The Foundations of “Democracy”: Its Origins and Essential Ingredients

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Introduction

Meaning of the Term ‘Democracy’

President Woodrow Wilson maintained that the United States fought the First World War in order “to make the world safe for democracy.” He would hardly have intended to comprise within his notion of “democracy” the communist countries’ self-styling as “Peoples’ democracies.” North Korea is proudly displaying a distinctly North Korean “democratic centralism.” Obviously, the meaning of the term “democracy” in the understanding of those who use it is not the same.

Why, then, we may inquire, is there in social reality competition for the use of what would seem to be an arbitrary construct that might well be replaced by a less controversial symbol? We are reminded that Hitler described his political party as “socialist,” clearly to invoke a similarity with the organizations representing workers’ interests that he was anxious to solicit. There was benefit in the simile; there is more “in a name” than a sound. To be honest, scholars must begin by defining the topic of their inquiry.

Beyond misuse of the term “democracy” there is also a variety of meanings that might be traditionally attributed to the term “democracy.” Throughout history, the symbol “democracy” has been used to designate diverse forms of government, such as “direct democracy,” where political decisions are reached by the majority of all “citizens”; “representative democracy,” where laws are made by representatives of, chosen by, the people; forms of government that combine elements of direct and representative democracy, as is the case in

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Switzerland and in several states of the United States; "constitutional
democracy," combining ingredients of representative (or direct) democracy
with constitutional safeguards protecting the minority and individuals against
abuses of the majority. Common to all these forms of government is the
assumption that the basic postulate of democracy is the majority rule, whereby
the majority of the people in a community makes the decisions that are to
govern. On this assumption most scholars trace the origins of "democracy" to
Greece. They disregard democracy's other constituent element, civil liberties.
It seems to escape their attention that Socrates was sentenced to death in
"democratic Athens" for teaching dissenting views.

In this essay we proceed on a more concise basic assumption, namely, that
the essential of democracy is the status of the individual within society, his
rights vis-à-vis the State, whereas the majority rule is but a compromise
solution in a state of necessity.

To demonstrate that the majority rule is not a democratic principle but a
compromise solution of democracy, let us assume that within a two-party
system, 100 votes being at stake, party "A" wins 51 votes and party "B"
wins 49. The proportion of victorious to defeated votes is minute. Yet, all
the benefits of victory are carried by the "A's," although the result can hardly
be celebrated as a triumph of the "A's." One might well argue that some
adjustment is appropriate. (1) We are hence focussing our attention on the civil
rights or civil liberties aspect of democracy, without neglecting the issue of
the form of expression of "popular will" to the extent that it bears on the
civil rights context of democracy—the citizens' participation in the formation
of popular decision making.

In 1991 the United States was celebrating the bicentennial of the "Bill of
Rights" (1791), which forms part of the United States Constitution, the

(1) There are in the history of democracy many examples of such close victories, to mention
but the victory of Kennedy over Nixon in the United States presidential contest of 1960,
a significant world event, for the fate of Cuba and the destiny of the Vietnam War might
have taken a different turn had Nixon won.
latter's first ten amendments. We intend to include in this group of civil
liberties also the Fourteenth Amendment which, in a somewhat narrower way,
guarantees "equality." Similarly, the right to vote, even when exercised within
the context of majority rule, has a legitimate place within that group.

On the occasion of the celebration of the bicentennial of the French Revolution
(1789) in Paris 1989, a controversy took place between the former British
Premier Mrs. Thatcher and the French President Mr. Mitterand over the
relative superiority of the contribution of Great Britain or France to the
development of democracy. Mrs. Thatcher pointed to the status of the Magna
Carta in the evolution of the modern concept of liberty, while Mr. Mitterand
stressed the leading role of the French Revolution in European democracy
generally. The fact is that the notion of democracy in both documents is
traceable to the Old Testament.

**Development of Modern Democracy**

Recognizing the validity of the Old Testament as a source of religious
authority, the Reformation spread its teaching. That teaching, in turn, became
the pattern from which modern worldly authority developed. The Peoples’
"contract with God" was its keyword. The message of contract or consent of
the governed as justification of government authority, rather than plain divine
right, was revolutionary.

Luther repudiated S. Hieronymous' contention that the Old Testament "is
cancelled," asserting that the ancestors of the Jews "had the very same spirit
and faith in Christ as we have."(2) Calvin believed that the spirit of Christ
dominated the Hebrew patriarchs, as all virtuous men, ever since the world
was created.(3) Both Luther and Calvin thus appropriated the Old Testament
as their own.(4) The Old Testament, then, by its own force, carried the spark

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(2) Luther, *Von weltlicher Obrigkeit, wie weit man ihr Gehorsam schuldig sei*, (1522) in
LUTHERS WERKE, Dritte Auflage, Vierte Folge: Vermischte Schriften 1 (Verlag von
(3) Calvin, INSTITUTES OF THE CHRISTIAN RELIGION, Book II, Ch. X (Edited by John
McNeill, Philadelphia, The Westminster Press, 23rd ed., Copyright (c) MCMLX W.L.
Jenkins 1965), at p. 459f.
(4) So did also Islam, the Qur’an, Sura II Verse 67, maintaining that Abraham was “not a
of freedom it ignited further.

An interesting conversation that sheds light on the Bible’s, and particularly on the Old Testament’s, function in Luther’s as well as other reformers’ political impact is recorded in his “Table Talks”. Dr. Usinger, Luther’s superior in his cloister of Erfurt, observed that Luther loved the Bible and was fond of reading in it, and in this context remarked:

“Eh, Brother Martine, what is the Bible? One should read the old teachers who had sucked the juice of truth from the Bible. They said that the Bible originates all uproar.”

Indeed, the Bible is a document affirming and glorifying freedom, as basis of statehood, as we shall show in the body of our essay. The framers of the new constitutions that erupted since the eighteenth century seem to have overlooked that when they invoked “the Laws of Nature and of Nature’s God” as foundation of State and Government. “Nature” does not produce either freedom or equality. The God of the Old Testament did when he led the Children of Israel from slavery to the freedom of Statehood by Covenant and Consent. The language of the era of Reformation reflected the spirit of that verity.

