

He is said to have declared the Ninth Symphony to be a mistake, and even to have spoken of working it over, at least of never repeating the experiment: we need not discuss the credibility of this tradition or lay any weight upon it. On the other hand we may regret that Beethoven did not carry out the plan, which had been earlier suggested, of providing a commentary to his own works. Then we could have expected an authentic critique of the Ninth Symphony by the author himself. So we must confine ourselves to the facts. We know that he planned a tenth symphony, that death intervened to prevent its completion and that little or nothing is to be gathered from meager sketches. But instrumental compositions like the last great string quartette were produced after the Ninth Symphony, and this alone may well suffice to put to rest all misunderstanding.

At a memorable Academy meeting on May 7, 1824, three movements of the *Missa solennis* and the Ninth Symphony were produced for the first time. The master was present, stone deaf. He heard not a sound of the wonderful notes which there came to life at his bidding; he heard not a sound of the thundering applause with which the inspired audience greeted him. He stood with his back to the public until Caroline Unger, one of the soloists who took part in the production, motioned to him to turn around. Then he saw how all were applauding and nodding to him. What a moment this must have been, and how indelibly impressed upon every one present! As he stood there in the concert hall facing the crowd of people, so in his life and work he stood in relation to the world—alone and unapproachable, and yet its affectionate benefactor.

ALL MEN ARE CREATED EQUAL.

BY A. V. C. P. HUIZINGA.

THE statement in the Declaration of Independence which asserts "All men are created equal," has been the subject of so much discussion that Jefferson himself, who drew up this American historical document, could hardly realize the full scope, or the various interpretations of this assertion. It is mostly misunderstood now, and therefore worth our while to review shortly its meaning in the light of its historical occurrence.

For a right understanding of the document, it is well to bear in mind that in the much vaunted political theories of "Natural Rights" in those days is inherent the right of revolution, an under-

taking which the American colonies at that time had taken in hand with much success. The colonies were anxious to justify the fact of this achievement against King George, for nations not less than individuals feel the necessity to justify their acts, because nations as well as individuals are under moral law. Consequently they are led to justify their acts before the world, and to themselves before God. Hence individuals and nations give always in important decisions an account of the circumstances and reasons which prompt their acts, setting forth their views in justification of the same.

Such an account is the Declaration of Independence. It does not apologize, but justifies the momentous act taken by the colonies in breaking away from King George, and adduces as the justifying principle of the action: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any Form becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

It is plain at first sight that the government becomes secondary in authority because of the fact which is taken for granted, the self-evident truth that all men are created equal and are endowed by their Creator with the inalienable rights to life, liberty, and the pursuit of happiness. In fact, the government exists only to secure these rights, but if, and whenever the government fails to do this, it thereby forfeits its right to be, which is the case of British authority, as is made apparent in the long list of enumerated abuses. It is of interest to note that the Declaration asserts: the government must rest upon the consent of the governed. Thereby the people were declared sovereign, and taxation without representation became impossible. But it should be made clear in this connection that Rousseau, who coined the phrase "the sovereign people" in his *Contrat Social*, does nowhere argue for a declaration of individual rights, with which the state shall not interfere. This is characteristic of the way in which the American people incorporated these principles in a political program with its provisions of "checks and balances" against usurpations of the government against the individual. John Adams maintained the power of the government,

while Jefferson was watching for the individual rights. This is in striking contrast with the French notion of unlimited power of the people, which soon became more tyrannical and destructive of the "natural rights of man" than the ancient régime had been, when, in the name of "Public welfare," the Terror committed its worst excesses. Robespierre himself said: "The government of the Republic is the despotism of liberty against tyranny." The American view maintains, however, that the liberty of the individual is only safe when the sovereignty of the state is limited in the right of its citizens. Thus the "Bills of Rights" are intended as limitations of the sovereignty of the people in favor of the liberty of the individual.

When comparing these declarations of France and of the American colonies, it must forever be borne in mind that the American view remains practical, while the French went to the extreme of *Prinzipienreiterei* which declared: "Vivent les principes, périsse le monde!" Such a theoretic conception or interpretation of the principles common to both declarations was, on American soil, well-nigh impossible. Thus Woodrow Wilson observes in *Constitutional Government of the United States*: "We think of the Declaration of Independence as a highly theoretical document, but *except for its assertion that all men are equal* it is not. It is intensely practical even upon the question of liberty." Of course when public expediency determines the measure of individual rights the rule of right has really been broken. This terrible world-war exemplifies in striking manner how under the stress of circumstances individual rights, no less than general rules of right, are set aside by the exigencies of the hour. It also clearly foreshadows a considerable extension and growth in the power and function of government, and a limitation of the rights of the individual. But it should be kept in mind that these views have developed in and are born from actual circumstances. As President Grover Cleveland said when propounding a definite view in a certain case, "we face conditions, not theories." This practical application of the principles is far removed from the theoretic formulation of the French, where Rousseau's will of the people, the popular sovereignty or the general will (*volonté générale*) must be distinguished from the will of all (*volonté de tous*). While the former aims at the common welfare, the other looks only to private interest and is but the sum of all particular wills. He finds the general will, not, as in the American way, by the rule of the majority, but declares that, if the extremes be taken from the sums of the individual wills, there

remains the general will. It is readily seen, how mob rule might easily result from such a theoretic, artificial conception of the general will of the people, then, this absolute power unchecked by rule or law, it is apparent again how the wildest excesses became possible. Even the majority rule as bound by law under stress of circumstances or popular clamor will override legal restraints in behalf of individual or community. It is everywhere and forever difficult to learn that liberty cannot exist without respect for law and order. A more fitting object lesson, therefore, could not well be found than that placed over the courthouse in Worcester, Massachusetts: "Obedience to law is liberty." But to assert similarity to any extent between the principles manifest in the spirit of the French Revolution of 1789 and the spirit of 1779 in America, even by almost identical wording in the "*Déclaration des droits de l'homme et du citoyen*" and the "Declaration of Independence" is like putting Rousseau's confessions by the side of those of Augustine. Even identical declarations run of necessity apart in their bearing upon, and interpretation by, different people. And how great is not the difference between revolutionary France formulating its extreme theories against the oppressive *ancien régime*, and the American colonies resisting the despotic demands of King George upon his unrepresented subjects across the sea. In fact, the only thing in common in these movements, except the wording of the official documents—the "Declaration of Independence" and "*La déclaration des droits de l'homme et du citoyen*"—is their assertion of rights against oppressive government.

