SOVEREIGNTY AND THE IDEA OF REPUBLIC  
by Charles W. Hendel

Preface.

Statesmanship is a noble and difficult art and it is rare. And to criticize or complain about the conduct of public affairs is of course easy. It is not becoming in a philosopher who has learned from Plato and Spinoza that “all noble things are as difficult as they are rare” to pretend rashly to know better than those charged with such heavy responsibilities of state and daily engaged in negotiations involving military, economic and political power as well as the imponderables of opinion and belief. It is also well to remember Machiavelli’s observation: “Fortune is the arbiter of one half of our actions ... she leaves us to direct the other half, or perhaps a little less.” Even virtù supreme may be defeated by circumstances. We should not in a superior, self-righteous manner lay any failure, then, simply to the faults of particular men or governments.

Yet in our present democratic world it is permissible, even the duty of any one in any nation whose life and prospects of well-being or ill are subject to the train of consequences that follow from acts of government and diplomacy to speak out when things seem wrong or bad. And in such a situation, it may well be the office of a citizen devoted to philosophy to examine the frame of ideas in terms of which the diplomats and politicians speak to each other and to the world and formulate their hoped-for settlements. Sometimes the troubles do come from a poverty of ideas, or it may even be from a lack of coherence in them which prevents any consistent policy from being attainable and in such situations the services of philosophers can surely be of some use.

1. The Case that Raised the Question of this Paper: The Suez Canal Affair.

What is here to be presented as a subject for discussion is occasioned by the Suez Canal imbroglio of recent occurrence. Three civilized nations in the pursuance of their rights have employed force against Egypt and left a blemish on their great records. There was young Israel seeking to secure her very existence, itself so unwelcome and intolerable to her neighbors and they themselves will allow of no possibility of peace, and
so a state of belligerency is thrust upon Israel willy-nilly and used as a ground for debarment from what had been an "international" waterway. Along with Israel, or at least acting at the same time, were France, so long a leader in civilization and culture, and Britain, the modern world's school for political freedom under law, these two old states high in honor. They took their military action and entered the land of Egypt. Yet one fine day or so they all "folded up their tents and silently stole away."

What made the victors do this, retreating from the positions of vantage which they had gained? That may not be so easy to answer in a few superficial words. More than meets the eye is involved, along with the public reasons. Thus we may hear it said, for instance, that Russia had growled with an ominous threat. The United States of America openly showed disapproval, together with some resentment at not being consulted. The United Nations voiced the general demand that member nations must not cope with a unilateral abrogation of conventions in that aggressive fashion but ought to proceed through the proper agencies of peaceful solution. There was a suspicion, too, that the states interested in the Suez Company's claim had tried to effect a fait accompli that would alter the situation several years hence when the Canal was due to revert to Egypt. In such confusion of hidden purposes and announced policies, and seeing the obvious danger of a war in the Middle East which could bring on a total world war, the onlooker nations had somehow called a halt, and their words had been heeded.

2. The Question Concerns Sovereignty.

It is at this constructive juncture that the doubts and questionings arise concerning the quality of our contemporary statesmanship. The diplomats of the West seem always to be at the mercy of situations others have created. They improvise for each such occasion: now a user's association and virtual boycott, then payment under protest to obdurate Egypt. There is also a troubleshooter from the United States wandering amid the foreign offices of the Arab nations in hopes of making friends and influencing people. Here helpless drift is all one sees, and no real settlement in prospect. Nothing has resulted except bulletins of reassuring words of comfort that all will be well, but nothing is proposed that will bring the nations together under the rule of law. We are still waiting for a policy, one course of action with some kind of unified aim and showing the proximate, logical, practical steps toward the ultimate goal of an international order with the semblance of mutual security and freedom with justice. There is, however, one special troubling outcome of this whole affair, namely, that the "sovereignty" of Egypt over the Canal has been accepted and vindicated. Only this and nothing more, nothing about the paramount authority of the United Nations or of any
law above the nations under whose rule they must conduct their affairs and dealings with each other. All the governments concerned have had to bow before the sacred character of the sovereignty of one nation. They have not challenged the idea or even said in reference to sovereignty what it means or entails. In granting that Egypt has sovereignty they have recognized mere possession as true property, without looking into the title. They have conferred a benefit for a previous violation of a convention and they have tied their hands so that they cannot put law above sovereignty, and all this is a very great evil.