Now, the Old Testament is a history of the Hebrew nation. The fiction that other nations are “almost chosen people,” as alleged from time to time, defies the facts as described in that document itself. The era during and preceding the Reformation reflected the life of the Hebrew nation, precisely because each respective country identified itself with that nation, and this gave the Old Testament a special pertinency. Thus, Henry VIII’s son, Edward VI

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Jew nor yet a Christian, but he was true in Faith, and bowed his will to God's's (which is Islam), and he joined not gods with God.” Cf also Sura XXVIII, Verse 58, and Sura XXX, Verse 7. Moslems also claim that since the Jews were bad, they forfeited their contract with God, which was then inherited by the Moslems.


(6) This is the version of the “Age of Reason,” to be found in Jefferson’s Declaration of Independence (1776). It was the credo of many writers of the era, including Rousseau.

was hailed as England's "Josiah," ruler of the Hebrew Kingdom of Judah (7th century BC), who enforced the Deuteronomic reform. Upon her ascension to the throne of England, Elizabeth I was acclaimed as "the glorious Deborah," (a twelfth century BC Israelite leader), "the restorer of Israel." On the European continent, likewise, e.g., in Switzerland, a prominent reformer, Huldrych Zwingli described the Christian congregation of Zürich as "the New Israel of God," an elect people, as were the Old Testament Hebrews. (8)

Such being the background, Calvin's reorganization of the Church along functional lines (into pastors, teachers, elders and deacons), replacing the traditional hierarchical ones (into archbishops, bishops and priests, culminating in the Pope), (9) was extremely effective. It laid the foundation for a non-dictatorial state. Calvin also originated the policy of Puritanism. Cromwell, a devout Calvinist Puritan, though only a few years in the Office of Lord Protector of England (1653~1658), laid down the foundations of a republican, responsible government. When the English crown was offered to him, he rejected it. He believed in religious tolerance; in an age of religious narrow-mindedness and obscurantism, he granted permission to Jews to settle in England. This was in accordance with his general approach; he presided over "a pluralistic religious settlement," various sects being represented in particular churches. This settlement did not survive his brief rule. The ensuing anarchy led to a return of monarchy in England, marked by the State's identification with a particular sect, the episcopal one, other creeds being recognized and protected.

Puritanism, one of Calvinism's prominent outgrowths, originally concerned with liturgy and ecclesiastical vestments, developed into a doctrinally dissenting group centered on the form of Church governance: the issue was whether that

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governance should follow the pattern of State government or organize itself into a system of voluntary congregations that “covenanted with God and with each other, chose ministers by common consent,” thus building what was believed to be the “true Church.”

In England Puritanism did not endure. It was mostly persecuted, at best tolerated, and eventually replaced by the so-called “Pietism.” 10) on the one hand, and the “Age of Reason,” on the other. However some of the “Separatist” Puritan groups fled from persecution in England to Holland, whence they migrated on the Mayflower to the Plymouth Colony in the New World (1620). 11)

In the New World Puritanism celebrated its greatest successes. In this young country the Cromwell revolution established deep roots. It brought with it government by “Covenant with God” and the rules of the Old Testament. Such being the origin, the “civil liberties” or “civil rights” of the Old Testament emerged. From Old Testament theology the framers inherited very particularly the notion of “Constitutionalism,” meaning “the rule of law as written,” departing from the English tradition of the “Common Law.” The Old Testament requires even the King to transcribe for himself and diligently read and obey the Law as given to Moses. With this, the foundation is laid for all the civil rights.

In continental Europe the road to Constitutionalism seemed to be promoted by the greater awareness of “legalism” than obtained in the United States. But precisely that “legalism” also constituted an obstacle to development of “civil rights” against a rightfully constituted government. Peculiarly enough, the concept of “resistance to oppression” originated in the English *Magna

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Between 1630 and 1640 over 20,000 newcomers settled in New England, most of them Puritans. Sakaguchi, op. cit. supra, p. 316.
Carta (1215),\( ^{(12)} \) and became more acceptable in continental Europe than in England or the United States.\( ^{(13)} \)

With this background, let us introduce a Swiss-French self-made political scientist, a greatly misunderstood and misappreciated scholar, Jean-Jacques Rousseau, who died July 2nd, 1778, at 11 a.m., on the eve of the French Revolution 1789, an exile from Paris and Geneva who guided the revolutionaries from his grave.

The revolutions of the eighteenth century were mainly inspired by four writers: the Englishman Locke, Montesquieu, Voltaire and Rousseau.

John Locke (1632~1704) was a pioneer of the movement known as "Enlightenment," that had an enormous impact on the French "Encyclopedists," including Voltaire and Rousseau.

Charles de Secondat de la Brède de Montesquieu (1689~1755), by his DE L'ÉSPIRIT DE LOIS, in which he introduced into the modern world the idea of separation of powers, had a lasting imprint on the structure of the democratic state throughout the world.

François Marie Arouet de Voltaire (1694~1778), as a citizen of Paris has formulated the catchword of the French Revolution: Écrasez l'infâme! (Destroy the abuser). The storming of the Bastille was a response to that encouragement.

Jean-Jacques Rousseau (1712~1778) was the youngest of these writers. He was probably the most personally talented among them. Sakaguchi\( ^{(14)} \) points out that in a single year (1761~1762) he produced three major works: LA NOUVELLE HÉLOISE, ÉMILE and DU CONTRAT SOCIAL ou PRINCIPES DU DROIT POLITIQUE. He is, nevertheless, not universally recognized as a genius. It may be noticed that neither did Montesquieu’s Spirit of the Laws

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\( ^{(12)} \) The most important Article 61 of the English *Magna Carta* entitles the barons "together with the community of the whole land, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained..."

\( ^{(13)} \) See German Constitution, Art. 20.

have as much immediate general acclaim as his Lettres persannes.\textsuperscript{(15)}

\textbf{Roots of the “Social Contract” in the Old Testament}

\textbf{Roots of Rousseau’s Contrat Social}

In their desire to isolate their religion from the turmoil of social and political life—while at the same time, paradoxically, using their religion as standard of ultimate judgment—deeply religious people refuse to connect the two motivating forces of human endeavors: they reject any confusion of the “sacred,” \textit{i.e.}, religion, with the “profane,” the form of civil government.\textsuperscript{(16)} We believe that this is the reason, actually, a prejudice, that prevents the Jewish people from claiming credit for having originated an essential ingredient of “democracy” as ideal of government.

As it introduced monotheism into the world, the Old Testament, which does connect religion and government, also initiated an amazingly mature ideology and practice of “democracy.” But to realize this feature of “the Book,” one must overcome the confusion of prejudice.

