



5-1985

# Jean-Jacques Rousseau and the Politics of Balance

Tesfaselassie Sebhatu

Winthrop University, sebhatur@gmail.com

Follow this and additional works at: <https://digitalcommons.winthrop.edu/graduatetheses>



Part of the [Arts and Humanities Commons](#)

---

## Recommended Citation

Sebhatu, Tesfaselassie, "Jean-Jacques Rousseau and the Politics of Balance" (1985). *Graduate Theses*. 40.  
<https://digitalcommons.winthrop.edu/graduatetheses/40>

This Thesis is brought to you for free and open access by the The Graduate School at Digital Commons @ Winthrop University. It has been accepted for inclusion in Graduate Theses by an authorized administrator of Digital Commons @ Winthrop University. For more information, please contact [bramed@winthrop.edu](mailto:bramed@winthrop.edu).

May 1985

To the Dean of the College of Arts and Sciences:

We are submitting herewith a thesis written by Tesfaselassie Sebhatu entitled "Jean-Jacques Rousseau and the Politics of Balance." We recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts.

*Dorothy M. Medlin*

\_\_\_\_\_  
Thesis Adviser

*Joyce W. Zdenek*

\_\_\_\_\_  
Committee Member

*Robert W. Lytle*

\_\_\_\_\_  
Dean, College of Arts and Sciences

*Michael Smith*

\_\_\_\_\_  
Chairman, Graduate Council

JEAN-JACQUES ROUSSEAU  
AND  
THE POLITICS OF BALANCE

A Thesis  
Presented to the Faculty  
of the  
College of Arts and Sciences  
in Partial Fulfillment  
of the  
Requirements for the Degree  
of

Master of Arts

in the

Department of French  
Winthrop College

May, 1985

by

Tesfaselassie Sebhatu

## Acknowledgments

I would like to thank Dr. Dorothy M. Medlin for kindling my interest in Rousseau and for her constant encouragement, and Dr. Joseph W. Zdenek for his comments.

Special appreciation is due to Mesgun Sebhatu and Almaz Yilma for their support and help with word processing. I would also like to thank the faculty and staff of the Dacus Library for their encouragement.

Finally, I would like to express my gratitude to Thomas Shealy, Foreign Student Adviser, for being always helpful.



## Table of Contents

|   |    |
|---|----|
| List of abbreviations .....   | iv |
| Introduction .....  | 1  |
| Chapter I. Paradoxes or Misunderstandings .....                             | 7  |
| Chapter II. Sovereignty versus Government .....                             | 32 |
| Chapter III. The General Will versus Majority Rule .....                    | 45 |
| Chapter IV. Participatory Democracy versus<br>Representative Democracy..... | 60 |
| Chapter V. The Natural Law .....  | 76 |
| Conclusion .....  | 88 |
| Bibliography .....  | 93 |

## List of Abbreviations for Works by Rousseau

The following abbreviations are used parenthetically in the text. Page numbers refer to

- O.C.                    Jean-Jacques Rousseau: Oeuvres complètes.  
Ed. Bernard Gagnebin and Marcel Raymond.  
4 vols, Bibliothèque de la Pléiade. Paris:  
Gallimard, 1959-
- CS                      Du Contrat social; ou principes du droit  
politique (1762).
- Confessions            Les Confessions de J.J. Rousseau (I-VI, 1782;  
VII-XII, 1789).
- Considérations        Considérations sur le gouvernement de Pologne  
et sur sa réformation projetée (1772).
- Emile                    Emile ou de l'Éducation (1761).
- Inégalité                Discours sur l'origine et les fondemens de  
l'inégalité parmi les hommes (1755).
- LCB                     Lettre à Christophe de Beaumont (1762).
- LDM                     Lettre à M. de Malesherbes (1762).
- LM                      Lettres écrites de la Montagne (1764).
- Rêveries                Les Rêveries du Promeneur solitaire (1782).

## Introduction

Jean-Jacques Rousseau was born in Geneva on 28 June 1712. His mother died soon after his birth. His father, having a fight with an aristocrat, left Geneva for exile when J. J. Rousseau was ten years old. His maternal uncle, Gabriel Bernard, took care of him and put him in a "pension" in the house of Pastor Lambercier at Bossey where he received for the first time a formal education. For a time he was happy in the simplicity of country life, but one day he was unjustly accused of breaking a comb. Concerning the encounter with the first injustice in his life, Rousseau remarks in his Confessions: "Là fut le terme de la sérénité de ma vie enfantine. Dès ce moment je cessai de jouir d'un bonheur pur, et je sens aujourd'hui même que le souvenir des charmes de mon enfance s'arrête là" (O.C., I, 20).

At that moment, Rousseau was not able to understand that he was a victim of appearance. Later he became very aware of the difference between being (l'être) and appearing (le paraître), or in Jean Starobinski's concise word, between "être-innocent" and "paraître-coupable."<sup>1</sup> Concerning this event, Rousseau writes in his Confessions:

Ce premier sentiment de la violence et de l'injustice est resté si profondément gravé dans mon âme, que toutes les idées qui s'y rapportent me rendent ma première émotion; et ce sentiment, relatif à moi dans son origine, a pris une telle consistance en lui-même, et s'est tellement détaché de tout intérêt personnel,



que mon coeur s'enflamme au spectacle ou au récit de toute action injuste, quel qu'en soit l'objet et en quelque lieu qu'elle se commette, comme si l'effet en retomboit sur moi. (O.C., I, 20)

Due to this episode, Rousseau returned to Geneva to the house of his uncle, who expected Rousseau to serve an apprenticeship in preparation for a career. But Rousseau passed from one job to another, employed at various times as an apprentice engraver, a servant, a tutor, an interpreter, and a secretary.

At Venice where he worked as a secretary of the French Embassy, Rousseau recalls that he was treated by the ambassador as a servant rather than as an office-holder. Because of this kind of treatment, he had a quarrel with the ambassador and was obliged to leave the post.<sup>2</sup> In relation to this episode, Rousseau writes:

La justice et l'inutilité de mes plaintes me laissèrent dans l'ame un germe d'indignation contre nos sotes institutions civiles où le vrai bien public et la véritable justice sont toujours sacrifiés à je ne sais quel ordre apparent, destructif en effet de tout ordre, et qui ne fait qu'ajouter la sanction de l'autorité publique à l'oppression du foible et à l'iniquité du fort. (Confessions, O.C., I, 327)

These experiences of humiliation, maltreatment and economic dependency that he encountered in his life made him see political problems and solutions from the people's perspective. For Rousseau, more than for other philosophes, the concept of freedom and the concept of equality become two sides of the same coin. "La liberté," says Rousseau in his Lettres écrites de la Montagne, "consiste moins à faire sa

volonté qu'à n'être pas soumis à celle d'autrui; elle consiste encore à ne pas soumettre la volonté d'autrui à la nôtre" (O.C., III, 841). Consequently, for Rousseau the political problem to be solved becomes: how can one be free and independent from the will of others within a society? The only solution, for him, is to find an association where the law can be put above man, and where men can obey nothing but the law. According to Rousseau, it is only under this condition of association that people can be both free and equal, ruler and ruled.

The main purpose of our thesis is to examine the unity of Rousseau's political theory through his concepts of sovereignty, general will, representation, and natural law.

To this end, we found it useful to begin with the general view of his philosophy and political thinking which is the subject of our first chapter. Here, we will try to show that his philosophy could not be reduced either to pure sentimentalism or pure rationalism and his political theory either to pure individualism or pure collectivism. In relation to his political writings, in order to determine the source of misunderstanding, we will make a distinction between the doctrine level and the system of realization level that must be made in every social science. Another source of misunderstanding which will be mentioned is the use of terminology and Rousseau's awareness of the difficulty of using common words to express new ideas.

Chapter two will concern the difference between the form of sovereignty and the forms of government that reflects the



distinction between the doctrine level and the system of realization level. Here, we will show that Rousseau, at the doctrine level, stands for democracy against the two extreme positions of despotism and anarchism; at the system of realization level, he stands for an elective aristocratic government against democracy and monarchy.

Chapter three will treat the general will in its essence and its realization or manifestation through the majority vote. Here, we will show that, if the distinction between the two levels is kept in mind and if a balance is maintained between the will of the sovereign people and the force of government, there is no danger of totalitarianism in Rousseau's political system.

Chapter four explores the idea of political representation. We will try to show that, even Rousseau, given the large size of some countries, accepts representative democracy at the practical level, although the idea of participation remains his idée directrice at the principle level.

Chapter five will deal with Rousseau's concept of natural law. Here, we will argue that Rousseau does not reject natural law theory as such; on the contrary, by making a distinction between natural law in the state of nature and in civil society, he reconciles the two extreme positions of the ancients and the moderns.

In all of these, our main goal is not to present Rousseau's political system as true and right, but to show that his political thinking, if it is understood in context, is not contradictory.

Notes to Introduction

<sup>1</sup> Jean Starobinski, Jean-Jacques Rousseau: la transparence et l'obstacle (Paris: Gallimard, 1971), p. 19.

<sup>2</sup> Maurice Cranston, Jean-Jacques: the Early Life and Work of Jean-Jacques Rousseau, 1712-1754 (New York: Norton, 1983), pp. 169-192.



## Chapter I

### Paradoxes or Misunderstandings

Since the problem of the unity of Rousseau's thought and his philosophy is at the center of much debate and the source of many misunderstandings, it is useful to make some comment on these before entering into our specific subject. To try to understand Rousseau's philosophy through the dualistic world view of the Modern Age and the Aristotelian logic of opposition and identity always ends in labeling him as an extremist in his philosophy as in his political theory. But the truth is that Rousseau always tried to hold the balance between two extreme positions, between sentimentalism and rationalism, individualism and collectivism, despotism and anarchism, monarchy and democracy. On the basis of such evidence, we think that Rousseau had sufficient reason to speak sometimes about his critics as his enemies, as his detractors on one hand, and to reiterate the unity and continuity of his thought on the other. In fact, in his Lettre à Christophe de Beaumont (1762), Rousseau explicitly and definitively expresses his idea on this subject matter: "J'ai écrit sur divers sujets, mais toujours dans les mêmes principes: toujours la même morale, la même croyance, les mêmes maximes, et si l'on veut, les mêmes opinions" (O.C., IV, 928).

In this respect, what Leszek Kolakowski says concerning Edmund Husserl's phenomenology as an attempt to save "European culture from skeptical decay,"<sup>1</sup> can be applied, by analogy, to Rousseau's case. The principal aim of Husserl's philosophy was the search for "the absolutely unquestionable foundation of knowledge" against any kind of relativism and skepticism."<sup>2</sup> Kolakowski writes that "Bergson was probably right in saying that every philosopher [in this case E. Husserl] in his life says only one thing, one leading idea or intention that endows all his works with meaning."<sup>3</sup> This remark fits appropriately with Rousseau's case and claim, because his ideas start from "a sudden illumination" that happened to him at the "Bois de Vincennes" on his way to visit Denis Diderot in 1749. In his Lettre à Malesherbes (1762), Rousseau writes:

J'allois voir Diderot alors prisonnier à Vincennes; j'avois dans ma poche un Mercure de France que je me mis à feuilleter le long du chemin. Je tombe sur la question de l'Academie de Dijon qui a donné lieu à mon premier écrit. Si jamais quelque chose a ressemblé à une inspiration subite, c'est le mouvement qui se fit en moi à cette lecture; tout à coup je me sens l'esprit ébloui de mille lumieres; des foules d'idées vives s'y presenterent à la fois avec une force et une confusion qui me jetta dans un trouble inexprimable. . . . Oh Monsieur si j'avois jamais pû écrire le quart de ce que j'ai vû et senti sous cet arbre, avec clarté j'aurois fait voir toutes les contradictions du systeme social, avec quelle force j'aurois exposé tous les abus de nos institutions, avec quelle simplicité j'aurois démontré que l'homme est bon naturellement et que c'est par ces institutions seules que les hommes deviennent méchants. (O.C., I, 1135-1136)<sup>4</sup>

Believing that the goodness of natural man is corrupted by the abuses of our institutions, Rousseau had one goal in mind, to solve the problem of political society by laying individuality



and communality on common ground. To this end, Rousseau in his political philosophy, begins, not from initial chaos,<sup>5</sup> but from a situation in which individual being (l' amour de soi) and species being (la pitié naturelle) are indissolubly united in such a way that a human being is both individual and communal. This idea, of course, is sheer nonsense if we try to understand it through Aristotelian logic that proceeds by exclusion, and also through Hegelian dialectic that moves from thesis to antithesis to synthesis, and again to thesis, etc.<sup>6</sup> Because Rousseau denies the opposition between individuality and sociability at the ontological level, in order to understand Rousseau's idea, we need a specific methodology that can explain, not the relation and solution of contraries, but the co-presence of two terms or parties indissolubly related to one another and at the same time maintaining their distinction. This kind of methodology can be found in the objective idealism of Michele F. Sciacca, an Italian philosopher of this century. Sciacca in his philosophy uses a specific methodology which he calls la dialettica dell'implicanza e della compresenza. This methodology, in Sciacca's word, "afferma senza escludere ed oppone senza risolvere l'un termine nell'altro ma afferma ed oppone includendo".<sup>7</sup> This kind of methodology can help us to comprehend Rousseau's intermediary position between two extreme theses. Rousseau, at the ontological level, does not start from two antithetical terms or contraries, but from two co-present terms (dual unity) mutually necessary to one another beyond the logic of exclusion and the logic of ideal

synthesis of contraries. On this basis, we can see that the difficulty of understanding Rousseau's philosophy in general and his political theory in particular does not come from his ontology that deals with the nature of things, but from the weakness of his epistemology that deals with the knowable about things and the lack of specific methodology appropriate to his ontology. Once the dichotomy between individual and society is commonly accepted as the point of departure to any future political philosophy, it was difficult to challenge the dominant Aristotelian logic of his time. Besides, what does not facilitate the understanding of Rousseau's philosophy is that his ontology, contrary to that of others, is laid on the predominance of sentiment, conscience, and heart over reason.<sup>8</sup> This, on one hand, complicates the relation between sentiment and reason, and on the other, marks Rousseau's original contribution to philosophy and theology. In Emile, Rousseau states:

Je sais seulement que la vérité est dans les choses et non pas dans mon esprit qui les juge, et que moins je mets du mien dans les jugemens que j'en porte, plus je suis sûr d'approcher de la vérité; ainsi ma règle de me livrer au sentiment plus qu'à la raison est confirmée par la raison même. (O.C., IV, 573)

Here, he does not seem to differ much from ontological realism, except his is based on sentiment in collaboration with reason. However, in Du Contrat social, he writes: "Toute justice vient de Dieu, lui seul en est la source; mais si nous savions la recevoir de si haut nous n'aurions besoin ni de gouvernement ni de loix" (O.C., III, 378). From the



combination of these two passages, we can see that Rousseau recognizes the limit of reason, contrary to many philosophes of the Enlightenment, in explaining the richness of what he feels about the reality in his sentiment and conscience. In this, Derathe has reason to consider Rousseau as a "rationalist aware of the limits of reason."<sup>9</sup> This means that Rousseau acknowledges the limit of reason, but he is not against reason as an instrument of the enlightenment of what every person is supposed to feel deeply inside him; on the other hand, however, he is against reason in the sense that it becomes an instrument of passions, of amour-propre; because this later reason, once separated from ontology, risks becoming an independent principle instead of remaining an indispensable light for conscience. Therefore, Rousseau's fear was not of reason in itself, but of reason in its alliance with amour-propre.

