

THE FREE SOCIETY AND THE RUNAWAY STATE

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With the gift for epigram that highlights historical truth, Bertrand Russell dubbed Rousseau "the inventor of the political philosophy of pseudo-democratic dictatorship."

Ever since his time (Russell wrote), those who considered themselves reformers have been divided into two groups, those who followed him and those who followed Locke. Sometimes they cooperated, and many individuals saw no incompatibility. But gradually the incompatibility has become increasingly evident.

Russell added dryly that in our time Hitler was the outcome of Rousseau, while Roosevelt and Churchill were the heirs of Locke.

The argument is not new. Yet, in democratic theory, and even more in populist rhetoric, the legacies of Locke and Rousseau remain so tangled that each generation must puzzle out the difference as it applies to their political mind and social evolution. Many who do not see the problem, or whose hearts belong to Rousseau, press ever more impatiently for government by mass reflex, for what might be described as the democracy of the stadium, moved in obedience to a supposedly self-revealing and self-validating "general will." In the United States, Rousseau's general will finds a pale double in what is represented as public opinion, as that illusive spectator is invoked to guide and sanction political decision.

Those who resist such a theory of governance are deprecated as "elitist" and "authoritarian," or, at best are dismissed as liberals of faint heart who do not trust democracy. Rules of procedure, constitutional restraints, and separations and divisions of powers are impatiently dismissed as undemocratic barriers erected to defeat the popular will.

"Participatory democracy" of (recent vintage, with its non-negotiable demands and cries for immediate action, is offered as democracy at its purest. With the development of electronic technology and techniques for the rapid measurement of public opinion (or for what is presented as public opinion), some bold spirits suggest government by telecommunication. Let the nation sit as a parliament of the whole, registering its decisions by pressing a button on every television set. The democratic ideal is understood to mean direct judgment by the people, who without resort to legislative hearings or extensive deliberation, mystically carry the powers of governance within them.

American democracy is not likely to reach this extreme. But the disposition it represents and developments in that direction are harmful to free government.

But why should we prefer Locke to Rousseau? There would appear to be little argument that purely in terms of etymology and popular interpretation the word "democracy" means what Rousseau takes it to mean. His concep-

tion of the sovereignty of the "general will" makes an obvious and immediate claim. The framers of the American system recognized this fact and shunned the *word* if not the concept. In the *Federalist Papers*, Madison takes great pains to distinguish the American representative system from democracy, which he understood as direct government by all free citizens acting as a whole. Like his colleagues in the Constitutional Convention, Madison feared government by direct popular will and sought to forestall it by means of a fundamentally different conception of government by the people. It is not an overstatement to say that the entire American experiment of limited, representative government has been a systematic effort to prevent the rise and sovereignty of a general will. Liberals and conservatives have shared this conviction and at critical moments have collaborated to uphold the Constitutional order of indirect, limited government.

One of the chief advantages of the division of government of a geographically extensive confederation of states, Madison argued, is in restraining authority by domineering majorities meeting in local assembly. The interests and prejudices of a local populace are not sufficiently diverse to encourage liberty. Fortunately, the geographical extent of the thirteen states precluded mass conviction. Their cultural and economic variability retarded the emergence of a mass consciousness. Madison was innocent of telecommunication and the feasibility of transcontinental political parley by electronics. But the logic of Madison's case is to forewarn us against the temptation to substitute a sovereign will, or any mutation of Rousseau's mass psychology, in place of the indirect and multifaceted system of governance we have inherited. Notwithstanding this history, the existence and supremacy of such a national will has become an implicit dogma of the democratic faith. Its pretensions require closer inspection.