A recent reading of Rousseau’s Confessions\textsuperscript{(17)} reinforced this interpretation. The Confessions—this amazing self-analysis of the great Rousseau—opens up new vistas on the origins of the French revolution. His masterwork, DU CONTRAT SOCIAL,\textsuperscript{(18)} despite much criticism, has been described as “the Bible of the Revolution,” the most immediate inspiration of its makers, and a


\textsuperscript{(16)} In HELEN SILVING MEMOIRS, WITH THE COOPERATION OF PAUL K. RYU (formerly Vantage Press, New York 1988, at present William S. Hein & Co., Inc., Buffalo, New York, USA), at pp. 261–262, there is reported a revealing experience: Helen Silving was being considered for a position as a Sunday School teacher and was asked to offer a model class in the presence of a representative of the parents’ group. He rejected her on the ground that she had compared the Passover rite with the Fourth of July celebration, the feast of American independence; she told the children that both celebrations commemorated a people’s “Exodus” from slavery to freedom. Apparently, in the gentleman’s view, this detracted from the holiness of the Passover.

\textsuperscript{(17)} Jean-Jacques Rousseau, LES CONFESSION, présenté par Jean Guéhenno, Livre de Poche (Editions Gallimard et Librarie Générale Française, 1963, 2 volumes).

\textsuperscript{(18)} Jean-Jacques Rousseau, DU CONTRAT SOCIAL, Nouveaus classic Larousse, Librarie Larousse, Sorbonne (thereinafter cited contrat). The original appeared in 1762.
model followed by all continental European democracies.

Rousseau, as most Bible students before and after him, had no conscious awareness of the impact of the Old Testament on his work. In his “Social Contract,” as well as in other publications, he argued a great deal with scholars who professed a contract or covenant to be the basis of the form of government of their choice. Yet, in discussing the religion of the Hebrews, he does not even mention the covenant between YHWH and the Children of Israel or between the latter and their kings, the very prototype of a State contract.

An obvious question to be answered is this: Why did Rousseau, a keen observer of government structures, simply ignore that genuine, authentic “State contract?”

Thus far, the only answer we found to this intricate query is the above suggested one: Rousseau, like most others, deeply imbued by religious influences and religious doubts, could not consciously absorb the idea of a religious source of his political preferences.

(19) De la religion civile, Chapter VIII of the contrat, cited supra, note 18, p. 108.
(20) Rousseau’s childhood was greatly impressed by the protestantism of his native Geneva and, despite later deviations, he returned to his original creed (August 1, 1754). His Discours sur l’origine et les fondements de l’inégalité parmi les hommes (published in Amsterdam in 1755) was dedicated to the Republic of Geneva and he described himself as a “citizen of Geneva” in the first edition of the “Contrat social” (1762). But during an early period of his life he underwent an involuntary, turbulent conversion to Catholicism. Eventually, the Swiss communities proved to be as inhospitable to him as the catholic French ones. The most dramatic conversion was his “self-conversion” to his own notion of theism, incorporated in “The Creed of a Priest of Savoy” (Profession de foi du Vicaire savoyard), in Émile ou de l’Éducation (The Hague, Amsterdam, May 23, 1762).
(21) A priest named M. de Pontiverre (see Confessions, vol. I, pp. 81ff), who served a most excellent wine and fed the starving Rousseau, then sixteen years of age, referred the youngster to Mme de Warens for conversion. She, in turn, sent him to Turin where he was placed in a cloister that served as a conversion mill (Hospic de Catéchumènes, see Confessions, vol. I, pp. 102-117), whence he was not released until he was duly converted. He remained a Catholic during a large period of his life. After being converted, he returned to Mme de Warens who at that time seduced him; she remained his only “true love” throughout his life. He called he “Maman.” Maman remained a Catholic until she died (1762). Here is the way Rousseau himself described his conversion in one of his latest writings, “Les Rêveries du promeneur solitaire” (Edited by [Note 21 continued:] Robert Niklaus, Manchester University Press 1942, reprinted 1975, at p.22): “Still a child and left to myself, enticed by caresses, seduced by vanity, lured by expectation, compelled by necessity, I became a Catholic, but I always remained a Christian; and soon, won over by custom, my heart attached itself sincerely to my new religion. The instructions, the examples of Mme de Warens confirmed myself in this attachment.”
Yet, the Bible seems to have remained a powerful though unconscious force motivating his mind, both as his childhood memory and as a continuing experience of his adult life. A reading of his *Confessions*\(^{(22)}\) shows that Rousseau, throughout his adult life, suffered from insomnia and each and every night before closing his eyes read the Bible and thus read it in its entirety, from beginning to end, at least five or six times. Could he help being impressed—though unconsciously—by the "contract doctrine" that permeates the Old Testament as a steady, continuing link?

Just consider one of the passages that impressed Rousseau most deeply:\(^{(23)}\) Judges XIX–XXI, that begins with the highly political statement, "In those days there was no king in Israel," and ends with a finding repeating the same statement and adding an equally political observation, "every man did what he pleased." That passage, one of the most dramatic, powerful accounts of the Old Testament, describes an evil, extremely arbitrary, violent event of Jewish history and the massive, popular outrage as a reaction to the violation of an individual's right to privacy, dignity and the sanctity of an abode, in Bible terms, also hospitality.\(^{(24)}\) It is a passage that marks a distinctive era of Hebrew

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\(^{(23)}\) *Rousseau* states at p. 376: "That story impressed me very much, and I was thinking of it in a sort of a dream." (*Cette histoire m'a affecté beaucoup, et j'en étais occupé dans une espèce de rêve.*) Would Freud need a better proof of the sort of impact the story had upon the dreamer?

\(^{(24)}\) These were the facts as recorded in the cited passage: A man from the tribe of Levi, residing in the province of Ephraim, went to entice his unfaithful concubine to come back to him. During the return trip, while accompanied by the lady, the travelers stopped overnight in Gibeah, a city in the province of Benjamin. Evil men of that city showed utter disregard for the hospitality rules obtaining throughout the country. They first demanded that the visitor be delivered to them so that they might abuse him homosexuually, but when that was rejected by the host of the travelers, having gotten hold of the concubine, they raped her repeatedly and abused her until she died. The Levite, whose rights were thus violated, cut the body of the dead woman into twelve pieces and sent "her" thus to all the twelve tribes.

