

Cambridge University Press

978-0-521-15470-3 - Rousseau After Two Hundred Years: Proceedings of the Cambridge
Bicentennial Colloquium

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I

POLITICS AND SOCIOLOGY

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I



Rousseau and Kant: principles of political right*

STEPHEN ELLENBURG

The meaning of Rousseau's political philosophy was already controversial during his lifetime, and disagreements have multiplied in the two hundred years since his death. Among the enormous number of interpretations are those which approach Rousseau's ideas from the standpoint of Kant's philosophy.¹

This Kantian approach seems promising for several reasons. The influence of Rousseau's ideas upon Kant is undeniable.² Also, Rousseau and Kant agreed about some matters. For example, both took man's capacity for free will to be a distinctive quality of his nature, distinguishing man from other animals.³ Indeed, Rousseau's conception of man's moral freedom in the *Social Contract* – 'For the impulse of appetite alone is slavery and obedience to law one has prescribed for oneself is freedom' – suggests Kant's definitions of ethical autonomy or positive liberty.⁴ And both defended what they called republican principles of political right.⁵

Moreover, the purpose of Rousseau's political thought appears Kantian in character. Although Rousseau never systematically pursued the epistemological concerns of Kant's critical philosophy, Rousseau believed that his writings combated a kind of empiricist scepticism. Rousseau criticised Hobbes, Mandeville, Locke, and Helvétius for, he asserted, having reduced morals and politics to individuals' calculation of exclusive advantages.⁶ Similarly, Kant argued that ethics and politics cannot be based upon natural inclinations of self-love or on utilitarian happiness.⁷ Rousseau's intention to 'test fact by right', his claim that we must 'know what ought to be in order to appraise what

* Arthur R. Gold, Richard A. Johnson, and William S. McFeely commented on an earlier version of this paper. This paper was written during a leave of absence from Mount Holyoke College supported by a Humanities Fellowship from The Rockefeller Foundation. Cornell University Press has granted me permission to draw upon my earlier study: *Rousseau's Political Philosophy: An Interpretation from Within* (Ithaca, 1976).

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is', his criticism of Montesquieu for having 'ignored the principles of political right', and his rejection of Grotius's 'persistent mode of reasoning [which] is always to establish right by fact'⁸ – each of these positions is roughly analogous to Kant's transcendental method and to Kant's claim that 'before the advent of critical philosophy there was no philosophy', only 'various ways of philosophising'.⁹ Critical philosophy establishes the competence and scope of reason itself, so that now 'moral principles [. . . could] stand of themselves a priori'.¹⁰

I do not propose here to consider directly Kantian interpretations of Rousseau's political thought. Instead, by sketching Rousseau's and Kant's conceptions of political right, I wish to restate the case for the extraordinary originality of Rousseau's political thought. For I believe that a Kantian reading of Rousseau misses fundamental aspects of Rousseau's thought. Specifically, a Kantian perspective obscures Rousseau's radical egalitarianism and his condemnation of all familiar politics as enslavement. In other words, I believe that Rousseau and Kant defended different principles of political right, that Rousseau's insistence upon the liberty of literal self-government cannot be identified with Kant's defence of a coexistence of subjects' lawful liberties. I also wish to suggest how a Rousseauist society of free rather than enslaved citizens must make unusual, sometimes terrifying, and distinctively un-Kantian demands of politics. Finally, I shall examine three critical issues which Rousseau had to raise but failed to resolve: the motives of participants to an original contract of self-government, a divided vote in a legislative assembly of a sovereign citizenry seeking to declare its general will, and, last, the justification of criminal punishment in a free society. Because of his radical egalitarianism Rousseau could not avoid these issues. Because Kant's conception of political right is fundamentally inegalitarian these same matters were not problematical for him.¹¹

True, in a significant formal sense, Kant's political thought has an egalitarian dimension. Kant required that juridical laws be publicised, apply to all subjects, and be impartially enforced. Only in this manner can the juridical duties of subjects be equal and reciprocal.¹² Beyond this truism of legal constitutionalism, however, Kant's conception of political right is not egalitarian. For Kant defended the division of civil society between rulers and ruled. Governmental rulers are legally empowered both to legislate on behalf of a people and to secure subjects' obedience to law by means of legitimate coercion.¹³ A people merely consents tacitly to its external rule by others.¹⁴ Among Kant's major purposes, then, was to justify a ruler's authority to compel the ruled, to define and to justify a limited scope for 'external compulsive

