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Introduction

Almost everything in Rousseau is the subject of debate. But one of the points which does, probably, command universal agreement is that Rousseau set out to propound a theory of a just political order, or, to use a phrase which reflects his intention, the doctrine of the 'well-ordered society'.

Every political society establishes its own political order, but it is only a political order which satisfies certain moral criteria which may correctly be described as a *just* one. It was precisely because he hoped to define these criteria that Rousseau undertook his study of political systems. For him, order is not, in itself, a primary value; it is the just political order which is the ground of value since it is the necessary condition for the primary values of liberty, virtue and happiness. It is Hobbes, not Rousseau, who can correctly be described as the philosopher of an unqualified political order, and the political philosophy of the *Social contract* may legitimately be interpreted as the search for a theoretical alternative to the order propounded in *Leviathan*.

The phrase 'well-ordered society', which we find at the beginning of the first version of the *Social contract*, suggests a society ordered in such a way that men find it in their interest to treat their fellows with justice and consideration – that is to say, to live in harmony. Men have not created the society in which they live as a whole. Social relations are the product of the chance concatenation of several different circumstances. Nevertheless, it is perfectly reasonable to try to define the nature of the political constitution which men would want to establish, if they were in a position to do so. Rousseau's political doctrine is based on the idea that neither chance nor will can alone legitimize political institutions. For a political institution to be

defined as just it must be possible to think of it as being capable of commanding the free consent of men.

The men that the doctrine of the well-ordered society has in view are men 'as they are'. They are individuals motivated solely by self-interest and the pursuit of their own good, who are ambitious and dominated by egotism. It is this pride which drives them to seek worldly position and preferment. As a result each man is in conflict with his fellows, and their mutual relations are in a state of discord. Moreover, in societies where the most highly valued positions and most elevated ranks are occupied by the least deserving, there is a disequilibrium in social relations. Finally, those who are enslaved by their own passions, in particular, ambition, live in disorder. A just political order should provide the answer to the problem of disorder in all its aspects. For Rousseau, a society is *well* ordered when men's passions are tempered by law and custom, and where harmony and restraint take the place of a generalized conflict. A just order exists where the highest places are occupied by the most virtuous and not the strongest or the most cunning, and where, finally, everyone can control his/her passions and act with moderation, an ability which is one of the main prerequisites of true happiness.

The antithesis between order and disorder is the major antithesis around which the work of reconstructing the political philosophy of Rousseau may proceed, and it forms the basis of the present study. The first part of the present work seeks to show the interrelations between the different conceptions of order; the second section analyses the idea of disorder, and in the final part there is an attempt to reconstruct the doctrine of a just political order.

The analysis of the interrelations of the different forms of order (moral, natural and political order) leads to one of the most frequently discussed questions in the long history of Rousseau studies: namely, nature and the artificial. The antithesis between 'natural man', who is essentially good and 'artificial man' corrupted and made wretched by social institutions, is one of the central themes in the discussions which followed the publication of the two *Discourses*. This aspect of Rousseau's thought found its most acute expositor in Kant,¹ and in our own time has been taken up again by Cassirer.²

¹ Kant, *Mutmasslicher Anfang der Menschengeschichte*, in *Immanuel Kants Werke*, Hildesheim, 1973, vol. 4, pp. 325–42 (transl. L.W. Beck and R.E. Anchor, *On History*, Indianapolis and New York, 1963, pp.53–68).

² E. Cassirer, 'L'Unité dans l'oeuvre de Rousseau', in *Bulletin de la Société française de philologie*, 1932, reprinted in *Pensée de Rousseau*, Paris, 1984, pp.41–63.

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In this context, we have tried to show that Rousseau's political doctrine is based on the idea of a dual form of the artificial, rather than on the antithesis between nature and the artificial. The first form of the artificial (the 'first stages of art') is to be found in the 'arts' and in corrupt political institutions; the other form of the artificial (perfected art) is the art of politics, the sublime art whose masters are the great lawgivers, and which has as its goal the founding of a harmonious community.

