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III.—THE ANTECEDENTS OF THE DECLARATION OF INDEPENDENCE.

By JAMES SULLIVAN, Ph. D.,

WITH DISCUSSION BY

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THE ANTECEDENTS OF THE DECLARATION OF INDEPENDENCE.

By JAMES SULLIVAN, PH. D.

The doctrines of the Declaration of Independence may, for convenience of treatment, be grouped under five heads: First, the doctrine of equality—all men are created equal; second, the doctrine of inalienable rights; third, that the origin of government was in a conscious act—governments are instituted (the doctrine of the social compact is present here, though it is not expressly mentioned); fourth, the powers of government rest on the consent of the governed; fifth, the right to throw off government, hence the right of revolution.

In regard to the second of these doctrines—that is, the doctrine of inalienable rights—it will not be inapropos to say a few words in order to define our position toward such theories in general. Very recently we have heard a great deal about all kinds of rights. Enlightened editors and correspondents of various New York newspapers have written learnedly about the numerous rights of man, inalienable and otherwise. A former lawyer of this State has announced that he has certain inalienable rights because the constitution of Pennsylvania says so; a city superintendent of schools has declared that teachers have an inalienable right to strike; and various labor organs have heralded in type measurable only by a foot rule that man has the inalienable right to labor and to prevent others from laboring. In fact, in the public mind of to-day inalienable rights are those things which we reserve for ourselves and deny to our enemies.

This whole discussion in the press has served to illustrate the wide gulf which separates the scholarly world from the general public. As a matter of fact, the world of learning

long ago abandoned the state-of-nature theory, with all its corollaries of equality, inalienable rights and others, but the world at large still seems to be, in respect to such doctrines, back in the eighteenth century. Such a state of mind is not surprising, however, when we consider that the average man stops his schooling at a stage in his mental development when such doctrines as those expounded in the Declaration of Independence leave an indelible impression which can not be removed by mere contact with the active, commercial world.

Into the discussion as to whether there are such things as inalienable rights it is not the purpose of this paper to go at any length. Had man been blessed in the beginning with an inexhaustible as well as a bountiful supply of the luxuries and necessities of life, such as existed in proverbial Eden, we may be safe in saying that the doctrine of inalienable rights would never have arisen. Unfortunately for him, however, the very necessities of life—omitting luxuries altogether—gave out at times, and the pack of which he was a part seemed to think that the easiest way was the best way, and took what they could get from their neighbors. When the neighbors had nothing but their own flesh, the conquering hungry ones took that. Now the eaten men may have thought in their own primitive way that they had an inalienable right not to be thus devoured, but it is doubtful if they could have convinced the eaters to accept any such high-flown notions. In truth could the eaten have changed places with the eaters, the idea of man's inalienable right to his life would scarcely have found place in their rudimentary brains.^a

Fortunately for man he did progress, and there arose some sort of crude, social unit which gave a rather uncertain guarantee that an individual's life was his own, and that no one could deprive him of it with impunity. In other words, the so-called inalienable right of life was made possible to man by organization. If we once grant this, however, we destroy its whole character of inalienability, for that which is inalienable in the sense of the Declaration not only can not be taken away, but is actually part of man from all time.

Such, and I do not think I am making the case too strong, is the position of modern writers on this subject. The right

^aSee the interesting study by Spencer and Gillen, *The Native Tribes of Central Australia*. London, 1899.

to breathe, the right to move along the street without molestation, the right to property—in sum, the right to life is made possible to us by organized society. If through the course of history man has been allowed to enjoy certain privileges without interference, it has not been because he has any inalienable rights, but simply because organized society, for her purposes, has not found it necessary to deprive the individual of them. Against her, however, prescription does not run, and if at any time through her agent of government she sees fit to deprive us of some of these so-called inalienable rights, which we have hitherto enjoyed, she may do so. This, however, is merely a question of power and not of expediency. We may grant that what organized society can do is limited only by physical laws, but we may at the same time think it highly inadvisable to interfere with certain privileges which the individual has enjoyed for generations. For instance, many of us to-day think it inadvisable for society to deprive man of the privilege of having private property in land or in movables, but few would deny her power to do so.

