
Hegel's edition of Jean-Jacques Cart's 'Confidential Letters' 3/3

An abridged and commented translation into English

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Jean-Jacques Cart (1748-1813)

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This post concludes our series on Hegel's German edition of Jean-Jacques Cart's *Confidential Letters* (French, 1793, German, 1798). Cart was a Swiss lawyer and political reformer and this annotated translation was Hegel's first publication.

Introduction (Stephen Cowley)

This is a précis of the final *Confidential Letters* (French, 1793, German 1798) of Jean-Jacques Cart, the German edition of which was annotated and prepared by Hegel in 1798. These final letters deal with the period after the arrival of the French émigrés in Switzerland after the French revolution of 1789 and the Bernese occupation of the *Pays de Vaud* (Vaud Country) that ensued.

¹ https://1.bp.blogspot.com/-nsFDkka6AYU/WLwTLg8MFHI/AAAAAAAAA7w/g_3huutHRRoLpFM5hZu6VUfgTvmKkn3XgCPcB/s1600/jean_jacques_morges.jpg

² <https://edinburgh.academia.edu/StephenCowley>

³ https://scottish-hegelian.blogspot.com/2017/03/hegels-edition-of-jean-jacques-carts_11.html

The main impressions that my work on the *Letters* leaves me with are firstly that the idea of property is the basis of much of Cart's reasoning about society. Cart seems to have had direct experience of a society run by common law from his time in England and America as well as in his legal practice and public life in Switzerland. In such systems, disputes over property play a leading role in court decisions. Secondly, Cart's own political inclinations are moderate and Girondin. Thirdly, Montesquieu, whose ideas drew from British constitutional practice, is more of an influence than Rousseau on Cart's politics. This carries over into Hegel's notes, in which Montesquieu is mentioned. The idea of property was carried over into the first part of Hegel's later *Philosophy of Right* (1821), where it is then modified by the later sections on morality and *Sittlichkeit* (public ethical life) and again by the sections on world history and absolute mind later in the system. We know from his early manuscripts that Hegel was thinking through the relations of society and religion at this time. Hegel's later idea of spirit (*Geist*) may be influenced by Montesquieu's *L'Esprit des lois* [Spirit of Laws] (1748).

The period between Cart's edition (1793) and Hegel's (1798) saw the fall of the moderate Girondin government, the Reign of Terror and the Directory in France, the War of the First Coalition (1792-97) and the establishment of the Helvetic [Swiss] Republic under French influence in April 1798. The course of events may have influenced Hegel's editorial decisions, including the decision to publish the Letters. Hegel's introduction is marred by his mistake in the first sentence in supposing that Cart was dead. In fact, Cart returned from America a few months later and played a prominent role in Swiss politics. The rest of Hegel's brief introduction defends Cart's passion as appropriate to his subject matter and warns that government depends on respect for justice and hence a willingness to correct grievances.

Hegel adds a long note on later events to Letter Six. The prominence of Montesquieu as a thinker is noteworthy in Letter Seven, where his theory of the separation of powers is applied. There is also reference to Cart's time from 1768 to 1773 in Boston, America, then still under British rule. The relation of reason and positive law dealt with here is also a theme in Hegel's own thinking. I have posted the two excluded letters⁴ (Eight and Nine in Cart's edition) separately. Claude Saumaise (1588-1653) mentioned in Hegel's Letter Eight was a French classicist. Hugo Grotius (1583-1645) was a Dutch theorist of natural law. In Letter Eleven there are more references to Montesquieu.

The titles of the Letters are added in Hegel's edition and I follow his numbering of them. Sub-headings within the letters are my own and I place my own comments in square brackets. The page references of direct quotations are to the French edition.

⁴ hegels-edition-of-jean-jacques-cart2.htm

Cart's Letters six to twelve

Letter Six – The Administration of Justice, the Arrival of the French Émigrés and the Bernese Occupation

Lyon, 4 January 1793

If, in addition to Berne taking power over legislation, taxation and the judiciary, it also undertakes to judge us, we have fallen into an absolute slavery, for our fortune, freedom and lives depend on its will alone. This is a violation of public order and safety.

In the first letter, Cart showed how the judicial power under the House of Savoy remained with Vaud. There were courts of first instance, with appeals to the bailiwick of Moudon. Above that, major cases could be brought before the Estates. Criminal cases also were judged in Vaud. The Baron of Vaud could not so much as issue a fine on his own account, or issue the death penalty. “The famous law that the English regard as the shield of their freedoms, the law of Habeas Corpus, dates back with us nearly 500 years and even that date is less than its origin than that of its ratification.” [Cart cites a Charter of 7 December 1439 in Latin. - SC] There was no exception for *lèse-majesté* [the offence of disrespect to the monarch].

The costs of justice were retained in Vaud. The local judges had no interests beyond the security of all and the interests of the country in accordance with justice. The Bernese knew that the people of Vaud would sooner give up their treasury than their persons. For many years there was a roving court of appeal, whose location was at last fixed in Berne, where it judged civil cases: the *Chambre des suprêmes appellations romandes* [Chamber of Final Romance Appeals]. The town of Moudon complained, rejecting compensation. A sum set aside for this has remained in Lucens Castle until today.

The right to move appeals beyond the territory is a question of public law independent of practical administration. Trials in Vaud have always been pleaded in our own language [French] by our own advocates [barristers]. This right does not exist in the German canton. The above Chamber of Final Appeals was normally enlightened and impartial, but this is not so for other Bernese tribunals, which are detestable, like the Holy Inquisition. Our adversaries are our judges.