Concerning the relation between conscience and reason, Rousseau says in Emile: "La raison seule nous apprend à connoître le bien et le mal. La conscience qui nous fait aimer l'un et haïr l'autre, quoiqu'indépendante de la raison, ne peut donc se développer sans elle" (O.C., IV, 288). Jean Lacroix comments on this passage:

Si la conscience est sentiment, il ne s'ensuit pas que tout sentiment l'exprime. Il y a la sensibilité positive qui dérive de l'amour de soi, et la sensibilité négative issue de l'amour-propre. La conscience est sensibilité positive. Mais en elle-même elle n'est pas connaissance: elle est amour d'un bien qu'elle ignore. Dès que la raison le lui révèle, elle le désire. . . . La conscience ne nous dit pas la vérité des choses mais la règle de nos actions: non ce

qu'il faut penser, mais ce qu'il faut faire. Seulement, pour savoir ce qu'il faut faire, il faut connaître ce qu'on doit penser: La conscience-sentiment a besoin de la conscience-raison.<sup>10</sup>

Therefore, Rousseau makes a clear distinction between loving good and hating evil that depends upon conscience, and knowing good and evil that depends upon reason. Since we do not have innate knowledge of good and evil and knowing them does not mean necessarily loving or hating them, according to Rousseau the interaction between reason and conscience is indispensable for man as moral agent. "Connoitre le bien," says Rousseau in Emile, "ce n'est pas l'aimer, l'homme n'en a pas la connoissance innée; mais sitôt que sa raison le lui fait connoitre, sa conscience le porte à l'aimer: c'est ce sentiment qui est inné" (O.C., IV, 600).<sup>11</sup> Here, it is obvious that our focus must not be on the conflict between reason and conscience, but on their interaction and their proper realms. In order to clarify this relation and avoid the ambiguity involved in the concept of reason, we must keep in mind the distinction between "two concepts of reason" as historically and conceptually explained by I. Fetscher:

The reason that serves the passions corresponds to the modern mechanistic conception, as represented, for example, by David Hume in his Treatise of Human Nature where he actually says: "Reason is and ought only to be the slave of the passions and can never pretend to any other office than to serve and obey them." On the other hand, the conception of reason as a perception of the "order of things"--or, in other words, subjective reason directed toward the objectively and absolutely rational--goes back to the older tradition shared by the Christian and the classical worlds, which Rousseau came to know via the school of Malebranche.<sup>12</sup>



These two reasons, in Jean Lacroix's words, can be called "la raison discursive" and "la raison intuitive." Rousseau explains:

L'art de raisonner n'est point la raison, souvent il en est l'abus. La raison est la faculté d'ordonner toutes les facultés de notre ame convenablement à la nature de choses et à leurs raports avec nous. Le raisonnement est l'art de comparer les vérités connues pour en composer d'autres vérités qu'on ignoroit et que cet art nous fait découvrir. Mais il ne nous apprend point à connaître ces vérités primitives qui servent d'élément aux autres, et quand à leur place nous mettons nos opinions, nos passions, nos préjugés, loin de nous éclairer il nous aveugle, il n'élève point l'ame, il l'énerve et corrompt le jugement qu'il devoit perfectionner. (O.C., IV, 1090)<sup>13</sup>

Once again, Rousseau is not speaking against the intuitive reason that permits him to discover the first truths but criticizing discursive reason, especially, when it takes as its premise the opinions, prejudices, passions that could arbitrarily differ from one person to another. In this context, we can see that limited descriptions of Rousseau as anti-intellectualist, anti-rationalist, and pure sentimentalist are unjustified. Truth to tell, Rousseau is neither rationalist tout court nor sentimentalist tout court, because his sentimentalism is tempered by his reason as well as his rationalism by his sentiment. Ernest H. Wright is correct in saying: "We are not going to argue that Rousseau is a rationalist; he is nothing quite so simple. We have failed only if he still appears a rag of sentimentalism."<sup>14</sup> To

understand the relation between reason and sentiment in Rousseau's philosophy is also one step in understanding his concept of general will which is "l'union de l'entendement et de la volonté" (O.C., III, 380).<sup>15</sup>

As in the concept of reason, we must distinguish also between two concepts of sentiment. In his book entitled The Question of Jean-Jacques Rousseau, E. Cassirer writes:

Rousseau's terminology designates with a single expression the two fundamentally different dimensions into which feeling enters. The word sentiment bears now a purely naturalistic, now an idealistic stamp; it is sometimes used in the sense of mere sentiment (Empfindung), sometimes in the sense of judgment and ethical decision. One must pay careful attention to this double meaning, which, as a matter of fact, appears to have hardly ever been noticed by writers on Rousseau; for, if this double meaning is ignored, the tortuous threads of Rousseau's doctrine threaten to become tangled up again and again. At times, feeling (sentiment) is for Rousseau a mere psychological affect; at times, it is a characteristic and essential action of the soul.<sup>16</sup>

If we take the first meaning as Rousseau's only genuine sentiment, we reduce him to pure sentimentalist and sensualist. As a result, our understanding of his concept of reason and of the general will is impaired. The approach to his thought or insight through either/or argument has caused the split of his philosophy into sentimentalism and rationalism on the basis of heart-reason dichotomy, his political philosophy into individualism and collectivism and his works into earlier and later. On the contrary, Rousseau always stood for an intermediary position between two extreme theses. In relation to this, we can remark that Rousseau was



radical concerning principles, but he was moderate at a practical level. Even in this as often he was misunderstood by many revolutionaries from both sides who claim his ideas as a guide to their actions or a basis for their terrors.

To sum up, not starting from original chaos, but from ontological unity, what Rousseau tried to do was to reestablish the primitive synthesis--disrupted by the corruption of society--by transforming its source from the instinctual level to the rational level and at the same time by keeping its end which is the self-preservation and respect of others' life and good. Rousseau says in Du Contrat social: "Le traité social a pour fin la conservation des contractans" (O.C., III, 376).<sup>17</sup> It is very important to insist again on his philosophy, because in his political system, the dichotomy between the individual and society reflects not Rousseau's ontology of human essence but the empirical or historical existence of man in a civil society. This is not because of his nature, but of the nature of the society in which he lives; accordingly his salvation must come to him from political institutions. This is why Rousseau considers ethics and politics as two terms dialectically related, and why also he makes appeal to the Lawgiver since the constitution is the key to good society. If we take this empirical dichotomy for the ontological one, Rousseau hardly differs from Hobbes who denies that man is by nature sociable. If we translate the passage of mankind from the state of nature into civil society as a sudden passage, against man's nature, from individuality to sociability, we misapprehend the importance of Rousseau's

evolutionary theory of humankind. In Rousseau, the relation between the state of nature and civil society is chronologically sequential; on the contrary, the relation between the individual and society is ontologically simultaneous. By isolating a passage from Emile (O.C., III, 600) and not taking into consideration the ontological relation between the individual and society, P. Bénichou sees a contradiction in Rousseau's thought: "Car l'homme, nous dit Rousseau qui oublie son système, est 'sociable par sa nature'; il est vrai qu'il se reprend aussitôt et ajoute 'ou du moins fait pour le devenir.'"<sup>18</sup> Rousseau's political solution aims to create a new and legitimate association that reflects human nature, respects its natural development, and allows man to live at peace with himself and with other men. According to Hobbes and Locke, man enters into civil society purely to escape the state of nature in order to secure his life or property; according to Rousseau, man enters into social contract in order to overcome his alienated condition in civil society. Therefore, the real conflict, for Rousseau, is between the goodness of human nature and the corrupted society.

Rousseau's approach to political philosophy, not being one-sided, at least theoretically, can avoid a philosophical dilemma stated by J.M. Bochenski:

This is . . . the philosophical antinomy which forms the background for the state in which mankind finds itself today. What is real: man or society? What should be sacrificed for what? What is the end and what



are the means--the whole or the individual? Are concentration camps, in which millions of men suffer endlessly and die, justified because they are useful for society, or should we say that, with respect to us, society has no rights at all; that taxes, military service, traffic laws are all morally unjustified, that we have no duties to a fiction called the state?<sup>19</sup>

For the adherents of the primacy of right over law, this antinomy is a crucial point, because in the last analysis, it leads us to the irreconcilable polarity of the rights of the individual versus the rights of society.

As his philosophy was reduced either to sentimentalism or to rationalism, his political thinking was reduced either to individualism or to collectivism. In his book entitled The Party of Humanity, Peter Gay summarizes very well these conflicting interpretations: "In this arena of interpretation, four Rousseaus were set to battle against one another: the individualist, the collectivist, the confused, self-contradictory, and curiously combining these three, the individualist who shifted in mid-career to collectivism."<sup>20</sup> C. E. Vaughan writes that "the political work of Rousseau, when taken as a whole, presents an unbroken movement from one position almost to its opposite."<sup>21</sup> These two opposite positions, according to Vaughan, are founded in a discrepancy that exists between Rousseau's earlier writing (such as the two Discourses, where he "asserts the freedom of the individual, but of an individual divorced from all communion--it is hardly too much to say, from all connection--with his kind") and his later works (such as the Contrat social and the

Économie Politique, where he "reverses the process, and exalts the claims of the community to utter 'annihilation' of individual interests and rights").<sup>22</sup> But Rousseau himself rejects the existence of this discrepancy between his earlier and later works, as he writes in his Confessions : " Tout ce qu'il y a de hardi dans le Contrat social étoit auparavant dans le Discours sur l'inégalité; tout ce qu'il y a de hardi dans l'Emile étoit auparavant dans la Julie" (O.C., I, 407).<sup>23</sup> In order to be convinced of Rousseau's claim about the unity and continuity of his ideas, at least, between the Discours sur l'inégalité and Du Contrat social, it is important to read carefully the Dédicace and the passage where he speaks about the research to be done concerning "la nature du pacte fondamental de tout Gouvernement," in his Discours sur l'inégalité.<sup>24</sup> On this specific subject, Paul Bénichou confirms Rousseau's claim:

Le Contrat social est la véritable suite du Discours sur l'inégalité, dont il parachève la dialectique dans le sens d'une réforme de l'ordre civilisé. D'ailleurs le Contrat s'articule littéralement, et non pas seulement logiquement, sur le Discours, puisque ce nouvel ouvrage est annoncé dans le Discours même, à l'endroit où il y est question de la naissance des premières sociétés.<sup>25</sup>

Now, if Rousseau's reiterated claim is true, do these contradicting interpretations and accusations come really from the understanding of Rousseau's text, or from an approach to his text through preconceived theories in terms of which it is interpreted? Do not the inherent limitations in our



methodology complicate the task of comprehending the world or a given text in general, and Rousseau's political ideas in particular?

This does not mean, however, that Rousseau's texts are problem-free and he has not a taste for paradoxical expression. Even so, our attention must be focused upon avoiding the great mistake which is to take Rousseau's paradoxical expression for a real paradox, in the sense of contradiction, inherent in human nature. This is clearly stated by Felicity Baker in La Route contraire: "les paradoxes de Rousseau ne postulent nullement un 'homme paradoxal' comparable à celui du Pascal. C'est l'écrivain qui se fait paradoxal afin de communiquer la vision d'une humanité sans conflits. Nous avons dit que ce n'est point pour choquer la raison des lecteurs qu'il se fait paradoxal."<sup>26</sup> This, of course, does not remove all sources of misunderstanding, because Rousseau not only uses ordinary terms to mean different things, but seems to combine two principles, namely the social contract<sup>27</sup> and the general will<sup>28</sup>, which are supposed to belong to two separate political paradigms, based on different ontological categories. The contrast between these two schools, for our purpose, can be better exemplified by John Locke's liberalism, which is based on the ontological premise of the primacy of the individual, and by Hegel's collectivism, which is based on the ontological premise of the community. Locke, starting from the primacy of the individual, reduces the role of political society to an instrument of safeguarding natural rights and securing private property.

On the contrary, Hegel, giving the ontological primacy to the community, views the individual man as "a dialectical moment of society and nothing more."<sup>29</sup> In these two dominant political postulates, the relation between individual and political society is understood in terms of subordination, not of coordination; individual-social split at a premise level and their relation in terms of subordination is at the source of a tension within man himself between his individual and his social dimension, a tension of which Rousseau was very well aware. Rousseau tried to heal the split in his Du Contrat social in which he is committed to "find a common foundation or ground for both individual freedom and the community."<sup>30</sup> Rousseau was far ahead of his time in seeing and going beyond the institutionalized conflict due to these two opposed political postulates. For Rousseau, starting from a primitive synthesis of man as individual-being (self-love, self affirmation) and species-being (pity, self expansion),<sup>31</sup> the individual and the social could not be two different entities, but two sides or aspects of the same reality which is man. For Rousseau, the individual-social split within man himself does not come from his essence, but from his history, i.e. from the fall of man. This initial synthesis makes Rousseau differ from other individualists such as Hobbes and Locke. Therefore, for Rousseau, even man as an individual, in the state of nature, was de facto separated from others; he was not separated from them by his ontological nature.<sup>32</sup> In fact, Rousseau in his Lettre à M. Philopolis (i.e. Charles Bonnet



1720-1793), clearly states that society was natural to human species:

N'oubliez pas, je vous prie, que selon moi la société est naturelle à l'espèce humaine comme la décrépitude à l'individu. . . . Toute la différence est que l'état de vieillesse découle de la seule nature de l'homme et que celui de société découle de la nature du genre humain, non pas immédiatement . . . mais seulement . . . à l'aide de certaines circonstances extérieures qui pouvoient être ou n'être pas, ou du moins arriver plutôt ou plus tard, et par conséquent accélérer ou ralentir le progrès. (O.C., III, 232)

Here what Rousseau is saying is that the de facto absence of society in the state of nature does not mean that society is/was contrary to the nature of man, who had/has within him latent potentialities--such as reason, language, imagination, sociability--that were not yet developed, because, at least, they were not necessary to his conservation; these potentialities could be developed with the concurrence of some external circumstances. Then, for Rousseau, as H. Gouhier points out:

La contingence métaphisique de l'histoire ne permet pas l'alternative: état de nature ou état historique. Une nécessité de fait condamne "l'homme selon la nature" à devenir "l'homme de l'homme": mais l'homme devait-il nécessairement devenir celui-là même qu'il est devenu en fait? Rousseau ne peut songer à un "retour à l'état de nature": est-il pareillement obligé de maintenir le status quo? La question qui se pose n'est donc pas : état de nature ou histoire ? mais : cette histoire ou une autre?<sup>33</sup>

Therefore, Rousseau's so-called primitivism in the Discours sur l'inégalité, instead of reflecting his real intention,

rather tells us how he was misunderstood by his contemporaries and their followers and to what degree his contemporary critics were integrated to the society of their own time. Then, to interpret Rousseau through the dichotomy of state of nature versus society or history, not only is at the source of many contradictory questions, but also caused misapprehension of his very important conceptual frameworks such as the notion of primitive synthesis, of perfectibility, and especially, related to this, his "méthode génétique"<sup>34</sup> that permits him to "trace the gradual stages of man's psychological development from his original animal condition to the state of civilization."<sup>35</sup> "It is only in the context of his genetic concept of man," remarks Fetscher, "that we can . . . explain Rousseau's position vis-a-vis Hobbes' thesis of the 'unsocial sociability' of man on the one hand and the classic doctrine of the social nature of man on the other."<sup>36</sup> Then, Rousseau's so much misunderstood criticism of the progress of arts and sciences, i.e. of civilizations, was neither an invitation to return to the state of nature nor against progress in itself, but against its bad use and the consequences of its negative effects on a man as species being, that estranged him from himself, his fellow man and nature.<sup>37</sup>