3. A Profession of Faith.

I have passed a judgment here. Before going on to the properly philosophical part of this presentation let me confess the full content of my convictions. It is my belief that in thus bowing and scraping deferentially before sovereignty—I mean national sovereignty, and this applies to any nation whatsoever—the politicians and lawyers of the present age are condemning us to still further reversions from peace and a decent civilization. I have taken the Suez Canal case only as an illustration and may have misjudged and misrepresented it. Let it be treated as a fiction, then, or a myth. The point I want to bring out is that the featuring of the sovereignty of any state as untouchable and absolute so that one cannot argue about its competence or propose limitations is contrary to the philosophy of the "republic" which I hold to be the only foundation for civilized existence. The idea of "republic" includes a number of ideas with which the idea of sovereignty is in opposition. This contrariety among the ideas that are essential stock in the trade of politics can be one cause for the failures of the policies of great powers from which we are suffering. I believe that we must commit ourselves steadily to the republic-idea and do all that it requires of us or else perish. So much for the profession of faith.

4. Concerning "Ideas."

Every idea long acceptable and valuable in the experience of people is more than a single concept. It has first some original intent, and then it develops a set of essential meanings which are logically and empirically connected. When the term is used that refers to this schematic idea it may actually call up the thought of only a part of the system but more is entailed, and sooner or later it may come to light. One may recall here what Immanuel Kant said about the meaning of "idea" in Plato, and the idea of the "republic" as an example. The actual employment of any "idea" from time to time in history results also in certain historical associations which become adherent to its meaning and these may be as influential and important and fateful as the original sense. One
can say, therefore, of the idea of republic as well as that of sovereignty what Chief Justice Charles E. Hughes said of liberty in an opinion of the Supreme Court: “Liberty in each of its phases has a history and a connotation.”

5. The Vogue of the Title “Republic” and Its Connotation.

Nearly all the nations of the world today are committed, by their own profession, to the political system of a republic or commonwealth. They have assumed the title and glory in it. It is an interesting historical phenomenon that during the past two centuries republics have come into such vogue. Besides the first republics of North, Central and South America and France, new ones, both large and small, have been established in Europe, Asia, and Africa. The fact that there is a Republic of China and a Union of Soviet Socialist Republics shows that the idea has ubiquitous appeal across all ideological lines.

The connotation of “republic” in this present phase is largely determined by the American precedents. The colonists of British North America founded their republic, with help from France and Spain, and after a war for independence, from empire. They represented their cause as just before the rest of the world in immortal documents and claimed that the remote government in London had utterly disregarded the principles of free government, namely, the welfare of those governed and their rights and liberties. Liberated as a United States of America these people set up their own institutions, beginning with a constitution defining and limiting the powers of any subsequent government for the American nation. Meanwhile the French Revolution occurred, a throwing off by the people of the intolerable yoke of their own government. The Republics of Ibero America were a close sequel revealing to the world that the idea of republic was not limited in meaning and value to peoples of British and French extraction but was viable for nations of other stocks and traditions and cultures. And all these republics were established with difficulty and in the teeth of greater power elsewhere which might at any time conspire to wipe them off the face of the earth. With their Hardy survival and dramatic success the name “republic” is historically associated.

So for many years, as nations have developed strength and integrity within former empire and revolted or freed themselves, they have assumed this proud title of republic. It signifies liberation from domination and an autonomy or self-government and dedication to the principle that the proper object of all government is the general good. Usually, too, conditions have been established defining and limiting powers of government in the interest of personal liberty. This is the connotation of republic in its recent phase.