The relationship between nature and the artificial has often been discussed by writers on Rousseau from the point of view of the relation between the natural and the political orders. For example, Rousseau's contemporaries evaluated his political doctrine on the assumption that the order of nature was the model of true order.³

More recently, Durkheim argued for the analogy between the social world and the state of nature. His interpretation represents a particularly significant example of a 'naturalistic' reading of Rousseau's political thought and it therefore merits close attention. For Rousseau, he writes, the natural state 'consists of a kind of peaceful anarchy in which the individual members, quite independent of one another, are linked by no social bonds and rely entirely on the 'power of nature'. In the social, continues Durkheim, 'individuals are external to one another, and their interpersonal relations are minimized, but they rely on a different kind of power additional to the forces of nature, which has, nevertheless, the same universality and the same necessity as the latter, namely, the general will'.⁴

In contrast with this view, the present study emphasizes that, as conceived by Rousseau, political and natural order are by no means the same. Firstly, the members of a well-ordered society are united by very close bonds and form a community. This is quite different from the state of isolation which characterizes the situation of men in the natural state. Moreover, the laws which govern the actions of citizens in society are very different from those which operate in the natural state. In the first instance, it is the citizens themselves who are the authors of the laws; in the second, man receives laws from nature or, more properly, from God, which laws he cannot contravene. Finally, the fundamental principle of natural order is that the 'totality' should

³ See, for example, F. d'Escherny, *De l'égalité*, Basle, 1796.

⁴ E. Durkheim, 'Le "Contrat social" de Rousseau', *Revue de métaphysique et de morale*, 25 (1918), p. 159; see also, R.D. Masters, *The political philosophy of Rousseau*, Princeton, 1968, p.424.

be preserved, while the prime aim of political order is to ensure the freedom and security of the individual. Durkheim is right when he says that collective life has few points of contact with the natural order, but he is mistaken in thinking that Rousseau sought to ground social being in nature. Quite the contrary, on several occasions he draws attention to the completely artificial nature of political institutions.

The analysis of Rousseau's use of the concept of disorder leads to a consideration of the question of inequality. For Rousseau, inequality represents a problem for political theory when it takes the form of moral inequality, that is, an inequality in the status individuals enjoy in the eyes of the community. From this point of view, the problem of inequality is closely linked with the question of personal identity. Personal identity is a product of the opinions that others have of us and is thus a result of the comparison between individuals. Consequently, in the case of men living alone in their natural state, one cannot speak of personal identity. But as soon as men begin to compare themselves with others, and the opinion of others assumes importance, each of them seeks preferment, to achieve superiority over their peers, or, better still, to convince others of their superiority. For Rousseau, inequality is not an abstract problem; it has repercussions on the very way that people live and influences the way people think of themselves. Moral inequality becomes concrete and visible, so to speak, through the eyes of others and in the way they treat us. The kind of inequality that causes offence is, according to Rousseau, an unjust inequality founded on caprice and chance, not the kind of inequality which can be justified by merit and virtue. Thus society, the network of enduring relations between men, is the necessary condition for the creation of individual identity, but, at the same time, life in society spontaneously gives rise to different forms of moral inequality and is the source of the desire for preferment.

Central to Rousseau's theory of inequality is an analogy between the process at work when, in economics, the price of an object is fixed in the market-place, and the process whereby the social worth of each individual is assessed. Each person living in society, amongst his fellows, is accorded a certain level of esteem, in much the same way as a price is placed upon objects. Just as the price of an object is fixed by the purchaser and not by the owner of the goods, so the esteem accorded any given individual comes to him from others. Here Rousseau is influenced by the moralists of the period and the major modern political

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theorists, Pufendorf and Hobbes. Stated thus, the problem of inequality amongst mankind may be rephrased in terms of the criteria by which men are awarded degrees of honour and esteem. So that society may be well ordered it is necessary for certain qualities (virtue, humanity, courage, moderation) to be more highly esteemed than others (riches, birth, power).

A just political community is characterized by the way in which the worth of individuals is assessed and how its status hierarchy is established. The equality which reason sees as necessary for a just political constitution is not arithmetical, ascribing the same thing to everyone, but is geometric or proportional. If the body politic is to be sound, it is necessary for public honour and esteem to be commensurate with the degree of individual merit and the nature of the services rendered to the community (in other words, with virtue) 'vera nobilitas virtus (sola) est'. In Rousseau we come across the old classical idea of just proportion,⁵ which, especially in the writings of Cicero and Sallust, had become one of the central concepts of republican political theory. We also find another problem that was familiar to republican writers: how is it possible to make equal degrees of liberty 'aequa libertas' compatible with a hierarchy with its different degrees of honour and worth, 'dignitas et honores'?

