

of kings was severely questioned, while the theory that government is an institution of the people clearly emerged.

John Locke, writing only a few years later, was very careful to indicate that governors can be only the *trustees* of the public will.⁷ He considered governors, the executives of government, to have no more power than that exercised at the will of the legislature.

Jean-Jacques Rousseau in *Le Contrat Social* more explicitly opposed the theory of government by contract. Legislators, in his thinking necessary to guide and inform the general will of the sovereign state toward the good of the society, are of the people and are "commissioned" to exercise only the general will. Full sovereignty remains in the people and can neither be sold nor given away.

Rousseau believed that only *power* could be delegated, never *will*. He thought that it was through the exercise of the general will that all power became authority. Following this thought, it would be beyond the power of a governor to exercise his personal will or even to act by prerogative, that is, where the society is silent and its will unknown. It is by Rousseau's definition of government that one understands Rousseau's failure to recognize the existence of a government contract. "Government," he stated, "is an intermediate body set up to serve as a means of communications between subjects and sovereign, and it is charged with the execution of the laws and the maintenance of liberty, both civil and political."⁸ In other

words, to Rousseau, government was the legitimate exercise of the executive power where the creation of an executive and the legitimacy of his power were both in accordance solely with the general will and for the good of the state. Rousseau admitted that monarchy might be most effective, but he considered quite important the problem of endowing monarchs with all the virtues they *ought* to have. Unlike Montesquieu, Rousseau was unafraid of his contemporaries and literary censors who were eager to accuse and have convicted the enlightened authors of high treason. By further asserting that monarchs are inevitably subject to corruption, Rousseau dealt a deathblow to the concept of government by contract.

With the demise of the idea that government arises from the solemn binding obligations which are established by original contract between a people and their king, came the slow birth of a new idea based upon the concept that the origins of government arose out of the delegation of the people's sovereign power. Whereas the compact theory may have originally implied an ideal situation wherein all members of a society sit around a massive table and form an "original compact" to which all present give their explicit consent,⁹ to conceive of the social compact as this alone is to refuse to cross the bridge between theory and the actual world, and may unfortunately yield an absolute denial of any validity in this theory which flourished for more than a hundred and fifty years.

David Hume assured his readers in *Of the Original Contract* that "human

⁷ J. LOCKE, *Second Treatise on Civil Government*, in *SOCIAL CONTRACT* (1962).

⁸ J. ROUSSEAU, *DU CONTRAT SOCIAL OU PRINCIPES DU DROIT POLITIQUE* 273 (Garnier Frères ed. 1962).

⁹ Contract and compact are used interchangeably. See J. GOUGH, *THE SOCIAL CONTRACT: A CRITICAL STUDY OF ITS DEVELOPMENT* (1957).