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The Journal of Politics, Vol. 32, No. 3 (Aug., 1970), 696-708.

Stable URL:
http://links.jstor.org/sici?sici=0022-3816%28197008%2932%3A3%3C696%3ATSCATI%3E2.0.CO%3B2-F

The Journal of Politics is currently published by Southern Political Science Association.

THE SOCIAL CONTRACT AND THE IDEA OF SOVEREIGNTY IN ROUSSEAU

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An organic character in the work of most great thinkers makes it extremely difficult to isolate a part and explain it without multiple references to the whole. This problem is, I believe, especially acute in the case of Rousseau, and a failure to recognize it is the probable cause of so many unsatisfactory and even absurd interpretations of his basic principles. As he said, "All my ideas hang together, but I cannot expound them all at once."[1] In this article I propose to present some of the interrelations that closely unite Rousseau's ideas on the social contract, sovereignty, moral or political obligation, and on one aspect of the general will. Because of the organic nature of his thought, a comprehensive analysis in article form is impossible. For example, no attempt has been made to include his detailed justifications of the positions given below, and his treatment of various kinds of freedom has been omitted. It is hoped, however, that this article will help the reader to deal more satisfactorily with some of the simplistic interpretations of Rousseau's work.

In the religious tradition of the West the idea of sovereignty was well known even if under other terms. God's will, whether interpreted voluntaristically or not, was binding law from which no appeal could be taken. In this sense sovereignty implied legitimacy and morality as distinguished from naked force. By analogy Bodin invested the king with this property. But since the right inherent in the idea of sovereignty seemed too dangerously absolute, he rather unclearly limited it by natural law. With a more rigorous logic Hobbes removed all limitations, though it must be added that he believed that the sovereign would in fact be limited by pragmatic considerations. Since there is no distinction between sovereign *de facto* and sovereign *de jure*, this version reduces moral

[1] *The Social Contract*, Bk. I, ch. 5 in *Rousseau: Political Writings*, trans. by Frederick Watkins (New York: Nelson, 1953). All subsequent citations from the *Social Contract* (abbreviated, S. C.) are from this translation.

obligation to a species of physical obligation, i.e., the prudential necessity of obedience in the face of superior force.

Such approaches to sovereignty are completely unacceptable to Rousseau. Natural law is irrelevant, even if there is such a law, either because it is not known, or if known, is known only in such a general way that its application in a given case is doubtful, or if clearly applicable, because there is no higher power to enforce it. Rousseau rejected Hobbes's version because sovereignty, conceived as a moral property, can never be an attribute of a person or a group not coextensive with the people as a whole.

But what can it mean to speak of the sovereignty of the people? Constant repetition in fourth-of-July oratory may have given the phrase emotive impact, but its cognitive content is seldom clarified. Sovereignty is clearly not a distributive property like humanity. For though each instance of *homo sapiens* is a man, no individual man is a sovereign. Nor is each man a part of the sovereign as each ticket-holder is a part of an audience. On the contrary, Rousseau conceived of sovereignty as a property of a *people* as distinguished from a mere *aggregate*. In several places he insists that where the rule of force reigns there is no community. A master-slave relation may exist between a despot and his subjects, but, ". . . I do not see a people and its ruler. It may be an aggregation, but not an association; there is no commonwealth, no body politic there."[2] For sovereignty to exist a political community must exist.

Rousseau was well aware that communities in a sociological sense exist even in the absence of legitimate governments. When he speaks of a people in this and related contexts he has in mind a community whose political organization is morally acceptable or legitimate. Polity and the political obligations it engenders cannot be separated from morality and the obligations it imposes. Whenever morality is in question, Rousseau sees only two alternatives: a state of morality or a state of nature. His idea of the state of nature is not simply that of the history of man prior to the establishment of government as described in his *Second Discourse*; it is also an analytic device that signals a special condition, viz., that amoral condition where the only rule is the rule of superior force. Thus, all men now live under governments, but because so few, if any, are legitimate, the great majority of men, from a moral point of

[2] *Ibid.*

view, are in a state of nature vis à vis their rulers. They may be obliged to obey, but this obligation is physical, not moral.[3]

Because legitimacy is the key point and because it is a moral term, "the people" indifferently denotes a moral or a political community. In other words, all legitimate political obligations are in the last analysis moral obligations.[4] This close connection comes about because a single process takes man out of a state of nature, and establishes at the same time both a government and a morality. The process in question is the social contract.