The similarity in wording is readily understood when we remember that, in the discussions of the Constituent Assembly which drew up the French Declaration of the Rights of Man and of the Citizen, reference was had constantly to the American Declaration of Independence. Rabaut de St. Etienne, the able Protestant minister who took an active part in these discussions, declares explicitly that the Declaration and Bills of Right had served them as a model for the French Declaration. It is therefore not true to fact when the French assert that their declaration rests wholly upon French antecedents, notably upon the writings of J. J. Rousseau. It is still farther from the truth when Americans declare their Declaration of Independence to rest upon the principles of the French Revolution with Rousseau (notably his *Discours sur l'inégalité* and *Contrat Social*) and other political writers as precursors. It is false to assert that "the French gave shape to the thought which America was to work out in actual practice," or that Dumont's

story of "Freedom and Equality" passed over into our Declaration of Independence. Apart from the explicit testimony that the American documents were considered and served as model during the discussions held for the purpose of drawing up the Declaration of the Rights of Man and of the Citizen, the significant fact remains that the American Declaration antedates the similarly worded document of the French by thirteen years. George Mason drew up the Bill of Rights of Virginia June 12, 1776; Thomas Jefferson, the Declaration of Independence officially July 4, 1776; but the committee of five of the Constituent Assembly composed the Declaration of the Rights of Man and of the Citizen in 1789, and it was prefixed to the Constitution of 1791.

Besides, it was Franklin who urged Mirabeau, one of the committee of five, to prepare the Declaration of the Rights of Man, to publish the address "Considerations on the order of Cincinnatus" four years before the French Declaration of Rights; and one year before this event Mirabeau drew up a Declaration of Rights for the patriots of Holland, "Address to the Batavians Concerning the Stadtholdership," in which he enumerates the right to which the people are entitled as men. Such influence as is exercised has come from the American side upon the French; but, then, rather limited to the framing of the Declaration than involving a real influence upon the French Revolution. But certainly there was no French fire kindled in the American struggle for Independence.

The great German jurist Stahl declares in *Philosophie des Rechts*:

"The French Constituent Assembly was entranced with the philosophical procedure of North America and imitated it with the greatest exaggeration. While disclaiming any intention of drawing up metaphysical and not practical rights, hollow and erroneous deductions from Natural Law were placed at the head of the Declaration of the Rights of Man and of the Citizen."

Stronger still is the case put in recent years by Professor Jellinek, who affirms in his *Die Erklärung der Menschen- und Bürgerrechte* that the French Declaration of the Rights of Man is a literal transcription of clauses contained in the Bills of Rights of the American States. Perhaps this position is somewhat extreme, but Dr. Scherger's argument against it in *The Evolution of Modern Liberty*, that the long discussion preceding the draft of the French declaration precludes such a supposition, does not seem weighty, inasmuch as precisely the formal rendering of public documents is of the highest importance. Comparison of, and selection

from, the Bills of Rights of the different States might easily have taken as much time as the formulation of a newly phrased declaration. Moreover, the French who had taken up Rousseau's phrases, "the sovereign people," and "Liberty, Equality, Fraternity," might well have been led by the consideration to avail themselves of apt phrases, ready to hand, which had done service in the struggle across the seas, and which therefore might be known to many. The people in general are even more sensitive to an apt and catching phrase than to a catchy melody. Less weight should be accorded his argument against Professor Jellinek's position that the German publicist fails to show how the French became acquainted with them. There seem to be numerous channels in the many eminent Americans who had resided, or were still residing, among them, besides, the French sought out the American ideas. As Von Holst quotes from Kapp, *Leben des amerikanischen Generals Johann Kalb* (p. 242):

"At this precise time it was not only the 'existing European sentimentality,' that was in search of a Dulcinea, most beautiful of women, in the primeval forests of America, under the names of Nature, Liberty, the Rights of Man and Humanity."

Carlyle observes in *The French Revolution*: "Borne over the Atlantic, to the closing ear of Louis, King by the grace of God, what sounds are these, muffled, ominous, new in our centuries? Boston Harbor is black with unexpected tea: behold a Pennsylvanian Congress gather; and ere long, on Bunker Hill, Democracy announcing, in rifle-volleys, death-winged, under her Star banner, to the tune of Yankeedoodle-doo, that she is born, and whirlwind-like, will envelop the whole world!"

"Squadrons cross the ocean: Gateses, Lees, rough Yankee generals, 'with woolen nightcaps under their hats,' present arms to the far-glancing chivalry of France; and newborn Democracy sees, not without amazement, 'Despotism tempered by epigrams' fight at her side. So, however, it is." Lafayette he describes as "fast-anchored to the Washington Formula."

To argue a relationship as to the form of these popular declarations does not involve, however, any real causal connection between the two movements to which they gave expression.

The circumstance that the documents bear relation to one another, can easily be overestimated in significance. In fact, the doctrines proclaimed in these declarations were centuries old. Natural rights and sovereignty of the people had been put forth in ancient and medieval times. In the seventeenth century they were held in England by the Levelers, among whom Lilburn was prominent.