Let us assume that this notion of the popular will, as a coherent, guiding force actually exists (an assumption which is open to considerable doubt). Having made the assumption that it exists, and moreover, endowing it with the moral right to prevail, we are still confronted with the considerable problem of knowing what this majestic power commands. How do we discover what the general will wills? Even if we disregard the rights of minorities and individuals and are willing to ride rough-shod over due process and other Constitutional checks and (dimitations), we are still perplexed by the problem of discovering a power so skittish and elusive. How do we plumb this reservoir of mystically perceived democratic truth? The more we consult its oracles, the more cryptic its rappings andappings become. Finally it requires the ministrations of a Maccabean chieftain who combines both priestly and kingly powers. Thus the demand for absolute democracy in the mass inevitably drives toward absolutism and dictatorship.

Yet, despite our inability to find a guiding intelligence in the general will, Rousseau was not deceived. He had touched the most powerful, if problematical power, in contemporary history. A distinction is necessary. Public opinion is not the same as the general will, even though the moral power of public opinion is often invoked to stake the claims of a sovereign will of the nation. The cognitive content of the general will is negligible.

In fact, it is not an informing intelligence at all. It is simply *will*, the impulse toward group solidarity and collective power, toward social invincibility and ideological infallibility, in short, the instinctive urge of the herd to incorporate infinite power and to overwhelm and ruin real or imagined enemies. It is pure instinct, feeling, passion the triumph of the viscera over the brain.

But if Rousseau's general will does not provide a guiding intelligence, can we not still hope to find a mandate for direct democracy in public opinion, which does have cognitive content? Unfortunately, the endeavor to discover and apply public opinion to governance encounters the same difficulties of knowing that we have just discussed. Some would attempt to cut the Gordian knot by finding guidance in scientific polling, but polling techniques involve powerful feedback mechanisms. Media experts, skilled in the manipulation of public perceptions and in the creation of what are accepted as needs and desires, create markets for ideologies and campaigns as readily as they create markets for new products.

One need not furnish all too familiar examples to show that public opinion *en masse*, to the extent that it can be measured without distorting selectivity or manipulation, is weak in foresight, laden with contradictions and inconsistencies, reactive and often punitive in judgment, simplistic and feeble in powers of discrimination, subject to violent gyrations and sudden reversals, and except for long-term attitudes and loyalties (such as anti-Communism and pro-Americanism), an uncertain guide for the shaping of national policy. Other than that, it is an excellent tool for guiding democracy.

A general electorate is most suited for choosing among candidates and parties, leaving the deliberation required for legislation and the direction of policy to their chosen representatives. Populist and progressive attempts to modify this division of labor is counterproductive and ultimately an encumbrance to representative democracy. Even the referendum, and the practice of writing legislation into state constitutions by use of the plebiscite are not exceptions to the rule that electorates cannot make law. The electors only ratify or reject proposals prepared by other hands - often by hands totally unrepresentative of any public except themselves.

The cry of elitism is false as it is made against liberal, representative democracy. The claimed moral superiority of egalitarian collectivism or corporate polity is spurious. In practice collectivism and the corporate party or state dictate a wider separation of the rulers from the ruled, with direction centralized at the top. The complaint of elitism in the liberal constitutional system is based upon a confusion of functions and competences. The issue for representative democracy is not *who* should govern, but *how* the government of the people can be arranged most effectually to make the state dependent upon, and answerable to, the electorate. The most critical test for free government is always to keep the political authorities answerable.

While the high Federalists, including Hamilton, were concerned that the *best people* should govern, Madison addressed the problem differently. For

him the issue was to insure that the *people* should have the *best means* to govern. His answer, discussed by correspondence with Jefferson, then American ambassador in France, is the balanced system of indirect, distributed, separated, and limited government that the Constitution provides. With Jefferson absent in Europe, Madison emerged as the central figure at Philadelphia and as the most energetic and resourceful member of the Convention earned his title as the father of the Constitution.