It has been necessary thus to define our position in regard to this doctrine of inalienable rights in order to show clearly the attitude which we occupy in tracing the history of this and the other doctrines contained in the Declaration. The connection between these doctrines and the works of Hooker, Hobbes, and Locke is so generally acknowledged^a that I shall confine my attention only to their history before the time of Hooker (1554?–1600). Even in the period before his time it is my intention to touch only upon such authors as state most clearly the substance of the doctrines of the Declaration, for I wish to avoid reading into many of the theories more than is really there.

The first men who advanced doctrines bearing a semblance to that of the social compact were Protagoras and the Sophists (481–411 B. C.). Though Protagoras wrote a work on the state it has been lost, and we know his theories only through Plato. For these theories we have two passages, one in the dialogue entitled *Protagoras* and the other in the *Republic*. In the first of these Protagoras is called upon by

^aLowell, A. L.: *Essays on Government*. Boston, 1889. Pp. 136–188, "Theory of the social compact." McLaughlin, A. C.: "Social compact and constitutional construction," *Amer. Hist. Rev.*, April, 1900, p. 468. Fisher, G. P.: "Jefferson and the social compact," *Amer. Hist. Assn. Report*, 1895, pp. 163–177.

Socrates to show how political virtue may be taught, and Protagoras does so by telling a myth or fable, now known as the Prometheus myth.^a

The essence of this is that men, being disunited in a state of nature, found it necessary to form a union against the wild animals. But unity for this purpose did not prevent them from fighting among themselves as individuals, and Zeus and Prometheus interfered, and, inspiring men with a sense of justice, caused them to unite on a basis of respect for the rights of others.

The passage from the Republic which refers to the same matter is as follows:

To commit injustice is, they [the Sophists] say, in its nature a good thing, and to suffer it an evil thing; but the evil of the latter exceeds the good of the former; and so, after the twofold experience of both doing and suffering injustice, those who can not avoid the latter and compass the former find it expedient to make a compact of mutual abstinence from injustice. Hence arose legislation and contracts between man and man.^b

As Protagoras is known to have taken the position of an agnostic toward the gods, it is safe to say that in his actual theory the union among men was made not at the instigation of the gods, but by an actual ordinance or conscious act on the part of men. Thus one of the theories of the Declaration finds expression as early as the fifth century B. C. It is not to our purpose, however, to explain the theory of Protagoras by examining the actual conditions of the Athenian state at the time, resting as it did on an individual basis. When all is said we must see that his theory is philosophical, and that no attempt was made, so far as our knowledge goes, to make any political application of it.

In connection with the theory of natural rights it is to be noted that the Sophists made a distinction between *φύσει*, by nature, and *νόμῳ*, by law, based upon the unchangeableness of the former as opposed to the variability of the latter according to time and space. It remained for later writers to develop this distinction in more detail and with more particular reference to the rights which men were supposed to derive from one source or the other.

Socrates himself^c spoke of certain unwritten institutions of

^aThe Dialogues of Plato, trans. Jowett. Oxford, 1892. Vol. I, p. 122.

^bRepublic, Bk. III, 358-359.

^cXenophon, Memorabilia, Bk. IV, ch. iv.

the gods, the same in every land, and of divine, not human, origin. It is important and fortunate for us that he enumerates some of those natural laws, for they are very different from the rights which the fathers of the Declaration thought they enjoyed by reason of certain fundamental and unchangeable laws of nature. They are, according to Socrates, the worship of God, duty to parents, gratitude, and requital of benefits, which are universally established in men's minds as rules of right conduct.

In the writings of Plato (427-347 B. C.) and of Aristotle (384-322 B. C.) there is little to detain us. They believed that a natural impulse in man led to the origin or slow growth of the state. In the *Laws*^a of Plato there is reference to a compact between three kings and three cities pertaining to the kind and character of rule to be given; but this agreement is historical, not philosophical, in its nature, and refers to states already established and not to any theory of their origin. As it stands, however, it may very well be said to express the idea of a compact between ruler and subject.