Milton, Sidney, Locke, and others held these views. Did not R. H. Lee charge Jefferson with copying the substance of the Declaration from Locke? But although these views were known and held before, they had no general acceptance. In France and in America, however, under the stress of circumstances to fulfil the respective needs, these views were taken up and formulated in the declarations. The doctrines in their bearing fit each case, and are interpreted and used according to the exigencies of the respective movements, which are manifestly wholly unlike. Thereby the declarations become in regard to these movements merely the occasion in the struggle. And it is natural that a people risen in frenzy against agelong oppression, and quite another type of people determined to resist infringement upon their liberties, read and understand even the selfsame declaration quite differently.

The doctrines contained in the declarations are indeed expressive of the American spirit, with French theoretic exaggeration, as Stahl observes, they become a metaphysical battleax to cut down radically the last vestiges of the hated *ancien régime*.

The Declaration of Independence could be an expression of the American spirit because in America the social and economic conditions were much alike, there was no caste or native nobility, and above all there were no feudal customs or traditions. When Jefferson drew up the now familiar doctrines of human equality, of the natural and inalienable rights of man, and the guarantee of these rights as the sole ground of government, and *the right and duty of revolution* when these rights were subverted—"The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants,"—he voiced truly the American spirit of his time.

Jefferson himself said well, in answer to the charge of Pickering and Adams that the substance of the Declaration had been "hackneyed in Congress for two years before": "Neither aiming at originality of principle or sentiment, nor yet copied from any particular previous writings, it was intended to be an expression of the American mind and to give that expression the proper tone and spirit called forth by the occasion."

The constitution of the United Colonies of Windsor, Hartford, and Wethersfield, drawn up in 1639, was based already upon the sovereignty of the people. Thomas Hooker preached the year before a sermon in Hartford in which he declared "that the choice of public magistrates belongs unto the people by God's allowance," that the people have power "to set bounds and limitations of the

power and place unto which they call them" (*Coll. Conn. Historical Society*, I, p. 20).

The political principles then were not new, nor did they originate upon American soil, but they were embodied here in a political program, because there was a setting for them here to realize them when occasion called them forth. They were not only hurled in a defiant, assertive mood against the rich Tories and arrogant officials sent from England to live off the colonies, they were also believed in as practical principles of government. Then again the greater part of the English settlers here were Puritans, who were Independents in England. The Mayflower carried *Pilgrim* fathers to these shores, who before had tasted exile from England in Holland. James I and Charles I persecuted these Independents because they "bred liberal views." Would not their remembered experiences strengthen these liberal convictions, when on these far shores that self-same arrogant autocratic royalty and servile episcopacy against which they or their forbears had stood out years ago, tried again to misrule them by divine right! Then the Puritan tenet appeared indeed natural "that kings are but ministers of the commonwealth, and that they have no more authority than what is given them by the people."

James I, however, proclaimed from the throne in 1609 his doctrine of the divine right of kings as follows:

"God hath power to create or destroy, to make or unmake at His pleasure, to give life or send death; and to God both body and soul are due. And the like power have kings: they make and unmake their subjects like men of chess: a power to take a bishop or a knight, and to cry up or down any of their subjects as they do their money."

The Anglican Church preached these doctrines from the pulpit. Bishop Overall's *Convocation Book* of 1606 attacks fiercely the doctrine that "all civil power, jurisdiction, and authority were first derived from the people and disordered multitude, or either is originally still in them, or else deduced by their consent naturally from them; and is not God's ordinance originally descending from Him and depending upon Him." The *Canons* of June, 1640, affirmed that the most high and sacred order of kings is of divine right, being the ordinance of God Himself, founded in the prime laws of nature and revelation, by which supreme power over all persons civil and ecclesiastical is given them."

Who wonders still that against this monstrous thing of pseudo-Christianity, wantonly torn from the historical Church of Rome,

and nationalized by the baseness of the dissolute King Henry VIII, secularized in his and his successors' service, with priests mere lackeys of king's wages, the cry should rise: "No bishop, no king!" No counterpart of the French: *ni Dieu ni maître!*

In this connection it should be mentioned that the most consistent opponent of the American struggle in this country was the English rector Boucher, who resided in Virginia and Maryland from 1759-75 and died in England in 1804. He published a vehement denunciation of the American Spirit in 1797, *A View of the Cause and Consequence of the American Revolution*.

There can be no question that the struggle in America and the American Declaration were more influenced by religious factors than were the French revolutionary ideas and acts. Ever since the landing at Plymouth Rock, sometimes called the cornerstone of American institutions, the lives of the English colonists had been intensely religious, as were those of the German settlers in Pennsylvania. Without belittling the economic causes at work in the lives of the people in those days one must concede that religion played a large and genuine part in the lives of the colonists and naturally colored their life-interests and views. Therefore it played a large part in the American struggle for liberty and the principles of the Declaration here assume a totally different aspect from the same ideas which the French theorists gave theirs. Jefferson observed to Lafayette that "Liberty becomes with an unprepared people, a tyranny still of many, the few or the one." The French Declaration is one of the rights of man—and of the citizen. "Men are born and remain free and equal in rights. Social distinctions can be based only upon public utility. The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression" etc.

It gives a more detailed assertion of rights against the age-long abuses to which the people of France had been subjected, whereas the American document on the other hand rather maintains the rights of the colonists upon which the British king would infringe. Hence the practical way in which the Americans take up and work out the principles of the declaration. Jefferson, the champion of human equality, was opposed to the institution of negro slavery, but he left the ownership of slaves. "We the people" meant in those days only the white people. The Americans took the declaration as a practical working instrument, when the times should be ripe for ideal political truths they surely would be applied. Lincoln

stood firmly upon the principles of the Declaration. "The Fathers," said he, "did not mean to say all men were equal in color, size, intelligence, moral development, or social capacity." They did mean "all men are equal in the possession of certain inalienable rights, among which are life, liberty, and the pursuit of happiness." The founders of the republic then meant merely "to declare the right so that enforcement might follow as soon as circumstances should permit." It shows the sagacity of that great president that the ideal stated must be practically treated in its application,—not, in French fashion, theoretically carried out.