In passing, we can remark that even Rousseau's last book, Les Rêveries du promeneur solitaire, should be interpreted not by reducing its theme only to "Rousseau's separation from society and his break with the demands that society makes on him"<sup>38</sup> as proof that he rejects his own political ideas, but by seeing the Rêveries as the reflections of a person aware of



man's tragedy inasmuch as he is caught in existential tension, because of the dichotomy (individual-social, man-citizen, private-public) that led into the polarity of individualism versus absolutism or collectivism concerning political theory.<sup>39</sup> This brings to mind another mind-body split in Cartesian dualism that, in its turn, led many into idealism-materialism polarity as basic categories in understanding human nature and its problems. Although Rousseau did not convince his contemporaries that the scandal of the conflict of civilized man with himself could be overcome, at least he has the merit of formulating the real problem and indicating the direction towards which to look for its resolution.<sup>40</sup>

In a context in which the social contract theory and the general will theory are taken as two mutually exclusive political postulates that justify political obligation on the basis of either self-interest or common interest, we can understand why these contradictory interpretations try to isolate in Rousseau's political text one genuine position based on the assumption that only one of the two contraries can be true. Otherwise, Rousseau is reproached for inconsistency or paradoxes, even of irrationality and madness. In the world view dominated by a dualistic structure, Rousseau is placed in the dilemma to opt either for the social contract theory or for the general will theory, without any intermediary option. From this point of view, we can understand further the logic behind, why his interpreters also are divided about the relation between his different works and

particularly about the role of the natural law in his political system. For some, Rousseau--however with some distinction--remains in the camp of the natural law theorists; and for others, he broke with the natural law tradition in favor of the general will theory by which he is, if not the father, the grand father of an authoritarian or a totalitarian regime.<sup>41</sup> Here, the important point to mention is that Rousseau seems to be the innocent victim of the rivalry between the two dominant political premises of the modern age. In fact both schools suspect him of some kind of betrayal of their premises; the liberals do not forgive him, because of his general will theory, the collectivists because of his social contract theory.<sup>42</sup> In other words, here, Rousseau is accused of being irrational. His critics condemn him for trying to maintain, at the same time, two contradictory positions which are supposed to be in flagrant violation of the Aristotelian logic of opposition and identity. But within this accusation and conflict, we think that Rousseau is neither a liberal tout court nor a collectivist tout court; instead he is a "democrat", and being that, he could be a liberal, as will be shown later in chapter III.

On the basis of what has been said, we can make now a tentative statement that many paradoxes attributed to Rousseau's text can be better explained and justified, at least partially, as a by-product of the collision between two self-consistent but diametrically opposed political principles based upon the individual/society dichotomy. As much as these



two political premises continue to be the only point of departure of political theory, Rousseau's political writings are considered as paradoxes. To escape from this trap, we must study Rousseau, as every original thinker, through two phases. In the first phase, we need to make an effort to see if his conclusions are or are not in harmony with his premises, and not with the premises of others. In the second phase, we must judge whether his premises are right or wrong, in the sense that his premises can explain better than other premises the problems of humankind in the social and political aspects not only of his epoch, but also of ours. But, here our study will be limited to the first phase.

One of the most common sources of misunderstanding comes from not having a clear distinction in mind between two levels in political analysis and therefore not being able to distinguish clearly between premises and conclusions. These two levels are: the doctrine or principle level and the system of realization level or the practical level.<sup>43</sup> The first level is concerned with the principle of political legitimacy and the second with the realization of that principle through political institutions and organizations. This distinction is not only useful and valid; it was present in Rousseau's mind as the structure of his Du Contrat social attests. The first two books of Du Contrat social treat general principles and the other two books the effectiveness and conservation of the same principles at the practical level.<sup>44</sup> By applying this distinction to Rousseau's political writing, we will try to

demonstrate consistency rather than inconsistency.

Related to this is another source of misunderstanding: the use of terminology, because the same term changes its meaning and real value when it is used in different levels and in different contexts. Above all, when every original thinker wants to communicate his intuition or his new theoretical discovery to an audience using ordinary words to express new ideas, he encounters a real problem of communication. This means that the same terms in his mind and in the mind of his audience often do not mean the same things. Therefore, to communicate thoroughly, it is not enough that each refers to his own subjective meanings, but rather to what Charles Taylor calls "intersubjective meanings."<sup>45</sup> The limitation and the insufficiency of language and logic as an exhaustive means of communication and expression was often felt by many intuitionists, because the intuition of which they speak and on which depends the whole meaning of logical conclusion is beyond either affirmation or negation of even well constructed sentences. In this, Rousseau was not an exception. In a footnote to the Du Contrat social, he warns his readers: "Lecteurs attentifs, ne vous pressez pas, je vous prie de m'accuser ici de contradiction. Je n'ai pu l'éviter dans les termes, vû la pauvreté de la langue" (O.C., III, 373). Rousseau realized that contradiction in words easily could be translated into contradiction in thought. At a crucial point, the original thinker's difficulty in communicating with an audience and the audience's in comprehending new ideas or

visions, may result in an involuntary isolation on the part of the thinker and a premature error in judgment on the part of the audience.

With these precautions in mind, we can now approach Rousseau's concepts of sovereignty, general will, representation and natural law in our search for a consistency beyond the apparent paradoxes of his thought, a coherent unity proclaimed by Rousseau himself in Du Contrat social: "Toutes mes idées se tiennent, mais je ne saurois les exposer toutes à la fois" (O.C., III, 377).



Notes to chapter I

- <sup>1</sup> Leszek Kolakowski, Husserl and Search for Certitude (New Haven: Yale University Press, 1975), p. 4.
- <sup>2</sup> Kolakowski, p. 4.
- <sup>3</sup> Kolakowski, p. 4.
- <sup>4</sup> See Confessions, O.C., I, 351; Emile, O.C., IV, 310-311.
- <sup>5</sup> See Emile, O.C., IV, 245.
- <sup>6</sup> See Hannah Arendt, Willing (New York: Harcourt Brace Jovanovich, 1978), pp. 39-51.
- <sup>7</sup> Michele F. Sciacca, Atto ed essere, IV ediz. (Milano: Marzorati, 1963), p. 23.
- <sup>8</sup> See Ernest H. Wright, The Meaning of Rousseau (New York: Russell & Russell, 1963), pp. 25-26; Alfred Cobban, Rousseau and the Modern State, 2nd. ed. (Hamden, Conn.: Archon Books, 1964), pp. 92-93.
- <sup>9</sup> Quoted in Peter Gay, The Party of Humanity (New York: Norton, 1971), p. 233.
- <sup>10</sup> Jean Lacroix, "La conscience selon Rousseau", in Jean Jacques Rousseau et la crise contemporaine de la conscience, eds. J.-L. Leuba et al. (Paris: Beauchesne, 1980), pp. 94-95.
- <sup>11</sup> See Pierre Burgelin, Notes to Emile, in O.C., IV, 1560-61, n. 1-2; J.H. Broome, Rousseau: a Study of His Thought (London: E. Arnold, 1963), p. 120.

<sup>12</sup> I. Fetscher, "Rousseau's Concepts of Freedom in the Light of His Philosophy of History," in Liberty: Nomos IV, ed. Carl J. Friedrich (New York: Atherton Press, 1966), p. 42. See also Robert Mauzi, L'idée du bonheur dans la littérature et la pensée françaises au XVIIIe siècle, 2nd ed. (Paris: A. Colin, 1965), p. 521.

<sup>13</sup> Mauzi, p. 541, p. 259.

<sup>14</sup> Wright, p. 162.

<sup>15</sup> See J. G. Merquior, Rousseau and Weber (London: Routledge & Kegan Paul, 1980), p. 19.

<sup>16</sup> Ernst Cassirer, The Question of Jean-Jacques Rousseau, trans. and ed. Peter Gay (New York: Columbia University Press, 1954), p. 110.

<sup>17</sup> See also O.C., III, 419-420.

<sup>18</sup> Paul Bénichou, "Réflexions sur l'idée de nature chez Jean-Jacques Rousseau," in Annales de la Société Jean-Jacques Rousseau 1972-77, t. 39 (Genève: A. Julien, 1905-), p. 43.

<sup>19</sup> J.M. Bochenski, Philosophy: an Introduction (New York: Harper & Row, 1972), pp. 99-100.

<sup>20</sup> Gay, p. 214. See also Cobban, pp. 13- 31; J.G. Merquior, pp. 35-56.

<sup>21</sup> C. E. Vaughan, Introduction to The Political Writings of Jean-Jacques Rousseau, vol. I (1915; rpt. New York: Wiley, 1962), p. 80.

<sup>22</sup> Vaughan, p. 5.

<sup>23</sup> See LCB, O.C., IV, 933-934.

<sup>24</sup> See O.C., III, 111-121; 184-185.

25 Bénichou, p. 30.

26 Felicity Baker, "La Route contraire," in Reappraisals of Rousseau, eds. Simon Harvey et al. (Totawa, N.J.: Barnes & Noble Books, 1980), p. 156.

27 See Vaughan, Introd. to The Political, vol. 1, p. 1; Pierre Méthais, "Contrat et volonté générale selon Hegel et Rousseau," in Hegel et le siècle des lumières, ed. Jacques d'Hondt (Paris: Presses Universitaires de France, 1974), p. 103, p. 115.

28 See Gay, p. 217.

29 Bochenski, p. 99.

30 Paul Ricoeur, Main Trends in Philosophy (New York: Holmes & Meier, 1979), p. 218.

31 See Inégalité, O.C., III, 125-126, 155-157; I. Fetscher, p. 38.

32 See Inégalité, O.C., III, 162; Robert Derathé, Jean Jacques Rousseau et la science politique de son temps (Paris: J. Vrin, 1970), p. 163.

33 Henri G. Gouhier, Les méditations métaphysiques de Jean Jacques Rousseau (Paris: J. Vrin, 1970), pp. 23-24.

34 See Derathé, pp. 132-133, p. 163.

35 Arthur O. Lovejoy, Reflections on Human Nature (Baltimore: Johns Hopkins Press, 1968), p. 149.

36 Fetscher, p. 37.

37 See préface to Narcisse, O.C., II, 959-974. See also Robert Wolker, "The Discours sur les sciences et les arts and Its Offspring: Rousseau in Reply to His Critics," in



Reappraisals of Rousseau, ed. Simon Harvey et al. (Totawa, N.J.: Barnes & Noble Books, 1980), pp. 250-278.

<sup>38</sup> William T. Bluhm, "Freedom in the Social Contract: Rousseau's Legitimate Chains," Polity, XVI, No. 3 (1984), 378.

<sup>39</sup> See James Ogilvy, Many Dimensional Man (New York: Harper & Row, 1979), pp. 61-67.

<sup>40</sup> See Paul Ricoeur, Histoire et vérité (Paris: Seuil, 1964), pp. 252-255.

<sup>41</sup> See Bertrand Russell, A History of Western Philosophy (New York: Simon & Schuster, 1972), p. 701.

<sup>42</sup> See Cassirer, p. 63.

<sup>43</sup> This general distinction I owe to lectures in social ethics by Arthur F. Utz, my former professor at the University of Fribourg, Switzerland, 1969-70.

<sup>44</sup> See J. H. Broome, p. 54; Derathé, Introd. to CS [1ère version], O.C., III, p. LXXXVI.

<sup>45</sup> See Charles Taylor, "Interpretation and the Sciences of Man," in Interpretative Social Science, eds. Paul Rabinow and William M. Sullivan (Berkeley: University of California Press, 1979), pp. 25-71.

## Chapter II

### Sovereignty versus Government

Rousseau was aware of his predecessors' and his contemporaries' inability to distinguish between the concept of sovereignty and government. In order to understand Rousseau's originality, we will maintain his implicit distinction between the form of sovereignty and the forms of government. The former refers to the doctrine level, and the latter to the system of realization level. If these are not kept distinct, we can easily misapprehend the original contribution of Rousseau to political theory.

At the sovereignty level, Rousseau has no choice to make: democracy is the only legitimate form. Its two extremes, despotism (unity without diversity) and anarchism (diversity without unity) are the signs of the disintegration of the body politic.<sup>1</sup> At the government level, three forms are possible: democracy, aristocracy, and monarchy.<sup>2</sup> This classification of governments, as Emile Durkheim remarks, is made "according to the number of persons who participate in them."<sup>3</sup>

At the doctrine level, we have Rousseau's criterion (democracy) to discriminate the legitimate from the illegitimate form of sovereignty, since, here, Rousseau is dealing only with the general principles that would be valid and legitimate whatever the circumstances. On the contrary,

at the system of realization level, Rousseau has no a priori criterion to say that a specific form of government is better than the others, as Rousseau explains in Du Contrat social: "On a de tous tems beaucoup disputé sur la meilleure forme de Gouvernement, sans considérer que chacune d'elles est la meilleure en certains cas, et la pire en d'autres" (O.C., III, 403). Rousseau has, however, an a posteriori criterion to prefer one form to another. Indeed, this preference is set forth in his Lettres écrites de la Montagne:

Les diverses formes dont le Gouvernement est susceptible se réduisent à trois principales. Après les avoir comparées par leurs avantages et par leurs inconvéniens, je donne la préférence à celle qui est intermédiaire entre les deux extrêmes, et qui porte le nom d'Aristocratie. (O.C., III, 808)

Constantly maintaining this distinction, Rousseau clearly stated in Lettres écrites de la Montagne that he was treating political science in a very original way:

Les fondemens de l'Etat sont les mêmes dans tous les Gouvernemens, et ces fondemens sont mieux posés dans mon Livre que dans aucun autre. Quand il s'agit ensuite de comparer les diverses formes de Gouvernement, on ne peut éviter de peser séparément les avantages et les inconvéniens de chacun : c'est ce que je crois avoir fait avec impartialité. (O.C., III, 811)

His new contribution to political theory becomes more explicit when Rousseau criticizes his precursors, especially, as he respectfully comments on Montesquieu's approach to the



study of political principles in Emile by name and in Du Contrat social by allusion. " In this respect," E. Cassirer remarks, "he [Rousseau] drew a sharp line between his own problem and the problems of the empirical sociologist. He reproaches even Montesquieu for not having gone back to the basic principles of law and for having been content to give a descriptive comparison of existing forms of law."<sup>4</sup> In Emile, Rousseau writes:

Le seul moderne en état de créer cette grande et inutile science [le droit politique] eut été l'illustre Montesquieu. Mais il n'eut garde de traiter des principes du droit politique; il se contenta de traiter du droit positif des gouvernemens établis, et rien au monde n'est plus différent que ces deux études. (O.C., IV, 836)

In Du Contrat social, he says:

Voilà pourquoi un Auteur célèbre a donné la vertu pour principe à la République . . . mais faute d'avoir fait les distinctions nécessaires, ce beau génie a manqué souvent de justesse, quelquefois de clarté, et n'a pas vu que l'autorité Souveraine étant par tout la même, le même principe doit avoir lieu dans tout Etat bien constitué, plus ou moins, il est vrai, selon la forme du Gouvernement. (O.C., III, 405)

From these two passages, we can understand that Rousseau is dealing with the principle of political right, rather than with a descriptive comparison of positive laws of already established governments as Montesquieu and others had done, because, for Rousseau, the problem of political principle is

not the question of facts and of their relation via comparison, but that of right. Therefore, as Rousseau indicates in his Lettre à M. le Marquis de Mirabeau (1767), the answer to the problem of sovereignty must be found either in his position, which stands for law above man, or in Hobbes', which stands for man above law:

Je ne vois point de milieu supportable entre la plus austère démocratie et le hobbisme le plus parfait: car le conflit des hommes et des lois, qui met dans l'État une guerre intestine continuelle, est le pire de tous les états politiques. 5

By this statement, Rousseau not only marks the boundary to be raised between democracy and arbitrary despotism, but also radically rejects the Physiocrats' position which is a "despotisme légal." Rousseau reduces this latter position, highly respected among many philosophes, to "deux mots contradictoires, qui réunis ne signifient rien. . . ."6

Concerning the forms of government at the system of realization level, in his Lettre à M. le Marquis de Mirabeau, Rousseau so clearly points out: "La science du gouvernement n'est qu'une science de combinaisons, d'applications et d'exceptions, selon les temps, les lieux, les circonstances. Jamais le public ne peut voir avec évidence les rapports et le jeu de tout cela."7 Therefore, the criterion, abstractly speaking, for the best or the worst forms of government is related to many concrete factors such as time, size of territory and of population, climates, and other contingent



circumstances. In addition, in his Lettres écrites de la Montagne, Rousseau defines the government in precise terms: ". . . le gouvernement . . . est un corps intermédiaire établi entre les sujets et le Souverain pour leur mutuelle correspondance, chargé de l'exécution des Loix et du maintien de la Liberté, tant civile que politique" (O.C., III, 808).<sup>8</sup> Then, the concept and the necessity for government as intermediary is related to Rousseau's distinction between the people as sovereign and the people as subjects.

