

### 3

## Checks, balances and popular participation: Rousseau as a constitutionalist

The liberty of the whole of humanity did not justify the shedding of blood of a single man. (Jean-Jacques Rousseau, L. 5450)

Rousseau's denunciation of violence as a means to an end, in his letter to the Countess of Wartesleben, is in stark contrast to the picture painted of him by his adversaries (see the previous chapter). While it is generally acknowledged that J.L. Talmon (1952) was unduly one-sided (Hampsher-Monk 1995) when accusing Rousseau's 'Jacobin' philosophy for requiring 'intimidation [and] election tricks', it is still widely asserted that Rousseau – through guilt of association – can be condemned and convicted for promoting a doctrine of the 'general will' which in 'itself poses a threat to individuals who might find themselves at odds with that [general] will' (Barry 1995: 51). Even writers sympathetic to Rousseau admit that his allegedly totalitarian theory (Barker 1948) 'required heavy doses of civic education' (Shklar 1988: 267); not exactly a ringing endorsement at a time when liberalism (in different guises) has become all but an article of faith. It is debatable if this charge of totalitarianism is justified, and, indeed, plausible. Totalitarianism is characterised by a deliberate attempt to change people to fit a political system or a historical development (Barber 1987: 525).<sup>1</sup> Proponents of the thesis that Rousseau was a totalitarian seem to have overlooked that he explicitly set out to inquire 'whether in civil order there can be some legitimate and sure rule of administration, taking men as they are' (*tels qu'ils sont*) (III: 351).

Some writers have sought to rescue Rousseau from the charge of authoritarianism by pointing to the allegedly metaphorical intentions of his writings (see Putterman 2001 for a review). Miller – in an often quoted study – argues that Rousseau deliberately 'charged the uncertain region between dream and reality, between impossible ideals and remote

possibilities ... the treacheries of tempting them in practice, to travel the path indicated by his thinking had virtually convinced him to abandon the attempt' (Miller 1984: 131). It has occasionally been suggested that Rousseau imagined himself as legislator (Fralin 1978). 'In fact', writes Judith Shklar with characteristic assertiveness, 'he thought nothing of the sort ... no one had a clearer view of the differences between the life of action and the life of observation, and he knew himself to be capable only of the latter' (Shklar 1969: 133).

Whether Rousseau entertained the thought of becoming a latter-day Solon is a contentious question, unlikely ever to be resolved.<sup>2</sup> What seems uncontroversial, however, is that he championed a doctrine of 'positive liberty' (Berlin 1969: 131). It would be sheer folly to contend that Rousseau was a theorist of 'negative liberty'. Rousseau was, as Berlin noted, at pains to show that liberty 'entails not simply the absence of frustration but also the absence of obstacles to possible choices' (Berlin 1969: xxxix). Some have seen this as proof of his totalitarian leanings.

This adherence to positive liberty does not automatically relegate him to the league of authoritarians – although some have reached this conclusion (Riker 1982: 9). Other thinkers with similarly soft spots for positive liberty, for example Mill, have escaped this charge (Thompson 1976: 136). Rousseau's *Wirkungsgeschichte* has been less fortunate (Cobban 1968 for an overview). Louis Sebastian Mercier singled him out as one of the 'first authors of the revolution' (*'l'un des premiers auteurs de la révolution'*) (Mercier 1791; see also Swenson 1999), and he has often been quoted, for example by Burke (1791) and Constant (1818), as a 'Jacobin', and as someone who 'furnished deadly pretexts for more than one tyranny' (Constant 1988: 317). That Robbespierre himself singled him out as the chief ideologue of the terror regime has done his reputation few favours (Barney 1986: 120).

The main charge is that he, through his doctrine of the General Will, through his allegedly uncritical advocacy of plebiscitary democracy, and through his alleged opposition to checks and balances, has become the antithesis of constitutional democracy. The case for the prosecution has been stated by J.L. Talmon, who finds that Rousseau 'puts the people in the place of the physiocratic despot' (Talmon 1952: 45). Moreover, Talmon believed that 'at the very foundation of the principle of direct and indivisible democracy ... there is the implication of dictatorship' (46).

There are, however, scholars who – with ample textual evidence – have pointed out that Rousseau's positive concept of liberty, in general, and his theory of popular participation in particular, does not make him a

totalitarian (Leigh 1964).<sup>3</sup> But it is as if his advocates, in their eagerness to defend him, trade in that very multiplicity of readings and meanings which have earned him a position in the canon of Western thought.

Rousseau is a thinker who invites many different interpretations. Such is the fate of the genius (Strong 1994: 2). A thinker with a taste for paradoxes, he has inspired conservatives (Bloom 1960) as well as Marxists (Levine 1993) and feminists (Fernon 1997) alike (Gourevitch 1998). Far from claiming that there is but one true interpretation, one can read Rousseau's political theory as – among other things – a contribution to what we, for want of a better expression, may call 'constitutionalism', i.e. the doctrine which emphasises the necessity of checks and balances on power. First, however, an overview of the debate as it has evolved through the different epochs of political history.

#### *Absolutism and constitutionalism*

Lord Acton is often cited for the dictum 'power corrupts – and absolute power corrupts absolutely' (Letter to Bishop Mandell Creighton). It followed from this – at least according to Acton – that power had to be checked and restricted, for example through constitutional courts, a royal veto, or powerful second chambers. We will call this view 'constitutionalism'. Yet this school is not unopposed. Invoking a perhaps simplistic dichotomy à la Isaiah Berlin (1953; 1969), we may draw a distinction between two fundamental political traditions in Western political thought; the *absolutists*, who, for fear of political chaos, believe that all power should be united in one individual or group of individuals, and the *constitutionalists*, who believe that all power should be checked, lest the rulers arrogate to themselves powers to which they are not entitled. Among the former we may cite Plato, Hobbes, Jean Bodin, Robert Filmer, Karl Marx, Carl Schmidt and Lenin. Among the latter we may cite Aristotle, Cicero, Locke, Montesquieu, Madison, Hayek and possibly even Machiavelli (McCormick 2001: 297).

Like all dichotomies this one stretches reality, and may become inaccurate and even absurd when applied too rigorously. However, as a heuristic device it may serve a purpose, namely by identifying the common denominators which we might otherwise overlook. Moreover, this distinction can even be found in the empirical literature (Ertmann 1997), as well as theorists have used the distinction for hundreds of years. Thus in 1476 the English statesman Sir John Fortescue distinguished, in his tract *The Governance of England: Otherwise called the Difference between*

*Absolute and Limited Monarchy*, between absolutist states in which the King ‘mey rule his people bi suche lawes as he makyth hym self’ and those countries (the constitutional ones) in which the King ‘may not rule his people bi other laws than such as thai assenten unto’ (Fortescue 1885: 109).<sup>4</sup>