Cart cites a decree about a forest and a case of inheritance, where the parties in dispute were from Berne and Vaud. It is the principle that is wrong though. He rejects the idea of a General Commissioner as a solution, about which he intends to write in a separate work. Formerly Vaud judged its rulers, now its rulers judge it. There is a difference between a prince, such as the Baron of Vaud, and the burghers of a small town. They are too close to those they rule. "A terrible government is one by the burghers of a small town that wishes to exercise absolute sovereignty over an entire province." (139) Its means are small.

There was mitigation in criminal cases, where the procedures were led in Vaud and independent of the authority of bailiffs, who could not imprison people. It is worth noting that ten Germans are sent to the galleys for every man of the Vaud Country. Perhaps this is because bailiffs do not exercise criminal justice in Vaud, but do outside it.

Some years ago, the government forbade the circulation of the currency of Fribourg and Lucerne; close relations between cantons, including fairs and markets, made this impractical. Suddenly, several individuals were summoned before bailiffs and fined. Their accuser was neither present nor named and they were allowed no defence. The informer and bailiff each received a third of the fine. Cart believes this was not the work of the Grand Council [of Berne], but of a particular department. However, it is a danger to property rights. No other government in Europe would allow such a thing. People were alarmed, but the matter only affected their pockets.

[The Martin Case] Worse was in store. Mr [Jean-Rodolphe] Martin [(1737-1818)], minister of the Gospel at Mésières, was arrested in the night and taken under guard to Berne, where he was thrown in a dungeon. One would think some great crime had been committed, but in fact Martin had been denounced for uttering the following words: "Your lord asks from you a tenth of your potato crop; you are on the eve of attending a trial on the matter; the question seems easily soluble to me: it depends on this – are potatoes to be considered as a grain, or as a vegetable? What do you say, Mister assessor?" "By my faith, minister, potatoes are no more a grain than cabbage?" "Then no tenth is required. This is the time to say so with force and violence. Look at France! Dr Cart shamed himself in making excuses to Their Eminences [”LL. EE.“] for composing a memoir in which he defended the rights of our country." (144-45) Cart denies making any such excuses. This was, not the crime, but the accusation. It was again the work of a secondary department in Berne: the Senate, not the Council of Two Hundred. The reason for putting itself above the law was the issue of high treason. The words alleged by the informer Reymond ("to represent with force and violence") reveal falsehood: to represent, you do not use violence, and if you use violence, you do not represent. What was advised was "to represent with force", that is to say,

the force of reason and conviction, not main force.



The Return of J-R Martin to Mézières by J-F Chatelanat.

The complaint was made only after several weeks to the landowner, an interested party and perhaps also a member of the government, not to magistrates. Martin was discharged and set free by the consistory, but for want of proof, not because the procedure was absurd. Forty fathers of families have had to suffer more for the same reason.

[The French Émigrés arrive] The French émigrés have flocked to the Vaud Country [i.e. aristocrats feeling revolutionary France.] At first we sympathized. Most were feudal proprietors who had lost their property. All had lost the privileges of a caste apart. They won our confidence, but only to betray it. Our words were reported, exaggerated and poisoned. Jacobin propagandists were the creation of their imaginations. They plotted counter-revolution, frightening some Swiss who received annuities from France. The French revolution became a subject of daily conversation.

The 14 July was celebrated in Lausanne and other towns in Vaud in 1791. Toasts were made to the National Assembly and to all friends of liberty. The bonnet was worn, there were balls and fireworks, but no laws were broken. The aristocrats too dined in public, with white cockades, at Cully. When someone proposed a toast to patriots, a fight broke out and the bailiff of Erlach, who presided, tried in vain to calm matters. This was the event that deserved censure, but it was not so. The cry of high treason went up, wild accusations were made.

⁵ https://2.bp.blogspot.com/-pMsGjUnjyGg/WMQIg0vSEQI/AAAAAAAAA-I/K3pUqJ8Pkuc9zf7Mahwik6s3H4Uo32ewQCLcB/s1600/Retour%2Bde%2BMartin_1791.PNG

[The Bernese Occupation and its Effects] Soon, 3,000 armed men from the German country entered Vaud, with artillery and equipment of war. The talk in Berne was of blood and torture. Four Bernese commissioners sought out evidence of a crime that did not exist, usurping the functions of justice. Cart considers himself a victim of these events. He intends to write on this, but solely to prevent its recurrence. Proclamations were issued to excite hatred, rivalry and vengeance. Rewards and secrecy were promised to informers. Military executions by an arbitrary authority terrified people. Soldiers were billeted on local households. Some houses were turned into military hospitals. The officers modeled their conduct on Louis XIV in the Cévennes. Our main streets were menaced by cannons placed to defend town halls. The Bernese Council delegated its powers to the military authorities. Our councils drank the cup of humiliation.

Yet there had been no insurrection, no taking up of arms against Berne. There had been some representations about tolls, taxes and the Martin case; and success had been wished to the people of France. For that, we endured death sentences, exile, long prison sentences. Lausanne above all was filled with aristocratic émigrés. It was as if some in Berne were showing off to them. The rulers of Algiers and Morocco, Peter the Great, so called, showed their strength through executions.

The secret was disclosed by Mallet du Pan's letter of 17 September 1792. "The Swiss guard," it said, "will take particular care to maintain security and order in the place where the king will establish his residence." (157) Mallet was deposed from the Security Committee of the National Convention in November. He wanted Baron Gabriel d'Erlach to take up service in the guard as a lieutenant-colonel appointed by the Count of Artois. The letter was published in the papers and is in his style. Other addresses and letters confirm the content. This was why Lausanne was turned into a bloody altar. Cart wishes to denounce Gabriel d'Erlach to Switzerland for sacrificing their safety to his ambition. Cart has followed his deeds for three years now. The Bernese government has been handed over to him. This is why the country is said to be sold to the Count of Artois.