That he was able to battle for it with unwavering determination once the time was ripe for its realization shows his attitude during the Civil War. In singular contrast with the French theorists who carried the ideas to their logical and impossible extremes, defeating their own end, while they created abhorrent conditions which made the very name of "natural rights" odious, stands the practical advocacy of certain rights by the Americans. They were denied their rights as English subjects, therefore they appealed to their rights as men. What the law of the land denied them, they demanded according to natural rights and the law of nature. Hence they never entered upon a violent program to carry out these rights of man. On the strength of them they asked some very concrete popular rights, such as they knew were granted English subjects in the Magna Charta, the Habeas Corpus act, the Bill of Rights of 1689, and others. In the American Bills of Rights the people declare for concrete rights, as trial by Jury, freedom of speech and of the press, freedom of elections, security against excessive fines, cruel and unusual punishments, general warrants, and others. These concrete rights are often even copied verbatim from the Magna Charta and English Bill of Rights, but the demands for them are based on the abstract doctrines of natural rights. Hence they are preceded by the statements of abstract principles: the natural freedom and equality of men, the purpose of the government, the sovereignty of the people, the separation of powers, etc. But these principles were not asserted as a new political program: they were, in the words of Lincoln, the stated basal principles on which concrete rights were to be enforced, "as soon as circumstances should permit." On the other hand, the French were enamored of the bare, abstract ideas which they proclaimed, and went to excesses which made not only Burke rail against their "paltry, blurred shreds of paper about the Rights of Man," but which incurred also the opposition of Bentham, Austin, and Maine.

The foregoing discussion tries to explain that the American Declaration means precisely what it says when declaring, "All men are created equal," and that it does not mean "All men are equal *before the law*"—as is generally believed. This is a legal twist of the philosophical doctrine, soon after already in evidence in some of the "Bills of Rights" of the States.

So the *Florida Declaration of Rights*: "All men shall be equal before the law."

The Rhode Island Constitution: "All laws shall be made for the good of the whole."

The Connecticut Constitution: "All men have equal rights when they form a social compact."

The South Carolina Constitution: "No person shall be denied the equal protection of the laws."

The Virginia Bill of Rights, antedating the Declaration about a month, states plainly: "All men were by nature equally free and independent."

The Massachusetts Declaration of Rights renders the slogan of the struggle four years after the Declaration: "All men are born free and equal."

The Constitution of New Hampshire retains the logical sequence in declaring: "All men are born equally free and independent, *therefore*, all government of right originates from the people, is founded in consent, and instituted for the general good."

It is apparent that after *the event* of the Declaration has passed, the element of law becomes prominent in its interpretation. The legal mind treats men as under the law, and thinks of 'man as before the law.' But in the historic struggles, both here and in France, the legal notion was not uppermost. It goes without saying that legislation was involved; but, as a matter of historic fact, the asserted rights to whatever abolishment of old and reenactment of new political and legal rights they led, rested in their appeal upon the then acknowledged "natural rights," which, from Hugo Grotius onward, had been a household word with political writers. Calhoun understood clearly that the declaration "all men are created equal" was an abstract principle of philosophic rather than political significance. He calls the declaration of these theories as universal principle "glittering generalities," but he does not fall into the error of combating the declaration as if it possessed political or legal meaning.

Jefferson's declaration appealed to the natural right of man as created being, without reference to the law. The whole document is a declaration that the law should be suited to the rightful claims

of man as human being,—rights to life, liberty, and the pursuit of happiness. As, in striking contrast to this declaration, the institution of slavery was left by the law, this circumstance was urged against Jefferson, although he himself was opposed to slavery. This shows that it was felt that the declaration treated of men as human beings, but did not deal with men as before the law. Else they would not have urged this contradiction, were it not that the declaration spoke of man as man, not of the equality of man before the law. The negro, to be sure, was still excluded in the practical application of the principle of the declaration, but, as Lincoln affirmed, the declaration enfranchised the negro too, because he also is a human being. Had it meant: "All men are *created equal before the law*," the negro would not have counted, and the institution of slavery would not have been affected by the declaration at all, for the negro had no status before the law, a slave was a chattel of his master. In both ways of reading the declaration the negro was barred from recognition. Reading it as a declaration of equality before the law would keep him out of his rights permanently, because as chattel he did not come under the cognizance of law.

Reading the declaration as the proclamation of human rights pure and simple which all men share equally the negro was kept from recognition by the laws which rest upon this principle of human equality, only as long as "We the people" was reserved for the white men. "In that respect the Declaration of Independence is the greatest outrage ever committed since the world began; for half the people who signed the Declaration of Independence were slave-holders" (Fabian Franklin in *Proceedings of Academy of Political Science*, Volume VII, p. 152). Lincoln with characteristic fairness conceded to Douglas that the fathers in framing the constitution had in mind in their legislation only the white man, but the underlying principle for which the law itself is made, called for revision and reversal of the law. The principle that all men are created equal, however, endures forever. Besides there were antislavery clauses in the draft, but as Jefferson writes, "The clause was struck out in complaisance to South Carolina and Georgia, who never had attempted to restrain the importation of slaves and who, on the contrary, still wished to continue it" (Jefferson, *Works*, I, p. 170).

Men are not *created*, either equal or unequal, *before the law*. The Christian forefathers understood better than the present generation that "The sabbath was made for man, and not man for the sabbath" (Mark ii, 27).

