolved to set out in a solemn declaration, the natural inalienable and sacred rights of

man in order that such a declaration constantly present before all members of the body social, shall remind them ceaselessly of their rights and their duties, in order that the acts of the legislative and the executive powers . . . shall be more respected: in order that the demands of the citizens, henceforth based on simple and incontestable principles, shall be directed always to the maintenance (protection) of the constitution and the happiness of all.

Accordingly, the National Assembly recognises and declares, in the presence and under the auspices of the supreme being, the following rights of Man and the Citizen.

We see from the preamble that this 'middle-class' assembly is reacting to the

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abuses and privileges of the Ancien Regime, and to the approach of Louis XVI. It is seeking an order and law that will be worthy of respect. It is setting out a framework in which the citizens may enjoy indisputable rights, based on incontestable principles, and will therefore be inspired and induced to maintain the new constitution and the good of all.

The preamble is not totally secular – it invokes the name of God or the Supreme Being.

Generally, the rights and duties outlined in the Declaration reflect the aspirations of a property-owning middle stratum, but it should not be forgotten that the revolt of the middle classes was viewed as outrageous, subversive and destructive of the existing order of the time, particularly by Edmund Burke.

For Edmund Burke the doctrine of the rights of man was not only absurd, but pernicious. He felt that society was so many sided and intricate that little in it could be changed, and he preferred to rely on the much approved, well established laws that had proved their validity over time. These laws he described as 'prejudices': To quote him directly: 'Instead of casting away our old prejudices we cherish them because they are prejudices and the longer they have lasted and the more generally they have prevailed the more we cherish them'. Burke's main point is that revolutionaries try to go too far. He is highly perceptive of the limitations of change.

But, despite Burke's strictures, what picture of the proposed state and constitutional dispensation emerges from the individual articles of the Declaration?

The first article states that 'Men are born and remain free and equal in rights. Social distinctions can only be based on common utility'.

The second article provides a *rationale* and *raison d'être* of the new state: 'The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression'.

Here the selection of rights is revealing – liberty of the citizen is put first, but property comes second – a rather obvious reflection of the middle class interest in an unambiguous title to their goods (a reaction against the arbitrariness and corruption of the Ancien Regime). Security is an important context for the flourishing of middle class interests – above all trade and commerce. Resistance to oppression is necessary and right, given the arbitrariness of feudal rule.

The third article states that the basis of sovereignty in the realm is the nation i.e., the total citizenry, not any individual such as a monarch, or any group such as an oligarchy. No individual or body may exercise authority that does not expressly originate in the nation.

The fourth article is central to the

philosophy of the new document. It defines liberty as the freedom to be able to do anything that does not harm another party. Therefore, to quote it directly: 'The exercise of natural rights by each person has no limitations other than those that guarantee the other members of society the enjoyment of those same rights. These limitations can only be determined by the law.'



The Declaration of the Rights of Man and the Citizen.

The fifth article specifies the relationship between law and freedom of action of the citizen. 'Law has only the right to forbid actions that are damaging or harmful to society. What is not forbidden by law cannot be prevented and no-one may be constrained to do what the law does not require'.

The sixth article echoes and reflects the important writings of Jean Jacques Rousseau, notably 'The Social Contract'. It states that law is the expression of the general will. All citizens have the right to participate personally, or via representatives, in its creation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally entitled to all titles, positions and public employment, according to their abilities and without distinction other than that of their strengths (virtues) and talents.

Rousseau's approach to political participation is based on the concept of the general will. His theory raises the problem of how to establish the general will: 'It implies a small community which can conveniently assemble to establish certain basic political principles which command the consent of all citizens'.

The general will is not the result of a quantitative survey to determine a high degree of consensus, but rather a shared perception of a healthy polity.

Rousseau argues that true law is a set of rules made by a people in its capacity of sovereign and obeyed by the same people in its capacity as subject. He believed that people will not enslave themselves if they are both sovereign and subject.

Actual law, according to Rousseau, may be unjust. True law, by definition, cannot be. True law therefore corresponds to the general will. Actual law corresponds to the will of all. All citizens subscribe to the social contract, otherwise they are not citizens. Everybody agrees to accept the majority interpretation of the general will *not* the will of the majority.

The seventh article is the familiar principle of arrest in conformity with legal norms: citizens arrested according to law must be punished, must obey at once and resistance signifies guilt.

The eighth article covers the concept of legally applied punishment.

The ninth article deals with the presumption of innocence.

The tenth article introduces the concept of religious tolerance, under public order: 'No-one may be disturbed because of his opinions even religious opinions, provided their expression does not disturb public order established by law'.

The sixteenth article states that any society in which the guarantee of rights is not assured, and the separation of powers determined, has no constitution. Here the concept of a structured and agreed form of polity is stressed.

The seventeenth article guarantees the right to peaceful enjoyment of property and compensation for loss thereof.

The most notable omissions from the document are references to economic freedom, economic equality, social justice, limitations on property ownership and social policy measures.

Today, the Declaration of the Rights of Man and the Citizen remains a vital document insofar as many societies fail to protect the basic civil rights of their citizens. In Europe and other developed societies the scope of citizen rights has expanded in the late 20th century to cover such matters as family law, minority rights and the protection of the right to limit family size voluntarily. In the present more encouraging climate of east-west relations, citizens rights will be the central issue in the process of *detente* and *rapprochement*, and thus Republican France will continue to be the inspiration for the pursuit of civic freedom, as we enter the third century of the Revolution.

Perhaps the inheritance of the French Enlightenment and the French Revolution of the 18th century is well encapsulated in the final words of Harold Laski's *Liberty in the Modern State*: 'Where there is respect for reason, there is also respect for freedom and only respect for freedom can give final beauty to men's lives.'³

REFERENCES

1. *Revolutionary Europe 1783-1815*, by George Rudé, London, 1970, p 107.
2. *Ibid.*, p. 107.
3. *Liberty in the Modern State* by Harold Laski Penguin edition, 1930, p 212.