Moreover, inequality is a problem for political theory when it takes the form of social inequality. Sharp differences in the distribution of wealth are, in effect, incompatible with a political constitution which claims to provide equality before the law. On the other hand, critics had often focussed on the question of private property. Voltaire's commentary on the famous passage which opens the second part of the *Discourse on inequality* is the most significant example of a tradition of interpretation which sees Rousseau as the adversary of the institution of private property:

What! he who has planted, sowed and enclosed his land has no right to the fruit of his labour? What! that unjust man, that thief, should be considered as the benefactor of the human race! There you have the philosophy of a rogue who would like the rich to be robbed by the poor.⁶

This view has found its supporters in our own time, as well, and Rousseau has been cast in the role of the predecessor of Marx.⁷

⁵ See Plato, *The Statesman*, 307e–308; *Laws*, 690–1, see also, Aristotle, *Politics*, 1301b–1302a.

⁶ G.R. Havens, *Voltaire's marginalia on the pages of Rousseau*, New York, 1966, p.15.

⁷ See, for example, R. Dahrendorf, *Essays on the theory of society*, London, 1968, pp.158–9.

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However, this interpretation does not seem convincing. Rousseau never considered that the abolition of private property would provide a solution to the problem of inequality. Private property is a sacred right grounded in the social contract. Thus, any attempt to confiscate private property would be unlawful. Instead, when dealing with the forms of social inequality, Rousseau insists that it is necessary for the state to attend to the problem of justice in the distribution of wealth in order to limit, in a way reminiscent of the theories of Aristotle,⁸ the most extreme forms of inequality. Rousseau does not abandon the fundamental principle of the doctrine of natural law which sees the state as a guarantor of the rights to property. But, at the same time, he notes that, in order to preserve its legitimacy, the state should take steps to moderate social inequality.

As with the theory of inequality, the doctrine of the social contract is one of the ideas which has attracted the greatest amount of criticism from political theorists and commentators. In my view the weightiest criticism of the social contract is not to be found amongst those writing within the empiricist or utilitarian traditions,⁹ but in Hegel, and at this point it would be helpful to pause and consider certain passages in the *Principles of the philosophy of right*, without, of course, making any claim to exhaustive analysis of such a difficult and important problem as the relation of Rousseau to Hegel.

Hegel discusses the doctrine of the contract as if it were a normative theory which seeks to define the rights of the state in relation to the rights and interests of the citizens. According to the doctrines of natural law, the rights of princes and of the state are to be thought of as arising from a contract. They are grounded in a common will which springs from the agreement of the totality of individual wills. The consequence of these doctrines is the principle that the *raison d'être* of the state consists in the protection of the lives and property of its citizens.

According to Hegel, the error here lies in the transposition of an institution of private law, such as a contract, into a sphere of a quite

⁸ Aristotle, *Politics*, 1295b 25; see R. Derathé, 'La Place et l'importance de la notion d'égalité dans la doctrine politique de J.-J. Rousseau', in R.A. Leigh, ed., *Rousseau after two hundred years*, Cambridge, 1982, pp.55–63.

⁹ See, for example, D. Hume, *On the original contract*, in E. Barker, ed., *Social contract. Essays by Locke, Hume and Rousseau*, Oxford, 1971; J. Bentham, *A fragment on government and an introduction to the principles of morals and legislation*, Oxford, 1948, pp.49–56.

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different and higher nature.¹⁰ Nevertheless, Hegel also commends Rousseau for having seen that the fundamental principle of the state is the will.

Unfortunately, however, as Fichte did later, he takes the will only in a determinate form as the individual will, and he regards the universal will not as the absolutely rational element in the will, but only as a 'general' will which proceeds out of this individual will as out of a conscious will. The result is that he reduces the union of individuals in the state to a contract and therefore to something based on their arbitrary wills, their opinion, and their capriciously given express consent.¹¹

For Rousseau, the state is not 'Reason in and for itself', as Hegel would have it, but derives its rationality from the fact that it is a necessary condition for the safeguarding of liberty, of goods and of individual persons: which means that the state is rational so long as it fulfils these functions. For this reason Rousseau's doctrine must bear a grave responsibility for having destroyed 'the divine existing in itself and for itself, its absolute authority and its majesty'.¹²

For Hegel, doctrines which find a basis for liberty in the 'acquiescence of the individual' will bring the state to ruin, as was proved by the example of the Polish diet where no decision could be taken without each individual giving his consent. Even more dangerous was the idea that 'it is only the people who are in possession of Reason and Wisdom and know the true'. According to Hegel, the advocates of the principle that no law is valid unless it has the unanimous consent of all citizens fail to understand that their doctrines must necessarily lead to the dissolution of the political constitution:

If one takes the principle of individual liberty as the sole foundation of political liberty, namely, each individual must give his consent before any decision can be taken by, or on behalf of the State, then there will be, in effect, no Constitution.¹³