The Madisonian formula for democracy in a representative federation of republics, a development of liberal theory in the Lockean tradition, is first and foremost a *deliberative* democracy. This is its chief difference from direct democracy which boasts the power to ratify but lacks the organs to deliberate. A deliberative process is alone capable of creating a government that is both responsible in its initiatives and answerable in its administration. Its answerability is specific and prescribed. Its parliamentary deliberations do not assume the prior existence of a general will awaiting discovery, and its actions do not presume to announce the general will by its fiat. Its task is the prosaic business of hammering out acceptable compromises, finding practical accommodations, and generally resolving or balancing conflicting interests, always with an eye for protecting the weak and vulnerable and taking into account legitimate exceptions and distinctions. The will of the majority in a well ordered pluralistic democracy is more the collocation of opposites than the imposition of superior numbers. It is the ultimate in coalition. The consequences that flow from such a conception of law making are radically different from those that follow from the doctrine of the general will. And even public opinion, insofar as it can be usefully applied, only helps to describe the problem to be solved. It does not provide the solution.

Critics of Humanism and liberalism frequently indict these philosophies on the charge of tending toward Rousseau's totalitarian state. While there are strains of modern thought, sometimes representing themselves as humanistic and liberal, that manifest these tendencies, the mainstream of the liberal-humanist tradition flows in the opposite direction.

The indictment is made superficially credible by mingling the very different philosophies of Voltaire and Rousseau - by treating them, despite history and logic, as a single species, thereby incriminating the Enlightenment tradition as a whole. But the thought of Voltaire and Jefferson, on the one hand, and that of Rousseau and Robespierre, on the other, were wholly dissimilar. Except that all four were deists - believing in a Supreme Being, but rejecting Christian revelation - there was very little that the Lockean party of Voltaire and Jefferson shared with Rousseau and his successors. Even their deism was held on different grounds, the Enlightenment Lockean appealing to reason and the Rousseauists exalting instinct as the source of a higher truth.

As a young exile in England, Voltaire developed what proved to be a life-long admiration of British ideas of limited government and constitutionalism, as well as a lasting respect for British science and philosophy. Like his contemporary, Montesquieu, he served to transmit British

ideas of liberty and limited government to the French Enlightenment, so admired by Jefferson and other leaders of the American Revolution. Like Jefferson a generation after him, Voltaire personified the spirit of tolerance. In contrast, Rousseau demanded subordination of the person to the general will, and thus in practice to the rule of uniformity.

Jefferson gloried in proclaiming: "It does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg." But Robespierre, faithful disciple of Rousseau, sent the atheist Hebertists to the guillotine and decreed the Cult of the Supreme Being. The hand was the hand of the radical revolution, but the voice was the voice of a resurrected Holy Inquisition. The same mentality activates the Soviet Communist Party's Institute for Scientific Atheism and anti-religious museums. Robespierre and Lenin held to different interpretations of the creed, but they belonged to the same Church.

Every student of intellectual history understands clearly enough that Rousseau's anti-rationalism, his exaltation of instinct and feeling, overthrew the Age of Reason - through the collapse of the misguided French Revolution. But ironically, the folly of Rousseau's disciples who presided over the debacle, discredited the philosophy of Rousseau's opponents, not Rousseau, as one might suppose.

The historical confusion has not yet run its course. To clarify our position in history we need to keep continually in mind the distinction between these schools of thought as it applies to the democracy of the open society. We become even more confused when we fail to recognize the bifurcation in our popular psychology and theory of education. We raise our infants, and even nourish generations of infantile adults, on Rousseau's gospel of instinct, feeling and group mindedness, all the while expecting them to develop into responsible Jeffersonians. A remnant has remained loyal to reason, the free market of ideas, and the application of the scientific method to the solution of human problems - but, please, say it with *feeling!* In a self-indulgent, charismatic ally mesmerized culture, little requires shame or apology other than a clear head.

Even Jefferson - but never Madison, so far as I can discover - sometimes wrote as if temporarily muddled by the Rousseauistic mythology as it applied to the common folk. At least occasionally Jefferson fell into paeans of glorification to the people - assuming, of course, that the people were unspoiled agrarians, not city dwellers corrupted by cheap wine, ubiquitous debauchery, and bad sewers.

