

# Rousseau's general will, civil rights, and property

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Rousseau dismisses the theological notion that justice emanates from God, and in addition suggests that although philosophy may have contributed to a conceptualization of justice through reason, that in order for justice to be actualized, it must attain not only as an end, but must also be the result of social relations which involve reciprocity.<sup>1</sup>

In this paper, I consider Rousseau's argument that justice cannot be derived from reason alone: he proposes that justice while being an object of reason; in order to be meaningful (i.e. actualized justice) must attain a condition of reciprocity between the distinctive parties.<sup>2</sup> He claims that a conception of justice based on reason is empty and insubstantial. Therefore he proposes that a general will is the necessary symbiotic inter-link that permits the substantiation of justice in social relations. In the first section I discuss several points that Rousseau makes with respect to the general will and what I call Rousseau's principle of reciprocity. To conclude, I give a short analysis on why, useful as Rousseau's conception of the general will is, this conception is as if it were incomplete, because it lacks clarity with respect to property.

## **Rousseau's Principle of Reciprocity**

Justice can become substantiated, i.e. a meaningful end in social relations, but requires the mediation of these relations through reciprocity which in order to take place entails, on the part of all parties, the concession and reciprocation of equivalence in exchange. Rousseau considered that there is no reciprocity or exchange of equivalence

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<sup>1</sup> Jean-Jacques Rousseau, "On the Social Contract," in *The Basic Political Writings*, 1987. p. 160.

<sup>2</sup> *ibid.* p. 161.

in divine justice, because God dispenses justice but does not have a commitment to reciprocate at a level that is intelligible to humans. Instead, he proposes that justice which is meaningful to humans emanates from two simultaneous social acts based on reciprocity and equivalence in exchange. The first is the joint and unanimous act of particular wills to recognize equivalent rights in all others as a claim to justice; not motivated by contingency or necessity, but arising from the motivation of humans to improve their lives and to transcend the state of nature. The second occurs on account of another moment of reciprocity constituted by the absolute volition to justice by a general sovereign will towards each particular will.

Justice, as a social process which presupposes an exchange of equivalence coalesces, through reciprocity, and becomes the constitutive part of the sovereign body politic.<sup>3</sup> To maintain this process of justice requires that there be a continual social exchange in which both these elements of the principle of reciprocity between the parties are materialized: thus justice is not only generally meaningful but individually beneficial as well.

### **The General Will**

What is the equivalence that is exchanged? On their part, particular wills unanimously consent to alienate their natural rights of freedom to a general will, (i.e. they transfer and agree to subsume these rights to the general will). These rights include the execution of individual freedom which they enjoyed in the state of nature. Upon this alienation of the particular wills to the general will, a new social dynamic takes place, which permits the transcendence of particular wills from the state of nature to a body politic. Thus two instances have occurred: one which is the constitutive act of the general

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<sup>3</sup>. *ibid.* p. 148. Kant elaborates these point in the *Groundwork of the Metaphysics of Morals*.

will as the sovereign and the other the configuration of a civil body politic through the general will.

The constituted body politic reciprocates by granting civil rights and liberty in a republican polity to the particular wills, which it now calls citizens. Note: the alienation of these wills does not directly configure the body politic: only the general will is the inter-link between citizens and the body politic. Rousseau differed from other state of nature theorists, such as Locke and Hobbes, because of this distinction: the act of volition of the particular will to alienate their rights in which they alienate their rights is the constitutive act of the general will.

Rousseau explains that each person has the capacity to alienate their perceived natural rights because they are born free, but being born free in the state of nature (natural freedom) is not the condition of the exercise of freedom.<sup>4</sup> but instead what concerns Rousseau is *conventional* liberty in the body politic, i.e. civil society.<sup>5</sup> Differentiating between natural freedom and conventional (civil) liberty allows understanding the conditions which give rise to the expression of reciprocity from which justice emerges. For Rousseau, in the state of nature the principle of reciprocity did not attain because in this state social relations did not have justice as their aim.

This explains why the general will is such a crucial term for Rousseau: it is the totality of social relations seen as political relations with justice as their aim. The general will is the totality; it is also the highest expression of justice and therefore is not alienable.<sup>6</sup> Hence, Rousseau was concerned with the relation between the totality and its

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<sup>4</sup> *ibid.* p. 144.

<sup>5</sup> *ibid.* p. 148.

