

again, and in 1824 said, "All power is inherent in the people." And in his last extant letter, written ten days before his death in 1826, when the idea of inherent rights had all but been abandoned by the learned, he affirmed his belief that "all eyes are opened, or opening, to the rights of man."

He was quite mistaken in this, even of his own country. Seven years earlier in the epoch-making Supreme Court decision in *McCulloch vs. Maryland*, John Marshall had written: "The government of the Union is emphatically and truly a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them and for their benefit."

Jefferson may have been right in affirming that we didn't fight for an "elective despotism," but given the situation which existed in the eighteenth and nineteenth centuries, it is obvious to hindsight that that is what we were going to get. The tyranny of the majority is simply the unhindered application of the "consent of the governed" idea, with no restraining influence which might come from virile belief in Natural Law and inherent rights. Edwin Corwin writes that "'Natural Law' in the sense of 'the observed order of phenomena' has tended

in recent years to crowd the earlier rationalistic conception to the wall, thus aiding the triumph of the idea of human and governmental law as an expression solely of will backed by force."

Mill and Spencer

John Stuart Mill uttered many timeless truths about liberty on the basis of the utilitarian standard that liberty provides conditions conducive to the greatest happiness. But although his rhetoric was gorgeous, he didn't make his case. Who will decide which one of several alternative courses of action should be adopted so as to maximize happiness? Majority rule again! The decision is based on "the judgments of those who are qualified by knowledge of (the consequences), or, if they differ, that of the majority among them, must be admitted as final." And Herbert Spencer, who in his early writings defended the rights of man against the State, concluded somewhat sadly in his *Autobiography* (1904) that "the unlimited right of the majority to rule is probably as advanced a conception of freedom as can safely be entertained at present; if indeed, even that can safely be entertained."

"The unlimited right of the majority to rule" can, in practice, mean only one thing: that a de-

termined and articulate few will create *ad hoc* majorities for the sole purpose of ratifying minority demands. Such is the inevitable end result of popular sovereignty, as Francis Lieber foresaw a century ago:

Woe to the country in which political hypocrisy first calls the people almighty, then teaches that the voice of the people is divine, then pretends to take a mere clamor for the true voice of the people, and lastly gets up the desired clamor.

"Consent of the governed" was an altogether inept phrase in the Declaration, out of step with the main body of the American political vision. The dream was that if men knew the right principles of social integration, no one would be governed, i.e., the creature of another man's will. The society would be free, i.e., comprised of self-governing units whose social agency of arrest and restraint served individual liberty by maintaining the inherent rights of each person. But remove the idea of inherent rights and this structure collapses.

Majoritarian "Civil Rights"

When the idea of inherent rights is abandoned, people will still go on using the word "rights," after distorting its original meaning. On the one hand, "rights" will be used as if it were

synonymous with "desires" or "privileges." Thus we are presented with long lists of "human rights" to such things as housing, education, medical care, a job, and so on. The source and dispenser of these "rights" is, of course, the sovereign state. On the other hand, the air is filled with talk about "civil rights," which means certain patterns of conduct permitted or enforced by the sovereign majority. The conduct in question may be ethically desirable, provided it is voluntary; but the majority has power, and is willing to use it on minorities. Members of minorities have no inherent rights, so of course they have no "civil rights" either until they join forces with the majority.

Inviolable Man

Can we recover the idea of inherent rights? Only if we can rehabilitate the belief that man is not wholly resolvable into a social being, that part of him is inviolable, shielded always from the prying hands of either majorities or rulers.

Two main lines of argument have been used to support this conviction, one religious, the other secular. According to the former, rights have a reference above and beyond society, in a transcendent order. The individual is a crea-