Thereupon, the Children of Israel rose up "as one man" and assembled, 400,000 battle-ready men, from Dan to Bersheba, at the seat of the Ark of the Covenant. By a complex system of selection, in which a drawing by lot played a role (Judges XX:9), the appropriate number of warriors gathered, surrounding Gibeah. The Benjamites refused to extradite Gibeah's evildoers for punishment and appeared in force to face the rest of the Israelites. The latter defeated them and imposed upon them a grave sanction: the Israelites took sacred oaths not to give their daughters in marriage to Benjamites. Since this threatened
polity, the early, anarchical one. In a way, it prepares the reader for entry into a second phase, showing one of the motives for the people's demand for a king. Notice that the theme of Judges XIX-XXI occupies the last pages of the Book of Judges, followed by I Samuel, whose predominant topic is a highly political one, the institution of a kingdom in Israel. A most appealing, commanding figure in this history is King David, the ancestor of the Messiah. David, himself a savior of Israel from defeat by her enemies, reigned by covenant with the Elders of Israel (II Samuel 5:3). That covenant was an indisputable State contract. How could Rousseau ignore this remarkable feature of the Old Testament?

Rousseau not only dreamt of the events of Judges XIX-XXI. He also produced an opus titled Lévite d’Ephraim. Of this work he said: 

"The Levite of Ephraim, if not the best of my works, will always be the most cherished one."

**The Status and Scope of the “Contrat Social”**

Of course, Rousseau's impact on the French Revolution is viewed by many as hardly a credit to him. For that revolution was one of the bloodiest, most sadistic upheavals of history, surpassed only by the Holocaust. Indeed, Rousseau does not enjoy particular popularity either among intellectuals or the general public. Though most versatile in the choice of means of self-expression, a genuine encyclopedist, he was rather limited in the direction of his creativity; he was stigmatized as having produced "a dictatorship of the majority"—an absolute rule of and by the "people." Thus, he is being held responsible for the excesses of the French Revolution, the reign of terror that resulted in the practical extermination of the French aristocracy.

True, the extremists of the Revolution, Robespierre and St. Just, were greatly influenced by him. But to evaluate the impact of the Revolution on

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Footnote 24 continued:

It may be interesting to note that the first king chosen by YHWH to rule over Israel was a Benjaminite, Saul.

the political culture of our times, one cannot judge it merely by its excesses. Nor can these excesses be ascribed directly to Rousseau’s direction. He certainly did not advocate them. What is the truth of the matter?

Rousseau knew that his political philosophy was not best adaptable to a large country. He promoted maintaining small states, such as the Swiss Cantons, capable of being ruled by direct, \textit{viva voce} voting of the citizenry, without representative government. Who is that citizenry? It is composed of individuals born into a “state of nature” with incident “natural rights,” who find it to their advantage to associate themselves by contract with others having like interests and transform themselves thus into “citizens of a community.” That community is thereby endowed with a personality of its own and a \textit{volonté générale}, that is absolutely binding on each and every member thereof, however slight the majority might be.

In Rousseau’s view, only the original constitution of society—reached by unanimous consent—is based on contract. All subsequent steps by the thus evolving community are determined by the community itself. Are the citizens free? Of course, says Rousseau, they are subject only to the \textit{volonté générale}, which is the product of their own will, and in this sense they are free, though by the general will one can be “compelled” to be free,\footnote{Contrat, p. 32.} which is a paradox.

In dealing with Rousseau’s doctrine of “dictatorship of the majority,” several points require attention:

1. The scope of the contract;
2. Limitation of the subject of the \textit{volonté générale};
3. Rousseau’s concept of the so-called “tribunal” (tribunate)\footnote{Contrat, pp. 103–04.};
4. The general status of the institution of majority rule within modern democratic government;
5. A lesson to be derived from the history of Polish institutions;
6. Rousseau’s appreciation of what we might term “civil rights” as
constituent ingredients of his favored form of government, though not discussed with sufficient specificity.

We shall discuss these qualifications of the volonté générale point by point.

(1) The scope of the contract is limited; it encompasses solely matters covered by interests for the pursuit of which the individuals concerned have associated themselves. Whatever requires no association lies in the individual sphere.\(^{(28)}\)

Herein lies what we might call "freedom from the State," in contrast to "freedom in the State." However, the former is modified by the clause that it is the community that ultimately decides what remains outside the contract.

(2) In the interest of "equality," Rousseau did not admit legitimacy of special laws, privileges bestowed upon certain individuals or groups.

(3) Rousseau's most significant contribution to the doctrine of "democracy," specifically to its stress on legitimacy, is the institution of the tribunat. It is, indeed, comparable in significance to the institution of judicial review of constitutionality, as conceived in the United States.

Let us, then, use in comparison the history of the jurisdiction of the United States Supreme Court. Its early conception was that its function was merely negative; it was to have a quasi veto power over excessive use of jurisdiction by the other government organs, but was not itself to engage in policy making. However, having authority to decide the jurisdictional issue itself—Kelsen called this authority "Kompetenz-Kompetenz"—the Court soon developed a type of "activism" not originally contemplated for it.

When observing this development of the United States Supreme Court, one is amazed at the degree of astuteness shown by Rousseau, not even a lawyer, in providing for a special organ to supervise the balance to be achieved between the several organs of State power. The tribunat was to be such a preventive and protective organ\(^{(29)}\) and, to have even that institution avoid the temptation of overstepping its authority, he made it subject to call in the

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\(^{(28)}\) *Contrat*, p. 47.

\(^{(29)}\) *Contrat*, pp. 103-104.
event of need rather than a permanent body.

(4) As suggested in our Introduction, the majority rule is not a democratic principle but a compromise solution of democracy. Rousseau knew this and was considering alternatives to the majority rule, particularly decision by casting lots. (30)

(5) Rousseau was a student of Polish government structure whose most remarkable feature was liberty carried ad absurdum, the so-called "liberum veto." (31) Until 1791 (Konstytucja trzeciego maja), when the sejm (parliament) met surreptitiously and amended the constitution, any petty Polish nobleman could "disrupt a sejm," meaning that he could annul all laws passed in a given parliament session by simply shouting "veto." (32) Of course, for ages the sejm was unable to pass any laws. When the provision was finally amended, it was much too late for reforming the obsolete legislation; Poland was partitioned. (33) Rousseau knew that unanimity is not an everyday reality; his "dictatorship of the majority" was the exact opposite of the "liberum veto."

(6) While thus the "dictatorship of the majority" as conceived by Rousseau was not as total as it is often alleged to be, Rousseau also recognized "civil liberties," though it is not entirely clear how they were related to the majority rule in the totality of his scheme.