Again, the declaration involved a new constitution, urged new

laws, but did not start out from them as a basis to declare that these should apply equally to all men. This could only be on the assumption of laws of the people already in force, which laws needed to be remedied in their application. Rather it is evident that the declaration calls for new laws, and such laws as will recognize the principles on the strength of which they are to be made, i. e., the recognition of the humanity of all men, the inalienable rights of man as a human being. In the light of historic circumstances it seems stultifying to read "All men are created equal" as meaning "All men are *created* equal *before the law*," when this law is urged on these self-evident truths, of which in the declaration "All men are created equal" is the first. If such a meaning should be put upon it, would in the careful phrasing of the document the word "created" not have been omitted? And would not have been added as in some Bills of Rights "before the law"?

As a matter of fact: All men are not equal before the law, but they should be. In the circumstances under which the document was drawn up it should then have been rendered: "All men should be equal before the law," but in that case the declaration would not assert the reason why all men should be thus equal before the law. The Declaration of Independence, however, shows unmistakably a logical reference to the abstract grounds on which the new legislation should rest. This is what Dr. H. von Holst declared in his well-known *History of the Constitution of the United States*:

"Neither Congress nor the people relied in the declaration upon any positive right belonging either to the individual colonies or to the colonies as a whole. Rather did the Declaration of Independence and the war destroy all existing political jural relations, and seek their moral justification in the right of revolution inherent in every people in extreme emergencies."

The legal twist which wants to repudiate the real meaning of the declaration that all men are created equal,—and read the philosophical doctrine in a legal way to mean: "All men are created equal before the law" is evident also in the superficial but very popular denial of the statement that all men are created equal. It is often asserted that men are not equal, because out of millions of men only a few stand out in their respective careers, and they in such marked degree as if to proclaim how unlike men are. The pugilistic strength of Jack Johnson, the musical ability of Paderewski, the voice of Caruso, the incisive logic of Jonathan Edwards, the oratorical powers of Daniel Webster, the strategy of Von Hinden-

burg, the comic drollery of Charlie Chaplin, the inventive genius of Edison, etc., are few and far between in their respective careers. They not only stand unique in their professions but were predestined to be so from the first, because they were so unlike the majority of their rivals. In the race for preeminence men are too unequal. Moreover, some are born imbeciles, some are physically strong, others physically weak, some are burdened with the curse of heredity, others are blessed with transmitted hereditary qualities, some are gifted with talents, a few with genius; most men are mediocre, while many poor specimens of humanity are a standing refutation of the declaration "All men are created equal."

Surely, if we view men in their social setting, in their careers, their ability, in their relations to one another, it is going off on a tangent from common sense to maintain the proposition that all men are created equal. But this is precisely what we must not do. We cannot read a philosophical declaration as if it were a political or legal document.

Rodney Thomson, illustrator of the *New York Sun*, treats the statement of the Declaration in the *Pictorial Magazine* of March 7 and March 21, 1915, from this mistaken, popular viewpoint. He therefore points out in pictorial representation the incongruities involved, and adds a question mark to the statement. A long train of humans are making their way toward success. Genius and wealth lead, poverty, physical debility, prenatal influence, hereditary disease, inherited weakness, weak mentality, idiocy and congenital deformity lag behind in the race. To be sure, other things being equal, the difference of means to an end, the instrumentality in any pursuit, must affect the outcome. In that sense,

"The race is to the swift;
The battle to the strong."

Forsooth, not all men are equal in the race for successful achievement in society. But whether first in the race or last, we remain forever human and entitled to life, liberty and happiness.

On the strength of the true facts of the first cartoon, and the mistaken meaning of the declaration that all men are created equal, the answer by the same artist in the *Sun's Pictorial Magazine* of March 21 is even more fallacious.

The country lad, ploughing the field, may indeed aspire to the occupancy of the White House. There are no formal, legal disabilities or barriers, but in view of the graphic truth of the first cartoon, the average country lad would be rather handicapped in

the race. Generally speaking, it would be better for himself and the country not to heed the beckoning angel to illusory aspirations, for in running the race for political or social eminence all men are not equal, though they remain forever equal as human beings, and being of one kindred, enjoy the same essential human rights.

When we accept the religious tenet that all men are equal before God, we do not stumble over the differences among men in their earthly relations. "For there is no respect of persons with God" (Rom. ii. 11). Individual differences, social distinctions, disappear in the sight of God.

When we view men as before God, they are all equal. Similarly this philosophical proclamation means to refer only to man in his specific human qualities. All men, rich and poor, gifted or stupid, strong or weak, of whatever mold or individual qualities they are, have forever inalienable in common the characteristics of human beings. All men are created equal (and alike) in that. All men like to live; all like to enjoy freedom; all like to be happy with such possessions and opportunities as are theirs. This is the true meaning, which is so explicit in the declaration that those have missed it altogether, who urge against this declaration of the essential equality of humanity, political, social, or legal considerations. They have missed altogether the true sense of Lincoln's reaffirmation of it in his Gettysburg address.

"Four score and seven years ago our Fathers brought forth on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal."

Lincoln repeatedly affirmed in his plain, direct language the belief in this equality of the formal outlines of human nature, that all men are essentially human. This psycho-physiological principle admits, of course, that the content of each individual as manifestation of this common humanity varies with each person. This variation constitutes his individuality.

The philosophic principle that all men are created free and equal admits also that this freedom may exist even in bonds. The poet declared: "*Der Mensch ist frei, und wäre er in Ketten geboren,*" though it should be also observed: "*Es sind nicht alle frei, die ihrer Ketten spotten.*". It must always be borne in mind that the external conditions effect, and are largely expressive of, the way in which the principle of the essential humanity of all men is recognized among men.