The idea which has thus entered into modern civilization is of course ancient, and everyone naturally thinks of the delineation in the Republic of Plato. It is well to recall the speculative daring of philosophy in those days, and how the exemplar Socrates set out bravely to explore, in the face of ridicule, the sheer possibilities of the idea which ran far beyond any actual reality and even to sketch a whole order of society where the ideal might be completely realized. Though the scheme as a whole has seemed ever Utopian, parts of it have more than once been appropriated with remarkable effect. And an instance was the founding of the first American republic. The statesmen of that epoch worked from a pattern of republic which was mediated to them through Locke, Hume, and Montesquieu. Indeed, Montesquieu's *Spirit of the Laws* was a remarkably fertile reinterpretation of the Greek view of community and politics as applying to many types of historical situation vastly distant from anything contemplated by Plato and Aristotle. Inspired by such "republican" philosophy, the Americans then achieved their own original adaptation of the idea. "Republican government" to them meant not only adopting the central proposition of the Platonic politics, viz., that the general good shall always be the end of government, but also introducing the modern and "democratical" proposition that the people themselves must be represented in the government so as to be able to determine the laws and policies that in their opinion best serve the welfare of the nation. Thus provision for personal liberty was welded into the traditional form of the republic.

7. The Original Platonic Pattern in Review.

Immensely viable as this eighteenth century version has been, it should not be assumed to exhaust the possibilities of the republic-idea. The civilized world, organized in part, at least, according to such "republican principles," is now in dire straits and in need of a redeeming policy and we might profitably consult the original speculative pattern once again and try again, too, to put philosophy into good practice.

Let us consult, then, or better, review the scheme sketched by Plato. The first intention is to counter an evil pervading all parts of human society, viz., the Thrasymachus spirit and its sophistry: Power is not only its own law but it also imposes upon those subject to it, "the weaker," a belief that this is right. In actual fact such imposition can hardly succeed for long at a time simply because "justice" really is by "nature" something different from whatever merely prevails, and men even without philosophy do discover a real distinction between right and might.
That these are two things is matter of common experience, for life in society involves some reference both to justice and to force. There is then no reducing of one to the other. It is for the philosopher and the statesman instead to work out a rationale of both as realities that men must live by.

**Power Harmonized with Justice: The First Intention of the Republic.**

This harmonious order was not the peculiar dream of Socrates. It was writ large repeatedly in those various wonderful vehicles of Greek culture, the drama, the sculptured frieze, the reported counsels of the Delphic oracle, the celebrations of the Olympic games, as well as in histories and philosophies. It was sung early in the verse of Solon, the revered lawgiver of Athens who gloried in what he had done, in these words:

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"I liberated them. And through my power
With force and justice in true harmony,
I did the work."
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In the Greek spirit, then, the primary intention of the Republic written by Plato is to show that force must be harnessed with justice and never allowed to run rampant into injustice.

**Law Supreme—Justice.**

With law-giving in mind (the Solon gift), it must be said of course, that governments make laws, too, and they order thereby the affairs of the State, but these positive laws are something other than the supreme rule governing the exercise of power. This supreme law or justice is not something to be manipulated by rulers according to their arbitrary judgment or will and it is, indeed, by reference to Law in that eminent form that particular laws are judged to merit the name and authority of law.

**Harmonizing Self-Interest and the Commonweal in some Identity.**

A second stipulation appears in the consideration of the actual situation as respects the government of men, a situation which the Greeks faced no less realistically than Hobbes was to do at a later time, Hobbes who had learned so much from Thucydides. The aspect of the matter in view was this: it is always men who will do the governing and men will naturally act for their own interest and private advantage. This is as much a reality in human affairs as is the existence of force, previously recognized, and again the solution is not to reduce one distinct thing to another but to harmonize them. Self-interest must be reconciled with the interest of the whole community, in some kind of identity, and neither one swallowed up in the other. The striving of men for their own good is legitimate and necessary but, inasmuch as there are so many different
men with such varying abilities and powers no one can really promote his own welfare without attention to, and even acting on behalf of the general welfare of the community in which he "operates," so to speak.