To sum up, the general distinction between the sphere of sovereignty and the sphere of government is nicely and precisely stated in his Lettres écrites de la Montagne: "On doit se souvenir ici que la constitution de l'Etat et celle du Gouvernement sont deux choses très distinctes, et que je ne les ai pas confondues. Le meilleur des Gouvernemens est l'aristocratique; la pire des souverainetés est l'aristocratique" (O.C., III, 808-809).

One of Rousseau's original discoveries on this subject matter is the clear distinction to be made between sovereignty and government. The concept of sovereignty, before him, denotes legislative and executive powers in the hands either of one person, of a few nobles, or of the whole people. Indeed, Derathé points out:

Avant Rousseau, les juristes et les écrivains politiques ne font . . . aucune différence entre le gouvernement et la souveraineté. S'il en est ainsi, c'est tout d'abord parce que, pour eux, la puissance exécutive est une partie de la souveraineté au même



titre que la puissance législative, ou d'autres droits comme le pouvoir judiciaire ou le droit de faire la guerre et la paix.<sup>9</sup>

For this very reason, Rousseau criticizes Montesquieu's political analysis as great and useless, because, not making a distinction between sovereignty and government, Montesquieu tried to identify and locate in each different form of government its proper principle such as virtue for democracy, moderation for aristocracy, honor for monarchy and fear for despotism. This kind of approach to political study led to the discussion about the best form of government by comparing them to each other. Rousseau, not recognizing any legitimate form of sovereignty other than popular sovereignty, can say against Montesquieu that virtue must be the principle of all legitimate governments, and not limited to that of democracy.<sup>10</sup>

For Rousseau, the essence of democracy, at the form of sovereignty level, consists in the subordination of the executive power held by the different forms of government to the sovereignty of the people.<sup>11</sup> On the condition that this relation of subordination could be maintained, at least theoretically, all forms of government are considered as democratic, consequently legitimate. For the same reason, as we shall see later, Rousseau was not in favor of democracy, at the form of government level, because at this precise point the relation of subordination between the sovereignty and the executive power becomes less.<sup>12</sup> Even hypothetically speaking,

when democracy at the sovereignty level and at the form of government level coincide de facto, they must remain always separated de jure, as particular wills remain separated de jure from the general will even in the case of unanimity.<sup>13</sup> The reason for this, at least one of the reasons, is explained by Derathé:

Sans doute il n'est pas impossible qu'une volonté particulière soit d'accord avec la volonté générale, ou l'intérêt du prince avec celui de l'État, comme le soutiennent les jurisconsultes, mais cet accord, purement fortuit, ne saurait être durable ni constant. Il n'y a donc que des inconvénients à vouloir substituer une volonté particulière à la volonté générale.<sup>14</sup>

Besides, sovereignty and the government are separated in their sources. Sovereignty is instituted by the act of the social pact in unanimity basis and government is established by the act of law.<sup>15</sup>

To illustrate better the distinction between sovereignty and government, we will now refer to the concept of democracy as the most explicit example. Rousseau does not present democracy as the best form of government. In Du Contrat social, he writes: "S'il y avoit un peuple de Dieux, il se gouverneroit Démocratiquement. Un Gouvernement si parfait ne convient pas à des hommes" (CS, O.C., III, 406). And, in a Lettre à François-Henri d'Ivernois (1767), he adds: "Je ne suis pas visionnaire, et dans le Contrat Social je n'ai jamais approuvé le gouvernement Démocratique."<sup>16</sup> In addition, democracy at this level, sounds almost self-contradictory: "Un



peuple qui gouverneroit toujours bien n'auroit pas besoin d'êtré gouverné" (CS, O.C., III, 404).

Therefore, according to Rousseau, democracy as a form of government in which it is difficult to discern sovereign from magistrate, or sovereignty from government, would be reliable only to men as perfect as Gods, but since they are not: "il n'y a pas de Gouvernement si sujet aux guerres civiles et aux agitations intestines que le Démocratique ou populaire" (CS, O.C., III, 405). In this specific context, Rousseau's affirmation, at the principle level, that "Tout Gouvernement légitime est républicain" [i.e. démocratique] (CS, O.C., III, 380),<sup>17</sup> and his assertion, at the system of realization level, that "A prendre le terme dans la rigueur de l'acception, il n'a jamais existé de véritable Démocratie, et il n'en existera jamais"(CS, O.C., III, 404) are not in contradiction, if and only if they are taken at their appropriate level.

On this subject, we can only misunderstand Rousseau's ideas, if we confuse the distinction made by him between sovereignty and government, legislative authority and executive power, and consequently their specific roles and relations. About the confusion made on this distinction by his critics, Rousseau, in his Lettres écrites de la Montagne, makes the following observations:

La constitution démocratique a jusqu'à présent été mal examinée. Tous ceux qui en ont parlé, ou ne la connoissoient pas, ou y prenoient trop peu d'intérêt, ou avoient intérêt de la présenter sous un faux jour. Aucun d'eux n'a suffisamment distingué le Souverain du



Gouvernement. Il n'y a point d'Etat où ces deux pouvoirs soient si séparés, et où l'on ait tant affecté de les confondre. Les uns s'imaginent qu'une Démocratie est un Gouvernement où tout le Peuple est Magistrat et Juge. D'autres ne voyent la liberté que dans le droit d'élire ses chefs, et n'étant soumis qu'à des Princes, croient que celui qui commande est toujours le Souverain. (O.C., III, 837-838)

And again he illustrates this distinction by comparing the monarchic system with the democratic one:

Dans les Monarchies où la puissance exécutive est jointe à l'exercice de la souveraineté, le Gouvernement n'est autre chose que le Souverain lui-même, agissant par ses Ministres, par son Conseil, ou par des Corps qui dépendent absolument de sa volonté. Dans les Républiques, surtout dans les Démocraties, où le Souverain n'agit jamais immédiatement par lui-même, c'est autre chose. Le Gouvernement n'est alors que la puissance exécutive, et il est absolument distinct de la souveraineté. (LM, O.C., III, 770-771)

In Rousseau's political thinking, sovereignty and government differ also in their functions. The sovereign people has a function to legislate and government a function to apply existing laws to particular cases. Rousseau is very explicit in this matter:

Nous avons vu que la puissance législative appartient au peuple, et ne peut appartenir qu'à lui. Il est aisé de voir au contraire, par les principes ci-devant établis, que la puissance exécutive ne peut appartenir à la généralité, comme Législatrice ou Souveraine; parce que cette puissance ne consiste qu'en des actes particuliers qui ne sont point du ressort de la loi, ni par conséquent de celui du Souverain, dont tous les actes ne peuvent être que des lois. (CS, O.C., III, 395-396)

Within the context of this distinction and this relation of subordination of the executive power to the legislative power, we can see that there is no contract of submission (also called of government) between the people and the magistrates. So, Rousseau continues:

ceux qui prétendent que l'acte par lequel un peuple se soumet à des chefs n'est point un contract, ont grande raison. Ce n'est absolument qu'une commission, un emploi dans lequel, simples officiers du Souverain, ils exercent en son nom le pouvoir dont il les a faits dépositaires, et qu'il peut limiter, modifier et reprendre quand il lui plait, l'aliénation d'un tel droit étant incompatible avec la nature du corps social, et contraire au but de l'association. (CS, O.C., III, 396)

If the subordination of the executive power to the sovereign people is Rousseau's criterion of the genuine democracy, we could not understand Ellenburg's statement that "the form of legitimate government in every free state must be temporarily democratic on two occasions, when government is first established and when magisterial tenure is reviewed."<sup>18</sup> Does this really mean that the form of legitimate government is not democratic except on these two occasions? If our understanding is right, Ellenburg's distinction between legitimate government and the form of legitimate government seems to conform to Rousseau's distinction between sovereignty and the forms of government. If this is the case, we can not see a paradox between standing for democracy at the principle level and for elective aristocracy at the practical level.



Ellenburg says:

If the operation of legitimate government confirms Rousseau's anarchism in that such a government does not govern, there is nevertheless a paradox concerning the form of legitimate government: Rousseau's demand for literal self-government finds inexpedient a direct democracy and favors an aristocracy selected by lot.<sup>19</sup>

We think this paradox could come from the author's attempt to explain Rousseau's whole political system on the basis of the antithesis "between liberty and slavery," consequently between democracy and despotism.<sup>20</sup> By insisting much on the dichotomy between liberty and slavery, Ellenburg finds it difficult to understand the idea of "legislator," "divided vote in a legislative assembly" and "punishment" in Rousseau's political system, because logically he takes them as an obvious challenge to Rousseau's "egalitarian principle of political right," i.e. to self-government.<sup>21</sup> And on the other hand, he excludes any concept of representation, because it confirms his concept of "egalitarian imperative." However, in Du Contrat social, Rousseau does not exclude, a direct democracy at the form of sovereignty level, but excludes representative democracy at this same level. And Rousseau prefers aristocracy to democracy at the form of government level, in the sense of direct exercise of the executive power by the entire people.



Notes to chapter II

<sup>1</sup> See CS, O.C., III, 397, 422-423.

<sup>2</sup> See CS, O.C., III, 404-413; Emile, O.C., IV, 846-847.

<sup>3</sup> Emile Durkheim, Montesquieu and Rousseau (Ann Arbor: Univ. of Michigan Press, 1965), p. 124. See also CS, O.C., III, 402-403; LM, O.C., III, 808.

<sup>4</sup> Ernst Cassirer, Rousseau, Kant and Goethe, trans. James Gutmann et al. (New York: Harper & Row, 1965), p. 34.

<sup>5</sup> Lettre à M. le Marquis de Mirabeau, in Vaughan, ed., The Political Writings of Jean-Jacques Rousseau, v. 2, p. 161.

<sup>6</sup> Lettre à M. le Marquis de Mirabeau, in Vaughan, v. 2, p. 161.

<sup>7</sup> Lettre à M. le Marquis de Mirabeau, in Vaughan, v. 2, p. 159.

<sup>8</sup> See CS, O.C., III, 396, 398-399.

<sup>9</sup> Derathé, Jean-Jacques Rousseau, p. 385. See CS, O.C., III, 370-371.

<sup>10</sup> See Vaughan, Introduction, v. 1, pp. 61-62.

<sup>11</sup> See CS, O.C., III, 399-400.

<sup>12</sup> See CS, O.C., III, 432.

<sup>13</sup> See CS, O.C., III, 371.

<sup>14</sup> Derathé, Jean-Jacques Rousseau, p. 266. See CS, O.C., III, 368-369.

15 See CS, O.C., 434.

16 In R. A. Leigh, ed., Correspondance complète Jean Jacques Rousseau, t. XXXII (Oxford: Voltaire Foundation at the Taylor Institution, 1978), p. 89.

17 See Derathé, Introduction to Du Contrat social, in O.C., p. CVII.

18 Stephen Ellenburg, Rousseau's Political Philosophy (Ithaca: Cornell University Press, 1976), p. 263.

19 Ellenburg, Rousseau's Political, p. 262.

20 See Ellenburg, Rousseau's Political, pp. 117-143.

21 See S. Ellenburg, "Rousseau and Kant: Principles of Political Right," in Rousseau, after Two Hundred Years, ed. R. A. Leigh (Cambridge: Cambridge University Press, 1982), pp. 3-15.

## Chapter III

### The General Will versus Majority Rule

To understand the possible conflict between the general will and the majority rule, it is useful to clarify first the meaning of democracy in its relation to the concept of liberalism. The term democracy is ambiguous, because its true meaning depends on the context in which it is used. For our present purpose, the ambiguity of democracy comes from its association with the concept of liberalism. This association complicates our understanding of the sense in which Rousseau could be called democrat or liberal. As J. Salwayn Schapiro remarks in his book entitled Liberalism: "Hitherto antithetical in their meaning, the terms 'liberalism' and 'democracy' became interchangeable."<sup>1</sup> To have some clear ideas about the relations implied between democracy and liberalism, and consequently to avoid a confusing frame of analysis, we find it useful to refer to the ideas of two authors of the twentieth century, namely George Santayana (1863-1952) and Yves R. Simon (1903-1961).