As this principle of human freedom and equality is recognized

among men, liberty in its highest sense, the inner liberty of the soul, will be less banefully affected by untoward social conditions and circumstances. Christ gets a better chance upon the hearts of men. With the discussion of this inner liberty of the human soul the subject does not remain politico-philosophical, but assumes, besides a purely philosophical aspect, a thoroughly theological one as well. In this sense an actual slave declares himself happy that he is not a slave like his emperor. With this regard the prisoner Paul exclaims with persuasive eloquence: "I would to God, that not only thou (Agrippa), but also all that hear me this day, were both almost, and altogether such as I am, *except these bonds*" (Acts xxvi. 29). To this inner liberty refers also Paul's summons in Galatians v. 1: "Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage." This theological view of liberty is closely related to the metaphysical discussions on the freedom of the will, and involves also the political and legal views, lying at the root of them all.

It should therefore be observed here that the American Colonists were in this respect much better prepared for the ideas proclaimed in the Declaration on the strength of human rights, because of their religious character and training. They were better prepared to realize the meaning and the practical application of the principles of liberty and equality than the French revolutionists.

Professor Münsterberg renders this observation well in *The Americans*:

"The social sentiment of equality, although variously tinged yet virtually the same throughout the United States, in no wise militates against social distinctions which result from difference of education, wealth, occupation, and achievement. But it does demand that all these different distinctions shall be considered external to the real personality. Fundamentally, all Americans are equal. The statement must not be misunderstood. It by no means coincides with the religious distinctions that men are equal in the eyes of God, and it is not to be association with any ethical ideas of life. Equality before God, and the equal worth of a moral act, whether done by the greatest or the humblest of God's children, are not social conceptions; they are significant only in religious, and not in social, life. And these two spheres can everywhere be separated. It can even be said that, as profoundly as religion pervades everyday life in America, the characteristic principle of equality in the

social community is wholly independent of the ethics of the New Testament. It is still less a metaphysical conception. The American popular mind does not at all sympathize with the philosophical idea that individuality is only an appearance, and that we are all fundamentally one being. The American thinks pluralistically, and brings to his metaphysics a firm belief in the absolute significance of the individual. And finally, the American principle of equality which we wish to grasp is not rationally humanitarian; whether all human beings are really equal is left out of account. It is a question actually of this one social community living together in the United States and having to regulate its social affairs. One commands and the other obeys, but with a mutual understanding that this merely happens to be the most appropriate distribution of functions under the circumstances in which we happen to be placed. The real man, it is felt, is not affected by this differentiation, and it would not be worth while either to command or to obey if all men did not tacitly understand that each esteems the other as an equal. The man who truly sees social equality as a real part of the social contract, will feel toward those above as toward those below him."

Because we believe and recognize the principle of liberty, it does not follow that it can and must unqualifiedly be accorded to every one. As strenuous an advocate of liberty as John Stuart Mill argues the point in his celebrated essay "On Liberty," that one should never *force* liberty upon any one. Liberty cannot be granted, it must be taken! The inner liberty must be lived; the outer liberty must be appropriated to one's activities. This the French forgot altogether. Hence Fichte's pronouncement at the time of the reaction of the revolutionary period in France, regarding the necessity of an inner freedom to prepare for the political outer freedom. "The enslaved of all nations rouse themselves at the shout of deliverance, the patriot's heart throbs higher at the cry; the poet dreams of a new golden age; the philosopher looks with eager eye for the solution of the mighty problem of human destiny. All, alas! are doomed to disappointment; and over the grave where their hopes lie buried, a lesson of fearful significance stands inscribed in characters of desolation and blood, proclaiming to all ages that where the law of liberty is not written upon the soul, outward freedom is a mockery and unchecked power a curse."

The proposition in the declaration points simply to the human rights, the just claims of a human being as the prime concern in all political, social and legal regulations in guaranteeing man his free

exercise of the psycho-physiological functions which are his as a human being. It concerns itself with the ground on which this higher spiritual life may bloom: "The earth beareth fruit of herself; first the blade, then the ear, then the full corn in the ear." (Mark iv. 28.)

The declaration of natural rights allows that this human equality of equally enjoying the exercise of one's human functions, is compatible with social and economic inequality. It is the pathetic story of the French Revolution that liberty was sacrificed to the false notion of these theorists to square the rights of man with those of the citizen. An equality of rights, or an equality before the law, flows naturally from the proclaimed human equality. The French revolutionists, however, did not see how there could be liberty without equality, and they wanted an equality not only before the law, but strove for an economic and social equality to secure liberty. They reversed the logical order in trying for economic equality to secure human equality, for human equality lies at the basis of equality before the law, and is its guarantee, but it does not involve economic or social equality. In fanatic anger thus perverting and misapplying the doctrines of human freedom and equality, the French Revolution shows us that romantic figure Madame de Roland exclaiming on the scaffold: "Liberty, what crimes are not committed in thy name!" A French writer well characterized the motto of the French Revolution: *Liberté, égalité, fraternité* as *un mensonge entre deux songes*, for this it was "a lie between dreams," because the French failed to understand the true meaning of liberty and equality, always starting in their interpretation from the social point of view. This is strikingly illustrated by as radical a writer as Saint Simon, who declares in his *Système industriel*:

"The rights of each associate can only be founded on the faculties which he possesses to cooperate for the common good." (Les droits de chaque associé ne peuvent être fondés que sur les facultés qu'il possède, pour concourir au but commun.)

There is evidently nothing left of the *inalienable* human rights, which were the appeal in the revolutionary time. Rights here flow from expediency, not from natural claims. Similarly Joubert boldly states:

"Men are born unequal. It is the great benefit of society to diminish this inequality as much as possible by granting to all, security, a competency, education and help." (*Pensées. Du gouvernement et des constitutions.*)

It is plainly again a reversal of the logical order, making society basal ground for the betterment of man. Why must the unequally born man be equalized by measures of society if not that society may benefit from men better safeguarded in their human rights. Against this French viewpoint should be urged the emphatic declaration of Channing, whom the French styled "le Fénelon Américain":

"He who has never looked through men's outward conditions to the naked soul and there seen God's image commanding reverence, is a stranger to the distinctive love of Christianity."