In the *Rhetoric*^b of Aristotle there is a reference to "natural" law in the phrase: "Natural justice is law because it is right; conventional justice is right because it is law." Unwritten or natural laws are moral laws or principles to which all positive laws should conform. In his *Politics* he speaks much about revolutions, but he formulates no right of revolution; about equality in the state, but he does not say that men are created equal. Similarly, Plato says that in the matter of laws willingness of the subjects and not force should be considered,^c but he does not say that a state and its laws exist by the consent of the governed.

The Cynics of Aristotle's time had preached that life according to the right reason of man was the highest good, but their doctrines along this line do not seem to have had much effect until Zeno (308 B. C.) took them up and out of them developed the Stoic philosophy. Briefly stated, the doctrines of the Stoics were: Virtue rules the world; and as virtue is the rational part of man's soul, that which is according to man's reason is binding. Human law is derived from it, and justice is therefore natural and not derived from convention or compact. The individual, nevertheless, is complete in himself,

^a *Laws*, Bk. III, 684.^b *Rhetoric*, Bk. I, 13, 2.^c *Laws*, Bk. III, 690.

but as a reasonable being he must recognize society and subject himself to its ends and needs. Those who own one law are citizens of one state and contribute to each other's good. In this manner Zeno conceives of the people of the world as members of his universal state or republic. In this there is no family life or nationality, but all are merged into the common brotherhood of man. This cosmopolitanism and equality were the great doctrines of Stoicism. Like the signers of the Declaration, the Stoic philosophers had to face the great fact of slavery, and, like them, they glossed it over. To the Stoics only the wise men were really free, and the unwise were slaves. This, however, was but a poor makeshift and did not conceal their true belief and doctrines.

The Epicureans (306 B. C.) regarded all union of one man with another as superfluous, though useful to protect the individual from wrong by others. They characterized the state as an organization of men to insure safety, and resting upon a convention or compact (*συνθήκη*) of individuals.

It is not necessary to take much time to explain the causes for the origin of these doctrines of the Stoics and Epicureans. After Alexander the Great the uncertainty of political conditions and the loss of national independence on the part of the Greek states had weakened the regard of the Greeks for their own particular states. Instead of the state the individual became the object of attention, and speculation about him led to their theories.

These two systems of philosophy connected the Greek world with the Roman. In the development of their theories, however, the Stoics were responsible for a certain confusion between rights by law (*νόμος*) and rights by nature (*φύσει*), applying to the latter the same meaning as to the former.

Among the Romans, Polybius,^a for he may be called a Roman, discovered the origin of the state in man's instinct, and Cicero discovered it in man's love of society and not in his weakness. For us Cicero's ideas of natural law are most important, for from such were formulated the theories of natural rights. The science of the nature of law, according to Cicero,^b does not come from the codes such as the Twelve Tables, but from philosophy herself. In all men there is a natural reason or sense of right and wrong. It is born in us—

^a Bk. VI of his history.

^b De Republica and De Legibus.

put in us by God and nature—and from this comes natural law. From natural law come natural rights, but of these Cicero attempts no definition or enumeration. He does say, however, that although men in a state of nature may not be equal as regards riches or ability, there are certain equal rights which they all have. This is the nearest approach to giving his theory of natural rights a political significance.

Thus, by Cicero's time (106–43 B. C.) there were three ideas of the Declaration known to the world. These were, first, the conscious instituting of government by men, held by Protagoras, the Sophists, and the Epicureans; second, the equality of men—an idea advanced by the Stoics; and third, the idea of natural rights developed by Cicero. These ideas, however, were not combined into any one system, were imperfectly defined, and were not of any political, but only of philosophical, significance.

Christianity emphasized but did not express in more definite terms the equality and brotherhood of man. It was left for the Roman jurists of the early empire, especially Gaius and Ulpian, to give us a more definite statement of the doctrines of equality and of natural rights.