Santayana points out the danger of the commonly accepted association of liberalism with democracy that leads to the doctrine of tyranny of the majority rule over minority in



which the latter is subordinate to the former. To awaken us from this association, he uses this shocking phrase, at least at first glance: "to be liberal is contrary to the genius of democracy."<sup>2</sup> For Santayana, democracy requires "the single mind and temper irresistibly swaying the whole people."<sup>3</sup> This requirement is in total disagreement with the spirit of liberalism which is "individualistic, respectful towards things alien, new, or unknown; it welcomes diversity; it abhors compulsion; it distrusts custom."<sup>4</sup>

On the basis of this distinction, Santayana draws an important observation that needs to be quoted at length:

It would be a violent tyranny to make majorities absolute if, in a democracy the majority and the minority were not much alike. To yield on a question of procedure, of persons, of minor policy is easy for the minority; that minority is not thereby robbed of any fundamental liberty or outraged in any rooted habit. But to yield up one's soul, because the devil has a majority of one is not in human nature. Democracies must either have a single soul--the minority being in agreement with the majority in every important matter--or it must not touch the soul at all, but be itself only a matter of procedure, a convenient form of government so long as government is of no great consequence.<sup>5</sup>

This distinction between democracy and liberalism enables us to understand the relation between the general will and majority rule in Rousseau's political framework. If we confuse democracy with liberalism, there is a risk of considering the disagreement between majority and minority will as a clash of

principles, instead of as a technical disagreement about the best way to realize and promote the common interest. This was not a crucial problem in Rousseau's mind, because he was very well aware of it. Rousseau opposed Grotius on this matter, as he states in Du Contrat social:

En effet, s'il n'y avoit point de convention antérieure, où seroit, à moins que l'élection ne fut unanime, l'obligation pour le petit nombre de se soumettre au choix du grand, et d'où cent qui veulent un maître ont-ils le droit de voter pour dix qui n'en veulent point? La loi de la pluralité des suffrages est elle-même un établissement de convention, et suppose au moins une fois l'unanimité. (O.C., III, 359)

In this context, the decision made by majority vote has no validity unless it presupposes the existence of a previous unanimous agreement upon fundamental principles. Therefore, in Rousseau's political system, the relation between majority and minority creates less problem, because this difficulty is not placed at the principle level, but at the political process level. For this reason, the accusation of the majority's tyranny over minority becomes a serious problem, if and only if, by extrapolation we assume, as A. Cobban remarks that "the sovereignty of the general will means the sovereignty of the people, which in turn is equated to the tyranny of the majority."<sup>6</sup> But Rousseau, as Cobban adds, was far from "identifying the will of the sovereign with that of the majority."<sup>7</sup>

Yves R. Simon, in his book entitled Philosophy of Democratic Government, shows the subtle and indirect relation



between liberalism and democracy:

Liberalism, understood with philosophic thoroughness, implies that principles themselves are thrown into the universal competition of opinions. Democracy does not imply liberalism, but it does demand a discussion of means freely conducted in all parts of society. In so far as it is impossible to trace a clear line between means to be deliberated on and ends or principles to be kept above deliberation, democracy implies a state of affairs in which accidents favorable to liberal attitudes and doctrines are likely to be more frequent than elsewhere. It would be inaccurate to speak of an essential connection between liberalism and democracy and equally inaccurate to deny that they are connected in some fashion.<sup>8</sup>

Therefore, for Simon, the real problem in democracy is

to assert principles in such a way as not to jeopardize the free discussion of means, and to insure free discussion without jeopardizing the principles without which social life no longer has end or form. The risks proper to democratic practice demand that the assertion of principles be more profound, more vital, and more heartfelt than elsewhere. Unless this assertion is embodied in the living essence of community life, it will be nonexistent. Bureaucratic procedure cannot do a thing about it. A democratic society that loses its spirit is readily delivered to disintegration, for it no longer has any means of asserting its principles.<sup>9</sup>

If we keep in mind this distinction between liberalism and democracy, we can avoid accusing Rousseau of totalitarianism or anarchism on the basis of an either/or argument. It is not easy to label Rousseau either as collectivist or individualist, because he could be liberal and pragmatic concerning the discussion upon the best means of realization, and illiberal and democrat concerning the



principles of political right. In fact, he is a democrat, in the sense that in his political thinking sovereignty resides and remains in the hands of the people, whatever the form of government, and he is a liberal in the sense that he accepts decisions or laws passed by a majority of votes.<sup>10</sup> Therefore, to accuse Rousseau of totalitarianism is to confuse his key concepts of sovereignty based on the general will and government based on force, in which the force of government is subordinate to the will of the sovereign people.

On the basis of these general remarks, we can now treat the source of misunderstanding between the general will at the principle level and at the realization system level that created so many contradictory questions and condemnations. This distinction is nothing other than the distinction of the general will between its essence and its manifestation as expressed in the popular assembly.

Rousseau, at the principle level, speaks about the general will, in its essence, as "always constant," "always right," "pure, unchanging," and general in its "purpose as well as in its nature." On the contrary, at the system of realization level, he speaks about the general will as determined by the expressed vote of the majority. Accordingly, at the principle level, Rousseau speaks of the general will as inalienable, indivisible and indestructible, but, at the system of realization level, he admits the conflict between the general will and particular wills.

If the relation between majority and minority is placed in the social context where there is no common principle and interest, it is obvious that their relation becomes a very serious problem. Chaim Perelman points out this problem in his article entitled "Rhetoric and Politics":

In order for a democratic regime to function, that is, in order for a minority to accept the decision of the majority, after deliberation, the values common to all members of the community must be considered more fundamental than those which tend to separate it. Without these values, without the spiritual unity which the epideictic discourse properly reinforces, there is neither a majority nor a minority, rather two antagonistic groups which clash, where the strongest group dominates the weakest and where nothing counts except the power struggle.<sup>11</sup>

Then, if we interpret Rousseau's relation between minority and majority within the context of homogeneous society that has common value, we could lessen the problem concerning the general will as always right, always general in its source and its object in one hand, and the general will as expressed by majority votes. In fact, Rousseau explicitly says the subject of discussion by the assembled citizens is not about the rightness or the wrongness of the general will, but if the proposed laws conform with the general will or not:

Quand on propose une loi dans l'assemblée du Peuple, ce qu'on leur demande n'est pas précisément s'ils approuvent la proposition ou s'ils la rejettent, mais si elle est conforme ou non à la volonté générale qui est la leur; chacun en donnant son suffrage dit son avis là-dessus, et du calcul des voix se tire la déclaration de la volonté générale. (CS, O.C., III, 440-441)



This passage, to put it in Cassirer's judicious words, "would seem to indicate that the content of the general will could be determined purely quantitatively, by the simple counting of individual votes."<sup>12</sup> But, for Rousseau, the content of the general will, at the principle level, is not an issue of the second chapter of book four of the *Du Contrat social*. Moreover, where Rousseau speaks about the general will at the principle level, he writes : "ce qui généralise la volonté est moins le nombre des voix, que l'intérêt commun qui les unit" (CS, O.C., III, 374). What aggravates the problem is that the concept of the general will as determined by counting votes is preceded by the following passage:

Le citoyen consent, à toutes les loix, même à celles qu'on passe malgré lui, et même à celles qui le punissent quand il ose en violer quelqu'une. La volonté constante de tous les membres de l'Etat est la volonté générale; c'est par elle qu'ils sont citoyens et libres. (CS, O.C., III, 440)

The difficulty in understanding these two passages concerning the general will as constant and as determined by votes is well formulated in Ellenburg's essay on Rousseau and Kant, where he writes: "A lot is at stake in the interpretation of that familiar and obscure passage in the *Social Contract* where Rousseau, invoking the general will as the 'constant will' of all citizens, claimed that outvoted citizens have also consented to all laws."<sup>13</sup> Richard Dagger, who has written a



very important article entitled "Understanding the General Will," suggests a distinction between the and a general will in order to explain the relation between voting and the general will. However, because this distinction is not clearly implicit in Rousseau's Du Contrat social, Dagger writes: "Rousseau's mysterious remarks about the relationship between voting and the general will . . . have still to be explained."<sup>14</sup> Margaret Canovan puts the difficulty this way: "majority decision does not fit comfortably at all into his theory. After all, how can a defeated minority be said to be free and ruled by their own laws when the measure they have voted against passes over their opposition?"<sup>15</sup>

The first two authors, we believe, agree that the passages quoted from Rousseau's Du Contrat social cannot be interpreted as a confirmation of majority rule, because, in Rousseau's case, the majority can err in its interpretation of the general will. For this reason, as Ellenburg pointed out, "Rousseau . . . did not even attempt to defend a majority's right to rule a minority."<sup>16</sup>

Rousseau was aware that the problem of the divided vote in an assembly of the people concerning legislative matters, when it is taken out of its context, could be subject to question; consequently, in anticipation of his critics, he formulates himself the objection: "On demande comment un homme peut être libre, et forcé de se conformer à des volontés qui ne sont pas les siennes. Comment les opposans sont-ils libres et soumis à des loix auxquelles ils n'ont pas consenti?" (CS,

O.C., III, 440). And immediately in the following paragraph, Rousseau answers: "Je reponds que la question est mal posée" (CS, O.C., III, 440). Because, in Rousseau's political system, the separation between majority and minority at the principle level is nonsense. This distinction is admitted at the practical level either because of our limitation of knowledge or because of our selfish interest. The general will that guides and unites the people cannot be tied to numbers, but to what is the best for every citizen, therefore for each person. In this context, the counting of votes is taken as a sound sign that the majority opinion likely approximates the general will rather than that of the minority. J. H. Broome points out that Rousseau

considers voting, not in terms of absolute or wrongness, but in a perfectly reasonable and commonsense way, as the giving of estimates of the long-term interest of the community. This enables the community to exploit in its actions such probability-value as is vested in majority opinion; but it is also offers the great political advantage of holding open a door to reconciliation.<sup>17</sup>

This means, the common interest, in terms of ours and not of others, unites us with regard to the end and the necessary means. Rousseau says: "Qui veut la fin veut aussi les moyens" (CS, O.C., III, 376). The divided vote in a legislative assembly does not deal with the end at the principle level. However, it does with regard to the plurality of the means to choose in order to reach this same end, which is the common interest. Rousseau adds: "Ces moyens sont



inséparables de quelques risques, même de quelques pertes" (CS, O.C., III, 376). Therefore, this risk could not be remediated or acceptable if the members of the community were not in some way already united.<sup>18</sup>

Rousseau's acceptance of the majority decision at the expediency level, as an expression of the general will, is based simply on this assumption: "Ceci suppose, il est vrai, que tous les caracteres de la volonté générale sont encore dans la pluralité: quand ils cessent d'y être, quelque parti qu'on prenne il n'y a plus de liberté" (CS, O.C., III, 441). So, the minority is not asked to obey to or be bound by the will of the majority, i.e. the will of the others, but to consent to the general will that is the same for all, as interpreted and expressed by the counting of votes. In other words, the act of voting, at the practical level, did not bind the minority to the majority, but only to the general will of which both parties are members. The reason is that unanimity is only required for the creation of the social pact,<sup>19</sup> but not for the everyday operation at the practical level: "Hors ce contrat primitif," says Rousseau, "la voix du plus grand nombre oblige toujours tous les autres; c'est une suite du contract même" (CS, O.C., III, 440). Then, the consent of the minority to laws passed by the majority is a logical consequence of the nature of the contract.

The constant will of the members of the body politic is nothing other than the desire of citizens for the common interest. Therefore, the minority does not differ



fundamentally from the majority concerning the ends, but concerning the most effective means of reaching the ends through appropriate and detailed laws. In this, John B. Noone is correct in pointing out that

assemblies are convened, not to debate ends, but to consider matters that might be adjudged threats to these ends, or to seek means of strengthening or furthering them, or to consider proposals that might enhance the common life without threatening ends. . . . It cannot be emphasized strongly enough that legislation concerns means and not ends. If legislation ordained ends, the contract would be abrogated in the same way as if sovereign legislation marked off a predetermined group within society.<sup>20</sup>

Then, the aim of the deliberating assembly consists in approving or disapproving the proposal of the best means that can translate into reality those ends, which are not in themselves parts of the regular assembly's discussion.

If and only if the disagreement between the majority and the minority is considered as taking place at the principle level, instead of at the political process level, Rousseau's famous phrase, "quiconque refusera d'obéir à la volonté générale . . . on le forcera d'être libre" (CS, O.C., III, 364), becomes insult as well as injury.<sup>21</sup> If and only if Rousseau equates the general will with the majority will, the following analysis by A. Rustow could be irrefutable: "Instead of warning the majority against any despotic abuse of its constitutional power, instead of appealing to the conscience of the majority, or reminding it of any eternal and universal

norms of natural law, he [Rousseau] further reinforces the majority in its presumptuousness and obduracy. 'The general will . . . is always constant; unalterable and pure'. 'The general will is always right'. . . ." 22 If this were true, Rousseau's totalitarianism would be the worst of its kind, because the tyranny of the majority taken as the total embodiment of the general will would be endowed with righteous infallibility. In this case the minority would not be forgiven as mistaken, but crushed, excommunicated and persecuted as heretic and traitor. The consequences of such an interpretation are incalculable. Fortunately, Rousseau is far from subscribing to this premise and to its disastrous consequences. On the contrary, as Broome pointed out: "In associating the minority opinion with honest error rather than malevolence or corruption, Rousseau continues to lay claim to the loyalty of the defeated, and also, of course, remains faithful to his optimistic view of human nature." 23

It is very important to note that Rousseau's concept of the general will, at least in Du Contrat social, is purposely and consciously limited to small city states based upon definite economic ideas. This means that the understanding of the general will must be within the context of homogeneous society, not of the heterogeneous society of our time which complicates understanding the relation between minority and majority, and within them between active and passive; a society based upon different values and irreconcilable principles where the struggle for power, rather than shared



common values, becomes rule. In this, Cobban has reason to warn Rousseau's readers:

We must . . . take him quite seriously when in the Contrat social he limits his ideal state to a single city and when he complains that he has written only for his native city and similar small states, that he did not dream of reforming the great states of Europe, but only of checking the corruption of those which still retained their original size and something of their primitive simplicity.

We have constantly to keep in mind the distinction between the world for which Rousseau wrote and that in which we read him. . . . He is all along thinking of the small, simply organized, conservative state, where the inhabitants live as their fathers have lived, and where, once the constitution has been established, the passing of new laws would be a very rare event.<sup>24</sup>

If we pay attention to Cobban's warning and Rousseau's general assumptions, there is no danger that the discussion on the proposals by the sovereign people could be reduced to a simple technique of manipulation in the hand of the executive power, because the laws as expression of the general will arise out of the shared common goals and values.



Notes to Chapter III

<sup>1</sup> J. Salwyn Schapiro, Liberalism: Its Meaning and History (New York: Van Nostrand Reinhold Co., 1958), p. 36.

<sup>2</sup> George Santayana, Physical Order and Moral Liberty, ed. by John and Shirley Lachs (Nashville: Vanderbilt University Press, 1962), p. 260.

<sup>3</sup> Santayana, p. 260.

<sup>4</sup> Santayana, p. 260.

<sup>5</sup> Santayana, p. 260.

<sup>6</sup> Cobban, p. 78.

<sup>7</sup> Cobban, p. 78-79.

<sup>8</sup> Yves R. Simon, Philosophy of Democratic Government (Chicago: University of Chicago Press, 1961), p. 124.

<sup>9</sup> Simon, pp. 124-125.

<sup>10</sup> See John B. Noone, Rousseau's Social Contract (Athens, Ga.: University of Georgia Press, 1980), p. 174, p. 184.

<sup>11</sup> Chaim Perelman, "Rhetoric and Polis," in Philosophy and Rhetoric, 17, No. 3 (1984), 131-132.

<sup>12</sup> Cassirer, The Question ..., p.63.

<sup>13</sup> Stephen Ellenburg, "Rousseau and Kant: Principles of Political Right," in Rousseau: after Two Hundred Years, ed. R. A. Leigh (Cambridge: Cambridge University Press, 1982), p. 12.

<sup>14</sup> Richard Dagger, "Understanding the General Will," in The Western Political Quarterly, 34, No. 3 (1980), p. 366.

<sup>15</sup> Margaret Canovan, "Arendt, Rousseau, and Human Plurality in Politics," in The Journal of Politics, 45 (1983), p. 291.

<sup>16</sup> Ellenburg, p. 13.

<sup>17</sup> J.H. Broome, p. 67.

<sup>18</sup> See CS, O.C., III, 376.

<sup>19</sup> See CS, O.C., III, 440.

<sup>20</sup> J. B. Noone, Rousseau's Social Contract (Athens: University of Georgia Press, 1980), p. 79.

<sup>21</sup> See Alexander Rüstow, Freedom and Domination (Princeton: Princeton University Press, 1980), p. 520.

<sup>22</sup> Rüstow, p. 517.

<sup>23</sup> Broome, p. 67.

<sup>24</sup> Cobban, p. 88.