These traditions are diverse. The absolutists believe that the ‘legislator’ should have absolute and unlimited power – in order that legislation can be based on a single, consistent and rational basis. Yet, there is considerable disagreement as to who the ruler should be; Lenin proposed that it should be the vanguard of ‘the party’, in *What is to be Done*; Plato made a case for philosopher kings in the *Republic* (Plato 1974: 499) – though he changed his mind in *νομοι* (*The Laws*) (Plato 1975: 676–93); and Hobbes – perhaps the foremost of the modern absolutists – made a case for the total transfer of powers to the *Leviathan*.<sup>5</sup> The latter writes, ‘Sovereign power ought in all commonwealths to be absolute’ (1973: 136). It is not difficult to point out the differences among these thinkers. What unites them, however, is that they all, in different ways and for different reasons, believed and contended that legislation – lest it should become spasmodic and irregular – should be undertaken on the basis of one belief system, namely that which represented the truth, reflected the Platonic forms (*eidōs*), or was consistent with the ‘laws of motion of society’ (Marx 1978: 447). This view was lucidly expressed by Arthur Schopenhauer – not normally considered a political thinker – in his *The World as Will and Representation*:

The great value of monarchy seems to me to lie in the fact that because men remain men, one must be placed so high, and be given so much power, wealth and security, and absolute inviolability that for him there is nothing left to desire, to hope or to fear. (Schopenhauer 1958: 595)

It has often been argued that Rousseau subscribed to this view (Popper 1945). Hayek thus wrote that Rousseau believed that ‘democracy necessarily means unlimited power of the majority’ (Hayek 1978: 6).<sup>6</sup> We shall return to this in a moment.

The constitutional tradition – no less diverse than the absolutist school – is based on the common assumption that no group or individual should have absolute power. This view seems – with the unavoidable exceptions – to be grounded in the epistemological assumption that all human knowledge is fallible.<sup>7</sup> As no one has access to the truth – in the essentialist meaning of the term<sup>8</sup> – no one individual or group should be entrusted with absolute power. The power should be checked, for example through institutions which enable the rulers to think again. Saul Levmore has

summed up this view in the phrase ‘two decisions are better than one’ (Levmore 1992). James Madison, one of the best-known constitutionalists, famously summed up the view that central power be moderated by checks and balances, in *Federalist Paper No.51*. The basic reasoning was that the creation of a large number of independent public institutions which would, could – and should – veto politicians:

[T]he great security against gradual concentration of several powers in some departments consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of others. Ambition must be made to counteract ambition. (Madison in Hamilton *et al.* 1961: 319)

The different ‘players’ in the political game act as brakes. Rousseau did not follow Madison all the way. He never believed – as did Smith and Madison – that selfishness alone could be turned into a force for good. But he realised that institutions could play a part in shaping a just republic.

It follows, therefore, that the enactment of legislation should be made conditional upon concurrent endorsements of at least two distinct political institutions, such as parliament and the executive, both chambers in a bi-cameral legislature, etc. To understand this tradition we must temporarily break off the narrative to take a look at its history – or rather its genealogy.

### *The genealogy of constitutionalism*

It has been asserted – probably correctly – that constitutionalism was originally invented by (or entrusted upon) the Israelites. The law given to Moses by the Lord (Exodus 20), was the birth of constitutionalism (Finer 1997). For the first time in history, a polity established the principle that the power of the king, or ruler, was restricted by a higher law. As a political historian has observed ‘the monarch [was] bound by an explicit and written law code imposed upon him, coequally with his subjects, *from the outside*’ (Finer 1997: 239, italics in the original). In introducing this doctrine, the Jews established, before anyone else – and at a time when unrestricted despotism was the order of the day – the concept of the ‘rule of law’, or the *Rechtsstaat*. Yet it does not follow from this that the original conception was – or is – the true version of constitutionalism. Michel Foucault (inspired by Nietzsche) urged that we make a distinction between the ‘origin’ (*Ursprung*) and the ‘descent’ (*Herkunft*) of a concept (Foucault 1996b). We cannot, argued Foucault, fully understand a concept by simply tracing its first occurrence. The historian of ideas – like the genealogist –

must understand the descent of a concept, i.e. how it has evolved in different directions.<sup>9</sup> A concept is, therefore, like a thread. There is no fibre running through the entire thread, only the overlapping of many fibres which *together* constitute the thread. Likewise with constitutionalism. A tradition – like a family – may follow a developmental sequence during which its components will subtly change. Over a long period of time, like in biological evolution, its core may shed or acquire elements, and similarly its morphology may undergo a transformation. The members of the constitutionalist family do not constitute a monolithic bloc, yet like family members they share certain characteristics – they have what Wittgenstein called ‘family resemblance’ (Wittgenstein 1984: 277). The most important of these characteristics – though not a necessary one – is the doctrine of the ‘rule of law’, or the *Rechtsstaat*. Again the Jews may serve as an example: neither Saul, David or Solomon had absolute power. Unlike their contemporary colleagues in Babylon or Egypt, the Jewish kings were restricted in their actions by the law as laid down by God. The *Law*, therefore, could not be altered. The Law was literally God-given. The king’s role was to apply the law – he was a judge rather than a law-giver – though not all kings adjudicated as wisely as Solomon.

The doctrine of the rule of law might have been invented – or introduced – by the Jews. This people, however, was not the only one to subscribe to the doctrine. Aristotle, an early constitutionalist, advocated a similar doctrine in *The Politics*, noting that the ruler was limited by the natural laws. He believed that ‘the law should be sovereign on every issue, and that magistrates and citizens should only decide about details’, as the rulers were bound by a higher law (Aristotle 1988–89: 1292a).

Political theorists and practitioners, until Marsilius of Padua, held it undisputed that the law was given by God – or an equivalent figure – and that the ruler could not, and should not, change the law but merely apply it (Vile 1998: 29). The work of Marsilius of Padua in the fourteenth century was a turning point. A little earlier Thomas Aquinas had made a distinction between the ruler’s functions of laying down the law and of administering the law (Vile 1998: 30).

Marsilius went much further. By placing the legislative power in the people, and by rejecting the view that positive law must confirm to a higher law, he saw laws as enactments of secular authority. The old doctrine was well-suited to a society which was fundamentally unaltered from the fall of the *Polis* to the Renaissance. The law – as given to Moses, Solon, Romulus – was made for traditional society, and a society that seemed remarkably static. Yet this society, and hence its laws, was becoming an anachronism

at the end of the Middle Ages in the Northern Italian city-state cradles of modernity.

Marsilius has, rightly or wrongly, been seen as an early democrat; a champion of populism in an age of clerical despotism. This, however, was not his main contribution. His seminal contribution to the history of political thought was that he instituted man (whether individually or collectively) as the law-giver. The ruler should legislate – not merely adjudicate. The law was not static, God-given; it was to be made by men responding to a changing society. ‘The primary and proper efficient cause of the law’, wrote Marsilius of Padua in *The Defensor of the Peace* (his main work), ‘is the people ... commanding or determining that something should be done or omitted with regard to human civil acts’ (Marsilius 1951: 45). The law was no longer static and eternal; it could – and should – be altered when changing social and economic circumstances demanded.