For justification of the claims of liberty and equality we need higher ground than society or politics can furnish. Bossuet, though the Catholic Church was then allied with absolute monarchy, brings this query on religious grounds:

"The murmurs of the poor are just. Wherefore this inequality of conditions? *All are made of the same clay*, and there is no way in which to justify inequality unless by saying that God has commended the poor to the rich, and assigned to the former the means of living out of the abundance of the latter, *ut fiat equalitas*, as Paul says, 2 Cor. viii. 13-16."

Because men are of the same clay, the extreme inequality in social conditions has no right of existence, unless, the famous bishop declares, it be in behalf of the "good works" which the Catholic Church proclaims in reference to the well-known quoted texts. France, however, by destroying Protestantism never could be the soil where the claims of the individual would be adequately recognized. This is one of the fruits of the Reformation and to be remembered especially in reference to the conception of liberty.

The declaration "all men are created equal" has as its ethical corollary the high authority of the Golden Rule. Matthew vii. 12: "Therefore all things whatsoever ye would that men should do to you, do ye even so to them." This ethical principle active in behalf of the individual in society would transform it gradually from within. All reforms, political or otherwise, must thus be brought about, and liberty and equality too must come that way.

Kant seized upon this principle of "man as an end in himself" as the cornerstone of his system of ethics. "So act that the maxim of thy action may serve as a general rule," became the formula to be observed. "You are to treat humanity, whether in your own person or in that of any other, always and under any circumstance

as an end and never as a means only." This recognition of the individual under his rigoristic ethics stamps Kant a Protestant philosopher, if he cannot be the philosopher of Protestantism, as Paulsen (*Kant der Philosoph des Protestantismus*), Kaftan (*Kant der Philosoph des Protestantismus*), and others have proclaimed him. Besides the rejection of all intellectual proofs of religion (*Religion innerhalb der Grenzen der blossen Vernunft*) and his rejection of the value of pious works for an emphasis upon "the good will" are opposed to the teaching of the Roman Catholic Church. Protestantism which recognizes "the priesthood of all believers" is more consonant with individualism and democracy than the hierarchy of the Romish Church and could therefore interpret and better guard the principles of liberty and equality.

It nevertheless remains strange, that the French should so misconstrue the ideas of liberty and equality, were it not that bred on revengeful hatred Rousseau's catchwords had inflamed the populace to the extreme sentiments which made in the outburst of the Revolution the reasonable interpretations impossible. For if Rousseau did not influence to any considerable extent the political theories, he certainly had a powerful hold upon the masses, and figures as a considerable factor in the French upheaval. Many writers of that period like Voltaire and Turgot do not believe in absolute equality. Turgot even affirms that inequality of conditions is necessary to stimulate the progress of society, nor would he surrender individual liberty for the principle of public welfare. He says in *Lettres sur la tolérance*: "We forget that society is made for individuals, that it is instituted only to protect the rights of all in assuring the accomplishment of all mutual duties." This recognizes the view that social circumstances, economic conditions, political relations, and legal statutes all should further these human rights, freedom and equality. They can neither create nor destroy them, but should serve them in respecting in the citizen, the man, the claims of the individual as a human being. This personal right is often in danger, it is especially threatened now under the stress of circumstances of this gigantic, murderous war, the personal worth of man and his claims as a human being are absolutely discounted, man is now only a citizen. Under the guise of patriotic sacrifice the respective governments enforce upon the people the most exacting and far-reaching demands, while the people surely are inadequately voiced in the policies of the combat. But in France to-day Max Nordau protests that it is never the duty of the individual to sacrifice himself for the community. This is in line with the modern theory of self-

realization which we do not share. Sacrifice there must be; perhaps here too, it is "to die to live," so far as the individual is concerned. But there should be an emphatic protest against the governments' encroaching upon the rights of man, for the maintenance of which rights governments exist at all. Only to secure these rights were governments instituted among men, and their just powers are derived from the consent of the governed, whose "safety and happiness" is forever the aim of government. Thus the powers that be are ordained by God. This governmental view accords with Calvinistic doctrine, it is also biblical and it holds the paladium of true liberty for those over whom it is exercised.

But it has been repeatedly asserted that the contest in political history has been to rescue liberty from the grasp of executive power. On the long list of champions of political and human freedom one name was dimmed by the reproach of having advocated the extension of executive authority. It would have been plainly against the march of human progress, for it is retrogressive development to control public and private life more and more by governmental restraints. The government at best is but a pedagogue, leading, restraining, perchance educating the people, but it is not in a positive way ethicizing the nation, or moralizing its people. Fichte's remark is significant: "Der Staat geht, wie alle menschlichen Institute, die bloss Mittel sind, auf seine eigene Vernichtung aus; es ist der Zweck aller Regierung, die Regierung überflüssig zu machen." (The state like all human institutions that are merely means will ultimately end; the aim of all government is to make government superfluous.) Fichte's statement is too strong, but we certainly need less and less government, instead of more of it, as time goes on. Governmental authority should not be set up as an independent end in itself, nor should it be under the Church as the Roman Catholic Church would have it. Under God it is to serve the people over which it is instituted, and it is amenable to the will of the people. Tom Paine's remark is a pointed one: "Need made society, wickedness the government."