In Book I, chapter 6, Rousseau summarizes the terms of the contract. There is a total alienation of each individual's rights: "Each of us puts in common his person and all his powers under the supreme direction of the general will; and in our corporate capacity we receive each member as an indivisible part of the whole." The idea of a general will is introduced here without clarification, and until the above is interpreted in far greater detail, the "contract" is incapable of generating a political community.

A political community is not instituted by the mere affirmation of a desire of individuals to associate. It has no life prior to some collective decision that is realized in action. Before such a decision can be reached, however, men must agree on procedures for making decisions, and on some general definition of areas in which decisions may be made. For example, suppose a group of men declare themselves an association; if no decisions are made, the declaration of association in no way alters their previous unorganized condition. If a proposal is made and voted upon, is it "passed," i.e., obligatory, when the vote is 60 to 40? Without a prior definition as to what constitutes passage, it obviously is not. Nor can the body vote to decide what the voting rule shall be until it resolves this definitional problem. In order to obviate an infinite regress, the basic procedural rules must be accepted unanimously.

Since Rousseau's explicit description of the contract does not suffice to establish a political community, it is necessary to look elsewhere for a fuller account of the terms of that contract. As a

[3]The idea of an amoral, physical obligation is illustrated by such a sentence as, "The General was obliged to retreat because of the enemy's superior strength." This is, in effect, a kind of prudence.

[4]The converse need not hold. There may be moral obligations that are not political, e.g., rules governing interpersonal relations that have no public significance.

methodological principle, it may be stated that the social contract includes, with one important exception, all those *formal* rules that require unanimous consent. "There is only one law which, by its very nature, requires unanimous consent; this is the social compact."[5] A summary of these rules follows:

(1) The first rule is that all members of the association are to have a voice and a vote in the general assembly.[6] Put negatively, no individual or group may be lawfully excluded from the assembly.[7]

(2) Sovereignty is inalienable.[8] Expressed as a rule, this states that the assembly cannot transfer legislative authority to any person or body less than the whole. Even a unanimous vote to do so is incapable of amending this rule without at the same time abrogating the contract as a whole.

(3) Sovereignty is indivisible.[9] This means that one part of the assembly cannot be charged with some matters of legislation and other parts with others. All the people must have a legislative say in all areas of legislative concern.

(4) The assembly cannot bind itself, much less future generations. This precludes legislation passed in perpetuity. From the idea of sovereignty, ". . . it follows that there is not, and cannot be, any sort of fundamental law binding on the body of the people, not even the social contract itself."[10]

(5) "Except for the original contract, the majority always binds the minority, . . ."[11] The size of the requisite majority is a variable depending on circumstances and issues.

(6) The assembly is a permanent constituent assembly.[12] No

[5]*S. C.*, Bk. IV, ch. 2.

[6]*Ibid.*, Bk. I, ch. 6; Bk. II, ch. 2; Bk. IV, ch. 1.

[7]Considering the times and Rousseau's negative attitude toward female capacities, it must be assumed that by "the people" he meant adult males. Women and children would be virtually represented by fathers, husbands, and uncles.

[8]*S. C.*, Bk. II, ch. 1.

[9]*Ibid.*, Bk. II, ch. 2.

[10]*Ibid.*, Bk. I, ch. 7.

[11]*Ibid.*, Bk. IV, ch. 2.

[12]*Ibid.*, Bk. III, ch. 18.

given form of government is prescribed by the contract because the chosen form is a product of a legislative and not a contractual process. Since no law, according to rule 4, is in perpetuity, no form of government is privileged.