This altered focus opened a Pandora’s box in political theory – and did so in a way which nobody had foreseen. For by granting the ruler the right to legislate the inbuilt checks and balances inherent in the classical doctrine were now gone. Not everybody saw this as a problem. The absolutists were in the ascendancy during the Renaissance. Indeed, checks and balances were seen as a hindrance rather than a necessity. Marsilius’ doctrine – quite unintentionally – thus paved the way for a re-emergence of despotism as a credible doctrine (a feat that not even the Roman emperors had succeeded in forging). The king – now transformed to *rex dei gratia* – became a lawgiver and a judge anointed by God in the fashionable view. ‘Every man that is born’, wrote Robert Filmer, ‘is so far from being free-born that by subjection he is always to live, unless by immediate appointment from God ... he becomes possessed of that power to which he was subject’ (Filmer 1949: 233). A monarch who subscribed to this view was James I, who even troubled himself with penning his political philosophy in the treatise *The Trew Law of Free Monarchs*. James foreshadowed Filmer’s theory by noting that ‘kings are also compared to fathers of families; for the King is *parens patriae*, the father of his people’ (James cited in Fermon 1997: 211).

These works – in themselves philosophically insignificant – owed much to Marsilius, especially as he had been read by Jean Bodin, who in his *Six Livres de la Republique* had argued that a ‘well ordered state needs an absolute and legitimate sovereign centre’ (McClelland 1996, 281), a doctrine, which – as we have seen – was continued by Thomas Hobbes. Armed with view of Marsilius, Jean Bodin effectively buried the ancient theory of limited government, according to which the king was essentially

a judge interpreting an eternal and unchanging law. Bodin asserted that the monarch had the authority to enact new laws to *his* people and – equally importantly (from a historical perspective) – that legislation was the first and chief mark of sovereignty (Vile 1998: 29).

And then it changed. Absolutism gradually lost ground at the end of the seventeenth century. It is difficult to point to one single book or event that challenged the philosophical dominance of absolutism (indeed, absolutism remained the dominant doctrine in practical politics until the American Revolution). Constitutionalism was re-born in England, albeit little by little. The need for independent judges to counter a potentially omnipotent king had been emphasised by George Buchanan as early as 1579 (Vile 1998: 34), and Robert Hooker had asserted in *The Laws of Ecclesiastical Polity* that the king ought not to be judge in cases of felony or treason. Yet it seems difficult to sustain the view that these interventions were but peripheral to the development of constitutionalism. Thus it was not until after the English Civil War that modern constitutionalism took a form which is recognisable today. In the Putney debates<sup>10</sup> Henry Ireton, one of the Levellers, made a case for a system (which he believed had existed before): ‘the two great powers of this kingdom are divided betwixt the Lords and the Commons, and it is most probable to me that it was so that it was so that judicial power was in the Lords principally ... the legislative power principally in the Commons’ (quoted in Vile 1998: 34). This might not have been the first instance of the advocacy of a system of the division of powers but it was indicative of a general trend, and a new tendency to combine the ancient doctrine of constitutionalism with Marsilius’ doctrine that man is lawgiver. Algernon Sydney, another of the proto-constitutionalists, writing in 1678 in the aftermath of the English Civil War, stressed the latter:

It must be acknowledged that the whole fabrick of tyranny will be much weakened if we prove that nations have the right to make their own laws, constitute their own magistrates; and that such as are so constituted owe an account of their actions by whom, and for whom they are appointed. (Sydney 1996: 12)

The same view was more famously developed by John Locke, in his *Second Treatise of Government*. For Locke, the king, while bound by natural law, could only perform his executive power subject to the consent of the people (represented in Parliament). Rejecting Filmer’s view, Locke noted that ‘he that thinks that absolute power purifies mens’ blood, and corrects the baseness of human nature, need read but the history of this, or any other



age, to be convinced of the contrary' (Locke 1988: 327). He therefore urged that the 'legislative and the executive' power should be 'separated' (365). Not a new view at this time – indeed, the view had been stated more firmly by the Levellers and Sydney, but a view which only gained acceptance after it had been expressed by Locke.

There is a direct link between this view and the fully fledged doctrine of constitutionalism as the separation of powers, which was developed by Charles Secondat de Montesquieu (who in turn inspired both James Madison and Jean-Jacques Rousseau). In *The Spirit of the Laws* Montesquieu wrote:

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty ... Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge might behave with violence and oppression. There would be an end to everything, were the same man, or the same body, whether nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the cases of individuals. (Montesquieu quoted in Vile 1998: 99)

Thus the history of constitutionalism did not follow a straight path or an orderly evolution. From its haziest origins on Mount Sinai, where rulers for the first time accepted the doctrine that they were bound by a higher law, through Marsilius, to Sydney, Locke and Montesquieu, the doctrine gradually took an institutionalist form, i.e. it was combined with the doctrine of the separation of powers. What remained was to make the doctrine democratic. It was this task that Rousseau sought to resolve.

### *Rousseau's constitutionalism*

Rousseau has traditionally been read as the antithesis of the constitutionalist school. Ernest Barker – to quote but one (one could also mention Hayek, Barry, Talmon and Popper) contends that 'in the last resort Rousseau is a totalitarian' (Barker 1948: xxxviii). The question is whether Rousseau ever held views which deserve to be quoted using these terms? If he, in fact, as often contended, developed a doctrine which was anathema to modern constitutional democracy.

Covering a vast variety of topics, one could be excused for failing to discern a common denominator in Rousseau's thought. Rousseau's *oeuvre politique* deals with issues ranging from constitutional law, through

historical sociology and political theory, through comparative government to international politics.<sup>11</sup> Yet all his political works, with the possible exception of *Pologne*, contain two recurrent theses: the necessity of limiting (or placing checks on) executive power, and the impossibility of direct legislation by the people. Rousseau did perhaps become more concerned with practical politics in his later years, yet his views regarding this remained the same.<sup>12</sup>

### *Direct democracy and checks and balances*

Rousseau is often described as an archetypal theorist of direct participation. Carole Pateman, an often-quoted authority on the subject, writes: 'The central function of participation in Rousseau's theory is an educative one, using the term in the widest sense. Rousseau's ideal system is designed to develop responsible, individual social and political action through the effect of the participatory process' (Pateman 1970: 24–5).

Rousseau was, in fact, severely critical of the practice, as well as of the theory, of direct participation (Leigh 1964). In the *Discourse sur l'inégalité* he thus stressed, in direct contradiction of Pateman's thesis: 'In order to prevent self-interested and ill-conceived projects, and all such dangerous innovations as finally ruined the Athenians, each man should not be at liberty to propose new laws at pleasure ... that right should exclusively belong to the magistrates' (*'ce droit appartient aux seuls Magistrats'*) (III: 114).

This denunciation of the very system with which he so often – incorrectly – has been associated (Dicey 1910) was not exceptional. This criticism of direct democracy can be found elsewhere in his political writings. In his *Discourse on Political Economy* he thus rejected that the 'people should be continually assembled to pass laws'. He continued by asking the rhetorical question, 'must the whole nation be assembled together at every unseen event?' His answer was negative. Something which is difficult to translate: '*Faudra-t-il assembler toute la nation à chaque événement imprévu? Il faudra d'autant moins l'assembler.*' He continued noting 'that direct democracy in a great people would be impracticable' (*'Est impracticable dans un grand peuple'*) (III: 251).

Historians of political thought are always vulnerable to the charge of quoting out of context. The almost inherently contradictory nature of Rousseau's writings seems to justify a whole array of readings (Wokler 1995: 119). However, it is noteworthy that he consistently and without exception stressed his opposition to direct legislation by the people. *Du Contrat Social*, arguably his *chef d'oeuvre*, is no exception. Consistent with

the view in his earlier writings he contended that, 'one can hardly imagine that all the people would sit permanently in an assembly to deal with public affairs' (*on ne peut imaginer que le peuple reste incessamment assemblé pour vaquer aux affaires publiques*) (III: 404).