## Chapter IV

### Participatory Democracy versus Representative Democracy

In general, the term "representation" is ambiguous, and its use without qualification leads to more confusion rather than to clarification. Hanna Fenichel Pitkin, after she enumerated many terms used to express the true role of the representative, gives two main types of representation, and within them other variants:

The theoretical discussions in which such terms are invoked tend to fall into a basic pattern of polarization concerning the representative's role, which I have called the "mandate-independence" controversy. The controversy might be summarized in some such dichotomous choice as: Should (must) a representative do what his constituents want, or what he thinks best? On the one side are those writers who stress the popular mandate given to a representative by those for whom he acts, his obligation to do what they expect of him, to act as if they were acting themselves. On the other side are those who maintain that the representative must act independently, on his own judgment, that he is selected precisely for his special abilities, and that his job is to adapt and enlarge the constituents' special, separate needs into the national welfare.<sup>1</sup>

Rousseau in the Contrat social is against any representation concerning legislative power: "Les Députés du peuple ne sont . . . ni ne peuvent être ses représentants, ils ne sont que ses commissaires; ils ne peuvent rien conclure définitivement. Toute loi que le Peuple en personne n'a pas ratifiée est nulle; ce n'est point une loi" (O.C., III, 429-430). However in his Considérations sur le gouvernement de



Pologne, Rousseau seems to accept the "mandate" version of representation, when the will of the people is expressed in election or in consultation, but the "independence" version in subject matters not foreseen by the people. For our present purpose, we will use the terms "representative as delegate," because this translates well Rousseau's concept of deputy, and "representative as trustee," because Locke, the champion of the representative government, uses it.

Furthermore, the term "representation" is ambivalent in Rousseau's Du Contrat social, because he uses it negatively concerning sovereignty and positively concerning government. This means he accepts representative government at the practical level but rejects representative democracy at the principle level, in the sense that the sovereignty of the people, which is the exercise of the general will, could be transferable to the representatives. For this reason, in Rousseau's political context, it is appropriate to speak about the problem of representative democracy rather than representative government. As J.G. Merquior correctly points out: "contrary to the current impression, Rousseau was not against representative government; what he refused, in bk III, ch. XV of the Social Contract, was just the representation of sovereignty."<sup>2</sup>

At the principle level, Rousseau categorically rejects the idea that sovereignty could be represented: "la souveraineté n'étant que l'exercice de la volonté générale, ne peut jamais s'aliéner, et que le souverain, qui n'est qu'un

être collectif, ne peut être représenté que par lui-même; le pouvoir peut bien se transmettre, mais non pas la volonté" (CS, O.C., III, 368). This does not mean that Rousseau rejects representative government in general, as Ellenburg seems to be saying: "Rousseau's hostility to the very idea of representative government is a final, direct instance of his anarchistic imperative, for his concern was not the scope, responsibility, or accountability of representative political authority, but the division between those who command and those who obey."<sup>3</sup> On the contrary, Rousseau accepts, even insists upon, representative government. Rousseau's rejection of the idea that the sovereignty of the people could be represented in its legislative authority and his acceptance of representative government are based on his concept of law. Indeed, Rousseau writes in Du Contrat social: "La Loi n'étant que la déclaration de la volonté générale, il est clair que dans la puissance Législative le Peuple ne peut être représenté; mais il peut et doit l'être dans la puissance exécutive, qui n'est que la force appliquée à la Loi" (O.C., III, 430).<sup>4</sup> The essence of government consists in executing existing general laws by applying them to particular cases. Therefore, its role is to represent the sovereign in this specific function.

In order to understand thoroughly the relation between government and sovereignty it is necessary to know two aspects of law. The one aspect is related to the essence of the sovereign people that acts through the general laws,<sup>5</sup> and the



other aspect to the essence of the government that executes the same laws by applying them to particular circumstances.

Rousseau explains in Lettres écrites de la Montagne:

La Loi ne peut par sa nature avoir un objet particulier et individuel: mais l'application de la Loi tombe sur des objets particuliers et individuels.

Le pouvoir Législatif qui est le Souverain a donc besoin d'un autre pouvoir qui exécute, c'est-à-dire, qui réduit la Loi, en actes particuliers. Ce second pouvoir doit être établi de manière qu'il exécute toujours la Loi, et qu'il n'exécute jamais que la Loi. Ici vient l'institution du Gouvernement" (O.C., III, 808).

This means that government, being the sovereign people's commissioner, has no independent ground to legitimate its power. By this, however, the government is not made insignificant, because if it is taken at its proper realm, it is indispensable and the Body politic could not exist as it should without delegating the application of laws to the government. Otherwise, it risks falling into either anarchy or despotism.

In Rousseau's political context to ask whether he accepts representative government or not is misleading, because legislative authority is not included in his concept of government. Therefore, the right question to ask is whether or not Rousseau accepts representative democracy concerning the legislative authority. In his Considérations sur le gouvernement de Pologne, Rousseau seems to accept the idea of representative democracy, because of the large size of the country where it is impossible for the people to exercise



directly its sovereignty. This question is treated in the seventh chapter of his Considérations, under a significant title: "Moyens de maintenir la constitution" (O.C., III, 975).

Rousseau acknowledges the difficulty of exercising sovereignty directly by the people in large states. For this reason, he accepts representative democracy at the practical level, but without renouncing his fundamental position at the principle level. In his Considérations, Rousseau remarks:

Un de plus grands inconvéniens des grands Etats, celui de tous qui y rend la liberté le plus difficile à conserver, est que la puissance législative ne peut s'y montrer elle-même, et ne peut agir que par deputation. Cela a son mal et son bien, mais le mal l'emporte. Le Legislatateur en corps est impossible à corrompre, mais facile à tromper. Ses représentans sont difficilement trompés, mais aisément corrompus, et il arrive rarement qu'ils ne le soient pas. Vous avez sous les yeux l'exemple du Parlement d'Angleterre, et par le liberum veto celui de votre propre nation (O.C., III, 978-979).

To prevent this danger of corruption and disloyalty, Rousseau proposes two measures or remedies, one against corruption and another for the revocation of representatives in case they do not follow the instructions of their constituents:

Le premier est . . . la fréquence des Dietes, qui changeant souvent les représentans, rend leur seduction plus coûteuse et plus difficile . . . Le second moyen est d'assujétir les représentans à suivre exactement leurs instructions et à rendre un compte sévère à leurs constituans de leur conduite à la Diète. (O.C., III, 979)

Thereby, Rousseau does not accept any kind of representative

democracy such as the Parliament of England, in the sense that the representatives are independent from their constituents for determined years in the lawmaking process. On the contrary, by positing these two measures, i.e. by subordinating representatives to their constituents, Rousseau tries to reconcile the representative system with his concept of sovereignty. Rousseau clearly expresses:

Il faut qu'à chaque mot que le Nonce dit à la Diète, à chaque démarche qu'il fait, il se voye d'avance sous les yeux de ses constituans, et qu'il sente l'influence qu'aura leur jugement tant sur ses projets d'avancement que sur l'estime de ses compatriotes, indispensable pour leur execution: car enfin ce n'est pas pour y dire leur sentiment particulier, mais pour y déclarer les volontés de la Nation qu'elle envoie des Nonces à la Diète. Ce frein est absolument nécessaire pour les contenir dans leur devoir et prévenir toute corruption, de quelque part qu'elle vienne. (O.C., III, 980)

Then, according to Rousseau, the representative's mission does not reside in expressing his own conscience and his independent judgment, but the expressed will of his constituents. Given the subject matter to treat, Rousseau does not question the feasibility of this kind of representation: "Quoi qu'on en puisse dire, je ne vois aucun inconvénient à cette gêne, puisque la chambre des Nonces n'ayant ou ne devant avoir aucune part au détail de l'administration, ne peut jamais avoir à traiter aucune matière imprévue" (O.C., III, 980).

It is consequently difficult to understand the problem raised by Richard Fralin: "If the principles of the Contrat were really his guide, why, having already conceded the



necessity for representative government, would he not insist on reforming the Polish system of representation to make it as compatible as possible with the principles of the Contrat . . . ."6 Because as Derathé points out, Rousseau is doing exactly that. "Ce texte," says Derathé, "est en parfait accord avec les principes du Contrat social, puisque les instructions des Nonces en font de simples 'commissaires' du peuple, et qu'on ne leur laisse aucune initiative en matière législative."7 Furthermore, Derathé states, [Rousseau]

était . . . prêt à assouplir ses principes pour les rendre applicables aux grands États modernes. En particulier, au lieu d'écarter systématiquement le gouvernement représentatif, il se serait contenté de le réformer. Dans son esprit, le système des mandats impératifs devait suffire à maintenir, dans le cadre du régime représentatif, la souveraineté réelle du peuple.<sup>8</sup>

Therefore, for Derathé, there is no inconsistency or discrepancy between Rousseau's theoretical principles in Du Contrat social and his political realism in the Considérations sur le gouvernement de Pologne. Thus, Rousseau has no difficulty in accepting representative democracy on the condition that the delegates reflect the will of their constituents by following their instructions. In this, the essence of democracy remains intact, because of the subordination of the delegates to their constituents. Rousseau condemns representative democracy in which the representatives are considered as independent from their constituents, in the



sense that they legislate according to their conscience and their judgments.

Rousseau accepts a representative democracy in which delegates represent the views and interests of their constituents. Given the size of the country, Rousseau reasons, the people could not participate directly; then those supposed to represent them must be loyal to them. Accordingly, in the last analysis, for Rousseau, the guiding principle remains the concept of participation rather than that of representation.<sup>9</sup>

In order to understand these two different meanings of representation, it is important to take note of Derathé's remark concerning the meaning of election in Rousseau and in Stuart Mill:

Rousseau considère que les élections ont pour but de permettre au peuple de déclarer ses volontés et des les traduire sous forme de lois dans les assemblées parlementaires; c'est pourquoi les députés ne peuvent et ne doivent être que de simples délégués, "asservis à leurs instructions." Stuart Mill, comme Montesquieu, voit dans les élections un moyen de désigner des personnalités capables de légiférer. Il s'agit donc avant tout de faire confiance à des hommes d'une valeur éprouvée et de leur laisser la plus grande initiative dans leur mission de législateurs et leur tâche de gouvernants.<sup>10</sup>

Here, grosso modo, we have two concepts of representation: in one the representative as delegate, in the other representative as trustee. Therefore, the question concerning representative democracy is not simply whether or not Rousseau accepts or rejects it; two different roles of representatives must first be qualified. The representative as trustee relies

on his own conscience and his independent judgment due to his expertise in the subject matter in determining what is the best interest of the nation and his constituents. This type of democracy is based on the primacy of reason. The representative as delegate relies on the will of his constituents rather than on his own judgment, because the criterion is not placed on the wisdom of the delegate, but on the assumption that he represents the vote of his constituents if they had the opportunity to participate themselves. This model of democracy is based on the primacy of the will. Indeed, there is a great difference between to authorize someone to will for us and to authorize someone to execute our will given the circumstantial impossibilities.

Given the above distinction, we can affirm not only that Rousseau accepts representative democracy in the sense that the people's representatives in the Parliament reflect the will of their constituents, but also, in limited cases, that he accepts the initiative of a delegate in the subject matters not foreseen by his constituents. About these specific limited cases, Rousseau writes: "pourvu qu'un nonce ne fasse rien de contraire à l'expresse volonté de ses constituans, ils ne lui feroient pas un crime d'avoir opiné en bon citoyen sur une matiere qu'ils n'auroient pas prévue, et sur laquelle ils n'auroient rien déterminé" (Considérations, O.C., III, 980). In subject matters where the will of constituents is expressed, delegates who do not execute these instructions should be recalled, even punished:



Qu'elles [les Dietines] punissent leurs nonces, que s'il le faut elles leur fassent même couper la tête quand ils ont prévarié: mais qu'elles obéissent pleinement, toujours, sans exception, sans protestation, qu'elles portent comme il est juste la peine de leur mauvais choix; sauf à faire à la prochaine Diète, si elles le jugent à propos, des représentations aussi vives qu'il leur plaira. (Considérations, O.C., III, 980-981)

So, by reconciling the conflict between the jurisdiction of the Dietines and the Diet, Rousseau shows how to preserve the constitution and the unity of the country, even going against his doctrine that "toute loi que le peuple en personne n'a pas ratifiée est nulle; ce n'est point une loi" (CS, O.C., III, 430). But, essentially, as in the relation between sovereignty and government, in the relation between the sovereign people and their delegate, the delegate like the government plays the role of the commissioner on behalf of the sovereign people. Cobban sums up this apparent political paradox: "In the Gouvernement de Pologne he [Rousseau] . . . relaxes his ban against representation, which he is now willing to accept, so long as there are frequent diets and the representatives are strictly compelled to follow the instructions of their constituents; they are left free, moreover, to decide for themselves any unanticipated question which may arise."<sup>11</sup>

Therefore, the acceptance of representative democracy, due to physical or technical impossibility, does not make invalid Rousseau's guiding principle of participation. Otherwise, Rousseau must deny that the law is the expression of the general will and thereby he must accept the transfer theory, according to which sovereignty is transferable from



the people to the ruler or representative. In this case, Rousseau's emphasis on the subordination of the delegate to his constituents becomes sheer nonsense.

Given this context, now, we will analyse Rousseau's acceptance of "representative government" expressed by Fralin, in his article entitled "The Evolution of Rousseau's View of Representative Government" (1978):

Rousseau's view of representation was thus ambivalent throughout his political writings. On the one hand, he insisted that each citizen take an active part in the political process, particularly in the legislative process, which he considered the heart of every political system. In the Contrat he went so far as to declare void any law which the citizenry had not personally approved, and even in the Considerations he accepted legislation by a representative body only with great reluctance. On the other hand, he specifically and repeatedly denied citizens the kinds of political initiatives that were essential if their participation in the political process was to be meaningful. His institutional ideal of elective aristocracy not only gave the executive a dominant role in legislation through control of the legislative initiative but also enabled the executive to perpetuate itself in office through its monopoly of nominations. In view of these severe restraints on the exercise of popular political initiatives, his distinction between executive and legislative representation tended to break down, and the force of both his theoretical and practical objections to representative governments was weakened.<sup>12</sup>

Fralin forces Rousseau to accept "representative government" by softening his whole political system, instead of making a distinction between which ideas belong to the principle level and which to the practical level. Fralin sees some kind of contradiction between the participation of the citizens in approving or disapproving proposed laws and the active role of

the government in initiating law. In other words, he thinks that the participation of the sovereign people in the law making process could not be complete, if they are deprived from initiating laws. Rousseau admitted equality among men concerning their sentiments and emotions and not their reason. Consequently, given the complexity of public affairs, the people's right consists in the deliberative act upon the proposals made in periodically fixed assemblies. Therefore, the non-participation of the people in initiating law is not in contradiction with Rousseau's thesis that will cannot be represented in its deliberative act, and that sovereignty belongs only to the people. There is a discrepancy between what the people can know and will; for this reason, Rousseau states: "il faut apprendre à l'autre [le public] à connaître ce qu'il veut" (CS, O.C., III, 380). But this does not reduce the role of the people to essentially passive and negative; on the contrary it is active, because a sovereign people do not obey the laws imposed by the will of others, but obey the laws which they deliberate. Rousseau does not give the initiative to propose fundamental laws to the people because he makes a distinction between will and reason: "De lui-même le peuple veut toujours le bien, mais de lui-même il ne le voit pas toujours. La volonté générale est toujours droite, mais le jugement qui la guide n'est pas toujours éclairé" (CS, O.C., III, 380). This does not lead him to the theory of elitism, although Rousseau appeals to the Lawgiver to enlighten the people; on the contrary, as Werner Bahner exactly remarks:



"Rousseau n'est pas convaincu que la totalité des associés, le peuple en corps, opte selon les principes de la raison, et il s'adresse à un sage comme législateur. La législation n'est pas pour cela une affaire d'une élite, d'un groupe d'intellectuels. Elle doit être approuvée par le peuple souverain."<sup>13</sup> By this, Rousseau prefers the sovereign people in need of being enlightened rather than people guided by enlightened despot.