The parts of the juristic notions which most immediately concern us are to the effect that the law of each nation is divided into two parts—that which natural reason sets up among all men (called *jus gentium*, because all nations use it) and that which is peculiar to a particular nation. Thus the Roman people use partly their own law, and partly a law common to all men. But besides this *jus gentium* there is another kind of law, *jus naturale*, a law common to all animals, among whom man himself is included, a law followed blindly and without reason. To this latter kind of law belong, for example, the union of man and woman, matrimony, and the procreation and education of children.

Men, in distinction from the lower animals, however, were taught by natural reason. Feeling the pressure of custom and the needs of life, they established certain rules among themselves. Wars arose and slaves were made from captives, but this was contrary to natural law, for by natural law all men are from the beginning born free, and in the enjoyment of their natural rights they are all equal. Furthermore, no civil regulations should be contrary to these natural rights.

In the absence of any enumeration of these rights we are at a loss to know how much political significance to attach to this expression, especially since the later jurists declared that the will of the prince had the force of law. This was somewhat tempered, however, by the declaration that the prince had his power only because the people gave it to him.

Probably no statements exercised so much influence on subsequent political theory as did these of the Roman jurists. Studied and commented upon during the Middle Ages, they formed the basis for political ideas throughout the whole period.

Of the early church fathers, Ambrose (born 340 A. D.) believed in a state of nature where there was no private property, but St. Augustine (354-430)^a is by far the most important for us. He adopted the theory of Cicero and Plato that man was led by his own nature to enter society, but he connected with it the idea that man entered society to have peace. To the whole he added the very important doctrine that there was a general pact of human society to obey kings. So far as I know, this is the first use of the word "*pactum*" in this connection, although of course it is possible that St. Augustine may have drawn it from some work now lost. We must note, also, that this does not refer to a compact to form a state, but to an agreement to obey kings, an idea similar in many ways to the one spoken about by Plato in his *Laws*.

In this "*pactum*" of St. Augustine is to be found the beginning of the idea that government rests on the consent of the governed. Government, he says, is to render service to those who are governed. In the natural order of the world God arranged for man to rule only animals. One man was not to be ruled by another. Like the Stoics and like the men of our Revolutionary period, St. Augustine had to face the institution of slavery. He declared it to be a temporary institution of this world existing on account of man's sin. By natural and divine law it is unjust, but by human law it is not so. In the divine city, the *civitas dei*, where sin does not exist, there will be no slavery and the rule of one man over another will cease.

^a Confessiones, especially Bk. III; De Civitate Dei, especially Bk. XIX; Sermons in the Ante-Nicene and Post-Nicene Fathers, Vol. VI, p. 302.

Fully as important as these doctrines of St. Augustine is his further statement that it is not always bad not to obey a law, for when the ruler makes one which is contrary to God, hence to divine and natural law, then it is not to be obeyed. This, so far as I know, is the first absolutely unqualified and complete statement that obedience is to be refused to a ruler. Socrates and the Apostle Peter had expressed similar ideas, but not in so complete a form.^a The jurists had said that civil regulations should not be contrary to natural rights, but they had evolved no theory of non-obedience. In this doctrine of St. Augustine we see the beginning of the theory of active resistance or revolution. It was Christianity's first contribution to political theory by making the law of God not only equal but superior to the law of nature.

In adding these two theories—first, that the power of kings rests on the consent of the governed given in the form of a pact, and, second, that obedience need not be given to the laws of a ruler which are contrary to the laws of God—to the three already existing at the time of Cicero, St. Augustine completed in number the five theories of the Declaration of Independence. His influence on the theorists of the Middle Ages was enormous. Scarcely any works outside of the Bible were used more than his.^b

The theory of the consent of the governed was to a certain extent preserved during the period from the death of St. Augustine to the time of Gregory VII in the election of the German King by the people. It was modified somewhat by the theory that God gave the power of government to the people and that they in turn gave it to the kings. By this sort of compromise the very ancient theory of the divine origin of the kingship was reconciled with the theory that