These quotes do not paint a picture of an anti-democrat, they rather amount to an almost Burkean theory of representation. While there are remarkable and perhaps surprising similarities between Burke and Rousseau (as we have already argued above),<sup>13</sup> it would be erroneous to cite him as an opponent of all forms of citizen participation, let alone as being opposed to democracy – as we use the term today. Rousseau agreed with Montesquieu (see Book XI.6 of *Spirit of the Laws*), and later with Burke (Burke 1902: 447), that representative government was necessary. But he would not have been in agreement with the Burke that the representatives should act at their own discretion, as this would leave the people vulnerable to encroachments by the former.

Rousseau did write, in a letter to d'Ivernois, 'it is evident that I am not a visionary, and that, in *Du Contrat Social*, I did not defend democracy' (quoted in Wokler 1995: 111), yet Rousseau, like political theorists from Aristotle through Spinoza to Madison, uses the term democracy to refer to pure and direct democratic participation (like in Athens),<sup>14</sup> a system which Rousseau had deemed unrealistic and undesirable.

Rousseau favoured an 'aristocratic system', in which the representatives should propose the laws. This system was, as Masters has noted, 'merely another name for parliamentary or representative government' (Masters 1968: 402).<sup>15</sup> Rousseau writes: 'There are three types of aristocracy; natural, elective and hereditary. The first is suited only to primitive people, the third is the worst of all governments, the second is the best, and this is aristocracy in the true sense of the word' (III: 406). Rousseau agreed with Montesquieu that the 'great advantage of representatives is their capacity for discussing politics', an activity for which the 'people collectively are extremely unfit' (Montesquieu 1989, XI: 6). Yet he did not agree with Montesquieu that public participation was 'a great fault', and that 'they [the people] ought to have no share in government but for the choosing of representatives'. Leaving legislation to the discretion of the representatives would leave the people vulnerable to the encroachments of power by their elected masters. It was this lack of a check on the representatives, and the accompanying risks that they, the representatives, could vote contrary to the *General Will*, that made checks necessary. Burke had famously told the electors in Bristol that 'your representative owes you not your industry alone but his judgement and he betrays instead of

servicing you if he sacrifices it to your opinion' (Burke 1902, 447). This problem would not, in Rousseau's opinion, be resolved through representative government alone, but by complementing it with referendums in which the people could hold the magistrates accountable for their decisions. 'The holders of executive office are not the people's masters but its officer', and, wrote Rousseau, 'the people can appoint them and dismiss them as it pleases' ('*qu'il peut les établir et les destituer quand il lui plaît*') (III: 434).

Like *The Federalist*, Rousseau wanted these aristocrats to be elected by the people. He outlines this theory in *Du Contrat Social*: '[under direct democracy] all the citizens are born magistrates, while this other system [elected aristocracy] limits itself to a small number of magistrates, every one of whom is elected, a method which makes honesty, sagacity, experience and all the other grounds of popular preference and esteem further guarantees of wise government' (III: 407). Similarly in the *Project de la Corse*; 'what Corsica needs is a mixed government [*Gouvernement mixte*]', where the people assemble by sections rather than by whole, and where the repositories of its power are changed at frequent intervals' (III: 907). In all his political writings he stressed that the power of any political institution should be kept in check. A view, which in turn, resulted in the development of a theory, which in some respects resembled modern models of social choice (Trachtenberg 1993). Rousseau's interest in policy failures is evidently based on the epistemological view, which stresses the fallibility of human knowledge and, consequently, the most unplatonic view that no one has privileged access to the general will. Contrary to the charge that Rousseau's political philosophy would lead to authoritarianism (as the rulers would claim to be the only ones who fathomed *la volonté général*, whereas the ordinary citizen should be 'forced to be free' ('*qu'en le forcera d'être libre*') (III: 364) by the benevolent, if autocratic, rulers), he explicitly stressed this danger. Rousseau emphasised that '*tout homme peut graver du Pierre ou avertir un oracle*', 'any man can carve tablets of stone, or bribe an oracle, train a bird to whisper in his ear, or discover some vulgar means of imposing himself on the people' (III: 384). Rousseau, in other words, anticipated the likes of Stalin, Robespierre and Pol Pot, indeed, it was the aim of his political philosophy to rid society from tyrants. Alas not all of his followers and interpreters have understood this.

Rousseau's concept of *la volonté général* was not, therefore, a mystic concept of abstract political theology. It was rather theoretically related to the concept of 'collective goods', as employed by rational choice theorists (Mueller 1996: 51). Using this framework, one can see the identification

and implementation of the General Will as a social welfare problem, and 'some of the most obscure passages can be clarified' (Grofman and Feld 1988: 567). Through this approach we might resolve the often misunderstood assertion in *Du Contrat Social* that the *Will of All* is not – necessarily – the *General Will*. Far from basing this view on metaphysics, Rousseau, arguably, hinted at an early variant of Arrow's theorem, namely that it is impossible – or at least very difficult – to aggregate the individual preferences to a social welfare function (Trachtenberg 1993: 52). That is, Rousseau, criticised the will of all on the ground that it 'cannot serve as a reliable basis of social co-operation; he presumes that people will not co-operate to provide the collective welfare' (Trachtenberg 1993: 14).<sup>16</sup>

While it would be anachronistic to attach twentieth-century labels to an eighteenth-century theorist, it is noteworthy how preoccupied Rousseau was with the inherent difficulties of aggregating preferences and resolving *collective action problems*, something which, perhaps, is most visible in the fable of the stag hunt in the *Discourse on Inequality*. He wrote:

men were able imperceptibly to acquire some crude idea of mutual commitments and the advantage of fulfilling them, but only as far as present and palpable interest could demand, for foresight meant nothing to them, and far from being interested in a distant future, they hardly thought of the next day. If it was a matter of catching a deer, each certainly felt strongly that for this purpose he ought to remain on his post, but if a hare happened to pass within reach of one of them, it must not be doubted that he pursued it without scruple, and that having caught his prey, troubled himself very little about having caused his companions to miss theirs. (III: 167)

While each individual realised the benefits of co-operation, he was reluctant to give up modest short-term benefits for greater long-term gains. The establishment of co-operation was not, therefore, a foregone conclusion, although Rousseau believed that individuals in the fullness of time had learned to appreciate – at least some of – the benefits of collective action (Grofman and Feld 1988: 537).

It was the realisation that co-operation was necessary that led to the establishment of *le contrat social* (exactly as in Hobbes' *De Cive*).<sup>17</sup> As Rousseau put it in *The Geneva Manuscript*;

If the clashing of particular interests make the establishment of civil societies necessary, the agreement of these very interests make it possible. The common element in these different interests is what forms the social tie; and were there no point of agreement between them, no society would exist. (III: 282)

Yet the question remained

How to find a form of association, which will defend the persons and goods of each member with the collective force of all, and under which each individual, while uniting himself with others, obeys no one but himself, and remains as free as before? (III: 360)

True to his republican inclinations Rousseau found the answer in a system under which, ‘each one of us puts into the community his person and all his powers under the supreme direction of the General Will’ (III: 360). Yet he admitted – which often has gone unnoticed – that this system was far from flawless. As nobody had privileged access to the General Will it was important that power be shared lest a group of representatives usurped that power which rightfully belonged to the citizens. The citizens had to keep the magistrates in check. Sovereignty could only be represented by all citizens (the representatives are merely the people’s agents and cannot decide anything finally’).