Your [Demuralt's] commission is sitting, composed of four members. Under the law in Vaud, a jury should have 13 members. The first duty of a judge, above all in a criminal case, is calmness and absolute impartiality. A defendant has the right to face his accusers. [Cart cites laws.] Cart mentions witnesses not put under oath and threats of violence. A servant was threatened with blows over testimony about a visit to France by his master. The commission's sentences are void in equity, conscience and law.

What crimes have been discovered? One of *lèse-majesté* that consisted of a toast at Ouchy to the National Assembly and Prosperity to the French people, of which Rosset and la Motte are accused. "In how many countries of Europe has as much not been done? In Birmingham, suborned persons disturbed the celebration, burned the house, of Dr Priestley, one of the principal celebrants. There resulted a criminal trial from it, but against whom was it conducted? Not against those who had celebrated the festival, but against those who had disturbed it." (163-64)



Joseph Priestley (1733-1804)

If these celebrations were criminal in themselves, all who took part would be prosecuted. How are victims chosen? By whom? Humming a song [*ça ira* – quite a bloodthirsty song – SC] is not a crime of high treason. Signs of revolt such as the tricolor ribbon and French army buttons are widespread. The colors of different nations – France, Holland, Sardinia - have been worn by youth for centuries, including in time of war. If it is a crime, it is yours also. According to you, 10,000 of our compatriots wear the tricolor cockade in France.

⁶ <https://3.bp.blogspot.com/-WfnViCCZHwM/WMQFcnCxxmI/AAAAAAAAA98/GeQXa2UdAFISA97IDb4ti0XY8BGHuiocQLcB/s1600/Joseph%2BPriestley.jpg>

Rosset and la Motte are also convicted of advising two accused persons to flee. So it has become high treason to advise fleeing a place where public spirit has become a crime. Lastly, they were warned of their association with a club at Pontarlier. Were we at war with France? Do we not rather owe our remaining independence to our alliance with her? Were our old connections unwelcome, or are they now broken? [Cart specifies that he is speaking as of July 1791.]

Until now, Cart has spoken hypothetically. In his next letter, he will prove that, even if a crime of *lèse-majesté* of the first degree had been committed, judgment thereon could only be given in the first instance by our own ordinary courts. He has expressed himself forcefully, but that is the effect of the government measures. He has been burdened by the 16 months he has spent meditating on the ills of his country, but since beginning to write these letters and to fix and develop his ideas, he finds in the feeling that overwhelmed him a new source of strength and new enjoyment in his love of country.

Letter Seven [Cart's Letter Nine] – [Montesquieu, the Separation of Powers and the Autonomy of the Vaud Judiciary] Lyon, 20 January 1792

To recap, even a crime of high treason of the first degree that had been or would be committed in Vaud was tried in the first instance in the ordinary courts of that country. This follows from the general principles of public law and from the laws and customs of Vaud itself.

Let us hear [Montesquieu] the author of *L'Esprit des lois* [The Spirit of Laws], who was a gentleman who held to the privileges of his order:

“When, in the same person or judicial body, the legislative power is joined to the executive power, there is no freedom, because of the fear that the same monarch or senate would make tyrannical laws to execute them tyrannically. There is no freedom at all, if the power of judging is not separate from the legislative or executive power, the power over the life and freedom of citizens would be arbitrary, for the judge would be legislator. If it was joined to the executive power, the judge could have the strength of an oppressor. All would be lost if the same man or body of principals, or nobles, or of the people, exercised these three powers, that of making the laws, that of executing public decisions and that of judging crimes or the disputes of individuals.

”In most of the kingdoms of Europe, the government is moderate, because the Prince who

has the first two powers leaves to his subjects the exercise of the third. With the Turks, where these three powers are united in the head of the Sultan, there reigns a frightful despotism. [Book II, chapter 6] In the republics of Italy, where these three powers are united, there is less freedom than in our monarchies; the government also needs, to maintain itself, means as violent as the government of the Turks, witness the state inquisitors [of Venice], and the trunk in which each informer can, at any moment, throw his accusation with a letter.

“See what the situation of a citizen can be in these republics. The same judicial body has, as executor of laws, all the power it gives itself as legislator. It can ravage the state by its general decisions, and as it still has the power of judging, it can destroy each citizen by its particular decisions.” (173-74)

That, Sir, is the legal basis on which your government rests. Berne has drawn these three powers to itself. Only your virtues stand in its way. The town has a reputation for dissipation. Such rotten apples do not last. There is justice between individuals, but threats to its power turn its citizens into the crocodiles of Memphis. So we cannot rely on your virtues alone. The passions of men make laws necessary: “for if they can do whatever they want, they will do more or less than what they have to.” (175)

As Montesquieu says, when judicial power is added to legislative and executive power, all is lost. There are laws aplenty for us, but none for you. You make them, destroy them and adapt them. Cart concedes that last appeals could be heard in Berne. No-one should be judge in his own case.

Then he cites particular Vaud laws. These state that interested parties should not be witnesses. Family relations should not be judges in civil or criminal matters. So how then could the Baron of Vaud be judge in his own case? The case of Rosset and LaMotte was one such case. The same rule applies to the Bernese authorities.

Cart pleaded for a local commune in a minor case against a minister 12 years ago. Several individuals withdrew from the hearings on the above rules to create a neutral tribunal. The case is stronger for cases involving the interests of Berne. He cites the penalties for *lèse-majesté* and rules to ensure the neutrality of judges. Yet a death sentence with confiscation of goods was handed down by the Bernese government. The Duke of Savoy or Baron of Vaud could not condemn someone to death and seize their fortune!

[Omitted by Hegel: Desèze said on the trial of Louis of France: “I seek judges among you and find only prosecutors”. Cart comments; “I embraced the [French] revolution as one embraces the saviour of

humanity; but I have not embraced all its parts.” (181n). We are threatened with torture. We are not kings, but we are men. If 25 million men cannot judge a king, how can the Baron of Vaud judge 300,000 men?]