Rousseau devoted some impressive remarks to "equality and liberty," which with addition of "fraternity" were the principal slogans of the French Revolution. As is the general tendency in continental European wisdom, in contrast to Anglo-Saxon inductive reasoning, he speaks in generalities about these

(30) "In a real democracy it is election by lot that would be open to little objection." These words of Rousseau are quoted from the English translation of the Contrat by Willmore Kendall, in Jean Jacques Rousseau, The Social Contract, A Gateway Edition, Regnery Gateway (Chicago, Ill. 1954), pp. 172-173.

(31) On the liberum veto the most significant work is Konopczynski, Liberum veto (in Polish 1918). It also offers an excellent study of the majority rule. The rationale of the liberum veto was best summarized in the saying "nihil de me sine me" (nothing concerning me without me [my participation or consent]).


(33) This, of course, occurred after Rousseau's death.
concepts. In general, he is more egalitarian than libertarian, as evinced from his remark that “freedom cannot subsist without equality.” Of economic equity, he pointed out that “no one should be sufficiently opulent to be able to buy another man nor poor enough to be compelled to sell himself.”

On the whole, in Rousseau’s scheme, equality is not shortchanged. Everything determined by the volonté générale must apply equally to all citizens. As mentioned, laws must be general; there must be no law for a particular instance.

In 1989 we were celebrating a bicentennial of the French Revolution, alleged to have begun with the storming of the Bastille and liberation of political prisoners held therein. However bloody, that revolution had the overriding merit of having put an end to absolute monarchy in France and having initiated a call for republican, ultimately popular, institutions. Certainly the Declaration of the Rights of Man (1789), a product of the Revolution, was no mean accomplishment. Nor was the abolition of serfdom. We may deplore the excesses of that revolution while recognizing its significance in the overall history of continental European democracy. By the same token, we must ascribe credit to Rousseau whose Contrat social was an inspiration to the Revolution.

Moreover, the so-called “dictatorship of the majority,” in Rousseau’s view, was merely “absolute” within its scope of jurisdiction. From the social contract there follows an incipient statist doctrine, the binding power of the “union” over the individual, and the form of government agreed upon. Rousseau never denied the validity of “civil liberties.”

Continental European democracies owe their form of government to the French Revolution and to a large extent by the medium of that Revolution.

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(34) Contrat, p. 58.
(35) Ibid.
(36) Contrat, pp. 29, 42-43.
(37) Contrat, pp. 42-43, 47. This is a very advanced idea.
(38) There was intermittently monarchical rule, but the ensuing democracy was, in the last analysis, a product of the Revolution.
to Rousseau. The purpose of the instant essay is to demonstrate that Rousseau, similarly as the originators of the *Magna Cartae*, (39) derived his democratic inspiration from the Old Testament.

**The Impact of the Old Testament**

As noticed, the *Contrat social* is a covenant of free men who agree to associate themselves with each other and establish a union, one might say, a "state." In Rousseau's view, man's original freedom is a gift of nature, whereas, as pointed out in the Introduction, in the Old Testament it is a gift of YHWH to the Children of Israel, a gift that liberates them from slavery in Egypt. The political history of the Children of Israel emerges against the background of liberation: God's relation to them makes them free rather than subjugates them. As an individual experience, it goes back for each participant to God's relation with Abraham and more specifically with Jacob, alias Israel. At the dawn of this relation there are two remarkable events: difficult to interpret: God's testing Abraham's loyalty by asking him to sacrifice his only son (Genesis 22) and Jacob's "strife with God and mortals [in which] Jacob showed that he could maintain [such strife]." (Genesis 32:22-28).

There is some problem of reconciling Genesis 22 with the express prohibition of sacrifices of that nature to Molech (Leviticus 20:2-4; I Kings 11:7; II Kings 23:10); the custom seems very primitive under any circumstances except that it was not allowed to be implemented. But "Jacob's ladder" presents a major puzzle, unless a better translation of the passage is offered. We believe that it should read not that Jacob could "prevail against God," but that "he could [was able—*tihat*] strive with God." That passage is at the root of the concept of the "chosen people," which is based on reciprocity of the Children of Israel's election of God as a ruler and God's mutual choice of them as "His people." There is implied the people's "partnership with God," a most unusual idea in a theology combining revelation and political resolve.

In Rousseau's evolution of democratic ideology there is no equivalent of an "exodus," though his basic antagonism to monarchy in principle may be regarded as a qualified approximation to this idea. But the doctrine of social contract as fundamental idea of Rousseau's work, is undoubtedly a reflection of the Old Testament State contract. He also followed the pattern of the Old Testament in describing the nature of the transformation accomplished by the State contract, the evolution of detached individuals into a group, a "society," a community distinct from such individuals. The ensuing community becomes "un corps moral et collectif" (a collective and moral body); it is in the course of this transformation that the "volonté de tous" (the will of all) is replaced by the "volonté de tous" (the will of all) is replaced by the "volonté générale" (the general will). *(40)*

In this context there emerges an important formation of modern political science, the People.

It may be interesting to observe that "We, the People" in the Preamble to the United States Constitution is a favorite phrase of reference of the former President of the United States, Ronald Reagan. He contends that "the People" as originators of the Constitution is the distinctive mark of that constitution, that it is the feature that differentiates it from all other democratic basic documents.

The Old Testament contains this remarkable sentence, not sufficiently recognized as landmark of political science: *(41)*

"Listen, oh Israel! As of today you have become a people [of God]!"

By their Covenant with YHWH, as of the date of its undertaking, the Children of Israel were transformed from their status as individuals into a collective body, "a people," "a nation." No doubt, this idea was adopted—though unconsciously—by Rousseau.

Rousseau's "Social Contract" affords a reciprocal relationship between the

*(41) Deuteronomy 27:20.*
one designated as ruler and those to be ruled. As contemplated by him, the contracting individuals would be foolish if they delivered themselves into slavery, absolute rule.\(^{(42)}\) The people must receive an equivalent for surrendering their natural freedom.