The ‘English people’ were therefore ‘unfree’ (III: 429) because once they have delegated power they could not – and cannot – control the government, or the ‘elected dictatorship’, to use the late Lord Hailsham’s apt phrase. Rousseau did not, therefore, want to abolish representative government, but merely to complement this system with mechanisms of direct participation of the citizens, lest the delegates should transgress the boundaries of their authority. His swipe against the English was not a total dismissal of the British constitution. Indeed, he praised the Westminster system in *Lettres écrites de la montagne* (III: 848). What he merely wanted to show was that Britain – at that time the only major power to hold elections – was not an ideal polity.

In developing a model of constitutionalism, Rousseau stressed that the people should be entitled to veto legislation lest the enactments of the representatives should be in contravention of the General Will, i.e. represent the *Particular* as opposed to the *General Will*. It was in order to prevent this encroachment that he concluded that any law ‘which has not been ratified by the people in person is void, is not a law at all’ (III: 430).

This preoccupation with the danger that the political system might be corrupted – through unlimited rule – is in stark contrast to the reception – or *Wirkungsgeschichte* – of Rousseau’s work, especially in the English-speaking world (see Cobban 1968 for an overview). The thinker whom Karl Popper denounced as a champion of unchecked rule of the majority (Popper 1945: 50) did, in fact, advocate a system of (a variant of) balances of power. Not surprising, perhaps, as historians have documented his

indebtedness to Montesquieu (Cranston 1986: 16). This support for a system of checks and balances is nowhere more evident than in *Lettres écrites de la Montagne*. Rousseau asks rhetorically: ‘What better government is there than one of which all parts are held in perfect equilibrium, where the individuals cannot transgress the law because they are subject to magistrates, and the magistrates cannot transgress it because they are supervised by the people?’ (III: 844).

Rousseau’s originality lay not least in his proposed solution to what James Madison, in *Federalist Paper 63*, called ‘the continual encroachment’ of the rulers (Hamilton 1961: 389). While most constitutionalists have sought to resolve the problem through elitist means – the exception is Dicey (1910) – for example through constitutional courts (Hamilton), bi-cameralism (Montesquieu), consociational powersharing (Althusius) – Rousseau proposed (like the American populists a century later)<sup>18</sup> that the most effective and legitimate check on power was the plebiscite – or referendum as it has become generally known. As already alluded to, Rousseau proposed a system under which the citizens should perform the function of a ‘people’s second chamber’ by consenting, or otherwise, to acts passed by the representative assembly. True to his reverence for the Romans (whose system of government he elsewhere describes as, ‘the best government that have ever existed’ (*la police plus favorable à la constitution de l’Etat*) (III, 809) he cites (a somewhat idealised) description of the Roman Republic 200 BC in support of his views:<sup>19</sup> ‘the decemvirs themselves never claimed the right to pass any laws merely on their own authority. Nothing we propose to you, they said to the people, can pass into law without your consent’ (*ne peut passer en loi sans votre consentement*) (III, 382).<sup>20</sup> This was a revolutionary proposal at the time – and indeed it remains to be. True Locke had, in *Second Treatise*, argued that ‘if a controversie arise betwixt a Prince and some of the People, in a matter where the law is silent, or doubtful, and the thing be of great Consequence, I think that the proper Umpire in such a case should be the body of the People’ (Locke 1988, 427). Yet the Englishman had not explained or outlined how matters were to be resolved in the people’s favour. Rousseau did. The people were to decide through direct voting. He was not the last one to reach this conclusion. One hundred and fifty years later A.V. Dicey – a noted British constitutionalist – reached the same conclusion (and one which, like Rousseau’s, showed the shortcomings of Madison’s system). Dicey explained:

The referendum has one pre-eminent recommendation, not possessed by any of the artful, or ingenious, devices for strengthening the power of the

second chamber, or placing a veto in the hands of a minority. Its application does not cause irritation. If the Lords [the second chamber in the British system] reject a Bill people demand the reform of the peerage; if the French Senate (a popularly elected body) hesitates to approve a revision of the Constitution, the next scheme for revision contains a clause for the abolition of the Senate. Popular pride is roused, voters are asked to make it a point of honour that a measure, which an aristocratic or select chamber has rejected, shall be carried. A Bill's rejection turns into a reason for its passing into law. Should a regular appeal to the electors result in the rejection of a Bill passed by Parliament, this childish irritation becomes an impossibility. The people cannot be angered at the act of the people. (Dicey quoted in Qvortrup 2002: 65)

Rousseau held the same view. While defending the necessity of representative government, he was adamant that the representative body should not usurp the functions of the people.<sup>21</sup> While admitting the theoretical benefits of the absolutist doctrine of undivided rule, Rousseau reiterated his preference for a division of powers:

He who makes the laws knows better than anyone how it should be executed and interpreted. So it might seem that there could be no better constitution than one, which united the executive power with the legislative; in fact this very union makes that form of government deficient (*qui rend ce gouvernement insuffisant*). It is not good that he who makes the laws should execute it. (III: 404)

Rousseau explicitly favoured checks and balances: 'the legislative power consists of two things inseparably linked: to make laws and to maintain them, that is to say, to supervise the executive power ... without it [the power of supervision] there is no relation, no subordination between the two powers, the one would depend on the other' (III: 837). Or, as he put it in *Du Contrat Social*; 'the man who frames the laws has not, or ought not to have any legislative rights' ('*celui qui rédige les lois n'a donc ou ne doit avoir aucun droit législatif*') (III: 383).

### *Is the plebiscite a safeguard?*

However, one might question if these plebiscitary devices would prevent the corruption of power. Citing the undemocratic use of plebiscites by Napoleon III, Melvin Richter has criticised Rousseau for paving the way towards a 'plebiscitary dictatorship' (Richter 1995: 71), as a rigged referendum, in reality, may legitimise a publicly sanctioned autocracy. This view was forcefully summed up by Michael Oakshott: 'The plebiscite is not a method by which 'mass man' imposes his choice upon his rulers; it is



a method for generating a government with unlimited authority to make choices on his behalf. In the plebiscite ‘mass man’ achieved final release from the burden of individuality: he was emphatically told what to choose’ (Oakshott 1991: 379).

There are certainly an abundance of plebiscites which have generated dictators with unlimited powers, e.g. the plebiscites sponsored by Hitler. Rousseau himself was not blind to the danger that demagogues could deceive the people; ‘the people’, he wrote, ‘is never corrupted, it is often misled, and only then does it want what is bad’ (III: 371). Empirical evidence does not support this scepticism, however; Charles de Gaulle lost the plebiscite on local government in 1969 and even General Pinochet was forced to step down when 56 per cent of the voters rejected a proposal which would have extended his powers. Whether referendums result in ‘plebiscitary dictatorship’ is ultimately an empirical question, but evidence does not readily support this thesis. This conclusion does not imply that Rousseau’s model was realistic – let alone meant to be. Rousseau was a theorist not a politician. We can be inspired by the classics; they do speak through the ages but they have not provided us with solutions, let alone with applicable schemes for reform. Whether realistic or not, Rousseau’s considerations on a system of representative government, kept in check by a scheme of plebiscitary checks and balances, provides food for thought for constitutional engineers and political theorists alike.