^a Professor Dunning called to my attention that Socrates said he would obey God rather than the laws of the Athenians (Apology, 29), and that Peter said he would obey God rather than man (Acts v, 29). These passages contain the idea of resistance. The position of Socrates is, however, very doubtful. He steadily maintained that he was, in his teachings and actions, following the promptings of "the God;" and still, when the Athenians imprisoned him for doing so, he did not carry his theory of resistance into effect, but on the contrary preached absolute submission to law and authority, even when he must have felt that the law in punishing him was in conflict with the divine spirit which moved him to teach (see Crito). If the tradition concerning Peter's martyrdom were to be believed, he also took an attitude similar to that of Socrates. Certainly Paul preached the doctrine of submission to a ruler, and that without qualifications.

^b See Mirbt, Carl. *Die Stellung Augustin's in der Publizistik des gregorianischen Kirchenstreites*. Leipzig, 1888.

government came from the people. The theory of active resistance to the mandates of a prince began more and more to hinge on the question of the superiority of the laws of God, represented by the pope, over the laws of man, represented by the king or emperor.

Hincmar of Rheims (806-882)^a says that a king who does not attend to his duties or goes beyond them—in other words, becomes tyrannical—is to be judged by the priesthood and is to lose his office by the fact of his tyranny. Nicolas I,^b pope from 858 to 867 and a contemporary of Hincmar, says that tyrants must be resisted, for they rule contrary to law. We can see from these examples that the church was gradually enlarging upon the right of revolution; but the whole question was coming to be one of personal interest. Down to St. Augustine at least the various theories had been advanced from a philosophical point of view and with an entire absence of any feeling that the particular theory under discussion was aiding any political cause. From the time of St. Augustine, however, it becomes more and more evident that theories are advanced or opposed according as they tend to support or destroy the particular cause in which their advocates are interested.

This is especially true of the fight which broke out between Henry IV of Germany and Pope Gregory VII (1073-1085). Each side took up those theories which most advanced its own interests. The imperial protagonists clung to the theory of the divine right of kings, while the papal supporters took up those theories in which we are most interested. It was evident that if the latter could establish anything like the five doctrines of the Declaration of Independence, their cause was well-nigh won.

To treat the individual theorists of this time is impossible, as their tracts run into the scores. We shall attain our end if we find that they use any of the doctrines in which we are interested. Gregory VII^c himself says that the state originated in man's pride assisted by the devil. The pope, as representative of the spiritual power, may depose the emperor, who represents the temporal or state power. Manegold^d von

^a See works in Migne, vol. 126.

^b Letters in Mansi, vol. 15.

^c See works in Migne, vol. 148.

^d See the M. G. H. *Libelli de Lite*.

Lautenbach (1081), one of the most important supporters of the pope, declared that the state was the mere work of man. Kingship does not exist by nature or by merit. Even the word king is a mere word of office. The power which he has was given to him by the people. They did not exalt him above themselves so as to concede to him the free faculty of exercising tyranny, but they exalted him so that he should defend them from tyranny and interference by others. The people established government for mutual protection. They made a compact with the king and chose him king that he might force evil men to obedience and defend the good from the bad. If he falls into tyranny himself, the people are freed from his dominion and from subjection to him. As you would dismiss a swineherd for not taking care of his herd, so must you with better and more just reason remove a king. Here we have three complete theories of the Declaration of Independence: Governments are consciously instituted by compact; their powers rest on the consent of the governed; and the people have the right to overthrow them. In opposition to these theories, the supporters of the emperor offered others, such as those of the divine right of kings and passive obedience, but they do not concern our inquiry.

The only noncontroversial work of the period, the *Politicus* of John of Salisbury (1120-1180), affords little of interest to us. The prince is said to be the minister of the public good and the servant of justice, and to represent the public. If he rules by violence, he is a tyrant and should be killed. The person who does not pursue him commits a crime against himself and the whole body of society. For it is not only permissible to kill a tyrant, but it is equitable and just, and justice and equity are the very end of the state.