Let us ask if this principle contradicts some positive law. Quisard's old collection of laws and customs says that sentences are to be pronounced by the governors of the place and assistants at court, including in cases of treason (Book 1, chapter 39). These customs formerly existed only in the memory of magistrates and old men. They were collected in part in 1577 by order of the Estates and again in 1616. This now constitutes our legal Code after approval of the Estates by decree of 1 June 1616. They were then sanctioned, but not made, by the Baron.

Major Davel brought armed troops to Lausanne to seize the bailiff and make a revolution. He was tried and judged for high treason by the ordinary tribunals of the town of Lausanne. [Davel was executed in 1723. In a note, Hegel refers to Meiner's *Reise in die Schweiz* [Journey to Switzerland] for his story. – SC] It is replied that Lausanne has both civil and criminal courts. Cart names 19 other accused persons from Lausanne.



Major Jean Daniel Abraham Davel (1670-1723)

Berne has appointed four commissioners to replace many courts of justice in Vaud. Those who have read history will know the quality of such verdicts.

[Omitted by Hegel: Charles VI regretted this (see Vely's *History of France*). When Louis XI gained control of Franche-Comté [the free county, a French-speaking province near Switzerland] in 1480, when officers of the king made arrests for *lèse-majesté*, such persons were to be handed over again to the ordinary judges (see Vely's *History of France*). Yet Louis XI is execrated as a tyrant.]

Gustave III of Sweden is also recognized as a tyrant by many, but in 1772 he did not permit extraordinary commissions in the constitution he proposed to the Swedish Estates. Berne has acted where tyrants do not dare. And what of spies and secret rewards to faithless men? Cries of high treason and *lèse-majesté* have spread an atmosphere of fear. The American constitution declares:

“Treason to the United States will consist only in making war against them, or in associating with their enemies by giving them aid.”

That, says Mr Necker, is how a moderate people, even in the wake of civil war, circumscribes the accusation of treason (Of Executive Power in great States). Cart was welcomed in Boston as a young man and Switzerland was toasted at a public dinner in the belief that it was free.

It would have been better for Berne to replace local appointees than to send in commissioners. The sending of commissioners signalled a desire to find crimes where the ordinary course of justice saw none. Defiance, fear and despair have been the result. Only well-spoken aristocrats can keep themselves from it, and not everyone is an aristocrat. Several people have sold their property and left the country to avoid the situation. Cart is among those who have fled.

“In the shadows of the night, along byways, crossing the hills of Bougy, under the eye of God, my soul raised itself to him. My vows were for my country; I tell you frankly Sir, they were not for its oppressors. [...] Could you have left justice to its ordinary course? Far from fleeing, I would have embraced it, we would all have embraced it; not one would have fled.” (196)

Demuralt is the first magistrate of the country. The naming of the commissioners was the final step. One can flee the fury of a mob, but an entrenched despotism is a greater threat. It holds a torch in one hand and scales in the other, but the scales are not those of justice, but of its own passions and interests.

“In a word, the dangers one may run on the highways, in the forests or amidst a people in insurrection, do not seem to me comparable to those that accompany arbitrary and absolute power and that, naming whatever it pleases a crime of high-treason, judges and destroys.” (198-99)

⁷ <https://4.bp.blogspot.com/-z81CxTEag58/WMQDzuOE3UI/AAAAAAAAA90/el6ND2wcJ4YCymfWYzu8bOej4y5z4hj3wCLcB/s1600/Major%2BDavel.PNG>

The measure of our virtue is that of our danger. The citizen sees only two classes of persons: spies and victims. Sir, remove from our hearths the causes of revolution. Keep the church goods. Participate in the legislative and judicial process – we consented to this - but let Vaud participate also, as it has done up to now. This is the only barrier to arbitrary power. The only means to tranquillity and confidence is for the government to declare that, even in cases of high treason, ordinary justice will take its course. One cannot rely on the lack of virtue of the people, for the root lies in every heart, ready to come forth.

Letter Eight [Cart's Letter Ten] – Military Authority in Vaud and Bernese Ambitions Lyon, 25 January 1793

The constitution of the Vaud country is as wise as it is ignored in practice. If it were applied, the government would be loved and the people happy. We have the precious Charters of 1352, 1391, 1439 and 1487. These show that there was no-one of the ilk of Saumaise or Grotius among our ancestors. Freedom was as necessary to them as breathing. The Baron of Vaud recognised in 1439 the people's right to make war against those who would harm them and to make alliances.

This right, as shown in the previous letter, is natural to all peoples and necessary to their security. The Baron of Vaud recognized it. When the people conferred on him a small share of military power they limited it. The acts of 1352 and 1391 prevented him from leading troops from Vaud out of the Vaud Country for more than eight days there and back and only the three bishoprics (Geneva, Lausanne and Sion). The power of the Bernese burghers extends only this far. Anything further violates our constitution, charters and commitments.

It will be objected that this does not take account of modern military tactics. This may be conceded. That however does not mean that it can be changed without the consent of the people. The Vaud country contains a distinct people with its own rights and customs. The King of Prussia is only a Count in Neufchatel, with no right to impose taxes or military conscription. Even military service against him is possible. The Baron of Vaud is king of Cyprus and Jerusalem, but that does not change our relation to him. We have the same relation to the burghers of Berne, for our constitution did not change when the barony passed to the House of Savoy and then to Berne. Wars of Switzerland, Berne and the German part of the county are foreign to us.

It is objected that in 1653, an obligation to march against German nationals fleeing from Berne was recognized, but this was debated in Moudon. The war of 1712 is also brought up as an objection, but here too no absolute right was conferred on Berne. There is no baronial right to require a common arms and equipment. We have no standing troops of shiftless individuals, but draw our soldiery from fathers and sons of families with properties to care for. Victory as well as defeat can put us in mourning. We will fight to save our country, not for the ambitions or particular projects of Berne.