### *Constitutionalism and beyond?*

Rousseau was – albeit among other things – a constitutionalist and a republican who combined two opposite poles of democratic theory. As did formal minimalists, like Madison and Montesquieu, he made a case for representative government, and, like participationists, he encouraged more direct and robust modes of popular engagement in politics. By combining these two approaches, Rousseau not only developed an alternative check on the power of the elites, he also – and equally importantly – combined their respective strengths and weaknesses. Minimalists rightly stress the necessity of deliberation, and point out that this is only possible under indirect democracy. However, they overlook the flip-side of representative government, such as log-rolling and rent-seeking (Qvortrup 2002: 153). Participationists – like, say, Benjamin Barber – rightly stress the edifying aspects of civic engagement, yet tend to overlook the danger of populism, as well as they underestimate the practical difficulties in institutionalising direct legislation. Politics is not a spectator sport.

Through his case for referendums, Rousseau was able to both ensure the elements of deliberation, as well as introducing a democratically legitimate check on the elites. It is through this theory that Rousseau succeeds in drawing a line between direct and representative democracy and to combine the best of both systems. This is an important contribution, not only to political theory, but also for practical politicians who advocate the greater use of referendums as a complement to representative government, yet stop short of endorsing law-making by the people.

This essay does not aspire to be the last word on Rousseau's constitutional doctrine. The works of the classics are never mono-dimensional, but always open to interpretation. Rousseau was assuredly *not* a liberal constitutionalist like, say, Mill, yet his 'theory' of constitutionalism was a good deal closer to other constitutionalist theories than is commonly assumed. Far from presenting a theory of political theology about the *General Will*, he developed a model which, in fact, can be seen as a precursor of modern-day political science.

'My defence for the people's right to veto legislation passed by the representatives', wrote Dicey, was 'not due to any increased enthusiasm for the principles preached by Rousseau' (Dicey 1910: 539). It is conspicuous that Dicey singled out Rousseau as the straw man of direct democracy run amok. In reality Dicey – through developing a doctrine of people's vetoes – advocated the very same system as had been developed by Rousseau. Yet, while Dicey has been canonised by constitutionalists, such as Hayek (1960: 240), Rousseau has been vilified by the very same scholars. There may be several self-inflicted reasons for this, including Rousseau's poetic style, yet the substance of his writings indicates that constitutionalists should embrace rather than reject him, though Rousseau, in fairness, is not the average constitutionalist.

### *Censorship and the education of democratic man*

The reader might be excused for thinking that Rousseau – as he was presented above – was but a liberal constitutionalist with a bit of a twist. Such a conclusion would not be an original one (it was the thrust of John W. Chapman's study (Chapman, 1968),<sup>22</sup> nor, more importantly, would this be an entirely valid conclusion. Proponents of the constitutionalist interpretation, the present author included (Qvortrup 2002), find it difficult to square his democratic and constitutionalist views with his seemingly contradictory, but unequivocal, arguments for censorship. In *Du Contrat Social* Rousseau noted that 'men always love what is good or

what they *think* is good, but it is in their judgement that they err; hence it is their judgement that has to be regulated' (III: 459). Such views are provocative and repulsive at a time when Mill's attack on censorship in *On Liberty* received justified support. The English liberal noted that 'the opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course, deny its truth but they are not infallible ... All silencing of discussion is an assumption of infallibility' (Mill 1861: 22).<sup>23</sup> This presumed infallibility is difficult to square with Rousseau's scepticism in general and his political views in particular. Such is the power of Mill's view (and creeds like it) that we often forget that the republicans began 'from the presupposition that a free society governed by its members is in need of the most careful education in order that the citizens have the requisite virtues for ruling themselves and one another' (Bloom 1996: xi). Republican freedom, the granting to a people the right to legislate for themselves, is a grave task, which requires a concerted effort, and one which not only required a scheme of negative education but also – and more controversially (for us at least) – an element of censorship. 'Freedom', Rousseau wrote in *Considérations sur la gouvernement du Pologne*, 'is a food that is good to taste but hard to digest: it settles well only on a good strong stomach' (III: 974). It may seem strange today that the monarchical government was more tolerant than the republican city-state. In those days, it was quite common that republics required the greatest self-imposed restraints whereas tyrannies and other decadent regimes could often afford the greatest individual liberties. Indeed, Goethe (one of Rousseau's most illustrious – and independent-minded – disciples) observed in *Faust*, that 'he who does not daily conquer freedom deserves it not' ('*nur der verdient sich Freiheit wie das Leben, der täglich sie erobern muss*') (Goethe 2001: 203) would have received Rousseau's whole hearted support. Yet while Rousseau was – in theory – fond of censorship he was sceptical as regards the practicality of implementing such a scheme. And while he talked about reaching 'deep into men's hearts and uproot it by implanting healthier and more noble tastes', he conceded that 'merely prohibiting the things ... is a clumsy expedient and a pointless one, unless you see to it first that those things are hated and despised' (V: 18).

The problem with the liberal perspective is that it assumes that an atomistic society is possible; that it is possible to have rights without duties. Modern man, Rousseau noted in his *Letter to M. D'Alembert on the Theatre*, resembles the man

who did not want to get out of bed although the house was on fire. 'The house is burning', they yelled at him. 'What difference does that make to

me?’ he answered. ‘I am only renting it.’ Finally, the fire reached him. Immediately, he bounded out, ran, screamed, and became disturbed. He began to understand that sometimes we must take an interest in the house we live in even though it does not belong to us. (Rousseau 1960: 42)

This is a portrait of the *bourgeois*, that is of a man who, ‘in dealing with others think only of himself, and ... in dealing with himself thinks only of others’ (Bloom cited in Froese 2002: 34). Yet a society of egoists is an impossibility. The bourgeois is a parasite who abuses the sacrifices of others – i.e. more civic-minded citizens. If all people pursued their own goals the result would be the breakdown of society, hence the necessity of political education – and even censorship. Not, it must be stressed, as a means of indoctrinating the citizens but rather as a mechanism for generating an understanding of social cohesion, and an appreciation of the fundamental maxim that there can be no rights without duties. Citizenship has to be taught. We must learn to strive for things that are greater than self-glory or personal gratification. The citizen must be given a sense that citizenship – in return for political and social rights – must serve the state, and that he, if need be, must sacrifice *himself* for the sake of the common good. This, needless to say, was easier said than done. Rousseau did not – unlike Aristotle<sup>24</sup> – consider man as a social animal but as an individualist; a virtuous anarchist. He consistently stressed how difficult it was for us to learn to be – and perceive ourselves as – a part of a corporate whole to which we belong and from which we draw so much of our sustenance. In *The Social Contract* he described the task as ‘so to speak, changing human nature’, or ‘denaturing’ us (III: 381). Censorship was necessary to prevent man from acquiring views which would undermine his civic responsibilities. It was not, however, intended to shape man in a totalitarian mould; ‘the censorial office’, he admits, ‘may be useful in preserving morals, but never in restoring them’ (III: 479). The censorial office role would probably be no other than it is in most modern countries today, i.e. where there are restrictions on children and young people’s access to violent and pornographic films and videos. What was important was that citizens needed to be guided in the direction of civic duties to fulfil obligations. Allan Bloom – that most perceptive observer of Rousseau – has commented that we have to ‘distinguish between the really important elements of our liberty and the pretenders, which have gained credit by assimilating themselves to the truly necessary and noble pursuits; the fate of the most cherished rights should not be bound up with that of a licence and self-indulgence incapable of resisting impartial examination’ (Bloom 1960: xiii). Censorship may be necessary to ensure that we keep on the path of righteousness.

