

gious groups, but not as individuals. Beyond a doubt, belief in Rousseau's concept of the general will brought the importance of individualism to its ebb and gave rise to much of the criticism heaped at contractarianism for minimizing the role of the individual mind in society.

Rousseau, on the other hand, placed little confidence in separate interest groups and would certainly have opposed the equivalent of modern political parties. He might have viewed them as a means toward expressing one's self-interest, contributing only to the dissipation of the state by obstructing the exercise of indivisible sovereignty for the good of all. Yet, Rousseau further states that, if these factions do exist, the more numerous, the better, where the ideal is a society of one-man interest groups whose forces interact to yield the good for the society.¹⁵

It has been seen that a society, composed of men whose affinity for one another is either natural or the result of a quality the members all hold in common, by compact lays claim to sovereignty or the exercise of legitimate force to execute the will of the society through the government as directed by the dictates of the legislature. This is approximately the view of Locke, but one cannot stop here. No government is viable, nor can it claim to protect its adherents unless it wields the power to preserve itself from inner forces which would dissolve it. "May a prince be resisted," asked Locke, "as often as anyone shall find himself aggrieved, and but imagine he has not right done him? This will unhinge and overturn all polities and

¹⁵ On this point of factions and their inter-reaction, see THE FEDERALIST No. 10 (Madison), whose work was no doubt influenced by J. J. Rousseau.

instead of government and order, leave nothing but anarchy and confusion."¹⁶

In declaring the origins of a state's police power, Rousseau viewed every man as a sovereign executive: "He who refuses to obey the general will must be constrained by the whole body of his fellow citizens to do so: which is no more than to say that it may be necessary to compel a man to be free."¹⁷ On at least one important point both Locke and Rousseau agreed: the state's police power originates solely in compact, agreement, or mutual consent of those who make up the community. Such an idea is basic in explaining that a state is just in exercising capital punishment and lesser punitive measures against offenders of civil law.

Hegel could not understand this because he denied that a state is formed in compact. He denied also that society's essence is in the protection of its members. Hegel felt, like Hume, that men are citizens by birth and that membership in the state is not optional. Police power, he concluded, cannot be said to be derived from the mutual consent of society's members. This conflict of opinion takes on vital practical importance if one realizes that the very integrity of the state and the nature of its executive depends upon one's understanding of the extent, if at all, to which a society's members agree to subject themselves to civil law by mutual consent.

In the idea of a compact agreement to legislate for all equally, and to punish violators of law, is implicit the more difficult question of majority rule. The problem is best stated in the words of Locke: "When any number of men have

¹⁶ SOCIAL CONTRACT, *supra* note 12, at 118.

¹⁷ *Id.* at 184.