“While we are at peace, we suffer abuses whose remedy perhaps would be purchased too dearly by civil war; but, war for war, unless it were very evidently defensive, it is difficult to calculate what its outcome would be.” (256)

Perhaps Berne has more interest in limiting our military endeavours than it thinks. We owe peace to our geographical situation more than to government measures. The expression of opinion is threatened by torture, but the people of Vaud are not accustomed to wear a mask. Cart has fled the shadow of the axe, but he can speak for “the great majority of his compatriots” (257).

[Switzerland, Berne and France] We have all seen the part Berne has taken in the cause of the émigrés. This was supported by the Grand Council, though not by all its members. Three measures have been taken: Berne supported the treaty of Pavia against France and would receive the Gex Country in return. Bernese deputies proposed dismissing the French ambassador at the Diet of Arau and marching on France. The king of Sardinia asked Berne to expel the French from Savoy and guarantee that province for him.

Swiss troops were sent to Geneva and 16,000 posted along the border when the French invaded Savoy. Prussian and Austrian troops entered France, but were discomfited there. It is said Berne's intentions towards Savoy were more offensive than defensive. The Bernese gazette suggests this. All Swiss troops have sworn obedience to the nation, the law and the king. The Swiss confederation did not disapprove of this oath. The Legislative Assembly asked the Swiss guards to withdraw from the neighbourhood of its sittings. Mr Daffry (a Count) refused to obey until he had orders from his superiors. It is said that this related to previous events, that the Swiss were to co-operate with a counter-revolution without knowing it. Cart laments their loss. They were brave young people, accused of having fired first, but it may be they simply defended themselves.

The Bernese Senate seemed to think that had the Swiss soldiers succeeded they would have saved the monarchy. The spoils of the French people would enrich not only the soldiers, but families like the Steiguers [Six families are mentioned. – SC] If they lost, it would be simply another defeat that Berne

could make use of to stir up hatred against the French.

Was the plan of sending troops to the border only forestalled by the successes of the French? We cannot say so and it is unwise to trust appearances in these matters. If the Berne Councils did not join the anti-French coalition and the other claims are not true, let us be informed of it. Let us be told that only the security of the borders was aimed at, not the aggrandisement of Berne or the fortunes of some of its burghers. Send back your spies and the rabble of bribed informers. They will not maintain your authority, but destroy it. We know that governments are not perfect.

The possibility of these things alone is sufficient to convince us of the necessity of reclaiming our constitutional rights. Since the Swiss confederation was established, it has had the wisdom not to start wars abroad or even engage directly in them on its own account. It has maintained a military reputation. However, manners have changed since Montaigne praised it and perhaps it should not be put to the test with those who are less Swiss than subjects of the Swiss. If we fought once for those who think themselves out masters, we might next decide to fight for ourselves.

We draw two conclusions. First, neutrality suits both the Swiss rulers and inhabitants. If war is considered inevitable the consent of the people should be sought. If refused, war was not in their interest, if granted, they would be committed to its prosecution. In either case, this would free the rulers from reproach. Then let the conventions (i.e. the charters) that concern public order and the whole people be respected.

Letter Nine [Cart's Letter Eleven] – Military Service Abroad

Lyon, 27 January 1793

The Bernese burghers have supplied regiments to foreign powers and this has damaged our reputation. Our young men from the countryside go to markets and fairs. Overwhelmed by new experiences, they meet a recruiting sergeant with drums and fiddlers. Wine flows, girls are promised and the image of debauchery is presented as an incentive to enlist.

“Our old customs, based on feeling and reason, gave a large scope to paternal authority. It was only at the age of 25 years that a son of a family could enter into a contract; before this age all kind of commitments on his part, be it with regard to his fortune or to himself, were void. But paternal

authority has been made to bend before the interest of a few Bernese. A father can no longer reclaim his child; he loses all the rights that his solicitude and the law give to him when he enrolls himself in the foreign service." (268)

Hence our morality is reversed. Anxiety replaces domestic peace. A father wishes to censure his son after a provocation. The son threatens to enlist. The father stays silent. When there is a fair in the neighbouring village, the mother and father are alarmed. When France, Holland and Piedmont are at war, how can we allow recruits for these rival powers to be made on our land? Men would not enrol in this way. We have been reduced to brutes, willing to fight our ancestors, our friends, our brothers for a few pence a day. At Fontenoy [in 1745, a battle in the war of Austrian Succession], Swiss fought on both the French and the Dutch sides. When a soldier leaves, his family mourns, when he returns, the neighbourhood is alarmed by his vicious habits and the germs of a cruel illness.

Berne provides a regiment to France, two to Holland, one to the king of Sardinia, the Swiss Guards in France and Holland and regiments to which several cantons contribute. There are around 2,000 men from our barony. They earn less than half what the lowest day's work in Vaud earns. We lose 365,000 francs a year from the difference. Our land requires hard work as it is less productive than in France. Our recruits are replaced by Germans, Savoyards and deserters from all lands. It is not lack of work that drives our men away. The loss to Vaud is real.

A poor family's sons are its fortune; vine growers and farmers need hands. Most of our families are poor and recruitment is one of the main causes. The heavy air of the plains instead of our own subtle and pure air affects the health of the Swiss. They are like a fish out of water. Physical need compels them to desert, but if they are caught their end is with the hangman. There is a crime here, but it is not the guilty who suffer. Others who suffer ill health are fined. Time away can only be purchased dearly and families send support. An annual loss of £40,000 (Swiss currency, silver) is incurred through this and other causes. Nor does Vaud gain by its officers what it loses from its soldiers. They too are an expense. Without a company, which is the case for most, they cannot live on their pay. Cart adds up the annual loss to £422,400 (Swiss currency). In a century, over £42 million is lost to Vaud alone. All this for the profit of Berne and its leading families whose members command the regiments! [The Steiger family, for whom Hegel tutored, was a military family. – SC] To sacrifice the good of the state for that of a few individuals is high treason. Berne does not supply a single soldier; they all come from the canton. "Are we then your poets, your serfs, your property? Are we the low slaves whose work, sweat and being are put together solely for the profit of their master?" (277-78)

The officers from Vaud made representations on this in 1790, asking that irregularities, distinctions and exceptions be abolished. Several towns in Vaud seconded this. The reply was a reprimand with threats.

