

A relationship to this divine order gives added meaning and significance to the natural order, and the divine law furnishes the norms by which the different patterns of behavior in society are coordinated.

These moral norms, in other words, are believed to be anchored in the nature of things; they exist independently of men's interpretation of them, and neither individual persons nor majorities can flout them with impunity. This was the concept of the Natural Law, by virtue of which man was believed to possess inherent rights, as our Declaration of Independence explicitly states. Such a conviction kept the "consent of the governed" idea in a secondary spot.

The Crumbling Foundation

The Founding Fathers hung their case from a theological premise, although their own religious philosophies were anemic affairs and the eighteenth century ideology which they partly shared was not hospitable to theism. The colonists, however, were a theologically minded people, and the Church played an important part in their affairs. Thus they were easily appealed to with the idea that they were supernaturally endowed with inherent rights. It is one of the end prod-

ucts of the religious heritage of Christendom to claim natural rights for every human being as such, and to proclaim God's sovereignty over the social and political affairs of men. These religious beliefs are reflected in the Declaration. But withdraw these religious elements from the philosophy of the Declaration and we are in trouble. The concept of God-given rights goes when belief in God is suspended. This was happening even as the Declaration was being written; it has happened at an accelerated tempo since that time. It started as far back as Hobbes and Locke, in the middle and latter part of the seventeenth century.

There was a state of nature, Locke argued, of "peace, good will, mutual assistance, and preservation." Fully endowed human beings existed in this presocietal condition, each one possessing a natural right to protect himself and his property. After a rational weighing of the personal gains to be derived from living in civil society, individual men contracted with other individuals to form one, "by barely agreeing to unite into one political society, which is all the compact that is, or needs be."

As history, this is, of course, pure moonshine; men, by virtue of their genes, are biologically an-

thropoids; it is only by assimilation of their social legacy that they become fully human and members of a particular society. But social contract theories, which linked the ideas of natural rights and consent, were useful fictions during the political revolutions of the seventeenth and eighteenth centuries which were aimed at monarchy, and Locke furnished much of the ammunition used by our Founding Fathers. All this was fine when it came to deposing the kings — the only kind of authoritarianism which seemed to frighten the men of those centuries. But if we depose the kings only to set up a more far-reaching tyranny — parliamentary absolutism or the despotism of a majority — where's the gain?

Locke Sowed the Seeds

Actually, the seeds of majoritarian democracy are in John Locke: "And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society, to *submit to the determination of the majority*, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact. . . . The body

(of the community) should move that way the greater force carries it, which is the *consent of the majority*." (Italics supplied)

Jefferson's Uncertain Stand

Jefferson himself blows hot and cold in these matters. No one talked more than he about "our natural rights," or was more aware than he of the potential tyranny in the "consent of the governed" idea when reduced to mere majority rule. "An elective despotism is not the government we fought for," he wrote in 1781. But in 1787 he wrote to Madison, "It is my principle that the will of the majority should always prevail." And a year later, also to Madison, "I readily suppose my opinion wrong, when opposed by the majority." It is this phase of his thought which enabled Lord Acton to speak of "Jefferson's determined aversion to every authority which could oppose or restrain the will of the sovereign people."

But in 1816 the tide came back in with the "natural rights" idea, and he wrote, "Our legislators . . . true office is to declare and enforce only our natural rights and duties and to take none of them from us. . . . The idea is quite unfounded that on entering into society we give up any natural right." But then he veered