**Government Stands Under Law and the Public Good.**

It has developed in the inquiry that both a public end (the objective of common good or the commonwealth) and a rule (justice) stand over the power of government. They are criteria by which acts of governance are judged. There is a higher law and a good transcendent to the ambitions of rulers. Hence these are essentials of the connotation of republic—the supremacy of law for the State itself and the paramount concern for the commonwealth and all its members.

**Education a Superior Function to Government.**

The subordinating of political power goes even further—but this one can barely mention here. Education has higher place and dignity in the society of a republic than government. None of the above stipulations for the good life—indeed even for survival—can be met in any degree until "every man, woman and child" is somehow imbued with the spirit of membership, concerned for the whole community, and persuaded of the rule of law. In proportion as men think and feel themselves members of one body and "care more for the community and for one another" ("The Phoenician Story," Republic, 414, 415), the more disposed they will be to govern their conduct from within and the more responsibly will they behave toward each other. The lessons in self-government are hardest for the ones of political capacity, for such men "are guilty of the greatest crimes from ambition" (Aristotle, Politics, 267a), and it is they especially who most need an education in what Montesquieu flatly called "self-renunciation."^5

**The Connotation of Republic.**

These are the minimum essentials of the systematic idea of republic as set forth by Plato, and relevant to the purposes of our discussion—they are not regarded, however, as exhaustive of its meaning: A republic is an order of society founded upon a sense of community and membership where men feel responsibility and are inwardly determined to exercise self-restraint out of regard for the whole State and for their fellows, and an order where a higher law than the laws of the State regulates all men and governments alike. Only in such a system can force and self-interest be combined with justice for all in the whole commonwealth and men go forward together into the natural competitions and enjoyments of a social existence without destroying one another and many possibilities of good in themselves and others. And the tenets of the republic are not a set of stipulations only for a pleasant and good living, they are the condition of survival.
Historically sovereignty is associated with the establishing of order out of the chaotic state of affairs in sixteenth and seventeenth century Europe characterized by religious schism and civil dissension within and wars between the various nations. Some authority was imperative, for the universal authority, be it Church or Empire, had become ineffectual to control the situation. The changing economy, too, demanded ever new law without delay and such law could not be that described by Aristotle which "derives all its strength from custom," and "requires long time to establish." The answer to the imperative need was new practice and new theory in support of it, the theory of the sovereignty of the State.

An Addendum to the Republic.

In Jean Bodin's Six Books of the Republic the idea of sovereignty was introduced under the wing of that of republic: The supreme importance of the republic-idea was evident because in a time of such bitter, fanatical, disrupting religious warfare and the contests of princes with rival armies, all elements in society needed to be reminded of the idea of the State as one commonwealth whose preservation and welfare are paramount above all other interests and whose substance ought not to be wasted in internecine conflicts. The necessity of an authoritative rule of law was obvious. And the new design of authority was conceived to secure unity, order and law in each of the particular states, for henceforth there had to be many Sovereignties, corresponding to the territorial States.

The First Intention: Absolute Power to Make Law.

In Bodin's words, "sovereignty is the absolute and perpetual power of the republic to dispose of the goods and persons of the entire State . . ." The primary feature of this absolute sovereignty is that it is a power-with-right to make laws without the consent of the governed.  

Power Absolute Yet with Limitations.