However, to say that Rousseau was harsh with representative democracy because he had no experience with the parliamentary democracy of our time does not help us in understanding the essence of democracy in Rousseau's political theory. Rousseau's doctrine of sovereignty is grounded on the democratic principle of self-determination in which the people are educated morally and politically. J.G. Merquior is right in saying:

The core of Rousseau's theory of political legitimacy is the idea of participatory democracy. The general will is to be always activated by constant individual participation in the politics of sovereignty. . . . In Rousseau's eyes, egalitarian participation has two invaluable attributes. First, it secures a permanent control of power. Second, it is educative, in that it develops autonomous and responsible social action on the part of the individual.<sup>14</sup>

In representative democracy, legislation being the expression of the general will, the sovereign people do not abdicate their rights but try to exercise them through intermediaries, given the circumstances.



The problem of democratic representation remains under discussion in the twentieth century. Hans Kelsen (1881-1973), a well known legal philosopher, writes that "there can be no doubt that . . . none of the existing democracies called 'representative' are really representative."<sup>15</sup> According to Kelsen, to state that the member of parliament represents the people as a whole, and therefore the people are the legislator is a political fiction.<sup>16</sup> Political writers who insist on representative democracy "do not present a scientific theory but advocate a political ideology."<sup>17</sup> Although Kelsen does not specifically mention Rousseau, his explanation of the true sense of representation seems to us very close to Rousseau's concept of the representative system:

In order to establish a true relationship of representation, it is not sufficient that the representative be appointed or elected by the represented. It is necessary that the representative be legally obliged to execute the will of the represented, and that the fulfillment of this obligation be legally guaranteed. The typical guarantee is the power of the represented to recall the representative in case the latter's activity does not conform with the former's wishes.<sup>18</sup>

Notes to Chapter IV

- <sup>1</sup> Hanna F. Pitkin, ed., Representation (New York: Atherton Press, 1969), pp. 17-18.
- <sup>2</sup> J.G. Merquior, Rousseau and Weber (London: Routledge & Kegan Paul, 1980), p. 73.
- <sup>3</sup> S. Ellenburg, Rousseau's Political Philosophy, p. 160.
- <sup>4</sup> See R. Derathé, Jean-Jacques Rousseau, pp. 294-307.
- <sup>5</sup> See CS, O.C., III, 425.
- <sup>6</sup> Richard Fralin, "The Evolution of Rousseau's View of Representative Government," in Political Theory, vol. 6, no. 4 (1978), p. 183.
- <sup>7</sup> Derathé, Jean-Jacques Rousseau, p. 279.
- <sup>8</sup> Derathé, Jean-Jacques Rousseau, p. 280.
- <sup>9</sup> See Carole Pateman, Participation and Democratic Theory (Cambridge: Cambridge Univ. Press, 1970), p. 22.
- <sup>10</sup> Derathé, Jean-Jacques Rousseau, p. 278 n.1.
- <sup>11</sup> Cobban, pp. 42-43.
- <sup>12</sup> Fralin, p. 531.
- <sup>13</sup> Werner Bahner, "Le mot et la notion de 'peuple' dans l'oeuvre de Rousseau," in Studies on Voltaire and the Eighteenth Century, ed. Theodore Besterman, vol. 55 (Genève: Institut et Musée Voltaire, 1967), p. 126.
- <sup>14</sup> J.G. Merquior, pp. 57-58. See also Carole Pateman, pp. 24-27, pp. 42-43.

15 Hans Kelsen, General Theory of Law and State (New York: Russell and Russell, 1961), p. 289.

16 Kelsen, pp. 291-292.

17 Kelsen, p. 291.

18 Kelsen, pp. 289-290.



## Chapter V

### The Natural Law

The criticism concerning Rousseau's natural law theory follows the line of the controversy over individualism versus collectivism. Vaughan praises Rousseau's intellectual honesty in rejecting natural law:

The argument is a striking proof of Rousseau's originality. The idea of natural Law had held the field since the days of the Roman Jurists. With the political philosophers of more recent times, it had been a commonplace since the days of Hooker and Grotius. None of them save Hobbes and Spinoza--the latter far more completely than the former--had escaped its tyranny. The authority of Locke had given it a new sanction. And even apart from the almost unbroken tradition in its favour, there was much in it that could not but appeal strongly to the spirit of Rousseau. It is therefore the clearest proof both of his speculative genius and of his intellectual honesty that he should have decisively rejected it.<sup>1</sup>

Derathe denies that Rousseau abandoned the natural law theory. In order to show the right place of natural theory in Rousseau's political thinking, Derathé takes into consideration the importance of Rousseau's thesis of gradual evolution of humankind on the one hand, and his distinction between natural law in the state of nature and in civil society, on the other. He writes that

Rousseau n'a . . . pas renoncé au droit naturel. Tous ses efforts tendent au contraire à montrer que le droit naturel existe dans l'état de nature et qu'il subsiste dans la société civile. Mais tandis que ses prédécesseurs se font du droit naturel une notion unique et admettent que le droit de la nature et celui de la raison ne font qu'un, Rousseau est amené à faire une distinction entre le droit naturel primitif, antérieur à la raison et le droit naturel rétabli par la raison. En passant de l'état de nature à l'état civil, le droit naturel subit la même métamorphose que l'homme auquel il s'applique. Dans l'état de nature, il n'était qu'instinct et bonté, dans l'état civil il devient justice et raison.<sup>2</sup>

On this subject, we will follow Derathé's position, because we think that it conforms to Rousseau's true thought.

Rousseau's approach to natural law is very original and methodical, at least in comparison with that of his contemporaries. Indeed, since he sees clearly the ambiguity inherent in the expression of "natural law" itself, he is able to identify the source of misunderstanding that separated the ancients from the moderns in defining natural law. Rousseau criticized both positions as incomplete and thereby accepts and rejects both according to the different levels of his evolutionary theory of humankind. Therefore, Rousseau's approach differs, generally speaking, from the ancients who equate natural law with the law of nature and from the moderns who equate it with the law of reason only.

One of Rousseau's merits in this subject consists in clarifying the ambiguity involved in the expression of natural law. For natural law, Rousseau states, to be law "il faut que la volonté de celui qu'elle oblige puisse s'y soumettre avec connoissance," and to be natural, "il faut . . . qu'elle parle



immédiatement par la voix de la Nature" (Inégalité, O.C., III, 125). Therefore, when we speak about natural law, if the emphasis is put on the word "law," natural law necessarily presupposes reason and society; accordingly it is logical that natural law could be interpreted as the law inherent only in a rational being; on the other hand, if the emphasis is put on the word "natural," natural law does not necessarily presuppose reason and society; instead it exists prior to reason and society, and accordingly it is better understood as the law inherent in all living beings. The first position is concerned with knowledge of the natural law, and the second with its existence. In the context of the evolutionary theory of humankind, such as Rousseau's, existence and knowledge of natural law are not necessarily considered to be coeval.

Two definitions that characterize these two extreme attitudes are worth quoting. Ulpian (d. 228 A.D.), Roman jurisconsult, among the ancients, defines natural law (*jus naturale*) as "quod natura omnia animalia docuit."<sup>4</sup> Samuel Pufendorf (1632-94), among the moderns, defines natural law (*la loi naturelle*) as "celle qui convient si nécessairement à la nature raisonnable et sociable de l'homme, que sans l'observation de cette loi il ne sauroit y avoir parmi le genre humain de société honnête et paisible."<sup>5</sup>

When Rousseau speaks about the confusion in understanding natural law made by the moderns and the ancients, it seems that he has in mind these two extreme attitudes. Rousseau clearly writes:



Sans parler des Anciens Philosophes qui semblent avoir pris à tâche de se contredire entre eux sur les principes les plus fondamentaux, les Jurisconsultes Romains assujettissent indifféremment l'homme et tous les autres animaux à la même Loy naturelle, parce qu'ils considèrent plutôt sous ce nom la Loy que la Nature s'impose à elle-même, que celle qu'elle prescrit; ou plutôt, à cause de l'acceptation particulière selon laquelle ces Jurisconsultes entendent le mot de Loy qu'ils semblent n'avoir pris en cette occasion que pour l'expression des rapports généraux établis par la nature entre tous les êtres animés, pour leur commune conservation. Les Modernes ne reconnoissant sous le nom de Loy qu'une règle prescrite à un être moral, c'est-à-dire intelligent, libre, et considéré dans ses rapports avec d'autres êtres, bornent conséquemment au seul animal doué de raison, c'est-à-dire à l'homme, la compétence de la Loy naturelle. (Inégalité, O.C., III, 124-125)

This opposition, according to Rousseau, comes mainly from ignorance concerning human nature and the disagreement concerning the meaning of law. Rousseau not only criticizes his predecessors but also gives his own solution by transcending the one-sided position of these two extreme attitudes held by the ancients and the moderns. Rousseau, on the one hand, disagrees with the definition of the moderns, because for primitive man, in the state of nature lacking the use of reason, natural law could not be a precept or rule prescribed by nature to a rational being and discernible by right reason. He also disagrees with the definition of the ancients, because in the state of civil society, man, being rational, participates in natural law through his reason. At this level, man does not follow natural law by natural inclination only; instead he follows it by recognition and conscience. On the other hand, Rousseau agrees with the

ancients in affirming that man, as a sensitive being, shares natural law with all living beings, especially with the animals. Within this context, natural law is better understood as a rule imposed by nature to all living beings. Rousseau agrees with the moderns in affirming that man participates in natural law according to his specific nature as a rational being. Therefore, in the state of civil society, natural law can be better understood as a rule prescribed to a rational being.

By showing that natural law varies in the state of nature and in civil society, Rousseau conserves the definition of the ancients for man in the state of nature and of the moderns for man in civil society. Therefore, these two attitudes concerning natural law, for Rousseau, are not two fragmented absolutes that mutually exclude each other. With this, however, we are not saying that the ambiguity concerning natural law has found a definitive solution in Rousseau's philosophy. In modern philosophy, the notion of nature is reduced to the notion of matter, and the notion of reason is ambiguous, because of the controversy concerning the relation between passion and reason. If passion determines what is natural in man, reason becomes an instrument of passion; then natural law is essentially the law of passion. On the contrary, if reason determines what is natural in man, passion becomes a servant of reason; then natural law is essentially the law of reason. The first position prevails in the extreme empiricist context such as in David Hume; the second in rationalist philosophy



where, generally, man is defined by his reason or soul. The position of Rousseau seems similar to the second, even though he uses terms like "conscience" and "sentiment." Rousseau has great merit, at least, in offering a satisfactory solution to the controversy created by modern thinkers who conceive nature and law as two concepts mutually exclusive. In fact, in modern philosophy, the meaning of nature is reduced to the meaning of inert matter or to the sum total of phenomena. For this reason, nature could not have a normative value as it had in Greek and medieval thought. For this same reason the concept of cosmology has been replaced by mechanical physics.<sup>6</sup> Given the above change in the meaning of nature, modern philosophers, contrary to the ancients, reduced the sense of natural law to moral law. In this specific case, if we try to understand Rousseau's position by putting him in the modern context, we arrive at the logical conclusion that there could be no natural law in Rousseau's state of nature.

Natural law, in the state of nature, according to Rousseau, is a law derived from the combination of self-love and pity.<sup>7</sup> These two qualities are common to man and to the animals and exist prior to reason. The source of this law, at this stage, are the instincts of self-preservation and natural goodness imprinted by nature or by the author of nature in the human heart rather than in his reason. According to Jean Starobinski, specialist in eighteenth century culture: "L'amour de soi et la pitié sont les mouvements spontanés de la sensibilité qui fondent la morale naturelle."<sup>8</sup>



Natural law, in the state of civil society, has the same purpose, but now it has its source in reason and conscience rather than in natural spontaneity. As Starobinski points out:

Une fois perdu l'état de nature, cette spontanéité disparaîtra : c'est par le recours au raisonnement que l'on formulera les règles de la moralité, destinées à corriger l'erreur à laquelle l'homme est désormais exposé. Quoique la loi morale ne contredise nullement le droit naturel, elle doit néanmoins être édiflée "sur d'autres fondements".<sup>9</sup>

The important thing to underline here is that the distinction between natural law in the state of nature and in the state of civil society does not concern its end, but its source. In fact, to quote again Starobinski: "les motivations raisonnables, les impératifs du sentiment moral visent au même but (conservation de soi, respect de la vie d'autrui) que le mouvement spontané de la nature. Le droit n'aura pas changé dans sa fin, mais dans sa source."<sup>10</sup>

Therefore, Rousseau does not reject natural law, as Vaughan and others think, but he reformulates it in order to fit the condition of man in the state of nature and in the state of civil society. Given this reformulation, Rousseau clarifies his position:

De cette manière, on n'est point obligé de faire de l'homme un Philosophe avant que d'en faire un homme; ses devoirs envers autrui ne lui sont pas uniquement dictés par les tardives leçons de la Sagesse; et tant qu'il ne résistera point à l'impulsion intérieure de la

commisération, il ne fera jamais du mal à un autre homme, ni même à aucun être sensible, excepté dans le cas légitime où sa conservation se trouvant intéressée, il est obligé de se donner la préférence à lui-même. (Inégalité, O.C., III, 126)

Natural man, being only asocial in the state of nature, becomes a social being only with the concurrence of external factors actualizing his virtual potentialities. Under the tension or conflict between amour-propre and pity, his reason and conscience become awakened. This development or historical evolution is not in contradiction with Rousseau's concept of man, because natural man, besides those two qualities, was also endowed with the quality of perfectibility, the only quality that distinguishes him from other animals. At a later stage of his evolution conscience and reason become the source of natural law understood as moral law or law prescribed to the rational being.

The understanding of this historical development of man, from the primitive state to civil society, helps us to see the transformation of natural law by inclination to natural law by reason. But this transformation of natural law concerns the source and not the end.

One of the sources of misunderstanding about Rousseau's natural law doctrine consists in taking the word of law and the word of nature as two concepts mutually exclusive and then in equating the concept of law with that of reason. Marc F. Plattner, for example, denies the possibility of natural law in Rousseau's thought:



According to Rousseau, nature and law are mutually exclusive (the one belongs to the realm of physics, and the other to the realm of morality). Law can speak only to a being that possesses intelligence and moral liberty. But by nature man does not possess intelligence and moral liberty. Therefore nature cannot speak to man's reason, but only to the passions which he shares with the lower animals. Nature can only impose; it cannot prescribe. In short, according to Rousseau's own criteria, properly speaking there can be no natural law.<sup>11</sup>

From this statement, he draws another conclusion which is based on comparison of natural man with animals. Natural man, being "by nature devoid of reason," like animals, "cannot be subject to natural law any more than are the other animals -- and thus there can be no natural law."<sup>12</sup> To support this interpretation, Plattner quotes the following passage from Rousseau's Second Discours: "For it is clear that, being devoid of intellect and of freedom, they [animals] cannot recognize this law [natural law]."<sup>13</sup> This quotation can have Plattner's meaning, if and only if we equate the concept of law with the concept of reason. Otherwise, Rousseau is not saying that animals are not subjected to or do not participate in natural law but simply that animals "cannot recognize" it. In fact, Rousseau is clear on this subject, because he adds: "Mais tenant en quelque chose à nôtre nature par la sensibilité dont ils sont doués, on jugera qu'ils doivent aussi participer au droit naturel, et que l'homme est assujetti envers eux à quelque espèce de devoirs" (Inégalité, O.C., III, 126).<sup>14</sup> According to this passage, Rousseau is



saying that animals must also participate in natural law. For him, there can be no contradiction in stating that the savage, like animals, is subject to natural law without having adequate knowledge of it, i.e. by natural inclination. We think that this interpretation conforms to Rousseau's philosophy.