In the Old Testament there is, indeed, a mutuality of choice: the Children of Israel elect God as a ruler, and God elects them to be his "chosen people:"

Today you have committed yourselves that YHWH shall be your God, to walk in his ways and keep his statutes, his commandments and his ordinances, and to obey him. And today YHWH has committed himself that you shall be his chosen people, as he told you..."\(^(*)\)

That the transaction herein involved is "an election of YHWH" by the people, evinces more clearly from Jehosuah 24:22:

...Joshuah said to the people: "You are witnesses against yourselves that you have chosen YHWH for yourselves, to serve him." And they said: "We are witnesses."\(^{(**)}\)

The mutuality of election of YHWH and the people is a most significant element in the ideology of "the chosen people." There is an urgent need to clarify the nature of the Hebrews' claim of being "God's chosen people." For the common reaction to the phenomenon of Judaism is greatly affected by interpretation of that claim as evidence of the Hebrews' presumptuousness, a pretence of being superior to other nations.\(^{(43)}\) There is no such pretense

\(^{(42)}\) Said Rousseau: "If people promised just to obey without any qualification, "the political body would be destroyed."

\(^(*)\) It is difficult to translate the Hebrew word "He-emerta," translated here as "committed yourselves;" it suggests a statement in response to an invitation.

\(^{(**)}\) The New World Translation adds here the words "that you of your own accord have chosen Jehovah for yourselves." This addition, however interesting, is not strictly literal.

\(^{(43)}\) Among those who plainly misunderstand the ideology of the "chosen people" is the Primate of Poland, Józef Cardinal Glemp. While trying to cancel an obligation assumed by the Cardinals of Paris, Lyons, Brussels and Kraków, to remove a convent established at Auschwitz, the Polish Primate addressed the Jewish representatives complaining about the failure of the Polish Catholic Church to comply with its obligation, in the following terms: "Do not talk with us from the position of a people raised above all others...!" He then proceeded to justify the right of cancelling the obligation by the sovereignty of the Polish nation over the territory of Auschwitz, forgetting that the Jews who perished at Auschwitz hailed from all over Europe. He likewise omitted to take account of the fact
involved. Rather, in addition to reliance on the mutuality of choice, there is asserted to obtain a special closeness to YHWH, (44) also based on the Covenant with him.

Of course, it may seem odd for a revealed religion such as the Hebrew one to place YHWH in a position of apparent parity with the people, as contract partners. But therein lies precisely the message of the Hebrew creed: it is based on faith and love of God "with all your might" (Shema Israel, see Deuter. 6:4–9), not on sheer intimidation.

One might, in a sense, regard this apparent parity as Divine elevation of the stature of "the People," which also evinces from I Samuel 8:7, reporting YHWH's admonition to Samuel in connection with the people's demand for a king to be appointed for them:

"Listen to the voice of the people in all that they say to you, for they have not rejected you, but they have rejected me from being king over them."

This, certainly, is the most puzzling, but at the same time most democratic, sentence of the Old Testament, documenting the ultimately popular choice of a ruler, and be it YHWH himself.

Unamuno reflected on the spirit of the Old Testament by observing: (45) "As though the real deity of the Jews were not YHWH, but the very Jewish

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(44) "For what great nation is there that has a god so near to it as YHWH our God is to us whenever we call upon him?" Deuter. 4:7.

To Rousseau, who ultimately believed in a God inherent in nature, who may be reached by reasoning from observation of nature (see "The Creed of a Priest of Savoy," translated by Arthur H. Beattle, enlarged edition, A Frederick Ungar Book, Continuum, New York, Milestones of Thought, Eighth Printing 1988), Deuteronomy 30:11–14 should be persuasive. There the laws of the Torah are recommended as humanly rational, not as though coming from heaven, but as though emanating from man's heart.

people.” This might, indeed, appear to be the case to one who does not read the Old Testament in the original Hebrew. In Hebrew Isaac “loved Esau” (translated as “favored”) (Genesis 25:28), Jacob “loved Rachel” (Gen. 29:18); indeed, the seven years’ servitude for her “seemed like a few days to him because he loved her” (Gen. 29:20); Saul’s daughter Michal “loved David” (I Samuel 18:20); the “Rose of Sharon, Lilly of the Valley, was “loved” by her beloved (The Song of Songs 2:4); she asked the maidens of Jerusalem not to “rouse or awaken love until it bursts out” (Id. 2:7); “night after night on [her] bed she was seeking the one she loved” (Id. 3:1, 2, 4); “she was sick with love.” (Id. 5:8), she said. In the light of the comprehensive meaning of the word “love” [ahava], “loving God” has a unique, not translatable meaning. You argue with God, you “talk about His laws.” Yet, He has no body. Third of the “Thirteen Principles of the Jewish Faith,” as formulated by Moses Maimonides in the 12th Century.

Rousseau sensed the Old Testament’s trend toward democracy. He somehow felt its being the source of his preferred form of government. In criticizing people who attempt to impose their own religion upon others, he showed particular concern with such efforts directed at Jews, saying: \(^{(46)}\)

“I shall never believe that I have indeed heard the Jews’ own case until they have a free state, schools, universities, where they may talk and dispute without risk. Then only shall we be able to know what they have to say.”

These words were written in 1760 and were first published in 1762, as part of Émile. \(^{(47)}\)

The transformation, in Rousseau’s view, of a group of detached individuals into a community, obviously patterned after the Old Testament message, is one of the few aspects of Rousseaus’s political philosophy of which posterity approved. The Encyclopeda Britannica concedes that whatever the judgment

\(^{(46)}\) The Creed of a Priest of Savoy op. cit., supra, footnote 31, p. 67.

\(^{(47)}\) Rousseau pointed out that Catholics burned Jewish books and then, having deprived them of material they could rely on in defense of their faith, Catholics proceeded to argue with them. Tragically, Rousseau’s own book was burned shortly thereafter.
on Rousseau’s contribution to mankind’s progress might be, his “importance, symbolic at least,” in one context “cannot be overrated.”

“It was he who emphasized both the intrinsic rights of every citizen and the need for the citizen’s constant involvement in collective, communal affairs.” [48]

**Constitutional Monarchy; Rule of Law**

The Old Testament government is a “democratic theocracy.” YHWH governs the Children of Israel by Covenant with the People; that Covenant is renewed with each subsequent generation. (Deuter. 29:14-15). It is important to note that YHWH himself authorizes in advance his own substitution as a King, although he regards this form of government as in itself evil. (Deuter. 17: 14-15). He, thereafter, accedes to the People’s wish and names a king. He annoints that king, endowing him with a divine spirit, “turning him into another man.” [49] This original divine inspiration is significant, indicating the reigning of these kings by “divine grace.” Their subsequent deterioration is puzzling, indeed.

As the Old Testament tolerates but does not favor monarchy, so Rousseau accepts that form of government if it is the will of the people, but rather disapproves of it.