This is a very different theory of resistance from the earlier ones we have examined. St. Augustine advocated disobedience, and Manegold von Lautenbach declared that a tyrant could be deposed. Neither, however, placed his theory on ethical grounds, but on the grounds that the king held his power by virtue of a pact or agreement with the people. John of Salisbury, however, weakens his case by adopting the arguments of some of the imperial protagonists and declaring that some tyrants should not be killed, because they

are set over men on account of their sins. How a man is to determine if a tyrant belongs to the latter or the former class or if a king is a tyrant at all is not told us.

Gratian, who, about 1137-1142 attempted a codification^a of the canon law after the model of the Roman code, defined natural law as that which is contained in the New Testament (*Evangelio*), by which each one does unto others as he wishes to be done by, and does not do unto others that which he does not wish done to him. Divine laws exist by nature, human law by custom, which varies with different peoples. Divine law is identical with natural law. *Jus naturale* is common to all nations, and precedes all law in time and dignity. It includes such topics as the union of man and women, the rearing of children, community of goods, one liberty for all, the acquisition of those things which are to be taken in the air, on the earth, or in the sea, the repulse of violence with force. The debt to Roman law on the question of rights in a state of nature is obvious.

Jus gentium, which the Roman jurists had more or less confused with *jus naturale*, is by Gratian said to pertain to war, captivities, boundaries, alliances, thus acquiring with him that sense of international law in which Grotius used it.

Of greatest importance is the theory of the canonists in regard to general questions affecting all members of the church. That which touches all must be acted upon by all. If the officers of the church act for them it is only as their representatives. This purely ecclesiastical doctrine found its way into political life, and was used by Edward I of England in 1295 in a summons to his bishops to attend Parliament.

The scholastics of the time give us something about the right of resistance. Peter Lombard^b says obedience must be rendered to the prince unless his commands conflict with a law of God. Alexander of Hales^c doubts the justice of the rule of one man over another in view of the fact that all men are equal, and thinks that the rule of man should be over animals only. St. Bonaventure^d takes a similar view, and adds that power, when it is abused, may be taken away. The rule of one man over another is not according to nature, but arises in a corrupt state of nature when rulers are set up by human laws. According to the true state of nature all things are in

^aThe Decretum.

^bSententiæ.

^cSumma Theologica.

^dSententiæ.

common, but in the state of nature which has lapsed the right of private property comes in to prevent strife.

The influence of Aristotle during the thirteenth century led St. Thomas Aquinas (1225–1274)^a to abandon the compact theories so prevalent since St. Augustine. Nevertheless, he devotes some attention to natural law and introduces a new distinction between it and divine or eternal law. Though according to natural law all property was in common and all men free, the term may be made to include private property and slavery, which developed later because man's natural reason told him they were of use to him. So St. Thomas extends his idea of natural law to include these institutions under the head of natural rights, which previous theorists had accounted for on altogether different grounds.

Though disapproving of such a radical theory of tyrannicide as that advanced by John of Salisbury, St. Thomas does believe that if it is a right of the people to provide themselves with a king, it not unjustly belongs to them to remove him or curtail his power. A similar conclusion can be drawn from the work of Engelbert von Volkersdorf (1250–1311),^b a supporter of the popes, when he says that kingship rests on a *pactum subjectionis* on the part of the people among themselves to obey a king.

The struggle between Pope Boniface VIII and Philip IV, of France, was productive of no such theories as we found in the controversial writings of the investiture struggle. The conflict between Emperor Louis IV, of Bavaria (1286–1347), and the popes, however, brought into prominence again all five of the theories of the Declaration of Independence. All of them found expression in the works of two supporters of the Emperor—Marsiglio of Padua^c and William of Ockham.^d In defending the Emperor the latter occupied a rather anomalous position. Schooled in the ecclesiastical doctrines of the origin of the state he found it impossible to give up those theories when circumstances forced him into the ranks of the supporters of the Emperor. It is necessary to know this in order to understand why Ockham, a protagonist of the Emperor, should put to use theories used by such a rabid papal supporter as Manegold von Lautenbach.