(7) Whatever the form of government, provisions must be made for periodic assemblies.[13] With the exception of extraordinary circumstances, only those assemblies convened in accordance with the law are lawful, ". . . for the order to assemble should itself emanate from the law."

(8) All magistrates are to be elected on the basis of a universal franchise. This rule is often overlooked because it is not recalled that the first order of business facing each assembly is the approval or rejection of the present form of government and/or the incumbents.[14]

(9) The criminal code can lawfully include penalties up to and including death.[15] This rule contrasts with Hobbes's argument that regardless of the circumstances a man may *rightfully* seek to escape any threat to his life.

(10) The government and not the assembly is to be the arbiter of matters of fact and the proper application of the law in particular cases.[16]

(11) Legislation must be limited to areas of common concern, though it is the assembly that is the sole judge of what these concerns are.[17]

(12) Only those laws are binding that are universal and impersonal in form, i.e., those that apply equally to all and do not single out one person or group.[18]

(13) Citizens are to vote, not according to personal desires, but on the basis of their estimation of what the common good requires.[19]

(14) When the very life of the state is threatened, the sovereignty of the laws may be suspended and a dictatorship set up. Survival is the ultimate common good and therefore the first dictate of the general will.[20]

[13] *Ibid.*, Bk. III, ch. 13.
[14] *Ibid.*, Bk. III, ch. 18.
[15] *Ibid.*, Bk. II, ch. 5.
[16] *Ibid.*
[17] *Ibid.*, Bk. II, ch. 4.
[18] *Ibid.*, Bk. II, ch. 6.
[19] *Ibid.*, Bk. IV, ch. 11.
[20] *Ibid.*, Bk. IV, ch. 6.

(15) Individuals may enjoy property rights but these rights are ". . . always subordinate to the right of the community over all."[21] Property is not, as with Locke, an inalienable right.

(16) All laws must be completely and fully enforced. Every malefactor must ". . . be forced to be free."[22] This is the very heart of the contract, because obligation depends upon mutuality and equality—qualities that are lacking where vice has an unfair advantage over virtue.[23] So important does Rousseau consider this rule that he denies government the right of pardon, and ". . . even its [the sovereign's] rights in this matter are not very clear, . . ."[24]

(17) Implicit in the above rules is a further rule that apart from the limitations listed above, there are no further limitations to sovereignty.[25]

These rules are procedural or formal. They prescribe, for example, how a law is to be enacted and the form it must take, but they do not prescribe its content. One term of the contract, however, is quite definitely, if not notoriously, substantive, and this concerns the civil creed. It may be objected that the creed is not really a part of the contract, and Rousseau even gives this impression. He speaks of ". . . a civil profession of faith whose articles the sovereign is competent to determine. . . ."[26] If this were true, the creed would be a particular act of sovereignty and therefore not a part of the contract whose function is limited to creating sovereignty. But there are two reasons why the consistency of Rousseau's thought demands that the creed be a part of the contract and not a matter of law. If it were a law, it could, according to rule 4, be repealed, but he speaks of it as some sort of a priori condition of society. The creed embodies, ". . . sentiments of sociability without which it is impossible to be either a good citizen or a faithful subject." Second, if it were a law, it would, according to

[21] *Ibid.*, Bk. I, ch. 9.

[22] *Ibid.*, Bk. I, ch. 7. This notorious phrase cannot be satisfactorily explained or, I believe justified, without an extended analysis of Rousseau's treatment of the different meanings of natural, political, and moral freedoms.

[23] *Ibid.*, Bk. II, ch. 6.

[24] *Ibid.*, Bk. II, ch. 5.

[25] That is, of course, if my enumeration is complete.