The practical consequences of Rousseau's ideas on liberty (and this point is emphasized both in the *Philosophy of right* and in the chapter 'Absolute Liberty and Terror' in the *Phenomenology*) were seen in the

¹⁰ G.W.F. Hegel, *Grundlinien der Philosophie des Rechts*, 1821, s.75 (transl. by T.M. Knox, *Hegel's philosophy of right*) Oxford, 1942; on the relation between Rousseau and Hegel see S. Avineri, *Hegel's theory of the modern state*, Cambridge, 1972, in particular pp.40, 60, 183–4. ¹¹ *Ibid.*, s.258 (transl. *ibid.*, p.157). ¹² *Ibid.*

¹³ G.W.F. Hegel, *Vorlesungen über die Philosophie der Geschichte*, 1848; (transl. by J. Sibree, *The philosophy of history*, New York, 1956).

excesses of the French Revolution.¹⁴ But Hegel did not place himself in a position of theoretical opposition to Rousseau. He sought, rather, to take up the intellectual challenge that Rousseau had issued: how is it possible to live in a political community and at the same time be a free individual; but he is equally convinced that to elaborate a political theory of the state and modern liberty it is necessary to use very different theoretical tools from those furnished by the idea of the social contract.¹⁵

It is interesting to note that Benjamin Constant also criticized Rousseau for not having understood the true importance of the constitution, albeit for reasons very different from those of Hegel. While Hegel blames Rousseau for having, by his theories, opened the way to the dissolution of the constitution, understood as 'the organization of the state and the process of its organic life', Constant charges the author of the *Social contract* with failing to understand the necessity of limiting the sovereign power in the constitution. Both Hegel and Constant focus on the theory of the social contract and the sovereignty of the people, but the former is primarily concerned with preserving the unity of the State and the latter with safeguarding individual liberty against arbitrary interference from the sovereign power.

For Constant, Rousseau's error lay not in the fact that he had seen the will of individual citizens as the source of authority for the state, but that this theory condemned individuals to total subservience to the state.¹⁶ Constant goes on to allege that, through participating in

¹⁴ *Grundlinien der Philosophie des Rechts*, s.258; (transl. by Knox, 1942); *Phaenomenologie des Geistes*, in *Werke*, Frankfurt am Main, 1969, vol.3, pp.431–40.

¹⁵ On this subject Hegel's comments in the *Vorlesungen über die Philosophie der Geschichte*, (*Werke*, vol.20, pp.306–8), on the concept of freedom in Rousseau, are important. See also Z.A. Pelczynski, *Political community and individual freedom in Hegel's philosophy of state*, in Z.A. Pelczynski, ed., *The state and civil society. Studies in Hegel's political philosophy*, Cambridge, 1984, pp.60–2; W. Maihofer, *Hegels Prinzip des modernen Staates* (1969), in I. Fetscher, ed., *Hegel in der Sicht der Neueren Forschung*, Darmstadt, 1973, pp.352–86; J. d'Hont, ed., *Hegel et le siècle des lumières*, Paris, 1974.

¹⁶ B. Constant, *Principes de politique*, in *Oeuvres de Benjamin Constant*, ed. A. Roulin, Paris, 1957, pp.1071–2; during the nineteenth and twentieth centuries Constant's interpretation has been developed by several authors: for example, E. Faguet, *Dix-huitième siècle*, Paris, 1890; L. Duguit, *Souveraineté et liberté*, Paris, 1922. See on this subject R. Derathé, 'Les Réfutations du "Contrat Social" en France dans la première moitié du dix-neuvième siècle', in S. Harvey et al., *Reappraisals of Rousseau*, Manchester, 1980, pp.90–110. This tradition of interpretation is also present in German literature; see, for example, G. Jellinek, *Die rechtliche Natur der Staatenverträge*, Vienna, 1880, pp.11–12. Jellinek's ideas reappear also in Cassirer, *Das Problem Jean-Jacques Rousseau*, Darmstadt, 1970, p.14. A more moderate position somewhere between the extremes of an individualistic Rousseau and a 'Staatsabsolutist' Rousseau

the social contract, individuals confer absolute power on the sovereign, and the only difference between Rousseau and Hobbes is that Rousseau sees the sovereignty of the people as something absolute, while Hobbes advocates absolute government by one individual alone.¹⁷

The relations between Rousseau and Hegel, on the one hand, and Rousseau and Constant, on the other, deserve to be studied in greater detail, a project which would make a useful contribution to the analysis of the political thought of the nineteenth century. But on this issue the present work will merely note that neither Hegel's nor Constant's interpretation can really be said to do justice to Rousseau's thinking. In fact, according to Rousseau, the institution and preservation of the legitimate political constitution are the principle means by which not only the unity of the state is preserved, but also the liberty of its citizens. The sovereign authority of the state is not grounded in the whims of individuals, but in the general will, which is, or should be, a rational will which finds its expression in universal laws. If the whims of individuals (or factions) take over from the general will, sovereign authority is no longer legitimate, which means that the unity of the body politic has been sacrificed, as well as liberty. The political doctrine of Rousseau is based on the principle of the sovereignty of law, and thus of the rational will, not on the sovereignty of the individual will as such, as Hegel alleged.