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legislation'.¹⁵ Both the making and enforcing of juridical law always involved a political superior's coercive command of an inferior.¹⁶

As an a priori principle of universal justice, Kant defended a 'co-existence' of subjects' external liberties.¹⁷ He further argued that this universal principle of justice is 'united with' and indeed 'means the same thing' as the 'authorisation to use coercion' against violence.¹⁸ For when an act involving 'a certain use of freedom is itself a hindrance to freedom according to universal laws', then securing subjects' lawful liberties entails 'the use of coercion to counteract' this violence.¹⁹ More generally, as a rational creature man seeks a juridical law which limits the natural freedom of all men. But man also 'requires a *master* to break his self-will and force him to obey a universally valid will under which everyone can be free'.²⁰

In Kant's ethics, in what Kant called his doctrine of virtue, the free self-constraint of a moral agent's own legislative reason can subdue his natural impulses. In this manner partially rational man reluctantly performs the duties of virtue for the sake of duty itself; he acts in accordance with the moral law; and he acquires positive freedom. In Kant's politics, however, in what Kant called his doctrine of law, compulsion by rulers is essential to the performance of one's perfect duties towards others.²¹ Kant argued that 'nature of man' arguments are impermissible because such arguments contain empirical and contingent matters.²² Similarly, Kant maintained that the 'necessity of public lawful coercion' in politics does not rest on our experience of violence but is rather an 'a priori Idea of reason'.²³ But Kant dwelt on the 'unsocial sociability' of man's nature in a way that lends a Hobbesian intensity to his justification of compulsion by rulers.²⁴ A Kantian state of nature is a condition of 'unrestrained', 'wild', and 'brutish' freedom.²⁵ In this condition of 'external lawless freedom', man is generally inclined 'to play the master over others'.²⁶ But men's natural antagonisms become 'in the long run the cause of a law-governed social order'. For without men's natural antagonisms, there would be none of that productive resistance 'inevitably encountered by each individual as he furthers his self-seeking pretensions'.²⁷ In juridical society, man's viciousness and immaturity are 'veiled by the compulsion of civil laws, because the inclination to violence [. . .] is fettered by the stronger power of the government [. . .]'.²⁸ Nature and society, interest and duty, natural violence and juridical peace, brutish lawlessness and enforceable legal restraint, therefore, are permanently opposed in Kant's political thought and necessitate a division of civil society between rulers and ruled.²⁹

Rousseau condemned as enslavement the external exercise of power

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over men. Except for the unequal relationships of parent to child and of husband to wife,³⁰ Rousseau denounced all dependence upon the commanding or obeying will of another. He denounced every arrangement, official and unofficial, which differentiates ruler from ruled. Indeed, Rousseau's condemnation of political inequality from the point of view of the ruler as well as the ruled, his claim that a ruler is also unfree because he commands another, reveals the extent of his radical egalitarianism. Repeatedly, in examples ranging from the relationship between a tutor and an infant to the relationship between rich and poor,³¹ Rousseau took delight in pointing out that one who rules another is not free, that 'one who thinks himself the master of others is nonetheless a greater slave than they'.³² Because the ruled withhold or modulate the obedience demanded of them, because a ruler must take into account the opinions and prejudices of those whom he would command, 'domination itself is servitude'.³³

Because political inequality is itself enslavement, the scope, degree, numerical extent, and expected benefits of external rule are never at issue in Rousseau's understanding of political right. Similarly, Rousseau's discussion of political right does not consider how the exercise of political power by some persons over other persons might be voluntary, just, revocable, benevolent, representative, limited, impartial, officially promulgated, in conformity with constitutional law, and the like. In a Rousseauist free society, ruler and ruled are the same persons. For Rousseau's radical egalitarianism is a demand for literal self-government. A Rousseauist free society guarantees that 'each citizen is in a position of perfect independence from [the will of] all the others'.³⁴