Absolute though it be called, sovereignty in this historical connotation was no glorification of power unlimited: Bodin, Grotius and others who developed this first meaning intended their own theories as counterblasts at the amoral teachings of Machiavelli (Bodin, *op cit.*, explicitly Chap. 9). They conceived all the universe as under natural law which, as the law of God, stood supreme over all powers and principalities whatsoever. The sovereign was absolute but under God, and absolute, therefore, only in the sense that no other earthly agency within or beyond the national State had any "right" to intervene and restrain this sovereign power. But sovereignty was also more particularly limited. It was
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If a case of the property right under the law of nature, and were the exercise of it to weaken the validity of such natural-law property right, it would actually sap its own foundation. It was further limited de facto by the “law of nations” insofar as it was to the interest of other powers to maintain that public law. Further still, and of dubious value, sovereignty was limited by the moral law that required “good faith” and the observance of agreements and contracts. But vis-à-vis private parties, families, corporate bodies, etc., within the State, sovereignty was absolute in that it had the right and authority to command action in accordance with the sovereign will.

The Original Connotation Compatible with the Idea of Republic.

As thus introduced, in a milieu of respect for natural and moral law, the idea of sovereignty was not yet contrary in any important sense to the ancient idea of republic and it was proper of Bodin to present it to the learned and political world as a version of the “republic” relevant to the times. But a contrariety was latent. Were the belief in natural law to weaken or fade into thin air, the law of the sovereign State would rule absolutely supreme and unrestrained. To be sure, limited sovereignty, limited by new “constitutional” law, might salve the republic idea and its values unless something happened further to exalt the power of the State so that it could readily override all moral compunction and the restraints of the law of the constitution.


A sequence of developments must briefly be noted without time to argue for or justify them in this presentation.

From Monarchy to Sovereignty of the People.

In practice sovereignty in its first phase was associated almost exclusively with monarchy and centralized government. In due season monarchical power was overthrown. The gloriole of supremacy passed from monarchs to the people: the sovereign-people substituted for the sovereign-monarch. Was it the same power, or less or greater?

Sovereignty Unlimited.

Greater, we must say, and for several reasons or causes. The general conception of natural law itself as moral law sanctioned through religious belief passed into the discard—the political world thought and acted without reference to over-arching law. Moreover, sovereignty, when attached to the “people,” gained a new, peculiar moral quality, being in a sense a transcendent virtue available through the moral union of the wills of men. Thus sovereignty, in the new shift of weight, could gain upon law. Such sovereignty of the people would seem to need no limitation: it might be quite self-controlled.
The Theory of Rousseau.

So it was in theory, the theory of Rousseau. For Rousseau built two governing criteria into his doctrine of sovereignty. The "general will" was truly so—and therefore properly designated sovereignty—because it was general in its source (the wills of people uniting themselves in spite of their diversity of interests) and general in its object, viz., the general good of the whole body, each one and all of the people. Sovereignty is real then only in acting according to law which obliges and benefits every last one of the people equally. If that be so, sovereignty is actually limited by a stipulation that it shall ever establish only "equal law." Thus law again is the criterion and the very mark by which it is determined whether or not a putative sovereign has true sovereignty. Some writers see in Rousseau’s philosophy of politics only the absoluteness and infallibility of the sovereign people, who thus seem to inherit the exemption from higher judgment expressed in the old maxim: "The King can do no wrong." It should be noted, however, that the title of the relevant chapter in the Social Contract is in the form of a question: "Whether the general will can err?"

The intention of Rousseau is very clear and plain in his last political work:

To put the Law really above man is a problem of politics which I compare to that of squaring the circle in geometry. Solve that problem, and the government founded on the solution will be good and without abuse. But until then, rest assured that when you think you are making the Laws rule, it is really men who will do the ruling.9

Here is the ancient vision of the republic together with the supremacy of law. But Rousseau’s system has been taken only partially—and dangerously so—in the political views of the two centuries since he published, though it fared better in philosophy, thanks to Kant.

Political Authority is Greatly Required in Modern Society.