[26] *S. C.*, Bk. IV, ch. 8.

rule 5, be binding even on those who might have voted against it. However, "without being able to oblige anyone to believe them [the dogmas], it can banish from the state anyone who does not, . . ." This has the effect of requiring unanimity since dissenters are automatically severed from the body politic. Unanimity, it may be recalled, is a prerequisite for the contract alone. Rule 18 thus becomes: all must profess the civil creed, but beyond that religious toleration is accorded every dogma not subversive of the peace or morals of the community.

III

Once the contract is spelled out in all its details, it becomes far more crucial to Rousseau's thought than is generally realized. Moreover, it clarifies his doctrine of sovereignty. Strictly speaking the contract does not create a people. From an analytic point of view a people ceases to be an aggregate only when they legislate according to the terms of the contract and live up to the law. The sovereignty of the *people,* thus, means the people acting in a certain way: it is descriptive of a process and not of persons considered individually or collectively.

The terminus of such a process is law—sovereign law. Though one may speak of the abiding sovereignty of the people as a *potentiality* (they have the continuing authority to make new laws), at any given time what is *actually* sovereign is the law; it is the end product of sovereignty, conceived as a process, and receives its authority from that process. The process, once completed, ceases to exist, but the authority it generated becomes an attribute of law. To say, then, that the law is sovereign is to say that everyone who consents to the contract is *morally* obliged to obey the law, and that in the face of non-compliance the government has a moral obligation to resort to force. This use of superior force arising from the nature of the contract must be distinguished from the force characteristic of a state of nature: the former is legitimate force. What must be stressed is that a law is sovereign and hence morally obligatory only if it meets all the conditions embodied in the social contract. Even the slightest variation renders the contract void, and in the absence of the contract, "law" has no more authority than the natural power that enforces it. Men may obey it for any number of reasons but, from Rousseau's point of view, it is not morally obligatory.

It is now possible to make a distinction that runs through the *Social Contract* and is essential to the integrity of Rousseau's thought, but one that is obscured for the want of an adjective. If obligations must be self-imposed, in what sense is a man morally obliged by laws of which he does not approve and which, had he the power or authority, he would will otherwise? This difficulty can be resolved only if one distinguishes between different kinds of consent. Psychological consent, or a positive, direct willingness to accept, is essential only with respect to the social contract itself. This is a corollary of the condition requiring unanimity. But this particular instance of psychological consent generates a new type of consent, viz., moral consent. Because Rousseau considers morality a conventional affair, a moral community like a political community, *if* it is to exist, must have agreed unanimously on general rules regulating the formation of specific moral rules. The social contract contains these moral and/or political rules, and it is for this reason that all political obligations are moral obligations.

Once the social contract is viewed in part as a definition of moral consent, the usual relation of means and ends is reversed. Whereas most people would agree that he who consents to the end, consents to the necessary means, Rousseau argues that he who consents to the means, viz., the social contract as a process, consents to the end, viz., law. Thus, any man who psychologically agrees to this process, at the same time morally obliges himself to its terminus whether he psychologically likes it or not. The social contract is not a gimmick that is invoked to get civil society going and then quietly pushed into the background. On the contrary, more than a generative principle, it is an ongoing constitutive moral principle of society. Only insofar as it endures can laws be sovereign. Or put another way, laws are sovereign only to the extent that they embody the social contract. Tautologically stated, every *legitimate* law is a reaffirmation of the social contract.

It is not appropriate here to analyze and evaluate Rousseau's definition of the condition of moral consent or to show why he believed his definition as expressed in the contract to be a privileged definition. Let it suffice to note that such was his belief:

> The clauses of this contract are so completely determined by the nature of the act that the slightest modification would render them null and void; so that though they may never have been formally declared, they are everywhere the same, everywhere tacitly admitted

> and recognized, until the moment when the violation of the social compact causes each individual to recover his original rights and to resume his natural liberty as he loses the conventional liberty for which he renounced it.[27]

For Rousseau there is no third alternative between an amoral state of nature and a moral polity as defined by the terms of the social contract.