^a Summa Theologica, De Régimine Principum.

^b De ortu Romani Imperii.

^c Defensor Pacis.

^d Works in Goldast, Monarchia.

Thus far we have seen that the doctrines of the Declaration, originating in philosophical abstractions, came to be used after St. Augustine for distinctly utilitarian and party purposes. They were mainly advanced by churchmen, but as churchmen were the only learned men of the Middle Ages, and played a leading part in political struggles, this is not surprising.

Wiclif (1335?–1384),^a however, marks a turning point. He supported neither temporal nor spiritual lords. He advanced his theories more because he believed in them than because they favored one cause or the other. Under the circumstances it is not surprising that the doctrine of equality reached the lay world through him rather than through the former controversialists.

When Adam delyed and Eve span,
Who was then the gentleman?

was the cry for equality of the lower classes, which they had taken from Wiclif.

It remained for one of the writers during the Conciliar Movement in the early part of the fifteenth century—Nicolas of Cusa^b—to take all the doctrines of the Declaration and combine them into a systematic whole. “Since all men,” he says, “are by nature free, then government rests on the consent of the governed;” and so he proceeds, deriving one doctrine from another as he goes along.

Nicolas of Cusa in advancing his theories had no partisan end to serve. After his time, however, the doctrines of the Declaration were again used, notably in the Wars of Religion in France, to advance party ends. Hubert Languet^c (1518–1581) at that time was their best exponent.

To trace in detail the various theories between the time of Nicolas of Cusa and Richard Hooker is impossible in the time at our disposal. I think I have shown that the principles of the Declaration existed long before Hooker’s time. As an ecclesiastic he was familiar with them, and only helped to make them known to his own and to future generations.

Philosophical in their origin, the doctrines of the Declara-

^a Political-ecclesiastical works edited by Poole, R. L.

^b *De Concordantia Catholica*.

^c *Vindiciae contra tyrannos* is usually attributed to him. Lossen (1887) thinks it was written by Du Plessis-Mornay, but Treumann (1895) and Landmann (1896) adhere to Languet as the author.

tion came to be advanced for purely partisan purposes, only to be abandoned after the controversy had been won or had died out. Our own Declaration is not free from such imputations, and even now, at the threshold of the twentieth century, we are allowing the accusation to be brought against us that we used the sentiments of the Declaration when they served our purposes, but we abandon them when the same are used against us by struggling races of the East.

H. Doc. 461, pt 1—6

AN HISTORIC PHRASE.^a

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The Declaration of Independence has always enjoyed the reputation of an effectively phrased state paper. The draughtsman of the document has been honored, perhaps even beyond his very great desert, for the incisive forms in which were expressed the political philosophy and the political facts which underlay the separation from Great Britain. But the glory of Jefferson has always been associated particularly with the enunciation of fundamental doctrine at the beginning of the Declaration—the natural equality of man, the consent of the governed as the basis of government, and the rest. Not less effective and masterly is the formula in which independence is definitely announced at the end of the paper:

These united colonies are, and of right ought to be, free and independent States. * * * All political connection between them and * * * Great Britain is, and ought to be, totally dissolved.

There is a pleasing fullness and finish in that phrase, “are and of right ought to be.” It leaves no doubt that the deed is done, and is done permanently. First, the colonies *are* free. The fact—the main thing—is thus made perfectly clear. Only secondly and subsidiarily, as is common if not proper in high politics, the law and morals of the matter appear—“and of right ought to be.” The formula thus appeals to the philosophic sense by its content as well as to the material sense by the rhythmic collocation of plain, strong Saxon words.