Cart quotes an imaginary dialogue between the Swiss and their Emperor from Voltaire's *Questions sur l'Encyclopédie*. Cart says that recourse to the law of nature is not necessary as the charters he cites establish and limit the rights of Berne, unless the Estates are reconvened. Berne should not exercise a greater power than that claimed by the Emperor. "Truly Sir, I believe I am being reasonable." (279)

Cart suggests in a note that he will write separate works on other abuses and on the German country, which suffers the same or worse from these causes.

Letter Ten [Cart's Letter Twelve] – Berne exercises ecclesiastical Authority; Fate of the Vaud Archives

Lyon, 29 January 1793

Berne has all the trappings of absolute power in Vaud. Even in religion, they act like a papacy, exercising supremacy over the church. Berne's bailiff has become permanent secretary at the Academy of Lausanne. He chairs its meetings and has authority over the professors and students. He witnesses the oath they give to be admitted into the ministry of the church. Bailiffs chair local and synod meetings, often old military men, themselves surprised to be placed in charge of church affairs. They can suspend ministers. They can require marriage and permit divorce in cases of fornication and adultery.

(In a note, Cart says that he prefers Calvinism to the Church of Rome, but that is not at issue here.)

In the articles of their consensus, ministers are forbidden to preach against predestination. To be subject to legislative, judicial and military power, combined with ecclesiastical and executive powers, one has to be predestined! The clergy is stirring though and its action presupposes its own authority. The authorities set in motion the Martin case over the taxation of potatoes. Another case involved two ministers and attendance at a dinner. Lessons are being learned and it will be the worse for predestination!

Our ancestors had two Gospels. One was translated from Hebrew and Greek into our common language and taught our duties to our neighbour relative to the life to come. The other was found in the archives of the bailiwick of Vaud and taught the duties of our Baron and our duties to him. Few of the Vaud communes have preserved the Acts verified by the seal of the chancellery. The Dukes of Savoy respected our archives. The patriots of Vaud protected and conserved them. Since 1536, Berne has had this source

of light transferred to its keeping and limits our access to it. The despotic House of Austria does not act like this. Admittedly, Joseph II had the archives of Hungary transferred to Vienna, but he later returned them. Would that Berne would follow his example!

We have shown the bases of our constitution and how they have been overturned. As a result, we feel all the more the price of what we have lost. Be assured that most of Vaud feels this. Why then, continue on the current track, when it is better to turn and retrace your steps? You [Demuralt] hold your destiny and ours in your hands. Cart cites Montaigne (*Essays* I, 4):

"Let us not trouble them [the gods] with our business;
They take no heed of our disputes." [From Plutarch.]

Letter Eleven [Cart's Letter Thirteen] – The Bernese Bailiffs

Lyon, 6 February 1793

Cart writes: "My admiration for [Montesquieu's] *Spirit of the Laws* is always accompanied by some astonishment. How did this excellent work escape burning and its author persecution? Had he been from the Vaud Country, the bastille of Arbourg or Chillon would have been his reward." (288)

A principal source of disorder in aristocratic states, according to Montesquieu, shows itself when aristocrats appropriate to themselves the funds of the state under the pretext of recompense or salaries for the functions they exercise. In Rome, this was avoided under aristocratic rule as magistrates did not draw salaries (see *Spirit of Laws*, book 5 chapter 8). The leading citizens paid taxes and public funds were distributed to the people. It is the same in the Italian republics. In Genoa, expensive roads were built at the cost of millions, not to the state, but to a few aristocratic families. There and at Venice, they founded colleges, hospitals and charitable foundations.

The Bernese families have done nothing for us. If they had even preserved our public law and the channels of public resources, we would have thanked them. At the moment, to look at our past rights makes us guilty of high-treason, to speak of our heritage is sedition and to reclaim it would be a revolt. This is not his intention.

Before 1536, the Duke of Savoy had no bailiffs in the leading towns of Vaud. There were squires who

were Vaud patriots paid by the Duke. They presided over Tribunals of Justice. The Communes were self-governing. One bailiff covered the whole of Vaud. These arrangements could not be changed without the consent of the Estates. Berne replaced this system by one of 15 bailiffs from Berne paid for by Vaud. Cart estimates their annual cost at £40,000 (Swiss pounds) that came from church sources. (Cart cites a book *Du gouvernement de Berne* [Of the Government of Berne] that is consistent with his conclusions.)

Under the old regime, France was divided into 31 governments, none less than six times the size of Vaud. On the scale of Vaud, this would have cost £1,440,000, but in fact only cost £40,000 (£60,000 French pounds). The French government was corrupt and brought about "a revolution as indispensable as it was violent" (293). For a land only 20 leagues long and ten wide, our bailiffs' emoluments are £240,000 per annum. One might expect some public purpose to be served by this cost. They have a judicial function and oversee the police and state revenues. You would expect them then to know civil and feudal law, local customs and the science of administration. Some possess these qualities in whole or in part, but many find themselves in this position through fate or rank. Cart names four holders of one bailiwick in 18 years: excellent military men, but unlikely to become schooled in law at the age of 60 or 70.

