

Part 5: Book 2, Chapters 4 & 5

Book 2, Chapter 4: The Limits of the Sovereign Power

The State, in order to preserve itself “must have a universal and compelling force, in order to move and dispose each part as may be most advantageous to the whole.”

This is an overstatement. Private security and arbitration systems prove its excessiveness.

“We are bound then to distinguish clearly between the respective rights of the citizens and the Sovereign, and between the duties the former have to fulfil as subjects, and the natural rights they should enjoy as men.”

Here Rousseau is beginning to try to illuminate some kind of limits on the State, but he has no coherent concept of Natural Rights that he is working from. Locke at least had some definitions and referred us to Richard Hooker’s *Of the Laws of Ecclesiastical Polity*. Rousseau does neither.

This brings to mind the first two chapters of Locke’s *Second Treatise*. See my coverage [here](#), including a link to a free copy of Hooker’s book.

“Each man alienates, I admit, by the social compact, only such part of his powers, goods and liberty as it is important for the community to control; but it must also be granted that the Sovereign is sole judge of what is important.”

Again, the judge of what is important is a phantom.

Footnote 1: Rousseau begs not to be charged with self-contradiction; he needs more time, because “the terminology made it unavoidable.”

We’re going to see a lot of this in the next two chapters... I would argue that it might make sense to detail the limitations earlier, or organize things better. Blaming the terminology is ridiculous, since he hasn’t used many technical terms from other authors, in the same sense as those authors used them. For instance, Locke talked about a Social Contract, but it’s a very different thing than Rousseau’s.

For more from Locke you might like to check out his essay “An Essay Concerning Human Understanding.” [Part 1](#) | [Part 2](#)

“the Sovereign... cannot impose upon its subjects any fetters that are useless to the community, nor can it even wish to do so”

Define useless. No, wait—let the worst people in society define useless. I suspect it will become the null set.

Social responsibilities are “obligatory only because they are mutual” and we inevitably are working for ourselves when we also are working for others.

This is another case where the Iron Law of Oligarchy is devastating for Rousseau. Even if these responsibilities are mutual, there will be those who give orders and those who obey, and nothing in Rousseau’s arguments so far has suggested otherwise.

“...the general will... must be general in its object as well as its essence; that it must both come from all and apply to all; and that it loses its natural rectitude when it is directed to some particular and determinate object, because in such a case we are judging of something foreign to us, and have no true principle of equity to guide us.”

This is a perversion of Locke and Hooker’s conception of Natural Law as being logically self-consistent and generally based on axioms which are generally agreeable, and which denying would make a person vulnerable to turnabout. Things like “thou shalt not murder.” If you seriously argue that murder is not wrong, you cannot logically complain if others murder you.

Whenever the agents of the Sovereign focus down on one particular person or group of persons, it is acting as magistrate, and not Sovereign. “When, for instance, the people of Athens nominated or displaced its rulers, decreed honors to one, and imposed penalties on another, and, by a multitude of particular decrees, exercised all the functions of government indiscriminately, it had in such cases no longer a general will in the strict sense...”

Rousseau is really harping on this universality principle, which we’ll see affects the structure of what he calls Law, but realistically there is no way to differentiate between magistrate orders and the Sovereign Law when applied to individual cases.

In practice, governments organized under Rousseau’s framework will tailor the law to discriminate in clever ways (evil doesn’t mean stupid) which nudge the people in certain directions. I mean, look at tax law, and look at how taxes have been expanded to the point where any nudge the government wishes to do falls under the umbrella of “tax.”

More demands for time to “expound my own” views from Rousseau.

It’s almost as if he realizes he’s dug his own grave with his sloppy language and is backpedaling fiercely to avoid being seen as a totalitarian.

The line between idealist and totalitarian is, of course, paper thin. It takes very little effort to go from “I believe this is how things should be” to “how I think things should be must be enforced by violence,” especially when you have thrown away principled limits in the interest of a pat definition.

“every authentic act of the general will, binds or favours all the citizens equally; so that the Sovereign recognizes only the body of the nation, and draws no distinctions between those of whom it is made up.”