The respective positions of Church and State, when closely observed, are not so far apart as the vehement conflicts between them would lead us at first to suppose. Both refer to God in justification of the authority which they exercise. The Church would fain leaven society into spontaneous and ready response to the Gospel of Christ. Similarly every government endeavors to cultivate in its citizens a free and hearty cooperation. We must here bear in mind, however, that the Church has a more direct

bearing upon the conscience of her members than the State has, even when its government is a never so perfect expression of the society which it regulates. In keeping with this fact the Church addresses herself more exclusively to the individual as such, and primarily for his spiritual interests. The State naturally views the individual as part of society and in the more external bearings as a citizen. It should therefore be clear that the sphere and the methods of church-endeavors should be distinctly Christian, and always rely exclusively on moral suasion. No constraint but the love of Christ is to be her compelling power over a gainsaying and disobedient people. Only with spiritual weapons may she "go out into the highways and hedges, and compel them to come in." All true gospel teaching asks only for a voluntary assent of those to whom it goes out.

The Christian church, however, feels assured of final victory because of the need of man. Thus the church responds in spiritual nurture to the native need of individual man to bring him to the fulness of Christ, while governments restrain individual man in behalf of society. In fine, Church and State both claim the authority of God, but the Church rests this claim on special grace in the revelation of Christ for the positive bringing in of the kingdom of God upon earth. The State on the other hand relies on the common grace of God as restraining the curse of sinful man. It follows that the position of the Church is more ideally conceived, but for this very reason less justified for application in the visible actuality of this world. For this same reason it remains a very debatable question whether any visible church could make true these ideal claims and extend them over those who do not freely recognize them. The classic biblical passage, Romans xiii. 1-5, makes plain that government and civil authority are conceived as a restraint upon the evil which would unsettle society, and an encouragement to the good works which conduce to its welfare. It therefore appeals invariably immediately or mediately to God for its sanction. The ultimate appeal is always to God, because He announces himself in the heart of every man, and the conscience whispers that "He removeth kings and setteth up kings" (Dan. ii. 21). He is in all and over all, supreme on earth as He is in heaven.

"By me kings reign
And princes decree justice,
By me princes rule
And nobles, even all judges of the earth."
(Proverbs viii. 15, 16.

Nothing can bring home more potently the heavy responsibility of government authority than this plain injunction that all government is under God. Its *de jure divino* is open to varied explanation, and it is well worth while to emphasize at this time the biblical injunction: "By me kings reign." Then, do they reign as "by me"? It should be asked of any government,—for the form matters little—Is it acting *de jure divino*? As observed already, a stupid, selfish emphasis is laid upon the importance of government in the endeavor to enlarge its executive functions unduly. Thus *de jure divino* becomes a prop to bolster up the arrogant claims of governing classes, but it may also—and more truly—figure as challenging those in high places of government with condemnation from God's own words. Edwin Markham significantly asks in "The Man with the Hoe": "How shall it be with kingdoms and with kings, when this dumb terror shall reply to God, after the silence of the centuries?"

With that accursed fallacy that public expediency should determine the measure of individual rights, misguided power of a temporary majority has too often spoken for "public welfare" and called the instinct of loyalty into its service, throttling the liberty of man. For this "public welfare" Socrates had to drink the hemlock, the Christians were persecuted in Rome, the Huguenots driven from France, the Puritans from England; and Christ was crucified when Caiaphas "gave counsel to the Jews that it was expedient that one man should die for the people." (John xviii. 14.)

While the pendulum is swinging back from the direction of individualism and the state extends its power far into private, individual and human rights, it is well to remember the declaration of the essential equality of all men, of their rights to life, property and happiness, and to think of governments as mere means to that end. Laboulaye well declares in his work, *L'état et ses limites*:

"It is in the respect of the person that one can measure the true grandeur of civilization."

When the Declaration of Independence proclaimed this regard for man and his human right, the African negro remained legally excluded, only so long as the fact of his humanity was not recognized. Then he shared the equality of human rights with the white man, and slavery became impossible. But the same proclamation of human equality might be applied *outside* the United States as well. Just because it is an abstract, philosophical, not a legal statement, the declaration of human rights knows no limitation. It is absolute when it affirms: "All men are created equal." It rings

with the force of Paul's address on Mars' Hill: "God that made the world and all things therein, hath made of one blood all nations of men for to dwell on all the face of the earth." (Acts xvii. 24 and 26). Will, then, in the present time legal restraints and hindrances still bar the recognition of the equal humanity of the Mongolians? And how long will the Japanese endure these discriminations against them from the nation which set out with this declaration of the equality of *all* men?

SOME SKETCHES IN COMPARATIVE ANIMAL AND HUMAN PSYCHOLOGY.*

BY ERNST MACH.

With Illustrations by Felix Mach.

THE idea of applying the theory of evolution to the physiology of the senses and to psychology in general, was advanced, prior to Darwin, by Spencer.¹ It received an immense impetus through Darwin's book *The Expression of the Emotions*.² Later P. R. Schuster (1879) discussed the question whether there were "inherited ideas" in the Darwinian sense. I, too, expressed myself in favor of the application of the idea of evolution to the theory of the sense-organs.³

Ewald Hering in an academic anniversary address characterized memory as a general function of living matter.⁴ Memory and heredity come under one concept, if we reflect that organisms which were parts of the parent-body leave it and develop into new, independent individuals, preserving their characters in the transformation. In grouping memory and heredity together, however, we gain wonderfully in breadth of outlook, for by this thought heredity is rendered as intelligible to us as the retention of the English language and other institutions by the Americans of the United States.

Recently Weismann has conceived of death as a phenomenon of heredity; greater length of life and lessened propagation, ac-

* Translated from manuscript by Lydia G. Robinson.

¹ Herbert Spencer, *The Principles of Psychology*, 1855.

² Charles Darwin, *The Expression of the Emotions in Man and Animals*, London, 1872.

³ *Sitzungsberichte der Wiener Akademie*, 1866.

⁴ E. Hering, "Ueber das Gedächtniss als eine allgemeine Function der organisirten Materie," *Almanach der Wiener*, 1870. Translated into English and published with two other essays on allied subjects under the title *Memory*. Chicago: The Open Court Publishing Company, 1913.