<sup>6</sup> As such the general will cannot be alienated to a higher will, which I interpret is Rousseau's separation of the people from the divine will.

parts. Therefore, he wanted to make “a rigorous distinction between the respective rights of the citizen and the sovereign.”<sup>7</sup>

Although Rousseau differentiates between the three types of rights: natural, civil and the sovereign rights of the general will he sees that a contradiction arises on account of the independence of the particular will towards its own interests and that of the general will. This independence could, if accumulated and set upon its own purposes, derail justice as the aim of social relations. In other words, in the absence of a general will, at the level of society, given the independence of the particular wills these wills could accumulate their interests such that they over-ride civil rights since there is no mechanism such as the general will to prevent this. For example, despite a claim to the right to security of common property, the particular wills when left to their own devices, could by-pass any claim to these civil rights to access to this property.<sup>8</sup> If the particular interests over ride civil rights, seen as those protected by a body politic, then the interests of some or many particular wills separate, trying to gain precedence, and resulting in the separation of the volition of particular interests from the volition of civil rights. The former would be partial and centered on individual interests, the latter squelched on account of the lack of a general will. Rousseau believed that the general will solved this polarization of claims: those pertaining to particular interests and those claims belonging to the exercise of civil liberty. Otherwise the over-riding of particular interests over civil rights would be, for all extents and purposes, the return to the state of nature.

Rousseau insisted, “[...] that whoever refuses to obey the general will be forced to do so by the entire body. This means that he will be forced to be free.”<sup>9</sup> Rousseau’s

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<sup>7</sup> *ibid.* p. 157.

<sup>8</sup> I will refer to this again in the concluding section.

<sup>9</sup> *ibid.* p. 150

conception of justice through reciprocity is crucial to understanding the relation between particular interests, civil rights, the exercise of the general will and justice. For him, the condition of civil liberty rests on the ability of the entire body of the constitution to bear over and above individual interests. The sovereignty of the general will, seen as the exercise of justice, attends in the constitutional sovereignty over particular interests, and therefore subsumes particular interests to the citizens' exercise of their civil rights and liberty. In other words, the individual, through the general will subsumes their interests in order to obtain civil rights for all, and thus is forced to be free from subjective impulse and given the protection of the law or the dispositions of the body politic.

### **Social property and the general will**

Rousseau, through the general will does not solve a *problématique*<sup>10</sup> which Kant saw occurred when the general will is not materialized, because for their part particular wills have a material expression, therefore Kant proposed that the solution lay in tying the general will to social relations of property as well.<sup>11</sup> Unfortunately, Rousseau did not elaborate on the relation of property, the laws of civil society and the general will. Certainly, his views on property centered on the social relations attendant to property which arise historically, and he recognized the contradiction inherent in private interests in property and the inequalities that arise from the nature of social relations attendant to property.<sup>12</sup>

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<sup>10</sup> From French: this is my definition of the term: *problématique* expresses the complexity of a social relation expressed as a new epistemological dilemma and the grounds upon which it is articulated. In this case the complexity of the issue of property, justice and governance was a *problématique* pre-cognized by Locke.

<sup>11</sup> Immanuel Kant recognized the problem inherent in not tying the functioning of the general will and while not elaborating this point to a great degree, does nevertheless tie the functioning of the general will to social relations and property. Immanuel Kant, "On the relationship of theory to practice in political right," in *Kant Political Writings*, 1991.

<sup>12</sup> Jean-Jacques Rousseau, "Discourse on the Origin of Inequality," in *The Basic Political Writings*, 1987. p. 60.

What is beyond Rousseau's general will? I propose that the disposition of the general will should be linked to its materialization as social property, while at the same time preserving its volition in the principle of reciprocity. The actualization of justice, as materialization through social property, is a presupposition upon which the general will could (not should or ought) rest. Generalized social property, and private property are antinomies, they are mutually exclusive. When social property is the social relation between particular wills they are more compatible to the principle of reciprocity on both counts: between the general will and particular wills and amongst particular wills.

When set of social relations is based civil rights which do not derive from private property, this eliminates the contradiction of multiple competing interests, (private property presupposes rights arising from particular interests) and gives precedence to claims deriving from civil rights. Social property does not mean that there is no titular ownership of homes or other possessions:<sup>13</sup> it seeks to eliminate these contradictions and competition between material interests and civil rights. Titular possession would prevent the continual conflicts arising from private property since this latter type of possession does not confer civil rights, and is subsumed to the sovereignty of social property.

The scope of this paper does not allow me delve into the intricacies of social property which I argue has been present in all societies.<sup>14</sup> But I can give two historical examples of social property. First the *commons* in 17-18<sup>th</sup> century England, in the transition away from feudal relations: here the extinguishment of this social property occurred through the loss of access to the *commons* in which the peasantry held common

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<sup>13</sup> I derive this conception of titular possession from the use of land, for the good of humanity from Locke. John Locke, "The Second Treatise, Chapter V, Of Property," in *Locke: Two Treatises of Government*, 2004. Sec. 26

<sup>14</sup> I owe part of my conception of social property through my discussions with Dr. Jesus Garcia Brigos of the Instituto de Filosofía in Havana, Cuba. The material he has given me on this subject is not as yet published.

rights. For this reason I claim in the previous section that private interests *left to their own devices, could by-pass any claim to these civil rights to access to this property*, and this in fact occurred through acts to enclose the *commons* as private property. Second, social property is all our natural resources, the environment and the inter-relation of these to the community. Their preservation as well as use, as a common good, may materialize through a general will. And while private property is the foundation of liberal republics, social property is the foundation of justice as the common good and of human rights.

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