Rousseau did not believe that these mechanisms would rid society of its ills once and for all. He was not a utopian. Politics would not become automatic; the good society required good citizens. ‘The greatest public authority’, he wrote, ‘lies in the hearts of its citizens ... nothing can take the place of morality in government. It is not only upright men who know how to administer the laws but *at bottom only good men who know how to obey them*’ (III: 252, italics added). In short, man should learn to become a good and virtuous citizen. Not an easy task but one we all must learn.

His ambition was to create a virtuous circle in which transformed human beings could live in a transformed society in which all could equally enjoy a sense of self-fulfilment and community with others. This could not be established in a society dominated by competitive self-interested behaviour, which he believed had created inequality and social exploitation. Establishing morals – engendering a sense of community and solidarity with our fellow citizens – may require primary education, but this education has subsequently to be followed up by civic activities. There are thus two strands to Rousseau’s education of democratic man; the education of the child (see below) and the continuing civic education of the citizen once he has come of age.

Rousseau, believing that ‘Everything is good that leaves the hands of the creator of all things’ (IV: 279), maintained that the first task of the educationalist was to rediscover original man. His proposed education was a negative one, one of a discovery of the original man. He sought – in the eminent words of Jean Starobinsky – to rediscover ‘a forgotten present, a form that remained intact behind the veils’ (Starobinsky 1988, 19). The aim of this ‘negative education’ was to re-find *compassion* and *amour de soi même*, those natural feelings which have given way to vanity, selfishness, *amour propre*. Only once this had been accomplished could man begin his apprenticeship as a citizen. We find the most eloquent expression of this in *La Nouvelle Héloïse*. In a discussion with Saint-Preux and Wolmar, Julie claims that *pitié* is a natural feeling, and that the aim of education is to appeal to this natural goodness – not to create some inauthentic sense of abstract duties. ‘As far as I am concerned’, says Julie, ‘I am seeking to stay clear of the idea of what one ought to or should do, I never give him [her child] reason to believe that you should serve others out of pure duty; rather he should [serve others] out of compassion. This is, perhaps, the most important and difficult part of education’ (II: 564).

A society can only survive if its citizens have compassion with their fellow citizens and if they realise the necessity of partaking in civic functions with the aim of self-preservation. Liberals (the heirs of Smith and Locke)

seem to be labouring under the delusion that society is somehow automatic, that man is entitled to act without any external constraints and that as this egotistical pursuit of personal happiness, moreover, is believed to result in the greatest happiness of all, it is a justification for this course of action. Rousseau, whilst supporting checks on executive power and the state, rejected this as fanciful. Republican virtues do not emerge in a vacuum; 'citizens cannot be formed in a day, and in order to have them as men it is necessary to educate them as children' (III: 259–60). Society can only be maintained if man is willing and able to trade in his limitless 'negative' freedom for the benefit of the whole of the community. Or, as he writes elsewhere, in language which is bound to be misunderstood, 'Good social institutions are those that best know how to denature man, to take his absolute existence from him in order to give him a relative one and transport him into the common unity, with the result that each individual believes himself no longer one but a part of the unity and no longer feels except within the whole' (Rousseau 1979a: 250).

Rousseau might have exaggerated when he noted that 'every amusement is an evil for a being whose life is so short and whose time is so precious' (Rousseau 1960: 16). Yet his observation that failure to engage in active citizenship, which in turn has to be fostered, is indisputable. The aim of all institutions is to 'strengthen the national character, to augment the natural inclinations, and to give energy to all the passions' (20). That this required political education is a truism which liberals conveniently tend to overlook. Rousseau was not a liberal. And while he was a constitutionalist, he was more than that. Man needs to be continually re-taught that organic solidarity is a necessary condition for social cohesion. God made man capable of goodness, as Rousseau noted in the introduction to *Emile*, alas man, when left to his own devices, did not earn the trust of his heavenly Father. Hence it was necessary for God in his grace to send his son to remind man that he was created in God's image, and to teach man that he was capable of goodness, if only he could strip himself of ungodly humanism and *amour propre*. Man, therefore, is endowed with goodness, not with original sin (as postulated by Augustin). As Rousseau lets Saint Preux utter:

In creating man he [God] endowed him with all the faculties needed for his accomplishment of what was required of him, and when we ask him for the power to do good, we ask him for nothing he has not already given us. He has given us reason to discern what is good, conscience to love it, and freedom to choose it. It is in these sublime gifts that divine grace consists, and since

we have received them, we are all accountable for them. (quoted in Riley 2001: 108)

For Rousseau, therefore, the resolution to the problem of human morals did not lie in establishing institutions which would utilise man's selfishness for the benefit of mankind. Like Tocqueville, Rousseau saw societies essentially regulated by 'the feelings, the beliefs, the ideas, the habits of the heart and mind that compose them' (Rousseau cited in Riley 2001: 35), not just by institutions. 'There will never be a good and solid constitution unless the law rules over the hearts of the citizens', he wrote in the *Government of Poland* (35). The problem with man, as conceived by Hobbesians (and later by utilitarians like Bentham and modern economists) was that they, in their concern for their own wellbeing, had failed to recognise that society, to paraphrase Christ, 'does not live off bread alone'. In his pursuit of his own happiness man forgets his responsibilities to society, and that he is responsible for maintaining social order. Sacrifice for the common good was the model in Rome. However, being a realist, Rousseau conceded that a Roman solution was no longer possible, as public instruction 'no longer exists, because where there is no longer a fatherland, there can no longer be citizens' (35). In other writings – namely in *Considérations sur la gouvernement du Polonge*, *The Constitution of Corsica* and partly in *Du Contrat Social*, he sought to re-establish and re-develop the ancient concept of patriotism into the modern doctrine of nationalism. This doctrine is the subject of the next chapter.