This is a fantasy; laws can always be made to not specifically target one person or group, but, by way of seemingly legalistic phrasing, to actually target someone. Then, this phrasing can be justified by saying “if X didn’t want to be subject to law Y, then they shouldn’t do Z.”

Lots of tax law is like this, and is written as if the economy would be exactly the same if various highly productive individuals decided simply to not produce for six, ten, or eleven months out of the year.

Legislators can certainly ignore certain aspects of reality in order to pass good-sounding laws that actually have extremely destructive consequences.

Acts of Sovereignty only conventions between body and members and cannot “lay more charges on one subject than on another, because, in that case, the question becomes particular, and ceases to be within its competency.”

This sounds good but recall that in practice there are no clear distinctions between Acts of Sovereignty and Acts of Magistracy, and the people are bound in either case to obedience, because they cannot definitively tell the difference.

“...it is seen to be so untrue that there is, in the social contract, any real renunciation on the part of the individuals, that the position in which they find themselves as a result of the contract is really preferable to that in which they were before.”

This could be true with a limited-government style “social contract,” or actual real contracts, too. Rousseau has painted himself into a corner with his sloppy language.

More certainty, more security; “instead of natural independence, they have got liberty, instead of the power to harm others security for themselves, and instead of their strength, which others might overcome, a right which social union makes invincible.”

Rhetorical gibberish. [War is peace, freedom is slavery, ignorance is strength.](#)

“All have indeed to fight when their country needs them; but then no one has ever to fight for himself.”

Iron Law of Oligarchy strikes again. The king and officers do not risk their lives, or at least they structure things so that such a risk is minimal. George III was likely pissed when Americans started shooting officers.

Book 2, Chapter 5: The Right of Life and Death

Once again, individuals have no right to dispose of their own lives.

I’m surprised that Rousseau hangs onto this element of Hooker’s philosophy. He was hostile enough toward religion that I would imagine he would have dropped this point. In any case, it is based on a specifically Christian bit of philosophy and is largely irrelevant to the wider argument.

“Every man has a right to risk his own life in order to preserve it.”

This is actually a good line that helps to point at something specific: Does God differentiate between simple suicide and serving a hopeless cause? The answer [seems to be yes](#), at least in Christianity. Does a self-consistent morality system? Should it?

The social contract has, as its end, the preservation of the people, and that must include the means.

It is logically possible to aim at an uncertain end and contractually limit the means. The uncertainty of means required to reach some ends in fact encourages people to consider what they would trade for the desired end. This is economics 101.

It is also, of course, possible to aim at an end and only achieve it partially.

“He who wishes to preserve his life at others’ expense should also, when it is necessary, be ready to give it up for their sake.” Basically, man should be ready to die when the State declares it necessary because his life is a gift from the State.

Iron Law of Oligarchy again.

Concept of justice: we want to avoid being victims of crime X, therefore we consent to punishment (up to and including death) should we commit crime X

Here is Rousseau’s first hint at how Sovereign Law actually works. This is sensible but it comes too late and proves too much. He should have said this before he said that the State possesses absolute power over the individual, and built up from there. He’s trying to rescue his framework from becoming abject tyranny, but he’s left too many footholds and loopholes and phantoms for the worst people to use.

Criminals forfeit their membership in society and commit war against it.

Contradictory. If criminals exit society, then Sovereign Law is not needed, at least in the sense he just mentioned above. No consent from the attacker is required for self-defense.

Condemnation of criminals “is not a function of the Sovereign; it is a right the Sovereign can confer without being able itself to exert it.”

Because criminals are outside the system—then his fairly good “concept of justice” I mentioned above is totally useless. Also, then society or people pretending to speak for society can declare anything a crime, and punish anyone it wants. We’re back at totalitarianism.

“All my ideas are consistent, but I cannot expound them all at once.”

Prove it!

State cannot put to death those who can be rehabilitated or put to good use.

Terms need definition or explanation. He provides none.

“In a well-governed State, there are few punishments, not because there are many pardons, but because criminals are rare...”

“Man as he is,” he once said... Kropotkin did this too, [assuming that communalization would make crime disappear](#). It doesn’t.