It is necessary always to have in mind the two types of natural law unequivocally expressed by Rousseau himself. The first is of instinctive origin, what Rousseau calls "droit naturel proprement dit" (CS [1ère version], O.C., III, 329). This law is applicable, at least, to all sensitive beings, man included; it concerns essentially their self-preservation, the propagation and preservation of the species. The second type is called "droit naturel raisonné" (CS [1ère version], O.C., III, 329). This law appears with the development of human reason and society, and is known as law prescribed to a rational being and discernible by right reason.

These two aspects of natural law are rightly expressed by Derathé:

Rousseau affirme justement que le droit naturel peut se présenter sous deux aspects bien différents selon qu'il s'applique à l'état de nature ou à la société civile. Dans l'état de nature, les règles du droit naturel ont leur fondement dans des "principes antérieures à la raison," c'est seulement au sein de l'état civil qu'elles deviennent les maximes de la droite raison. En d'autres termes, il y a deux espèces de droit naturel; l'un, secundum motus sensualitatis, c'est le "droit naturel proprement dit," celui qui convient à l'état de nature, l'autre, secundum motus rationis, ou "droit naturel raisonné," n'apparaît qu'après l'établissement des sociétés civiles.<sup>15</sup>

According to Derathé, the denial of natural law in the state of nature would be true, only on one condition: "si le droit naturel était seulement le droit de la raison."<sup>16</sup> But, as Derathé points out, this equation is far from being in conformity with Rousseau's expressed position. As we saw above, these two kinds of natural law are not two separate laws, in the sense that one has nothing to do with the other. In fact, the first type of natural law is not abolished in civil society; instead it subsists in it through the transformation of the instinct of self-preservation and natural goodness to the principles of reason and justice. The transformation, then, does not concern the end of natural law, but its source by which it is recognized and applied.<sup>17</sup>

Notes to Chapter V

- <sup>1</sup> Vaughn, *Introd.*, vol. I, p. 17.
- <sup>2</sup> Derathé, Jean Jacques Rousseau, p. 168; see also p. 165.
- <sup>3</sup> See Starobinski, J.J.Rousseau, pp.358-360.
- <sup>4</sup> Quoted in Starobinski, notes to Inégalité, O.C., III, 1296 n.3.
- <sup>5</sup> Starobinski, notes to Inégalité, O.C., III, 1297 n.4.
- <sup>6</sup> Floyd W. Matson, The Broken Image (New York: G. Braziller, 1964), pp. 19-22.
- <sup>7</sup> See Inégalité, O.C., III, p. 126.
- <sup>8</sup> Starobinski, Notes to Inégalité, O.C., III, p. 1298 n.1.
- <sup>9</sup> Starobinski, Notes to Inégalité, O.C., III, p. 1299 n.2.
- <sup>10</sup> Starobinski, Notes to Inégalité, O.C., III, p. 1299 n.2.
- <sup>11</sup> Marc F. Plattner, Rousseau's State of Nature (Ithaca: Cornell University Press, 1976), p. 106.
- <sup>12</sup> Plattner, p. 107.
- <sup>13</sup> Plattner, p. 107. See Inégalité, O.C., III, 126.
- <sup>14</sup> See Derathé, Jean-Jacques Rousseau , pp. 166-167.
- <sup>15</sup> Derathé, Jean-Jacques Rousseau, p. 166. See L'Etat de guerre , O.C., III, 602; Emile, O.C., IV, 522-523; Derathé, Notes to CS [1ère version], O.C., III, 1424-1425 n.3.
- <sup>16</sup> Derathé, Jean-Jacques Rousseau , p. 166.
- <sup>17</sup> See CS, O.C., III, 364-365.



## Conclusion

From what has been said, we recognize that Rousseau's political theory is complex, because of many distinctions to make in regard to his main concepts. Our reading of his political writings convinced us that Rousseau is not an extremist. On the contrary, he is a moderate who prefers always an intermediary position between two extreme thoughts. In this, his consistency is striking.

In his Discours sur l'inégalité, Rousseau stands for an intermediary stage between the primitive and the civilized states of man:

quoique les hommes fussent devenus moins endurans, et que la pitié naturelle eût déjà souffert quelque altération, ce période du développement des facultés humaines, tenant un juste milieu entre l'indolence de l'état primitif et la pétulante activité de nôtre amour propre, dut être l'époque la plus heureuse, et la plus durable. (O.C., III, 171)

Equally, concerning language, as J. Starobinski pointed out, Rousseau prefers the spoken language of the patriarchal society which is "entre la langue grossière de la horde et la langue exténuée des civilisés."<sup>1</sup>

In Du Contrat social, we have seen that Rousseau, at the principle level, stands for democracy, which is an intermediary position between anarchy and despotism; and, at the practical level, for elective aristocracy, which is an intermediary position between democracy and monarchy.

In his Considérations sur le gouvernement de Pologne, his idea of representative as delegate takes an intermediary place between Hobbes' idea of representative that abolishes the represented and Locke's idea of representative as trustee.

Rousseau's concept of democracy is rooted in the right of voting of the people, but especially in the free expression of their opinions. For this the ideal political unit is the small city state (but not so small that it could not defend itself and be self-sufficient) in which the people could interact face-to-face and meet in a general assembly to discuss and deliberate on legislative matters. Indeed, as Rousseau indicated in describing the Parliament of England, the right of voting alone does not reflect participatory democracy. Instead, in England the electoral process excludes the people from politics: "Le peuple Anglois pense être libre; il se trompe fort, il ne l'est que durant l'élection des membres du Parlement; sitôt qu'ils sont élus, il est esclave, il n'est rien. Dans les courts momens de sa liberté, l'usage qu'il en fait mérite bien qu'il la perde" (CS, O.C., III, 430). For this reason, in Du Contrat social, Rousseau rejects representative democracy in a small city state, because the right of the people to speak, to discuss and to express opinions and emotions is his idea of democracy. To this end, since people can discuss and deliberate only if they meet each other as equals and free, Rousseau recommends a moderate economic equality.<sup>2</sup>



Another striking point to mention is that Rousseau was always firm concerning principles, but flexible concerning their applications. He affirmed through his political writings that sovereignty resides and remains in the hands of the people, and advocated that the people's legislative right could not be represented or transferred. But, on the practical level, Rousseau accepted the idea of representative as delegate in large states; in a small city state, concerning the legislative process, Rousseau made practical his theory of sovereignty by giving the right to initiate law to the executive power and the right to approve or disapprove the proposals after deliberation to the sovereign people. By carefully defining each role, Rousseau avoids the danger of anarchy and despotism.

The difficulty of understanding Rousseau's political thinking, then, comes from his intermediary position that tries to maintain a state of equilibrium between two extreme thoughts. From Rousseau's perspective the controversy over individualism versus collectivism, or totalitarianism versus liberalism in political theory could be better understood as a product of a loss of equilibrium. Rousseau was fully aware of the difficulty and the necessity to maintain a balance where he treats the relation between sovereignty and government, government and the people as subjects:

Le Gouvernement reçoit du Souverain les ordres qu'il donne au peuple, et pour que l'Etat soit dans un bon équilibre il faut, tout compensé, qu'il y ait égalité entre le produit ou la puissance du Gouvernement pris



en lui-même et le produit ou la puissance des citoyens,  
 qui sont souverains d'un côté et sujets de l'autre.  
 (CS, O.C., III, 396)

According to Rousseau, from the destruction of the balance between these three terms follows anarchism or despotism which are the signs of the degeneration of the body politic.

Hence, the concept of equilibrium or balance is very important in understanding Rousseau's political thinking. But Rousseau was convinced that to maintain the state of balance which is necessary to good politics is not easy. The balance could be broken at any time. This is why Rousseau praises virtue and adds to the constitution some institutional supports such as censorship and civil religion to maintain the balance within the body politic, and, a tribunate and dictatorship to correct it when it is at a critical point.

In conclusion, we can state that the various and important problems Rousseau raised make him our contemporary, because he, better than other philosophes, had an advantage to be in the Eighteenth Century without being of it. The actualité of Rousseau's impact on pedagogy, philosophy, sociology, theology, anthropology, and political theory is appropriately reflected in the title of the commemorative Rousseau issue of Daedalus in the bicentennial year 1978: Rousseau for our time.

Notes to Conclusion

- <sup>1</sup> Starobinski, Jean-Jacques Rousseau, p. 370.
- <sup>2</sup> See CS, O.C., III, 391-392.

### Selected Bibliography

- Arendt, Hannah. Willing. New York: Harcourt Brace Jovanovich, 1978.
- Bahner, Werner. "Le Mot et la notion de 'peuple' dans l'oeuvre de Rousseau," in Studies on Voltaire and the Eighteenth Century, ed. Theodore Besterman, vol. 55. Genève: Institut et Musée Voltaire, 1967, pp. 113-127.
- Baker, Felicity. "La Route contraire," in Reappraisals of Rousseau, eds. Simon Harvey et al. Totawa, N.J.: Barnes & Noble Books, 1980, pp. 132-162.
- Bénichou, Paul. "Réflexions sur l'idée de nature chez Jean Jacques Rousseau," in Annales de la Société Jean-Jacques Rousseau 1972-77, t. 39. Genève: A. Julien, 1905- , pp. 25-45.
- Bluhm, William T. "Freedom in the Social Contract: Rousseau's Legitimate Chains," Polity, XVI, no. 3 (1984), pp. 359-383.
- Bochenski, J. M.. Philosophy: an Introduction. New York: Harper & Row, 1972.
- Broome, Jack Howard. Rousseau, a Study of His Thought. London: E. Arnold, 1963.
- Canovan, Margaret. "Arendt, Rousseau, and Human Plurality in Politics," in The Journal of Politics, 45 (1983), pp. 286-302.



- Cassirer, Ernst. The Question of Jean-Jacques Rousseau. Trans. and ed. with introd. and additional notes by Peter Gay. New York: Colombia University Press, 1954.
- . Rousseau, Kant and Goethe, trans. James Gutmann et al. New York: Harper & Row, 1965
- Cobban, Alfred. Rousseau and the Modern State. 2nd ed. Hamden, Conn.: Archon Books, 1964.
- Cranston, Maurice. Jean-Jacques: the Early Life and Work of Jean-Jacques Rousseau, 1712-1754. New York: Norton, 1983.
- Dagger, Richard. "Understanding the General Will," in The Western Political Quarterly, 34, no. 3 (1980), pp. 359-371.
- Derathé, Robert. Jean-Jacques Rousseau et la science politique de son temps. 2nd ed. Paris: J. Vrin, 1970.
- Durkheim, Emile. Montesquieu and Rousseau: Forerunners of Sociology. Ann Arbor: University of Michigan Press, 1960.
- Ellenburg, Stephen. Rousseau's Political Philosophy: an Interpretation from Within. Ithaca: Cornell University Press, 1976.
- . "Rousseau and Kant: Principles of Political Right," in Rousseau, after Two Hundred Years, ed. R. A. Leigh. Cambridge: Cambridge University Press, 1982, pp. 3-22.
- Fetscher, I. "Rousseau's Concepts of Freedom in the Light of his Philosophy of History," in Liberty: Nomos IV, ed. Carl J. Friedrich. New York: Atherton Press, 1966, pp. 29-56.

- Fralin, Richard. "The Evolution of Rousseau's View of Representative Government," in Political Theory, vol. 6, no. 4 (1978), pp. 517-536.
- Gay, Peter. The Party of Humanity: Essays in the French Enlightenment. New York: Norton, 1971.
- Gouhier, Henri Gaston. Les Méditations métaphysiques de Jean-Jacques Rousseau. Paris: J. Vrin, 1970.
- Kelsen, Hans. General Theory of Law and State. Trans. by Anders Wedberg. New York: Russell & Russell, 1961.
- Kolakowski, Leszek. Husserl and Search for Certitude. New Haven: Yale University Press, 1975.
- Lacroix, Jean. "La conscience selon Rousseau," in Jean-Jacques Rousseau et la crise contemporaine de la conscience, eds. J.-L. Leuba et al. Paris: Beauchesne, 1980.
- Leigh, R. A., ed. Correspondance complète de Jean Jacques Rousseau, t. XXXII. Oxford: Voltaire foundation at the Taylor Institution, 1978.
- Lovejoy, Arthur O. Reflections on Human Nature. Baltimore: Johns Hopkins Press, 1968.
- Matson, Floyd W. The Broken Image: Man, Science and Society. New York: G. Braziller, 1964.
- Mauzi, Robert. L'idée du bonheur dans la littérature et la pensée françaises au XVIIIe siècle, 2nd ed. Paris: A. Colin, 1965.

- Merquior, J. G. Rousseau and Weber: Two Studies in the Theory of Legitimacy. London: Routledge & Kagan Paul, 1980.
- Méthais, Pierre. "Contrat et volonté générale selon Hegel et Rousseau," in Hegel et le siècle des lumières, ed. Jacques d'Hondt. Paris: Presses Universitaires de France, 1974.
- Noone, John B. Rousseau's Social Contract: a Conceptual Analysis. Athens: University of Georgia Press, 1980.
- Ogilvy, James. Many Dimensional Man. New York: Harper & Row, 1979.
- Pateman, Carole. Participation and Democratic Theory. Cambridge: Cambridge University Press, 1970.
- Perelman, Chaim. "Rhetoric and Polis," Philosophy and Rhetoric, 17, no. 3 (1984), pp. 129-134.
- Pitkin, Hanna Fenichel (ed.). Representation. New York: Atherton Press, 1969.
- Plattner, Marc F. Rousseau's State of Nature: an Introduction of the Discourse on Inequality. Dekalb, Ill.: Northern Illinois University Press, 1979.
- Ricoeur, Paul. Histoire et vérité. Paris: Seuil, 1964.
- Main Trends in Philosophy. New York: Holmes & Meier, 1979.
- Russell, Bertrand. A History of Western Philosophy. New York: Simon & Schuster, 1972.
- Rüstow, Alexander. Freedom and Domination: a Historical Critique of Civilization, abbreviated translation from the German by Salvator Attanasio; edited, and with



- intro., by Dankwart A. Rüstow. Princeton, N.J.:  
Princeton University Press, 1980.
- Santayana, George. Physical Order and Moral Liberty;  
Previously Unpublished Essays of George Santayana. Eds.  
John and Shirley Lachs. Nashville: Vanderbilt University  
Press, 1969.
- Schapiro, J. Salwyn. Liberalism: Its Meaning and History. New  
York: Van Nostrand Reinhold Co., 1958.
- Sciacca, Michele F. Atto ed essere. 4th ed. Milano:  
Marzorati, 1963.
- Simon, Yves R. Philosophy of Democratic Government. Chicago:  
University of Chicago, 1961.
- Starobinski, Jean. Jean-Jacques Rousseau: la transparence et  
l'obstacle. Paris: Gallimard, 1971.
- Taylor, Charles. "Interpretation and the Sciences of Man," in  
Interpretative Social Science: a Reader, eds. Paul  
Rabinow and William M. Sullivan. Berkeley: University  
of California Press, 1979, pp. 25-71.
- Vaughan, Charles E., ed. The Political Writings of Jean-  
Jacques Rousseau. 2 vols. 1915; rpt. New York: Wiley,  
1962.
- Walker, Robert. "The Discours sur les sciences et les arts and  
Its Offspring: Rousseau in Reply to His Critics," in  
Reappraisals of Rousseau, eds. Simon Harvey et al.  
Totowa, N.J.: Barnes & Noble Books, 1980, pp. 250-278.
- Wright, Ernest Hunter. The Meaning of Rousseau. New York:  
Russell & Russell, 1963.