In further contrast to Kant, Rousseau used the concept of nature as the justification for literal self-government. The concepts of both natural liberty and natural equality served as Rousseau's criteria of political right and are finally synonymous in their implications for social man. In the first form of this appeal to nature, Rousseau asserted that man is by nature a 'free being'. Rousseau also described mankind's natural condition as one in which natural liberty must remain unthreatened. Because of his presocial isolation, the natural savage could not even appreciate the meaning of 'servitude and domination' or of 'power and reputation'. The savage 'breathes only repose and freedom'.³⁵

It must be stressed that Rousseau's conception of natural liberty concerns negative liberty, in the sense of man's freedom from the commanding or obeying will of another. Further, this standard of natural liberty can neither refer to moral freedom nor correspond to

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what Kant defined as ethical autonomy or positive liberty.³⁶ For moral freedom, in Rousseau's view, does not carry the sanction of natural right. Men can become either morally free or morally unfree only after they have left the natural condition of presocial isolation, only when they have been morally transformed by the conflicting loyalties and identities which membership in society provides.³⁷ Indeed, moral freedom could not be fundamental to Rousseau's political thought because the natural savage is in fact morally unfree. Natural man obeys, automatically and unreflectively, his natural impulses of love of self (*amour de soi*) and pity.³⁸ Further, as I shall discuss presently, Rousseau's defence of moral freedom is only an instrumental one, for he argues that social men's general will must take precedence over their particular wills if they are to remain completely independent of the will of one another.

Because an insistence upon negative liberty pervades Rousseau's political thought, he maintained that man's 'liberty consists less in doing one's own will than in not being subject to the will of others; it consists further in not subjecting the will of others to our own. Whoever is master cannot be free; and to rule is to obey.'³⁹ And when, in the *Social Contract*, Rousseau argued that men's 'common freedom is a consequence of man's nature' and that any renunciation or transfer to others of one's liberty is 'incompatible with the nature of man' and can never be compensated, he could only be referring to negative liberty.⁴⁰ In this sense, Rousseau also claimed that the social contract solved the 'fundamental problem' of politics by assuring that social man 'obeys only himself and remains as free as before'.⁴¹

Rousseau also appealed to 'the equality nature established among men' in order to denounce all relationships of political inequality. Specifically, Rousseau distinguished two unrelated kinds of inequality: physical, and moral or political. Physical inequality, established by nature, 'consists in the difference in age, health, bodily strength and qualities of mind and soul'. Such differences remain 'barely perceptible' to presocial savages. Moral or political inequality, in contrast, comprises the 'different privileges that some men enjoy to the prejudice of others, such as to be richer, more honoured, more powerful than they, or even to make themselves obeyed by them'. This political inequality is 'authorised by positive right alone' and 'is contrary to natural right whenever it is not combined in the same proportion as physical inequality'. Rousseau ridiculed this possibility of proportionate combination in civil society, noting that merely to ask if there might be 'some essential link' between physical inequality and political inequality is 'a question perhaps good for slaves to discuss in the hearing

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of their masters, but not suitable for reasonable and free men who seek the truth'.⁴² And throughout the Geneva manuscript of the *Social Contract* and the definitive text itself, Rousseau construed every defence of political inequality as at bottom an attempt by 'proponents of despotism' to defend slavery. Aristotle's notion of natural slavery and Grotius's defence of contractual slavery figure in Rousseau's wholesale condemnation of his predecessors. But Rousseau also condemned, as presupposing or defending enslavement, conceptions of political right based on a people's contractual authorisation of external rule, an extension of parental authority to civil society, the claims of the wealthy, the interests of rulers, the right of the strongest or of conquest, and prescription or tacit acquiescence.⁴³ 'These words *slavery* and *right*', Rousseau thundered, 'are contradictory; they are mutually exclusive.'⁴⁴