Cart recounts a misunderstanding during a case he presented before one of them. Another profits from former church funds: "O blessed Calvin, O blessed Reformation, how many abuses you reformed, what good you have done to us!" (296) Our countryside is good for hunting, our rivers and lakes are filled with fish – this is for the bailiff. Cart used to forage in the valley of Mount Jura, where religion sent his forebears. In the Abbey of Lake Joux there a minister replaced the abbot. They both fished in the lake, but this was recently forbidden by the bailiff. O Calvin!

The reason for many payments of fees ceased at the Reformation. Monasteries could have been returned to the families who gifted them, but these arrangements were retained to the benefit of the bailiff. This is also the case with the priory and the right to sell wine in August. The work changes at harvest time and one wishes to drink more. At this time tithes are established to the benefit of the bailiff's wife, who makes a return in the form of poultry and mustard, but this is sent to Berne. It is a small matter, but by such small signs one often sees the original intention of institutions.

Cart tells similar tales about tariffs at the chestnut market in Morges, about a volume measure for which grain is crushed and the use of two measures, which operate to the advantage of the bailiffs. There are laws against the use of such measures. They do not respect property or the public good. One bailiff renounced their use. The saying that a bailiwick will arrange your debts has become proverbial. It

changes characters. Women say that their family did not accept it for a change of air.

The police [in an old sense of the word] was formerly administered by the Communes. Now the bailiffs have taken over this task almost entirely. The permit merchants to display their goods, comedians to perform, balls to be organized and wild animals to be shown. The bailiffs are paid for the position they hold, and then paid again to exercise their function. The fee for a judgement of the Final Court of Appeals contrasts with the fees charged by other courts. There are overlapping responsibilities for the police and courts and the most expensive means tend to be applied. Court fees are divided among fewer people, so that each court officer gains more.

In cases of defrauding of tolls, fines are divided equally amongst the informer, the bailiff and the state. Decisions are made by the bailiff. The fortunes of merchants and their creditors are put in his hands. There are virtues in Berne, but in this situation it is dangerous to tempt it or to risk the effects of its absence. In Berne, a member of the government cannot judge in the affairs of his family, but outside Berne he judges where his own interests are involved: a strange contradiction.

It may be believed that wise precautions are in place to prevent abuses. A defendant can present his case, strict proof is required and regular procedures followed. However, the Bailiff's summary court is used. The toll clerk is the primary witness and is rewarded with a third of the confiscation, as is the judge. Let those better informed say whether such courts exist in Turkey, Algiers, among the Hottentots or Iroquois. The merchant does not understand the jargon of the customs. He may not be granted a lawyer. Cart describes a case he was involved with about alleged illegal importation of hemp seed. Our province does not produce the seed, though the crop is grown here. Thus the import should be encouraged with a bounty, but instead it is taxed. The judge asked the clerk if he would allow a lawyer to speak. This was granted, but in the end, Cart could not present his case as he wished. Good practice by one bailiff shames the general custom of the others. What are we to think when fines are given out of which the judge receives a third? When Cart complained in writing, his report was denounced and he was threatened. The case went for the defendant, but their justification was admonished and costs given against them. Cart was the author of the justification and in effect was punished at his client's expense. Cart summarizes:

“The excessive remuneration of the bailiffs, all the gains that surround them, the part they are given in the confiscations and fines on which they pronounce as judges, such wicked institutions have for their goal only their private fortune, with no regard either to the public good, or the security of private property; they form, according to Montesquieu, the hardest of governments, for those who participate in them draw to themselves state monies, under the pretext of fines or remuneration for the functions they exercise, and they make the people their dependants in order to enrich themselves.”

(314)

Remedy will be found, or else there will be convulsions, leading to death or a return to health.

Letter Twelve [Cart's Letter Fourteen) – Other Nobility

Lyon, 18 February, 1793

There are few aristocracies that exclude their subjects from intermediate or lower ranks of the government. However, these are all exclusively taken by the Bernese burghers. This extends to ushers, wardens and the like. Some restrictions are reasonable, but they are extended to the whole government. The administration of the hospital of Villeneuve, established not by Berne but in part by local charity, is a Bernese appointment.

A shepherd discovers a salt water stream and it ends up under Bernese administration, with related employments given to the Bernese alone. Forests too are appropriated. Only recently have toll posts been open to appointees from Vaud, but still under supervision by Bernese nobles. Berne's position between Germany, France, Savoy and Italy – and between local cantons - makes posts there highly profitable. The replacement of packs by horse-drawn carts and the development of four horse cars have increased revenues. Income is not used to compensate those who repair the road, but appropriated by Bernese officials.

Coal is discovered. Their Excellencies in Berne give out free concessions. Rights to a mine are sold with a glass works. The purchase turns out badly and the creditors of the bankrupt business wish to sell the assets. The Bernese authorities oppose and prevent the sale. The concession, they say, was made to a Bernese burgher and is thus personal and not able to be transferred. Someone who buys land believes he has bought the rights to what lies underground, to minerals, streams, etc. This is the common law and practice of all peoples. Well, such a proprietor was mistaken, or rather he is made to see that the rules of property are uncertain in our countries, that they depend on the needs of the Bernese. He has bought only the surface, which is subject to charges, and someone from Berne can mine, turn up the ground and extract what he pleases. My goodness!

The Bernese have granted themselves hunting rights over all our lands, without respect for time, place or season. Hunts are conducted from springtime on, without regard for harvests. Such restrictions as exist are not honoured. The Bernese bailiffs set an example. They base this on a right of hospitality, but they

are hardly hospitable to us. The Baron of Vaud had this right, but this now means a wig maker from Berne can exercise it. It is easy to see that the Bernese families who had this right wished to extend it to their Bernese neighbours. Meanwhile, the locals cannot hunt and are even forbidden to kill hares that feed on the land, or thrushes that eat grapes.

