

SOVEREIGNTY

BY SMITH W. CARPENTER

THE rightful authority of man over man is founded upon the authority of man over self. Nature's god has given to everything that has life, whether vegetable or animal, the right to protect and sustain that life. We recognize the existence of this right everywhere, from the worm that turns to the axiom that makes every man's house his castle. That right was given in no meager dole, no right to a mere existence, but to life abundant such as is implied in the phrase, life, liberty and the pursuit of happiness. This right involves the dignity of life in general, and of manhood as the highest expression of life. This gift of a gracious God we style Individual Authority, or, in its loftier phases, Personal Sovereignty. The existence of such an authority is so self-evident that argument could add naught to bare enunciation.

In the light of that postulate let us inquire, whence comes the authority expressed in modern government? To all who read that question will instantly spring the answer, "All governments derive their just powers from the consent of the governed." With due reservation for the policing of the dark corners of the world, we may safely affirm that no great principle was ever more truly or more clearly stated. Yet when those very men who risked their lives to give expression to that idea came to form their government, they were strangely confused in their concept of the origin of the just powers of government.

A government by the consent of the governed had been enjoyed by the New England colonists from the very first, and by all the others in a marked, although less degree. Indeed, the great classical example, showing how human institutions crystalize when men of intelligence are cut off from superior constraining force, is the founding of New England. That they were so cut off was largely due to the general loss of interest in America; a result which naturally flowed from so many dashed hopes. The Mayflower venture seemed of so little promise to King James that he refused to take

the trouble to grant a charter. Rather petulantly he said to go ahead; if they behaved themselves they would be let alone.

In retrospect that royal word assumed something of the guise of a Magna Charta of America. All the organic union that ever existed between Plymouth and the mother country rested upon it. As soon as the colonists were able they got a patent for their land, but of governing authority it contained none. Thus established, Plymouth Colony flourished until it was united with Massachusetts under the charter of 1691, granted by Charles II. Indeed, that spoken word may be called the genius of America; all that any subsequently granted charter amounted to was to give formal, although diluted expression to that idea. When British meddlings interfered with that go-ahead-and-mind-your-own-business principle, they were largely nullified by the dogged resistance of the colonists.

The first step taken toward self-government was a momentous one, brought about suddenly through the disaffection of some of their number. With the Pilgrims were some, denominated strangers, who were of a wild and riotous disposition. When it was determined to land on the New England coast, and thus to effect their settlement outside the bounds of Virginia, some of these strangers planned to make use of the lawless license that would accrue beyond the bounds of legal jurisdiction. The need of meeting that situation awoke the memory of those free assemblages that had been the glory of their Anglo-Saxon forefathers; so to that ancient institution they gave a new birth in the Mayflower Compact.

The point of departure for the study of American constitutional history is the signing of that compact. Whence did they derive the authority for that act? It implied no renunciation of citizenship or qualification of allegiance; the language used consecrated them to the service of their king no less strongly than to the service of their God. Assuredly the right—privilege it was then esteemed—of self-government could not be read out of that verbal promise that they should be let alone if they behaved themselves, when one considers the technicality with which the courts surrounded such matters. No, I quite agree with you, they needed no authority for so simple and obvious a necessity; but that does not dismiss the question, for in the highest and most solemn sense that compact implied authority; whose was it, and whence did it come? There is nothing in the historical evidences to show, nor would a direct declaration by the signers be conclusive; it is a philosophical question, such as can never be determined beyond review. Manifestly they drew their authority from the pure, serene source of all authority: from

the unquenchable fount implanted by Almighty God in their own breasts.

What was the nature and significance of their act? It was a co-ordinating of their otherwise antagonistic individual authorities; it was a formal declaration of the implied social compact; it was the surrender of the right of each to be a law unto himself, and it effected just what it declared, a civil body politic. But it was more than that. When those free men, out from under the control or jurisdiction of any civil government, afloat on the Atlantic, assembled, deliberated, and agreed to pool their divergent individual authorities into one harmonious whole, they arose to a height unattainable by separate action. It was a supreme act. Authority becomes a word unworthy to describe an act of such dignity. It was a sovereign act. They achieved a federation of sovereign manhood. The government which they there instituted, despite its subordinate relation to the British crown, was a sovereign government, deriving its just powers from the consent of the governed. In the action then taken, and in the subsequent conduct of affairs in pursuance of that self-granted charter, they were unconditioned and unconstrained by any superior power.

Obviously, we are giving a slightly unconventional twist to the word sovereignty. What is sovereignty? The word is a literary survival; it was coined to express the highest functions of autocratic potentates; it comes from a day that knew naught of the manhood-source of authority; from a day when rulers were deified. It expresses an authority transcendent, a quality of authority the concept of which has passed from the minds of men save as some of its aura still clings to the word. Yet we of today make familiar use of the term without redefining it. We could not retain the name of an extinct species, the dodo for instance, without definitely applying it to something else; and we should know all about such a change, just as we know that the new *Maine* is not the "*Maine*" that lies at the bottom of Havana harbor. But sovereignty is the name of an idea instead of an object, and ideas are never so distinct to us as objects; we therefore suffer the idea to become obscure, indefinite, and esoteric; meanwhile, we retain the name in our familiar chatter, just as though it conveyed a definite meaning. For the purpose of this confab, at least, let us seek to determine what logical significance the name may have for this democratic age.

We define it thus: Sovereignty is that supreme governmental authority which is expressed by the majority will of the people.