The importance of Rousseau's appeals to natural liberty and natural equality can be seen in another way. For a Rousseauist free society further exhibits a necessary uniting of nature with society in the sense that the impulses comprising man's natural goodness have become the virtuous sentiments of new social men. In order to remain free, a citizen's interest must become his civic duty.⁴⁵ Only a truly virtuous citizenry, only citizens who adhere to their general will of civic virtue, can remain self-governing: 'The homeland cannot exist without liberty, nor liberty without virtue, nor virtue without citizens; [. . .] without citizens, you will have only vicious slaves, beginning with the leaders of the state.'⁴⁶ Thus, citizens avoid dependence upon the commanding or obeying will of one another by rejecting those particularistic loyalties and identities – their particular wills – which are politically exclusive and socially divisive. Every particular will expresses a desire for political inequality, or else it would not be a particular will.⁴⁷ Correspondingly, the only permissible authority in a legitimate state is that authority of a single, united people over itself. And Rousseau defended the direct and continuous exercise of legislative power by a sovereign citizenry while arguing that the division or alienation of popular sovereignty constitutes enslavement. Self-governing citizens, then, obey, and are obligated to obey, only those civil laws which they themselves have legislated directly and those customs which inhere in their common life.⁴⁸ More specifically, a people can be obligated by its general will alone. And a people's 'indestructible' general will can never be legitimately represented by particular persons.⁴⁹

Rousseau recognised no intermediate possibilities between liberty and slavery. Hence his indictment of external rule. Perhaps, by listing

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the matters which comprise this indictment, I can suggest something of the range, if nothing of the vehemence and surrounding arguments, of Rousseau's condemnations.⁵⁰ Rousseau's indictment includes, first of all, formal institutional arrangements which, often authorised by corrupt men, constitute legal enslavement: a division or alienation of popular sovereignty, representative government,⁵¹ a monarchical form of government,⁵² hereditary magistrates,⁵³ geographically large states composed of large populations,⁵⁴ and a large number of complicated civil laws.⁵⁵ Less official, but intrinsically enslaving nonetheless, are those social arrangements which also render men dependent upon the particular wills of one another and which usually accompany legal enslavement: economic specialisation, an economic division of labour, economic inequality, and struggles between rich and poor;⁵⁶ a pre-occupation with acquiring property and a desire for luxuries;⁵⁷ commerce, economic competition, and the use of money as a medium of exchange and for collecting taxes;⁵⁸ and the use of mercenaries and tax farmers.⁵⁹ Each of these matters expresses man's vanity (*amour-propre*), that socially acquired desire for invidious distinction which amounts to a will to dominate one another.⁶⁰ Less official still, but to be condemned nevertheless are modern printing and the modern mania for books;⁶¹ the sciences and the arts;⁶² complicated schemes of financial auditing;⁶³ learned academies, contemporary colleges, modern historians, and tendentious interpreters of Scripture;⁶⁴ modern forms of entertainment;⁶⁵ and cosmopolitans who proclaim their love of humanity.⁶⁶ Common to all these forms of enslavement, official and unofficial, are professionals themselves, the marionettes of modern society for whom citizenship and civic virtue are now but a sham: priests,⁶⁷ accountants,⁶⁸ magistrates who govern,⁶⁹ doctors and their submissive patients,⁷⁰ lawyers,⁷¹ scientists,⁷² playwrights and actors,⁷³ and especially philosophers.⁷⁴ All are lapsed citizens.

This indictment also tells us what Rousseau meant by a truly virtuous citizenry and by an egalitarian common life. The virtuous citizen is a versatile, active amateur and a devout patriot. He performs useful manual labour for the economic subsistence of his family.⁷⁵ He rushes to attend legislative assemblies.⁷⁶ He serves in a citizens' militia and does not shrink from risking his life in defence of his homeland.⁷⁷ He performs *corvées* of public service with patriotic zeal.⁷⁸ He participates in public celebrations and outdoor festivals of civic piety.⁷⁹ He obeys the ancient laws of his state, and he honours the memory of the wise legislator who founded his state.⁸⁰ He carries in his heart affection for his fellow citizens, and he cannot conceive his own interests diverging from their interests.⁸¹