The burghers of Berne and Fribourg have offered each other reciprocal hunting rights in their respective cantons. Many lands in Vaud are under feudal restrictions, including the right to hunt. The Duke of Savoy could transfer such rights, but they cannot be thus extended indefinitely to others to the exclusion of the proprietors. What would be unjust for him is unjust in the Bernese. The towns of Vaud also have hunting rights that were recognized by the Dukes of Savoy and that they have paid for. The bailiffs still fine them for it if they hunt without permission.

It may be said that Cart writes too much on this subject, but it does not concern just a pleasure. For some it is a positive right; for all it is part of natural law; for others it is an inborn taste, a carefree passion that they will not give up even when there are risks involved. There must be rules, "but it must be that these rules are equal for everyone." (326) I know not if a noble Venetian has the right to hunt, but I am assured that the whole people of Venice cannot. We are given arms that a Bernese captain can command us to fire, but a farmer cannot shoot a hare that eats his cabbage.

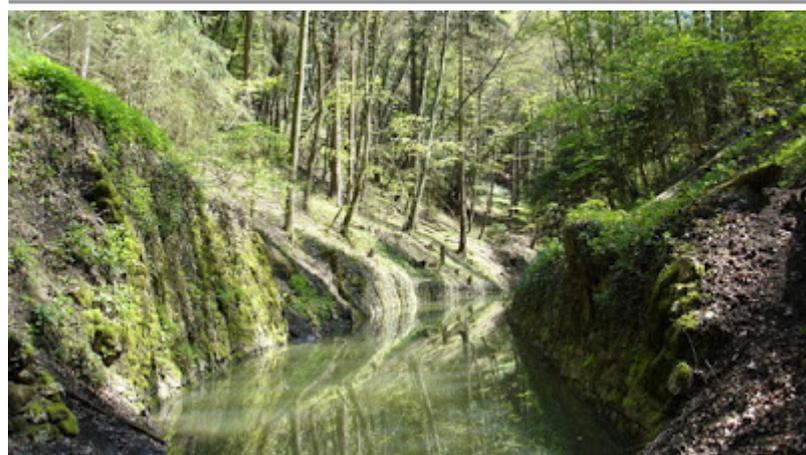
Such is our shame. A man from Vaud settled in Berne has no right to keep a dog there. Only the burghers can do so. The Duke of Savoy claimed no fishing rights in Lake Geneva, but now the bailiffs claim a right to a share of angler's catches. Rights to fish with nets have been changed to exclude the people.

Vaud has two main exports: some cheeses and above all wine. Here too Berne has taken control of the trade. Inhabitants of Simenthal are not allowed to buy wine directly from the vineyards owners of Vevay and Vaud. Instead they must travel to Berne 20 leagues away. We cannot sell our own produce in the German canton under pain of confiscation. The innkeepers there can buy from us, but the payments that can be made in this way are limited whilst a Bernese merchant is paid in full.



Vaudois cheese and wine.

The government is not responsible for the imperfect canal of Entre-Roche or the Lake of Yverdun. [The never-finished *canal d'Entre Roche* was intended to connect the Rhine to the Mediterranean Sea. - SC] Yet Berne obliges us to send our wine by them.



The canal d'Entre Roche.

⁸ https://4.bp.blogspot.com/-3bB6Y2_YGy0/WMfTuzTGngI/AAAAAAAAA-w/ZEhkkcy3N68sMNVznrjazW59BPVowIvRACLcB/s1600/Vin_Fromage_Suisse.jpg

The Doge of Venice marries the Adriatic Sea by throwing a ring into it each year. The Bernese have no such vain ceremony, but they take our fish and navigation. The Athenians abandoned themselves to unrestrained luxury before their decadence. Berne had exhausted the ways it can exert pressure on us. Everyone has read [Jonathan Swift's] *Gulliver's Travels* [(1726)], almost as famous as those of Captain Cook. Berne is like the flying island of Laputa over Vaud, depriving it of sunlight and dew. Before becoming bailiffs, the Bernese had Austrian bailiffs. The world is turning. Cart wishes happiness to Vaud, as he does to Demuralt's country.

[Cart's Concluding Note] Paris, 24 July 1793

“Sir, I told you so and I will keep my word: the thickest forests seem preferable to me to the most beautiful country of the universe when an arbitrary government rules over it. – I am going to those of America. I leave my country to be closer to it and to serve it better.” (332)

Lycurgus did the same and though he is neither a king nor a Greek, it is sufficient to be a man to follow his example. I will try to lead it back to the feeling of its own dignity. Cart hopes he can be useful to his former and his new country. Instructed that the seeds of evil accompany the birth of what is good, America may be able the better to keep its own constitution. A friend with whom these letters have been deposited will forward them [to Demuralt] at the same time as they are published. In the first, he demonstrates that Vaud pays more taxes than anywhere else on earth, proportionate to its means. “It is time to carry the torch to all these errors that sycophancy or ignorance spread at the expense of the truth and the happiness of peoples.” (333) Many things have been omitted, but no truth important to his country has been left out. He is threatened with the wrath of the Bernese authorities, with burning. Hopefully he has prepared the materials for a good blaze.

Yours respectfully...

⁹ https://1.bp.blogspot.com/-jUiomcMKERE/WMfMqb4k1YI/AAAAAAAAA-Y/gbyS1opA-mEZ-ldOoptfRTMpwxMZjY-WwCLcB/s1600/Canal%2Bd%2527entre_Roche.jpg



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Monument to Cart and the patriots of Vaud in Morges.

¹⁰ https://1.bp.blogspot.com/-5f-C7Ic14js/WMfQqTMSlpI/AAAAAAAAA-k/6_wVqriLirYbBHW8h0iG4ZiqxQDqnzyXgCLcB/s1600/Monuments%2Bdes%2Bpatriotes%2Bvaudois.JPG