The situation is much the same with regard to the criticism levelled by Constant. Constant fails to convince us that there is a similarity between Rousseau and Hobbes, viewed as advocates of absolute power (whether the absolute power of the people, or the absolute power of the prince). In fact, the point at which Rousseau diverges from Hobbes most notably is when the latter argues that the sovereign is above civil law. Rousseau states unambiguously that if the sovereign is above civil law he is a despot. Even when the people themselves exercise their sovereignty, they are governed by the fun-

is defended from a position within a neo-Kantian perspective, by R. Stammler, *Theorie des Anarchismus*, Berlin, 1894, p.14. With regard to Italian literature at the beginning of the twentieth century, see G. del Vecchio, *Su la teoria del contratto sociale*, Bologna, 1906; G. Solari, *La fondazione storica e filosofica dello stato moderno*, Naples, 1934; R. Mondolfo, *Rousseau e la coscienza moderna*, Florence, 1954 (republication of a work first published in 1912). For a complete bibliography of studies on Rousseau in Italy, see D. Felice, 'Jean-Jacques Rousseau in Italia: bibliografia (1850-1982)', in *Studi settecenteschi*, 3-4 (1982-3), pp.319-98.

¹⁷ B. Constant, *Principes de politique*, in *Oeuvres*, edited by A. Roulin, La Pléiade, Paris, 1957, p.1107.

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damental constitutional laws of the republic. Constant's recognition of the fact that all political power must be limited and subordinate to the constitution is justly made, but this requirement had already been noted by Rousseau, who never advocated absolute democracy.

In my view, the best interpretation of the social contract is provided not by Hegel or Constant but by Kant. In Kant's analysis this doctrine becomes 'merely an idea of Reason'¹⁸ which has as its goal the elucidation of the fundamental rules of a political constitution which is 'entirely legitimate', that is to say, 'a Republic'. He embraces both the spirit and the letter of Rousseau's conception – the letter, because he defines the legitimate political constitution in terms of a 'republic' (in contrast, as one finds in Rousseau, with despotism). He has grasped the spirit of Rousseau's thought by seeing the social contract as the only device by which theory may provide a ground of legitimacy for the political constitution.

Moreover, when Kant observes that the original contract is 'a union of every individual and private will', he does not seem to accept that this implies the destruction of the 'absolute majesty' of the state. This means that the ground on which the legitimacy of the state rests is defined (from the normative point of view) in terms of individual interests. Instead of interpreting the doctrine of the social contract as an attempt to justify a despotic state which deprives individuals of their liberty and their rights, Kant sees it as providing the ground for a political constitution which guarantees liberty.

The act by which the people constitutes a state for itself, or more precisely, the mere idea of such an act (which alone enables us to consider it valid in terms of right), is the *original contract*. By this contract, all members of the people (*omnes et singuli*) give up their external freedom in order to receive it back at once as members of a commonwealth, i.e. of the people regarded as a state (*universi*). And we cannot say that men within a state have sacrificed a *part* of their inborn external freedom for a specific purpose; they have in fact completely abandoned their wild and lawless freedom, in order to find again their entire and undiminished freedom in a state of lawful dependence (i.e. in a state of right), for this dependence is created by their own legislative will.¹⁹

This text from Kant would not have convinced Constant. The latter would have admitted that the social contract underwrites liberty, but

¹⁸ I. Kant, *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis* (1793), in *Immanuel Kants Werke*, Hildesheim, 1973, vol.6, pp.380–1 (transl. H. Reiss, ed., *Kant's political writings*, Cambridge, 1970, pp.79–80).

¹⁹ I. Kant, *Metaphysische Anfangsgründe der Rechtslehre*, in *Die Metaphysik der Sitten* (1797), in *Immanuel Kants Werke*, Hildesheim, 1973, vol.7, p.122, s.47 (transl. H. Reiss, ed., *Kant's political writings*, p.140).