In Rousseau’s view, an ideal government is a democracy:

“If there were a people of God, they would govern themselves democratically.” [50]

Rousseau follows the Old Testament in adopting a strict rule of law; the concept of “rule of law” runs throughout the *Contrat social*. [51] It begins with the statement that the social associations that unite us “are not obligatory unless they are mutual and are of such a nature that in complying with them one cannot work for another person without working for oneself.” [52]

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[50] *Contrat*, p. 70.
[51] In the translation see particularly p. 151.
[52] *Contrat*, p. 41.
In the Old Testament the "rule of law" is much more explicit. Popular consent to divine law is a formal act and the acceptance is affirmed by a series of self-blessings and self-curses. (53) One must not "add anything [to that law] nor detract anything [from it]." (54) The law is clearly written down in a book which is kept in the Ark of the Covenant.

That law is binding upon kings as well as upon the subjects. Kings are specifically directed to obey the law which they are required to copy for themselves and read diligently. (55) Consider how much vain effort it took the Common Law to achieve an even approximate obligation of rulers to reign "under God and Law," to estimate the greatness of the Old Testament as a document of "rule of law."

A king must not assume a standard of living raising him above the people. This is enjoined upon a king, "so that his heart be not lifted above his brethren." (56) Of course, monarchical rule lends itself to abuse of the rule of law, and admonition of the people to be ware of kingdom is one of the great wisdoms of the Old Testament. (57)

The Dignity of Man; Privacy

As pointed out before, Rousseau's philosophy of government, and following him continental European democracy generally, is more egalitarian than libertarian, whereas in Common Law countries emphasis is on freedom at the expense of equality. (58)

The discrimination of the United States Supreme Court against equality. (59)

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(54) Deuter. 4:2.
(56) Deuter. 17:20.
(57) On the rule of law in the Old Testament see Deuter. 27:8; 30:5–8; 31:26–27; I Samuel 10:25.
(59) Unfortunately, the Fourteenth Amendment to the U.S. Constitution lies outside the scope of the so-called Bill of Rights. It guarantees "equal protection of laws," but there are even today those who maintain that this applies only to the States of the Union.
is particularly regrettable because this court has the merit of having developed a general concept of civil rights as an essential ingredient of democracy, either coordinated with or superimposed upon majority rule. Justice Jackson defined "civil liberties" thus: (60)

"The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them on legal principles to be applied by courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

This concept of "civil rights" hopefully includes, on the one hand, Rousseau's sphere of individual decision making not contained in the Social Contract, (61) and on the other hand, encompasses the rights reserved to the individual within the Ninth Amendment of the United States Constitution, stating that "enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The rights preferably thus retained are the "dignity of man" and "privacy."

Neither of these "rights" are expressly mentioned in the United States Constitution and, as regards "privacy" there has been a famous dispute about its applicability in the landmark case of Griswold v. Connecticut. (62) This dispute continues up to the present day. (63) In constitutions of newer vintage than that of the United States, there is a tendency to incorporate "man's dignity" as a constitutional right of first rank. Thus, in Germany it is integrated in the Basic Law (Grundgesetz, Art. 1, § 1) as a comprehensive right from which all other civil rights are deemed to flow. (64) The Korean

(61) Compare supra, text at note 28.
(63) The debate underlies the struggle for and against abortion fought between the "freedom of choice" movement and the "pro-life" philosophy.
(64) The United States principal Amendments to the Constitution were products of the eighteenth century, whereas the German "Grundgesetz" was formulated in 1949. Emanuel Kant devoted much thought to the "dignity of man" and even the Nazi regime could not suppress a book containing a collection of Kant's statements on that subject.
Constitution incorporates it both as a general principle (Art. 10) and in the context of specific rights, such as those dealing with the status of women as wives and mothers. (Art. 36). Within the United States, the Commonwealth of Puerto Rico incorporates “human dignity” as a constitutional principle (Art. II, Section 1).

It is amazing, indeed, that “human dignity” not yet abstractly conceptualized in the United States Constitution or the Bill of Rights, has been generally and specifically recognized in the Old Testament. YHWH identified himself as the God

“who brought you of Egypt to be slaves there no longer”;

further emphasizing, thus combining liberty with dignity,

“I broke the bars of your yoke and enabled you to walk erect.” (Leviticus 26:13).

The “dignified liberty” implicit in this Old Testament passage is, indeed, a political science gem difficult to surpass in the order of human values as justification ground of state formation.

“Human dignity” is also set forth as a reason for limiting punishment to a maximum of forty lashes (Deuter. 25:1-3).

To be sure, the status of women in a culture which accepts polygamy as did the Old Testament, cannot be readily compared with contemporary morals. But some points may, nevertheless, be raised.

No doubt, emphasis is being placed in recent trends on “the dignity of women.” But in this regard, there is much incongruity in prevailing customs. For example, Switzerland, which is Europe’s oldest democracy, has only recently admitted women to vote. Yet, the Swiss Constitution (Art. 4, Section 2) guarantees to Swiss women “equal pay for equivalent labor,” a right still controversial in the United States.

Recently, the roots of the inequality of gender are being found in sexual customs, and most recently, Law Professor Anita Hill aroused unusual response among women by her testimony in the Senate Confirmation Hearings of Mr.
Justice Clarence Thomas, in which she asserted that he had subjected her to verbal sexual harassment. He was, nevertheless, confirmed by a United States Senate composed of 100 members of whom only two members were women.

On the other hand, much to its credit, “THE SPECIAL COMMITTEE ON HUMAN SEXUALITY” in its Response to the 203rd GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.) (65) made certain findings reflecting most recent scientific achievements. Citing the SONG OF SONGS, beyond scientific sources, the Committee seeks for women “equal status” in sexual matters, meaning, voluntary, consensual sex engagements, even in marriage, each incident of encounter being evaluated on the issue of non-violence, mutuality and consent. Since there appeared to be some disagreement on the issue of conformance to Biblical law of some of the findings, the report was not adopted. But a basis has been laid for further discussion, in the spirit of presbyterian tradition toward ultimate consensus, rather than order from an higher authority.

The encouragement of the citation of the SONG OF SALOMON is most welcome. It may well be that its purpose is to reflect upon YHWH’s passion for the daughter of Zion. It is, nevertheless, amazing that this vivid imagery of bodily human contacts was chosen to visualize that spiritual love.