Modern life still requires, as was necessary in the sixteenth century, the extensive functioning of government in making positive laws to take care of the relations of men and their disparate and highly competitive interests in the industrial and commercial economy of our era. The continuing increase of the power of government is not simply to be deplored or railed against to any effect. Political power must be available to bring into working harmony the powerful interests made possible by tremendous energies released through the scientific knowledge, the technology and the arts of organization in contemporary society. Call it sovereignty or something else, there must be legitimate authority with the power to cope with many divergent powers and bring them into order. The effective rule of Law is absolutely necessary.
10. The Critical Question of our Time.

Here is the critical juncture, and a question. Is sovereignty sovereign for the sake of law? Or is it absolute, and is law only the dictate of the sovereign? The fate of the system called the "republic" depends on the answer.

The trend of history in the very society of nations that so nobly call themselves republics seems fatal to the very system whose name they take. Nationalism has swept sovereignty-absolute into the saddle. The "will of the people" could in the past be a tame, academic, harmless thing, a mere x in a formula, any people, anywhere. But nations have for two hundred years become aware of their place and their time, their own group history, their defeats, their victories, their oppressions, their liberations—and their absolute separateness from other peoples. The "people" is a suppositious, universal, homogeneous thing and one may imagine a world organized as a republic or a republic of republics, but when the "nation" is the thing, it means this nation over against other nations; it means jealous boundaries of interest, seeking national gain alone and not seeing and caring about the cost of ruining competitors, treating with other nations but abusing the profession of good faith only in order the easier to take advantage of them. The nations can do no wrong in their own eyes, and since they judge only by reference to themselves there is no public right or law. Such sovereignty is absolved from respect for any higher law. Politicians can rant without rebuke from their constituency whose will they pretend to represent. "Who can flout the will of the people?" They quickly tell the people, too, what that will is. Thus liberty as well as law declines, when men do not have a will of their own and do not exercise it and let it be known. This is the dark scene of our time, with sovereignty in its nationalistic phase.

Sovereignty has gained a new absoluteness and it has also developed a new sophistry with which to sustain itself. A new Socratic argument is necessary to expose the frauds, to re-present the connotation of republic as it pertains to our circumstances, and to redeem liberty, the very liberty under law which the American nations have been particularly proud of in the past. Besides argument there must be action, enlightened by the discussion and guided by a politics which employs terms and ideas that are consistent or coherent, thus sustaining a policy which may advance the cause of civilization among the nations.


For the present, the point of what has been said is this: that sovereignty which is really absolute in fact and by pretension is contrary to the political system of society which is denominated that of the republic.
Such unlimited and uncontrollable sovereignty breaks away from the essential connection with right, from the harmony of power with justice, and from the subordination of government to law. Sovereignty in this mode is divested of both legal and moral quality and becomes nothing but sheer strength or power. It cannot claim therefore to be a right and to be respected as such. Such political power acknowledges no responsibility and it does not belong in a world that believes itself civilized, according to the criteria of civilization which have been profitably employed ever since the Greeks. It is the very prevention of peace among nations, the peace for which men have yearned and have striven hard. They will have no peace until they settle scores with nationalistic sovereignty. Plainest of all is the handwriting on the wall, that sovereignty in its unruly nationalistic form is the supreme threat to human liberty, that liberty which has been the very condition of the knowledge, the science, the developed economic power which has produced possibilities of well-being for all people greater than the world has ever known. The key to the future of liberty, law, international order and peace, is what one thinks and says and believes about such sovereignty. It is recommended here that we resume thinking seriously about the system of things which is symbolized by the term of “republic” and begin putting our ideas in order and making possible a practical diplomacy and politics which holds forth some hope for men of all nations.

NOTES

3. The Case of Near versus Minnesota, 1931.
7. Six Books of the Republic, Ch. 8.
8. J. N. Figgis has declared that this concept of positive law, law made and enforced by the sovereign State, is distinctive of modern theory and practice as contrasted with the medieval and classical. See “Political Thought in the Sixteenth Century,” Cambridge Modern History (New York, and Cambridge, England, 1934), III, Ch. 12, 745 ff.