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And the egalitarian common life of a virtuous citizenry? Such citizens enjoy a simple, memorisable code of civil law.⁸² Public education begins a training in citizenship, as future citizens learn the history and geography of their homeland and become skilled in economically useful crafts.⁸³ If private property exists, goods are exchanged by means of an imaginary unit of currency or preferably by bartering. Any taxes are paid in kind. Private ownership is supplemented by the common ownership and use of land, and by communal warehouses for storing an agricultural surplus.⁸⁴ And the extent of private ownership is strictly controlled by sumptuary laws.⁸⁵ Various forms of censorship and especially of self-censorship prevail, the latter illustrated by Rousseau's defence of a civil religion.⁸⁶ Disobedience is rare but its punishment severe.⁸⁷ And, when the bonds of common life slacken, an unofficial although intolerant public watchfulness provides further self-censorship.⁸⁸

In order to define this egalitarian principle of political right, Rousseau presented his view of the original social contract. I wish to suggest that Rousseau's idea of this contract is unclear because the parties to such an act of association are without motive. And this difficulty is duplicated, in an even more troublesome manner, when Rousseau discusses the historical foundation of a legitimate state by a legislator. Rousseau's legislator, by providing constitutional laws, is actualising the original contract of civil association. Further, Rousseau restricted the establishment of a legitimate state to simple men living in loose clusters of families who have not yet been consumed by *amour-propre*. But such simple men could have no reason for participating in a social contract or for consenting to the foundation of a legitimate state by a legislator.

No such issue of popular motivation could arise in Kant's version of an original contract. For, as we have seen, a Kantian state of nature is one of lawless violence. But because partially rational men can deliberate and choose, they overcome such violence by tacitly consenting to the establishment of representative government. Further, because the formation of juridical society is obligatory, because every person has the right to live in peace, anyone may use force in order to compel others to live under a civil constitution.⁸⁹

Rousseau, in contrast, could not locate either his social contract or a legislator's foundation in a Hobbesian state of natural war. For Rousseau insisted that war is artificial, a product of men's late social evolution, not natural. Thus, he maintained that the true state of nature was a presocial condition of peaceful isolation, laziness, and ignorance. Also, while rejecting the view that force could be the basis

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of political right, Rousseau restated his position that men can become enemies only by convention or through social practice.⁹⁰ Most important, as Rousseau argued in the *Discourse on Inequality*, men who are already at war with one another can only institute the legal enslavement of representative government.⁹¹ In other words, when serious conflicts do exist among men, when one's interest no longer remains and can never again become one's civic duty, then an irreparable and worsening state of war exists. A legitimate civil society cannot be instituted in order to escape from war because war itself is the emblem of a deteriorating common life. Thus, the participants in a legitimate contract would prevent or postpone a state of war, rather than escape from or terminate a state of war, as in Kant's view. Correspondingly, a legislator establishes a legitimate state only before a state of war threatens or erupts, not during a state of war. For, as Rousseau argued, among the many 'conditions for founding a people' which a legislator must take into account, there is one condition 'that cannot substitute for any other, but without which all the rest are useless: the enjoyment of prosperity and peace'.⁹²

In the *Social Contract*, Rousseau pointed to simple men's needs, especially their need for self-preservation.⁹³ But because such men are at peace, he could only be referring to prospective needs that simple men themselves could not appreciate or act upon at the moment of contract. So the motive to contract, the motive to this 'most voluntary act in the world',⁹⁴ is Rousseau's own pessimistic historical evolution described in the *Discourse on Inequality*: men 'need' to postpone an inevitable decline into enslaving warfare. But for the participants to have the foresight to appreciate this prospect of enslaving warfare, they would have to be already engaged in that very warfare which precludes their contracting to found a legitimate state.⁹⁵

The idea of a legislator's actualisation of this original contract presents greater difficulties. For Rousseau could not sustain his egalitarian principle of political right. His failure is a flagrant one. And Rousseau appears to have been aware of this failure, if only because he tried to disguise his difficulties under a barrage of specious reasoning and disarming eloquence.

Rousseau's problem is that a legislator does legislate on behalf of a people. Yet Rousseau tried to deny that this foundation of the state involves either a delegation of popular sovereignty or a representation of a people's general will. Rousseau's reasons for this denial are that an 'emerging people' cannot be expected to give itself fundamental laws; that the foundation of a legitimate state is an exceptional, temporary, and unrepeatable event designed to establish popular sover-