But Jefferson and Madison, no less than Hamilton, understood and feared the mob. In Paris Jefferson had seen the beginnings of the mob's destructive power as he witnessed the early stages of the French Revolution. But the unfathomed savagery of the dehumanized herd would not be revealed in full fury until twentieth century totalitarianism perfected the techniques for its utilization.

If Hamilton declaimed against government by the common people as the empowerment of the mob, Madison and Jefferson grasped clearly the differ-

ence between a deliberative system of democracy and the conditions that make a mob. The difference is not one of individual character, education, economics and culture only - important as these factors may be. It is principally the difference between the general will *en masse*, and the will of the people severally and respectively addressed, a difference in the pluralistic structure and function of society and government. Only that severality of opinion and authority permits deliberation and answerability. In Number 51 of the Federalist, Madison wrote:

If men were angels no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place to oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

The necessity of auxiliary precautions! In that phrase is captured the mind and soul of the American experiment, although Madison and his colleagues in framing the Constitution drew upon features and forces of American society that were (and are) more than auxiliary. These retain their powers today, if we understand and preserve their efficacy. Franklin announced the accomplishment of the Philadelphia Convention as "a republic, if you can keep it!" The two centuries since should have taught us that there are at least two ways of losing it, and for our generation the *radical heresy* (whether *radical right* or *radical left*) is the real danger; the return to traditional monarchy has lost power to threaten.

But what is the radical heresy, other than the surreptitious or unwitting entry of the general will, offered as populist restoration or reform? In his *Social Contract*, Rousseau supported a scheme of social organization that would dissolve all particular interests and associations, which he regarded as selfish obstructionists to the sovereignty of the general will. Or, said Rousseau, if we cannot abolish such competitive groupings, let us render them impotent by making them so numerous and weak as to have little influence. Madison and his co-workers built on the opposite principle: a government should flow from the diverse life of the people, not the life of the people submerged under the tide of government. The only way to accomplish this purpose is to avoid making a government by superimposing its structure on society, but to construct a government by bringing into consortium the varied political constituencies and publics that constitute the life of the people.

Viewed from this standpoint, the ultra-democracy (or pseudo-democracy) of the general will is the antithesis of free government. It is never to be accepted as merely an application of the same principle carried to excess. Even its mildest expressions are deleterious. Such a principle of social organization is the genetic opposite of Locke's free and open society, a different and alien flesh. If liberalism loses its genetic material and begins to incorporate the gene structure of its antagonist, the liberal philosophy and society become malignant and consume their own body.

Humanism Today

The generative concept of British Whig (Lockean) liberalism and its descendant, Madisonian constitutional democracy, can be described as the principle of the articulated society, a social order consisting of many conjoined, segmented, but interdependent and mutually responsive parts. It is not organized to behave as a homogeneous mass. It is the only form of social organization so constructed that its overall operations depend upon and maximize the responsibilities and competencies of its members.

Writing at a time when state governments were supreme, Madison argued forcefully that our liberties would be made more secure by the addition of national component in our laws and constitution. His logic in support of the general government is precisely the opposite of that which Rousseau would have set forth in support of the supreme sovereignty. The national strand in our governance makes our liberties more secure, Madison reasons, because it provides a check on the jurisdiction of local, popular prejudice. Local and regional prejudices are likely to be the most virulent, the least tolerant of differences. (This aspect of Madison's thought in the *Federalist* is especially worth noting in view of his prominence as a champion of the rights of the states against the Hamiltonian faction.)

At the same time that he argued for federalism as a restraint on local prejudice, he saw the value of a multiplicity of state governments and local interests in forestalling the rise of an American man on horseback, or the development of a centralist dictatorship. This careful mortising of governments close to the people to an inclusive general government, embracing and leavening the whole, is particularly impressive when we consider Madison as Jefferson's immediate successor in the White House and a central player in the ascendancy of democracy.