Because it is perhaps easier to see the connection between morality and the general will—virtue is conformity to the general will—it is helpful to make explicit the close relation that links the general will to the contract. Many problems arise in determining precisely what Rousseau meant by the general will. Sometimes he speaks of it in objective terms, i.e., the common good that honest men would will if they only knew what the common good was. More often it is used in the sense of a collective decision on specific matters. In this sense the general will is synonymous with sovereign law. There is a third meaning in which the general will is viewed as a disposition to will in a certain way when the occasion demands. But this disposition is none other than a willingness to abide by the social contract. Insofar as the terms of the contract have been fulfilled, the general will has been expressed and a law made sovereign. Negatively stated, should any of the terms be violated, the result is a specious general will and a law that is not morally obligatory. Because of this negative and positive correlation, it matters little whether we say that law is the expression of the general will or of the contract in action.

Perhaps the biggest obstacle to understanding the social contract as a definition of moral obligation can be traced to the term "contract." Many commentators have objected that a contract is an analytically poor device for grounding civil society. They point out that a contract is a legal instrument and hence an effect of civil society rather than its cause, a case of theoretical hysteron

[27] *Ibid.*, Bk. I, ch. 6. By rendering explicit the many terms of the contract, this article upholds a position that I have not found in any commentator on Rousseau I have read. However, my basic objections to those like Vaughan who minimize the significance of the contract and to those who, following Derathé, appear to give it an external sanction in natural law are based on an analysis of Rousseau's thought that goes beyond the limits of this article. More specifically, this analysis relates to the quotation at hand. Let it be noted that there is something paradoxical about a contract that is conventional and yet whose terms are "everywhere the same."

proteron. This objection loses much of its force when the idea of contract is enlarged to include any voluntary agreement. In Locke's theory the obligatory character of the contract is grounded in an antecedent natural morality, one of whose imperatives, it may be assumed, is that promises ought to be kept. In Hobbes the obligatory character extends no further than the coercive power at the disposal of the sovereign.

Rousseau is, as usual, far more complex. His contract is not a contract in the usual sense. Nothing in his thought rules out subsequent contracts between individuals, and yet he claims that "there is only one contract in the state, the contract of association, and that in itself precludes all others."[28] What he means here is that there can be only one public contract that binds the people as a whole. Any other such contract would limit the people's right to change its mind, and this would be a violation of the social contract. The social contract is, therefore, not really an instance of contract in general, but, because of its terms, a concept that is *sui generis*.

Since Rousseau's state of nature is amoral, no transcendent rule renders the social contract morally obligatory. In the state of nature promise-keeping may be a prudential imperative but it has no moral status, since there are no moral standards whatsoever. The contract itself is not obligatory since the people can collectively decide to annul the contract and return to a state of nature.

In Rousseau's approach the question of obligation *first* arises with respect to the law and not with respect to the contract. The obligatory character of a given law is demonstrated when it meets all the conditions of the contract. To ask further what makes the contract obligatory is to miss Rousseau's fundamental point, namely, that the contract defines what he means by moral obligation. In a language community where words have fairly settled meanings, it can be asked whether a given word has been used correctly or not, and the issue can be decided by referring to the accepted definition. It doesn't make sense, however, to ask whether the definition is correct. One could, of course, question the definition on other grounds, e.g., its utility in ordering experience, but its "correctness" is, as it were, self-certifying. It is what it ought to be by the very fact that it is.

This analogy is not perfect because Rousseau believed the contract to be unique in the sense that it is the only alternative to a

[28] S. C., Bk. III, ch. 16.

state of nature. Either accept morality as defined by the contract or live the amoral life of nature. This option not only antedates the contract, but it is a continuing option both for individuals and peoples. Where such an option exists it becomes meaningless to speak of the obligatory character of the contract itself. It is not obligatory but it defines obligation, and this definition has meaning and force only so long as people continue to accept it or consent to it. Two cases may be distinguished.

