

Part 15: Book 3, Chapters 16-18

Book 3, Chapter 16: That the Institution of Government Is Not a Contract

First establish legislative power, then executive. These are naturally separate acts.

Sounds like a “reasonable” start to a chapter, so I wonder what knots Rousseau is going to tie himself into in this one.

If the Sovereign tried to assume the executive role, “right and fact would be so confounded that no one could tell what was law and what was not; and the body politic, thus disfigured, would soon fall prey to the violence it was instituted to prevent.”

This is one of those things where Rousseau is making these imaginary distinctions and claiming they make a big difference. In a democracy, the Sovereign and the prince are the same group of people. How does changing their name change their opinions, their decisions, their powers, etc...

Citizens are equal and “all can prescribe what all should do, but no one has a right to demand that another shall do what he does not do himself. It is strictly this right... that the Sovereign, in instituting the government, confers upon the prince.”

So the Sovereign confers a right that it doesn't have onto the prince. That seems a bit of a contradiction, or at least a usurpation. If I try to make sense of this, the Sovereign gives the prince the right to convert law into decree, I think?

But Rousseau has already argued that [law can be fiddled with to make it sound universal while actually targeting an individual or group](#), so why bother with the distinction?

This might look like a contract, but the supreme authority cannot place something above itself. A contract is also a particular act, and cannot therefore be legitimate law.

The notion that there is some kind of force other than the people themselves to prevent the prince from taking power over them is a bizarre hallucination. If the prince can both judge, interpret, and execute the law, that is as good as being able to write it.

If a contract is a particular act, then the particular act of association (the Social Contract itself) also requires not majority, but unanimity. If one group enslaves another into their so-called Social Contract, then even Rousseau would say the association is null and void. See the [first few chapters](#) of this very book.

It also doesn't look like a contract, any more than a contract where “I give you all my goods, on condition that you give me back as much of them as you please.”

The open-ended nature of the Social Contract invites the same criticism.

Therefore it cannot be a contract. The only contract is the initial act of association. There can be no public contract that does not violate the first.

The initial act of association doesn't look like a contract, either. Plus, the Sovereign is all-powerful in Rousseau's framework. There is no other authority to plead to if one believes some other "public contract" is violating the initial act of association.

The term "public contract" is also vague and undefined. What prevents the government/prince from making what it calls "contracts" with the public? Is this another one of Rousseau's damned bits of floppy language?

Book 3, Chapter 17: The Institution of Government

The act of instituting the government is a complex act consisting of two others: "establishment of the law and its execution."

And the establishment of the law is a compound act, with an assignment of Legislator(s) and actual creation of the law. And establishment of its execution is also compound, with nominations and elections of members of government.

This is all floppy language that doesn't really get us anywhere, except to make a bunch of largely irrelevant distinctions to things that don't really have measurable differences, much in the same way that the "general will" is indistinguishable in practice from a majority vote or a decree that the government calls law, with all the problems to which this vagueness leads.

First, "the Sovereign decrees that there shall be a governing body established in this or that form; this act is clearly a law."

This is at least consistent with earlier chapters.

"By the latter, the people nominates the rulers who are to be entrusted with the government that has been established. This nomination, being a particular act, is clearly not a second law, but merely a consequence of the first and a function of government."

Rousseau is spending a lot of time on something that ostensibly happened once, long in the past, and is practically irrelevant.

How can there be an act of government before it exists? Sovereignty is suddenly converted into democracy, "so that, without sensible change, and merely by virtue of a new relation of all to all, the citizens become magistrates and pass from general to particular acts, from legislation to the execution of the law."

Distinctions without differences. This doesn't eliminate the destructive incentives of democracy, or the dangerous tendencies of coercive government.

What it does is give a rationale to deny people's exit from the dominion of a coercive State. "You agreed to the Social Contract, and now literally ten seconds later we strip you of your freedom and property." If the initial association required unanimity, then the establishment should also be unanimous, else those who just associated wouldn't have associated.

This kind of thing happens every day in English Parliament, where the Lower House becomes the Grand Committee to discuss affairs, transforming from a sovereign court to a commission, then reporting to itself as the House of Commons to debate again.

Parliamentary rules are complicated and silly mainly for the reasons of maintaining order without allowing exit, and to gatekeep against newcomers.

By “following the rules,” parliaments pretend to legitimacy and bind dissenters as “out of order.” They hold them in place to “maintain quorum.” Etc.

A democratic government can be established by “a simple act of the general will.” It can either continue as the prince or establish some other prince, per the law.

So, once the Sovereign establishes the law, it creates a temporary democracy to institute the government it intends to establish. It’s a lot of crazy wiggling to do one thing while still appearing to hold onto Rousseau’s framework. It’s also very strange to focus on this particular act when most people are already the subjects of some government, and they are duty-bound to extend its life as long as possible.

“It is impossible to set up government in any other manner legitimately and in accordance with the principles so far laid down.”

Failing to prove a negative, but whatever. Wouldn’t the fact that almost no existing government was built this way invalidate all of them? Where is Rousseau leading?

Book 3, Chapter 18: How to Check the Usurpations of Government

Since institution of government is not contract, but law, the prince is not the people’s master but its officer. The people can set them up and pull them down when it likes. The prince must obey the people.

Like Locke but more fail. Applies only to Rousseau’s very particular framework. Pleads based on a non-measurable difference between law and decree. Allows for long periods of “the law” being constant but decrees changing in horrible ways.

All smaller forms of government are provisional and last only until the people choose to reorder them.

Oh, so they can do this whenever?

“It is true that such changes are always dangerous, and that the established government should never be touched except when it comes to be incompatible with the public good.”

No, I thought not...

Formalities are necessary “to distinguish a regular and legitimate act from a seditious tumult, and the will of a whole people from the clamour of a faction.”

Formalities which will be adjudicated and interpreted by the prince. Not a good set of incentives.

Governments are strongly incentivized to extend their powers by preventing regular meetings of the people. Periodic assemblies as part of the basic law “are designed to prevent or postpone this calamity.”

Periodic assemblies of the people are only liable to result in further oppression of trapped minorities.

Two propositions should be raised at each assembly, as two separate propositions, and cannot be suppressed:

1) “Does it please the Sovereign to preserve the present form of government?”

2) “Does it please the people to leave its administration in the hands of those who are actually in charge of it?”

Assuming such an assembly ever happens, and assuming that the people are not going to force their authority on a variety of oppressed minorities.

It really would make more sense to permit secession at this point.

“[T]here is in the State no fundamental law that cannot be revoked, not excluding the social compact itself; for if all the citizens assembled of one accord to break the compact, it is impossible to doubt that it would be very legitimately broken.”

But since that will never happen and since the people are duty-bound to continue the Social Contract as long as the government serves the public interest, which it generally judges in its own favor, this is irrelevant.

“Grotius even thinks that each man can renounce his membership of his own State, and recover his natural liberty and his goods on leaving the country.”

May have to finally get to some Grotius after this.