Nor is this all. The Old Testament clearly admits the presence of female sexuality. The wives of Jacob were passionate women, and they determined the order in which he would pass the night with each of them. A most enlightened view of female sexuality is reflected in Deuteronomy 24:5. A man who takes a new wife is exempt from military service for one year, “so that he might give pleasure to the wife he has taken.” In our macho culture the passage is inaccurately translated to read the purpose to be: “to be happy with the wife he has taken.”

Rousseau, of course, was definitely not a feminist. The story of his five

illegitimate children being planted in a Home for Abandoned Children (Enfants-Trouvés—Found Children), which he seemed to consider appropriate under the circumstances, may have some explanation in his own childhood history. But he showed sufficient generosity in taking care of Thérèse Le Vasseur, whom he eventually married, and of her large family. In any event, Rousseau was not concerned with concrete rights. While offering definitions of “liberty” and “equality,” he does not specify their individual incidents. Yet, he seemed to be most sensitive precisely to “man’s dignity.” In his Rêveries du promeneur solitaire there is a recollection of a moving experience, showing the contrast between a repugnant enjoyment in seeing poor peoples’ struggle for a few crumbs and an innocent pleasure in facilitating poor boys’ sharing of bread.

Rousseau’s stress that man is not a proper subject of sale is reminiscent of the Old Testament’s prohibition of a permanent sale of one’s brother into slavery.

Neither in the Old Testament nor in Rousseau’s work is “privacy” incorporated eo nomine. But the postulate of privacy is reflected in the great story of Judges XIX–XXI, that impressed Rousseau so profoundly. The sanctity of a home is expressly safeguarded by the provision of Deuteronomy 24:10–11: The creditor must not enter the house of a debtor to take a pledge, but must wait outside and have the pledge brought out to him. There is no such specificity in Rousseau, and it would seem that he did not resent sufficiently the fact of being chased from home to home by intolerant government agents. He did resent the burning of his book and generally the thought control prevailing in his time.

(67) Contrat, Book I, Ch. VIII, and Book II, Ch. XI.
(68) Compare supra, Note 21, at pp. 103–104.
(69) Contrat, p. 58.
(71) See supra, text at notes 23 to 25, including the notes.
Economic Democracy

The provision on pledge taking, cited above, has a significant addition: Deuteronomy 24:12-13: If the debtor is a poor man and pledges his cloak, that pledge must be returned to him before sunset, so that he may sleep in it.

There are also laws that may be qualified as labor legislation. Such is the prohibition against withholding a poor man's wages overnight. (73)

Caution must be exercised against excessive yielding to the ideal of economic democracy: the experience of the Soviet Union should serve as a warning. The Marxist-Leninist social experiment shows how individual initiative may be stifled by going too far in socialization. Vesting the entire wealth of the country's population in the state, depriving everybody of all property, may result in an absurdly perfect equality of all citizens, all of whom are reduced to paupers. While there is ample justification for deeming a moderate redistribution of wealth in a capitalist economy a legitimate goal of democracy, there is serious doubt that a total privation of property rights of the citizenry is a meaningful aspiration of what may be considered a desirable form of government. But delving into the intricacies of "economic democracy" would exceed the scope of the present essay.

The socialism of the Old Testament appears to be salutary. Particularly noticeable are the biblical rules of reversion of ownership in an inheritance of land to the original owner after lapse of six years from the date of the sale. (74)

The Problem of Popular Will

The social philosophy of the Old testament is individualistic. The value of the individual is emphasized along with "God's people" in Isaiah's prophecy (Isaiah 13:12):

"I shall make a human being more precious than fine gold—a man [excel over] the gold of Ophir."

(73) Leviticus 19:13; Deuteronomy 24:15.
The State contract was first concluded by YHWH with Abraham (Genesis 15:18), and in the course of a long history, with the Children of Israel as a formal state contract, constituting Israel as a People, by transforming the individuals into a community based on consent.

This is also the theory underlying Rousseau’s *Contrat social*, as well as of most philosophers of the Enlightenment.

The governing principle that seems to follow from this assumption is unanimous decision making. It is, indeed, the principle reflected in the Old Testament. It is also Rousseau’s *volonté de tous* that generates the *Contrat*. What happens thereafter is a mystery: How is the majority rule born? Why a simple majority? Why is a qualified majority required under certain circumstances? What are those circumstances? In fact, why do we require unanimity in certain contexts, as in jury trials? Of all these questions, the last one may be answered with an approximate certainty: the unanimity rule of jury trials is patterned after the Bible, the 12 jurors representing the 12 Apostles, who are in turn representing the 12 Tribes of Israel.

In jury trials, of course, one would seem to search for some “truth” or faithful consistence with a reality of the past that cannot be reconstructed, the assumption being that in the absence of reaching such actually absurd goal, the litigant who bears no burden of proof must prevail. There intervene the many self-deceiving devices used by the law to declare itself satisfied. That to some extent is understandable. Less understandable is how the Church Councils expected to resolve pure dogmatic truths deciding them by majority vote. Yet, they did, and the indubitable fact is that this system of voting afforded an important precedent for other decision makers.

What significance did this system of voting in the Church Councils have in Rousseau’s formulation of his “dictatorship of the majority?” In all probability an important one, But we could not find a trace of it in either the *Contrat social* or the *Confessions*.

The unanimous decision making of the people of Israel, on the other hand,
is dramatically described in the case of *The Levite of Ephraim* (Judges XX: 11): there the Isrelitess, outraged by the evil men of Gibeah, rose up and gathered “every man of Israel as one man, in fellowship [or “as allies”]. The words here is “Ha'averim, meaning “fellows” or “allies” or “comrades.” This probably is the source of the French Revolutionary slogan “fraternité,” if only most translations allowed that meaning to be reflected. \(^\#\)

**Concluding Remarks**

Perhaps the most remarkable feature of the Old Testament is its amazing maturity in the field of procedure, particularly the branch we would today classify as “constitutional criminal procedure.”\(^{75}\)

Rousseau, not being a lawyer, could hardly be expected to deal with such specific subject. Moreover, most of the progress, even in the constitutional law of the United States has been achieved in the twentieth century, notably by the “Warren Court,” *i.e.*, the Supreme Court of the United States, presided over by Chief Justice Earl Warren.

The present essay affords us a welcome opportunity to pay homage to the memory of the great Chief Justice, recalling that he had visited Seoul National University and engaged in a spirited discussion with the students of the Graduate School of Law SNU.

\(^{(*)}\) The New World Translation permits that meaning to be reflected, as “allies.”