The people as a whole, for whatever reasons, may within the terms of the contract "legitimately" legislate a return to a state of nature. They might, for example, dissolve the government and repeal all laws. Since an individual in civil society retains as much of his natural right as is not proscribed by law, in a lawless state this natural liberty would be co-extensive with the natural right of a state of nature.

The right to withdraw consent to the basic definition of obligation is not limited to the people as a whole; it is the right of every individual. Men are obligated only by laws that meet the requirements to which they consent. But this consent, even if once given, is not binding in perpetuity. The consent in question is a matter of the present and not of the past. Let us consider, for example, an individual who either has never chosen, or now declines, to be a moral agent. In either case the situation is theoretically the same: an individual confronts a moral community as though he were in a state of nature. What develops is an asymmetrical relation. If the individual remains in the territory and disobeys the law, the government is morally obliged to exert force, and the force it exerts is legitimate. From the point of view of the individual, however, the only obligation he is under is strictly the physical obligation of superior force. From the perspective of its laws, the community may judge his behavior immoral, but analytically it ought to be classed as amoral. It must be added, of course, that the culprit has no grounds for complaint. He cannot object that it is unfair or wrong that he be forced to obey a law to which he has not consented. What he has not consented to is a standard that gives meaning to such words as "just," and "fair." In a word, he is a man without a country, because he is a man without a moral lexicon.[29]

[29]The status of the individual who refuses to play by the terms of the contract is perhaps more clearly and forcibly expressed by Rousseau in his

To summarize: The social contract is a detailed set of procedural rules for making further substantive rules, which are sovereign expressions of the general will. They are rules that govern the making of particular decisions about conduct—decisions that carry with them a moral obligation. The collective exercise of these rules is an act of sovereignty, and it transforms an aggregation of individuals into a people, i.e., a moral community. Laws are obligatory because they are sanctioned by the social contract, but the contract itself is not obligatory: it is a conventional, though a unique, definition of obligation. A specific law obligates an individual as though it were self-imposed even if he rejects it psychologically, provided he still consents to the social contract itself. Any individual who withdraws this consent ceases to be a moral agent and returns to the amoral state of nature. He may still be said to be bound by the social contract, if it is understood that what he is bound to is the law that proceeds from the contract, and that the obligation is the natural one of superior power.

The social contract is offered as the sole and unique instrument for terminating an ever-present option, an amoral state of nature. It defines what moral or political obligation means but it doesn't specify individual obligations.[30] It defines sovereignty but it doesn't specify what laws are sovereign. It defines the formal con-

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Political Economy. Any man who would attempt to subject another to his private will by that very fact ". . . ceases to be a part of civil society, and is related to this other as in a pure state of nature where obedience is prescribed solely by necessity." *Economie Politique,* in *The Political Writings of Jean Jacques Rousseau,* ed. by C. E. Vaughan, I (Oxford: Basil Blackwell, 1962), 245. Again, because mutuality is the basis of obligation ". . . no one can put himself above the law without forgoing its advantages; and no one is obligated to anyone who refuses to obligate himself. For this reason, in a well ordered government no exemption from the law is permitted on any grounds whatsoever." *Ibid.,* 246.

Finally government has an obligation to exert its power against a lawbreaker. "It is necessary to be severe in order to be just. To allow wickedness when one has the right and the power to suppress it, is to be wicked oneself." *Ibid.,* 250.

[30]Though not every rule would at first glance seem relevant to a definition of moral obligation, there is a reason for including them all. The entire set defines political legitimacy, and anything less constitutes, at least theoretically, a state of nature. Though rights and wrongs may exist in this state, their obligatory character is in abeyance. *S. C.,* Bk. II, ch. 6. For Rousseau, moral imperatives are always conditional on a state of equality which in turn implies a legitimate polity. Accordingly, an adequate definition of moral obligation must be co-extensive with a definition of political legitimacy.

ditions of a general will but it doesn't specify what the general will is in a given case. Every attempt to sever these relations between the social contract, obligation, state of nature, and the general will involves a serious distortion of Rousseau's politico-moral theory.