so consented to make one community or government, they are thereby presented incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest."[18]

Rousseau states that only the original social pact need be unanimous; those who are not included in the pact are foreigners by choice. Thereafter, rule should be by majority.

Hugo Grotius felt that a people may choose what kind of government they will have; but, once that choice is made, it would be similar to declaring war on the society by demanding the exercise of a natural right to arbitrary power if people were to resume their claim to institute government. The French Revolutionists put forth a rebuttal to Grotius' argument. Revolution, claimed the French, means dissolution of the compact, for it is outrageous to claim that a minority can bind a substantial majority.

Rousseau suggested the inquiry that should be made. In so doing, Rousseau contradicted his former arguments wherein he favored a consistent and stable majority rule: ". . . the more important and solemn the matters under discussion, the nearer to unanimity should the voting be . . . ."[19] This is of course to imply that the compact itself is the most solemn matter possible for discussion. It might be true theoretically (for it has not been so in recorded history) to assert as did Herbert Spencer that "members of a society contract with each other to submit to the will of the majority in all matters concerning the fulfillment of the objects for which they are incorporated; but in no others."[20] However, this is to beg the question.

The problem remains of how to determine the level of importance or solemnity of a matter or, in other words, how vital a matter is to the society's fulfillment. Locke suggested an impartial judicature. Rousseau, along these same lines, proposed a common judge. Is it possible, one might object, to find such a being who is not embroiled in politics, who is unaffected by judgments passed on political issues, and who is still of and by the people acting only for the good of the state? This question will always rise in the midst of majoritarian rule where an issue of principle is involved. The answer one might give is relevant to any discussion of rebellion and revolution and their status with respect to the state of nature and government by constitutional law.

It needs to be asked by what means either the government or the compact may be dissolved, and how this relates to the rights retained by the citizens in a free society. Invasion and conquest by a foreign force is almost the only way that a society may be dissolved, thought Locke. Where society exists no longer, the government cannot exist. On the other hand, Locke asserted that people are not bound to obey laws which are decreed by the executive; or laws not derived from the sovereign power of the state. When the executive legislates, the government is dissolved.

Locke distinguished between the dissolution of the government and the dissolution of the original compact. The

[18] *Id.* at 56.

[19] *Id.* at 274. Note also the arguments which were made in behalf of *a consistent and stable majority rule* to defeat a proposed amendment to Rule No. 64 (latter Rule No. 68) of Maryland's Constitutional Convention (July 11, 1967), which amendment would have required a two-thirds majority (in lieu of a simple majority) to amend the Convention rules.

[20] Spencer, *Railway Morals and Railway Policy*, 100 EDINBURG REV. 420 (1854).