It will be noted that two factors enter into this definition: the limitation to supreme expressions of authority serves to conserve the odor of sanctity with which history and tradition clothe it. The limitation to expressions of the popular will is also radically conservative. Sovereignty was and still is the attribute of royalty. The people is king. We but acknowledge historical fact in recognizing the mantle of authority where, in truth, it has always been, on the shoulders of the people. Since the people never lack the will, although they often lack the wisdom, to serve their own true interests, a presumption in favor of ethical sanction now attaches more strongly than before. Supreme governmental authority exercised otherwise than in accord with the popular will is an usurped and spurious authority which can never be sovereign.

A sovereign act, according to the authorities, is one of a catalog of acts of supreme dignity, such as the making of treaties, declaring war, coining money, or maintaining an army, when such act is performed by a sovereign person. To go back far enough, anybody who could perform such an act and get away with it was sovereign; but time breeds custom, and the tendency of custom is always to favor ideas of legitimacy. That is why, in what we call monarchical times, a sovereign act required a sovereign personage for its performance.

Who then is sovereign now in America? To pass for the moment the orthodox answer, we can make but one reply: Man, the prince of the House of Nature, the very son of God Himself, He alone is sovereign. We found Him individually possessed of a modicum of personal authority; we have seen Him join with His fellows to give co-ordinated expression to that authority; man the individual in body politic does not surrender his personal authority nor transfer it to the assemblage; he but co-ordinates the expression of his authority; the element of authority itself is inalienable. Bodies-politic are but vehicles of harmonious expression; they speak with the authority of their individual membership.

The government of Plymouth Colony, instituted under the Mayflower Compact, differed neither in source nor character of authority from the majority of the town governments set up in New England. Many of the towns were organized on shipboard, or at meetings before embarking. Of course, the place of organizing is of no consequence save as it tends to show the presence or absence of outside influences which might have a bearing upon the source of authority. Especially parallel with Plymouth in the absence of any shadow of British derived authority were the original govern-

ments set up at New Haven, Windsor, Wethersfield, Newport, and Hartford; although, unlike Plymouth, they obtained charters within a few years. Meanwhile, the towns of Windsor, Weathersfield, and Hartford united under that most notable document known as the Fundamental Orders of Connecticut, than which history affords no more worthy example of independent, self-constituted government, unless it be the New England Confederation of Colonies, which was established in 1648.

Of course, the orthodox view is that all the governing authority there ever was in colonial America was derived either directly from royal charters, or mediately from the grants of chartered companies: but of sovereignty there was none. The king was the sole fountain of sovereignty and of authority. He obtained plenary sovereignty from Almighty God by virtue of a crown placed upon his head by a bishop of the Church of England. That sovereignty, so investured, was made to apply to the American continent by virtue of sundry explorations made by subjects of the English king, and confirmed to him, to the exclusion of like pretenses of other kings, by the might of English arms. There are authorities so strict as to even deny any legitimate authority whatsoever to America. According to this legitimatist school, sovereignty, springing from God Himself, flows down from its heavenly source, and can only be exercised by the Lord's anointed. Similarly its attenuated counterpart, governing authority, flows only down, although it may be exercised under charter or commission, but it is as impossible to flow up—from the states to the national government, for instance—as for a stream to flow up a mountain. Generally, however, it is held that sovereignty vested, as the result of a successful rebellion, in the states, and was by them shared with the federal government, and confirmed to that government by the treaty of peace signed by King George.

Such is the doctrine that the learned doctors of law seriously propound to Americans. "Lord, Mariar, there haint no such beast!" Yet such was the mystical, hocus-pocus sort of sovereignty that ruled the minds of the Fathers, and of their children unto this present generation. That is the doctrine that you, the reader, have been taught, not baldly but in substance. Upon that ancient abomination is founded our whole system of jurisprudence. Our states and the nation stand *in loco regis* as original sources of authority. Local government can only exist by kind permission of an over-lord.

Vastly different is that from the practice of colonial days. Forget the doctrines they then held; remember what they actually did: groups of settlers without a vestige of authority derived from law

or charter could and did organize local governments having unquestioned jurisdiction over local affairs. Call it what you please, the element of authority was not lacking. They had no trouble over jurisdiction, nature took care of that. The general colonial governments felt no license to meddle with local matters where they were being looked after by local authorities; their concern was only for matters of general interest; but it was for them, as the greater body, to define the bounds of their jurisdiction, and to standardize town procedure where it was necessary. What the whole should establish was not for a part to question. Virtually, it was parallel with the relations now existing between the states and the nation although the towns had no such protection of their rights as the constitution affords the states.

The old colonial institutions were wonderfully close to the people; the towns elected the members of one house, and the people at large elected the members of the other. When, in time, the two houses came to be designated as upper and lower, it was the popularly elected branch that was made the upper house. Yet, when those sturdy patriots, nurtured in that sort of atmosphere, and familiar with that sort of institutions, came to organize a government totally their own, they reversed everything. Why? Because they were obsessed by that false concept of sovereignty. That precious jewel, which had been their birthright for a century and a half, they were unable to recognize when adverse claims had been released. It was that mystical, hocus-pocus element for which they esteemed their existing institutions to afford no fit abiding place; it must be fittingly housed apart and away from the vulgar herd; so the senate was created an aristocratic body, elected by the states; the selection of a president was entrusted to an electoral college, and local sovereignty was wiped off the map.

What a travesty that our cities, towns, and counties are so feeble! It is not that the people as a whole feel that they, themselves, lack the wisdom or the virtue to exercise original jurisdiction over their own local affairs; it is because they are dyed-in-the-wool votaries of that ancient infamy that holds their government to be the bastard of the Lords' anointed.