

former (the dissolution of the government) gives rise to rebellion wherein the sovereign power, based upon a continuing consent, still remains in the people. The sovereign power, however, lacks an executive who will legitimately exercise the sovereign or legislative power of the people. The latter (the dissolution of the compact) returns men to the state of nature wherein each man is his own judge of "right" and where liberty tends to privilege.

Rousseau argued that the social pact is broken at the moment the prince or executive usurps the sovereign power of the people. The state is dissolved and men are returned to a state of war with their ruler within a state of nature, Rousseau pointed out. "There is no fundamental law of the state," continued Rousseau, "which cannot be revoked, not even the social pact. For should all the citizens assemble for the express purpose of breaking this pact by common accord, it would undoubtedly be broken by due form of law."²¹

It is not contradictory to believe, on the one hand, that government ought to be overturned at the moment it becomes tyrannical and, on the other hand, that only unanimous consent can break the compact. Rousseau himself was unclear in making any distinction between rebellion and revolution. Locke's thesis, however, does lend itself to this distinction and, like that of Priestley,²² can be said to inspire less tendency to revolution and anarchy, while maintaining the right, indeed the duty, to rebel against despotism.

Locke foresaw the problem of minorities, or even majorities, desiring and

conceivably failing to resist the tyranny of an unjust magistrate or unjust laws. Both Locke and Rousseau suggest that the problem is more theoretical than serious. It will be obvious, stated Locke, when a train of abuses are adequate reason to justify rebellion by the people against their magistrate. Locke, of course, stated a fatal truism in recognizing that people are often set in their ways and, because of the lack of foresight, tend to value stability above freedom. Rousseau, appealing to a broad European public in an attempt to motivate revolution, not just to enlighten men's minds, claimed that the need for new laws will be quite evident to all and, as in Locke, that there is no reason to fear majoritarian dictatorship.

Regarding this issue of the right or duty to rebel or revolt, it would be agreeable to both Locke and Rousseau to quote from J. G. Fichte: "This contract of all with all secures to men an inalienable right to alter the constitution of the state, and on this rests a justification of revolution."²³ In the view of the compact theory, then, this inalienable right is a *natural right, not a civil right*.

This right can be exercised at any time that one feels a judicature within a society is not impartial. This right can be exercised at any time that one feels that an appeal to heaven is the only valid appeal for justice. This right can be exercised by anyone who is willing to declare war on the society by opposing its means of appeal, who is unwilling to abide by the will of the majority because he feels bound in conscience to reject the majority on an issue of principle, and who is willing to recog-

²¹ SOCIAL CONTRACT, *supra* note 12, at 267.

²² J. PRIESTLEY, *ESSAY ON THE FIRST PRINCIPLES OF GOVERNMENT* (1768).

²³ J. FICHTE, *BEITRAGE ZUR BERICHTIGUNG DER URTHEILE DES PUBLICUMS UBER DIE FRANZOSISCHE REVOLUTION* (1793).