As I reflected on this phrase it seemed to me that the man who coined it should have the credit for his work. To Jefferson this credit could hardly go with certainty, for the

^a The discussion of the preceding paper of Dr. Sullivan brought out this contribution to the subject, which is worthy of preservation in this connection.

phrase appeared in the resolution introduced by R. H. Lee in Congress on June 7, 1776, and was merely taken over and incorporated with the rest of the resolution in the formal Declaration. Yet Jefferson was closely in touch with the group of radicals from whom the whole movement for independence received its stimulus, and it would not have been impossible that he should have contributed to the resolution something of his phrase-making genius. But whether the formula was due to Jefferson or to Lee or to another of their group becomes an obsolete question when one reads a certain passage in the Drapier's Letters of Dean Swift. There it is said that the letters were written to show the people of Ireland that "by the laws of God, of nature, of nations, and of their own country they *are and ought to be* as free a people as their brethren in England." Swift had a facility in handling the English language that might well justify the conclusion that the phrase was of his make, and the setting of it in the passage quoted gives it even greater impressiveness than appears in the Declaration. Could it be, then, that the draughtsman of the resolution at Philadelphia merely appropriated from a master of virile English a form of expression that had been used fifty years before?

Further investigation proves that the answer to this question must in all probability be negative and, further, that Swift himself could claim the meed, not of ingenious invention, but only of judicious selection. Thirty-odd years before Swift wrote was formulated one of the most famous of English state papers—the Bill of Rights of 1689—and in this we find (sec. 7) Parliament enacting that William and Mary "did become, *were, are, and of right ought to be* by the laws of this realm our sovereign liege Lord and Lady." Priority in the use of the phrase thus is clearly with the statesmen of the Whig Revolution, and both Swift and the American are convicted of a deliberate or unconsciously reminiscent appropriation of an early lawyer's locution. The Bill of Rights was, however, a state paper of sufficient consequence to justify recourse to it as a model. But a very little investigation will found a suspicion that the phrase we are tracing was not specially devised for use in the Bill of Rights. When we enter the controversial literature of the Puritan Revolution in the middle of the seventeenth century we are assailed at every

turn by suggestions, if not actual expressions, of the formula. And, passing back to the reign of James I, we find that the House of Commons in 1621, in protesting against one of the numerous lectures to which it was subjected by that sapient monarch, declared that "every member of the House of Parliament *hath and of right ought to have* freedom of speech." Forty years earlier, in 1583, Whitgift's Articles Touching Preachers affirms that "Her Majesty, under God, *hath and ought to have* the sovereignty and rule over all manner of persons born within her realms." Twelve years earlier still (1571) in certain Puritan regulations in the diocese of Peterborough the "confession" contained the declaration that "the Word of God * * * [*is*] *and ought to be* open, to be read and known of all sorts of men."^a

In view of all these instances, which apparently might be indefinitely multiplied, the only safe conclusion seems to be on the whole that the formula in the Declaration was a commonplace of political English, and that the draughtsman would have had a better claim to distinction in avoiding than in using it. Yet the phrase is unquestionably effective, and one would like at least to find consolation in the thought that it has a peculiar fitness for the English race, amid which it originated; that its clean cut and incisive terms reflect something of that strong political genius which we have been taught has come straight down from the forests of ancient Germany through the God-favored, even if historically indeterminate, Anglo-Saxons.

But before we lay that flattering unction to our souls we must read again the account of that notable drama of A. D. 1300, in which the leading parts were played by Pope Boniface VIII and Philip the Fair of France, neither of whom boasted a drop of English or Anglo-Saxon blood in his veins. The French king claimed to be independent of all human authority. Boniface, replying with his characteristic force and directness, said: "Let not the French say in their pride that they have no superior. They lie. Quia de iure sunt et esse debent sub rege Romano et Imperatore." (*For of right they are and ought to be* subject to the Roman King and the Emperor.)

^a Prothers, Stats. and Const. Docs., p. 204.

It would seem, then, that the phrase has a history antedating modern times and running wholly clear of English tradition. I have made no attempt to trace this history beyond 1300 A. D. It does not seem extravagant to fancy it running through the great political and moral controversies of Rome and Greece and Egypt and Assyria to the dimmest antiquity of the race.

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