### Notes

- 1 The classic contribution to this literature is Hannah Arendt, *The Origins of Totalitarianism* (New York: Meridian, 1958).
- 2 Jean Fabre (1962), 'Realité et Utopie dans la Pensée de Rousseau, in *Annales de Societé Jean-Jacques Rousseau*, Tome 45, 1959–62.
- 3 R.A. Leigh noted: 'even if we accept this seemingly impossible challenge, it is clear that so far as it concerns Rousseau's intentions there is not much need to argue' (Leigh, *Rousseau et son Oeuvre* (Paris: Klincksieck, 1964).
- 4 This distinction can also be found in Robert Derathé, *Jean-Jacques Rousseau et la science politique de son temps* (Paris: J. Vrin, 1988), p. 365.
- 5 'A multitude of men are made one person, when they are by one man or one person represented.' (Thomas Hobbes, *Leviathan*, London: Everyman 1973), p. 107.
- 6 Rousseau only refers only once to Descartes in *Du Contrat Social* (III: 388). There are only two other references to Descartes in his other political writings,

- namely in *The Origin of Inequality* (III: 114) and in the *Geneva Manuscript* (III: 321). There are, by contrast, more than sixty references to Hobbes and more than thirty references to Machiavelli.
- 7 Rousseau was not, of course, an epistemologist. His mildly sceptical position might be summed up in a letter to Deschamps. He writes 'I would love metaphysical truth just as much if I believed it could be found, but I have never found it ... I have beliefs, not certain knowledge' (L. 1437).
  - 8 See K. Popper, *Unended Quest* (London: Routledge, 1992). See also Locke's distinction between *real essence* and *nominal essence*.
  - 9 This idea that the history of political concepts is like a family tree is found not only in Foucault. A similar understanding – though a more radical (and nominalistic one) – can be found in the later Wittgenstein, especially in *Philosophical Investigations*. 'Wittgenstein asks us to consider ... the proceedings we call "games". What is the essence or the core of the word game? What property or characteristic is common to all things we call games? I mean board-games, ball games, Olympic games, and so on. Don't say; "there *must* be something common, or they would not be called games" – but look and see whether there is anything common to them' John W. Dardoff, *Wittgenstein and Political Philosophy. A Re-examination of the Foundations of Social Science* (Chicago: University of Chicago, 1978), p. 97. See also Ludwig Wittgenstein, *Philosophische Untersuchungen*, in Wittgenstein, *Gesamtausgabe* (Frankfurt am Main: Suhrkamp, 1984), vol. 1, p. 66.
  - 10 The Putney debates were held in Putney (near London) by the Council of Oliver Cromwell's New Model Army and attended by two officers and two agitators from each regiment. They revealed deep divergence between the two groups, with Cromwell and Ireton resisting the radical demands of the ranks, among whom there was strong support for the Levellers. The Levellers' position has often – through erroneously – been seen as the first example of a demand for universal suffrage. Yet, as C.B. MacPherson has shown, 'the Levellers consistently excluded from their franchise two substantial categories of men, namely servants and wage-earners'. C.B. Macpherson, *The Political Theory of Possessive Individualism. Hobbes to Locke* (Oxford, Oxford University Press, 1962), p. 107.
  - 11 See especially Jean Starobinsky, 'The Political Thought of Jean-Jacques Rousseau', in A. Ritter and J. Bondanella (eds) *Rousseau's Political Writings* (New York: W.W. Norton, 1988), p. 221.
  - 12 Spink, among others, sees *Lettres écrites de la montagne* as the first of three – the others are *Pologne* and *Projet du Corse* – practical works. Instead of 'setting aside the facts', as he puts it in *Discours sur l'inégalité* (III: 132), he now argues on the basis of facts. The theorist Rousseau gradually became the empiricist Rousseau, but he remained a believer in representative democracy – tempered by direct participation and the veto power of the citizens. Spink cited in R. Fralin, *Rousseau and Representation: A Study of the Development of his Concept of Political Institutions* (New York: Columbia University Press, 1978), p. 96.



- 13 However, David Cameron notes 'When the names Jean-Jacques Rousseau and Edmund Burke are mentioned together, it is usually to illustrate opposite extremes of opinion' (Cameron, *The Social Thought of Rousseau and Burke* (London: Weidenfeld and Nicholson, 1973), p. 1).
- 14 See, for example, James Madison, 'The Federalist X'. By democracy he meant 'a society consisting of a small number of citizens who assemble and administer laws in person'. Madison 'Federalist X', in Publius, *The Federalist Papers* (New York: Mentor, 1961), p. 81. ('Publius' was the pseudonym under which Madison wrote.)
- 15 A similar conclusion has been reached by Robert Derathé, who contends that Rousseau gradually came to accept representative government, not simply out of expediency, but as a matter of principle (Derathé, *Jean-Jacques Rousseau et la science politique de son temps* (Paris: J. Vrin, 1988), p. 388).
- 16 It is, perhaps, instructive to compare this view with John Charvet's conclusion that 'Rousseau's intellectual effort in educational, moral and political theory is conceived as a solution to the problem that arises when natural men become aware of each other and begin to impinge on and conflict with each other' (Charvet 1974, 145).
- 17 Hobbes writes: 'Those who met together with the intention to erect a city were, almost in the very act of meeting, a democracy.' Hobbes, *Leviathan*, p. 197.
- 18 See especially Thomas Cronin, *Direct Democracy* (Cambridge: Harvard University Press, 1989), pp. 43–5.
- 19 Plebiscites were introduced rather late, namely in 287 BC (J.P. McCormick, 'Machiavellian Democracy: Controlling Elites with Ferocious Populism', *American Political Science Review*, vol. 95 (2001), 304). See also L. Taylor, *Roman Voting Assemblies* (Ann-Arbor: University of Michigan Press, 1990).
- 20 The Roman system was, apparently, inspired by the Athenian democracy. The Decemvirs were, according to Levy, established to increase public participation. The people, he argues, wanted a system of laws 'which every individual citizen could feel he had not only consented to accept but had actually himself proposed' (J. Levy, *The Early History of Rome* (New York: Penguin, 1971), p. 221). It was the latter aspect – the de facto use of legislative initiatives – to which Rousseau referred when he noted that, while advocating the citizens' involvement, he 'would not have liked plebiscites' (III: 113).
- 21 The same conclusion was reached by American president Teddy Roosevelt. He argued: 'I believe in the referendum, which should not be used to destroy representative government, but to correct it whenever it becomes misrepresentative' (Roosevelt quoted in M. Qvortrup, *A Comparative Study of Referendums. Government by the People* (Manchester: Manchester University Press, 2002), p. 152.
- 22 See also Lester G. Crocker, *Rousseau's Social Contract: An Interpretative Essay* (Cleveland, Case Western Reserve Press, 1968)), Tanguy L'Aminot (ed.), *Politique et Révolution chez Jean-Jacques Rousseau* (Oxford: Voltaire

- Foundation, 1994); Robert Thiéry (ed.), *Rousseau, l'Emile, et la Révolution* (Paris: Universitas, 1992).
- 23 J.S. Mill, it will be remembered, was anything but liberal. In Chapter VIII of *Considerations on Representative Government* he thus advocated that graduates should be given two votes to prevent the uneducated from gaining influence. Interestingly – and rather incredibly – this system existed in Britain until the late 1940s. See Robert Blackburn, *The Electoral System in the United Kingdom* (London: Macmillan, 1996).
- 24 In *The Politics*, Aristotle – in classical teleological fashion – noted ‘if earlier forms of society are natural so is the state, for it is the end for them [men], and the natural for a thing is its end. For what each is when fully developed, we call its nature, whether we are speaking of a man, a horse, or a family ... Hence it is evident that the state is the creation of nature’ (Aristotle, *The Politics* (Cambridge: Cambridge University Press, 1984), p. 3.