The twenty-six or so installments that Madison contributed to the *Federalist* establish him as a major political thinker, even without reference to his other major writings or his considerable part in shaping the Constitution itself. He was the most profound and prescient of the founders. To say this takes nothing away from Jefferson as the chief apostle of human liberty, or from Hamilton as the master organizer of federal administration. But it was Madison who previsioned the American Eagle in sharp focus and in three dimensions.

As we approach the Constitution's third century, what relevance does this order of society and government have for our future? There are shifts in popular beliefs and practices that place the articulated society and answerable government at risk. Even well meaning efforts to make government more democratic can make it less so.

An example of this can be seen in the recent evolution of our major political parties. Political parties have become very much an integral part of our governmental machinery, and the Supreme Court has wisely treated them as such.

Unlike the parliamentary parties of Europe, and especially the British Labor Party in recent years, the American parties have resisted ideological

rigor and party discipline. For decades critics have deplored their inconsistent positions and laundry-list platforms and have called for a realignment that would put progressives into one camp and conservatives into the other. Conventional as such wisdom has become, such a development would seriously weaken the pluralism of American politics and result in a government less answerable to the full range of the citizenry. Homogeneous, ideologically driven parties cannot answer the needs and desires of a heterogeneous, pluralistic nation. As it developed in practice, the Madisonian structure elicits and includes the distinctively American electoral alliances that we call parties, especially as we see them expressed in the Democratic and Republican parties.

These loosely structured electoral coalitions offer open, informal forums for the debating and testing of issues by large constituencies from a broad perspective. Much of the individual citizen's influence on national policy depends upon the vitality of party democracy. With the fading of state governments in the determination of national policies, the parties take on even greater importance as sources of local involvement, state and regional interests, and, through the party structure in Congress agencies for vigilant oversight of the executive and the bureaucracy.

We are told that more cohesive parties would be more efficient and dynamic. To believe this, we would have to believe that in social invention the certitudes of the doctrinaire are more prolific than the improvisations of the pragmatic. American democracy has not worked that way.

Nevertheless, there are pressures to make the parties more homogeneous. Four years ago a group of Democratic Convention delegates from the "liberal" left sought to deny party funds to Democratic candidates who had not taken a "proper" position on the Equal Rights Amendment. Prior to this year's Republican Convention, the director of the National Conservative Political Action Committee, known as Nic-Pac, appeared at an unofficial platform hearing and attempted to read a group of moderate Republican senators out of the party, a desire that the right wing increasingly vocalizes. Delegations to the Democratic Convention in recent years have been rigidly determined to include an equal number of male and female delegates, and at least one large state delegation was reported to have a carefully prescribed quota of recognized ethnic designations, down to one percent assigned to American Indians. Key figures in political life are excluded to meet such quotas.

However well-meaning these devices may be, their effect is to convene assemblies of impotence, substituting the appearance of democracy for the substance of leadership. Except for the ballyhoo, elaborately orchestrated for television reception, we might be witnessing a session of the Supreme Soviet, rather than the national convention of a dynamic American political party. When the same make-believe and preoccupation with media images are duplicated at the state and local level, responsible leadership is displaced and politics make the toy of professional managers and consultants. Democracy becomes spectacle, and the victory of the stadium over the deliberative assembly is complete.

We cannot accept the facile explanation that this development is simply the outcome of the primary system of choosing candidates. Party conventions still have work to do, if they were constituted to do it, as once they were.

The inroads of a Rousseauistic psychology need to be recognized and counteracted. The understanding for doing so is ours from the mind of Madison; if we are unable to apply his principles, it is not the philosophy but the civilization that is moribund. The runaway state, the governing authority that cannot be kept answerable to the people, is fated to be the permanent antagonist of liberty. Two distinct species contend for the name of democracy. The one we received creates the social good from responsible, deliberate self-government - if we can keep it.