

**Rousseau Rousseau
and et la
Criticism Critique**

**edited by
sous la direction de**

Lorraine Clark and Guy Lafrance

Pensée Libre N° 5

**Association nord-américaine des études Jean-Jacques Rousseau
North American Association for the Study of Jean-Jacques Rousseau**

Ottawa 1995

Romanticism and Rousseau's Legislator

"Anyone who dares to undertake the *founding* of a people should feel himself capable of changing human nature, so to speak, of transforming each individual, who by himself is a perfect and solitary whole, into part of a greater whole" (RPW, 108, my emphasis). This suggestion of a founding event, the creation of a culture, briefly emerges in Rousseau's *Social Contract*, but rests uncomfortably in a chapter which introduces a mysterious "*legislator*" who is to create the conditions for a concord which can give movement and will to a pre-formed body politic (RPW, 105). Rousseau's ambivalent word choice reflects his attempt to develop two distinct approaches to the problem of civilization: one, a reformulation of Montesquieu's "sociological" approach, and the other a radically new conception.¹ While there have been a number of scholars who rightly place Rousseau's legislative project within the French Sociological Tradition, recognizing his indebtedness to Montesquieu and the Enlightenment, I am aware of none that have looked at his venture from the perspective of Romanticism.²

The "romantic" version of legislation emerged from Rousseau's break with the Enlightenment with his realization that the fundamental problem of society was not backwardness, but corruption. Rousseau's discussion of the legislators in the *Social Contract* exemplifies just this transition and should be seen as initiating a Frankensteinian project of cultural re-creation through poetic revivification. While experimenting with different "forms" to find an instrument precise enough to create the internal changes needed, the substance of his later works maintain the general outline of the gnostic creation myth which characterized much of the Romantic Period.³ This paper will focus on the moment of *transition* from Enlightenment to Romantic legislation.

¹Hannah Arendt presents a cursory conceptual history of "founders" and "legislators" in *Between Past and Future* (New York: Penguin, 1977), 91ff.

² Michael Brint, *A Genealogy of Political Culture* (Boulder: Westview, 1991).

³ On the gnostic creation myth as a Romantic genre and its origins in the thought of Rousseau, see the excellent work by Paul Cantor, *Creature and Creator* (Cambridge: Cambridge University Press, 1984).

In "A Discourse on the Arts and Sciences", Rousseau traced the origin of the unsightly decorum of the Enlightenment to the material founding of government:

Necessity raised up thrones; the arts and sciences have made them strong...to them, happy slaves, you owe that delicacy and exquisiteness of taste [which is] the appearance of all the virtues without being in possession of one of them.⁴

This genealogy of taste marks the beginning of Rousseau's novel attempt to break with the Enlightenment's veneration of reason, progress and decorum, resulting in a radically new vision of human development and potential.⁵

"Before Art had moulded our behavior, and taught our passions to speak an artificial language, our morals were rude but natural," writes Rousseau of our prelapsarian condition, "[and while] Human nature was not at bottom better then than now,...men found their security in the ease with which they could see through one

⁴ Rousseau, *Discourse on the Arts and Sciences*, trans. G.D.H. Cole (Vermont: Everyman, 1973), pp.4-5.

⁵ Ironically, this revelation took the form of the Biblical Fall and thus resurrected the "gnostic" genre of the creation myth. This genre would become a favorite of the English Romantics who, like the ancient gnostics and Rousseau, faced the problem of criticizing a complete, revealed text, whether it be the canonization of the Old Testament, the buried laws of nature, or classic consensus on literary sources. All three responded by writing pre-histories, thus recontextualizing by filling the blank pages prior to Genesis. For this relation see the preface to Cantor, *Creature*.

On gnosticism generally see Hans Jonas, *The Gnostic Religion* (Boston: Beacon Press, 1963). For gnosticism's political relevance one can do no better than the work of Eric Voegelin--specifically *The New Science of Politics and Science, Politics, and Gnosticism*, both of which may be found in volume V of the *Collected Works of Eric Voegelin* (Baton Rouge: LSU, 1990).

For our purposes, it is important to remember that Rousseau's Romantic form (Creation Myth) and his Romantic view of man (as creator) emerge from his criticisms of the Enlightenment faith in reason and civilization as the progressive means of refining a pre-existing humanity.

another."⁶ This image of innocent transparency bears a striking resemblance to the Edenic portrait of harmonious ignorance we associate with Milton's *Paradise Lost*.⁷ In both we see a man untroubled by the inner diremption of conscience or the anxiety of self-consciousness; instead, his inner and external harmony allow him to act in cheerful synchronicity with all his parts and with other human beings. This harmonious community had been shattered, for Rousseau, largely by the prideful introduction of taste.⁸

Rousseau urges his contemporaries to ignore the idle instructions of academicians and listen more intently to the still "voice of conscience." The opposition of chatter and action, of vanity and conscience, suggests an internal cleft in the very frame of man which, as long as it existed, held out the opportunity of salvation through the call of natural goodness and simplicity. Regardless of the sincerity of his religious characterization of conscience at this point, Rousseau here believes a return to a state of simplicity possible through simple self-examination...and action.⁹ By the Second Discourse, however, all the action in the world--even the eloquence of Demosthenes--cannot save us.¹⁰

⁶ Cole, p. 6.

⁷ Cantor, p. 1: "Milton's myth involves three stages, which in altered form provide the framework for Romantic creation myths: paradise, paradise lost, paradise regained. An initial stage of unity is shattered by the fall, a painful stage of disunity results, with the promise of a third and final stage, in which the divisions of the fallen world will be overcome and the original unity restored, on a higher level."

⁸ Cole, p. 14.

⁹ Cole, p. 29. Rousseau is disingenuous in his appeal to God on p. 28. He is using the notion of conscience here in the sense of a natural moral faculty and probably religion largely as a rhetorical device, but generally as something unnecessary for virtue. Later, in the "Letter to D'Alembert," he becomes "only too disabused" of this arrogance (Bloom, p. 117).

¹⁰ Rousseau's use of the Body Politic as something that Demosthenes might, were it not enervated by luxury, *breathe life into* intimates that longing to create which will emerge full force only in the "literary" works following the *Social Contract* (Cole, p. 8). The extent of enervation and its possible remedy are the dominant problems which Barzun finds at the heart of

You will remember that in the First Discourse Rousseau accused art of moulding our behavior and teaching "our passions to speak an artificial language"--a language so enervating that, given enough time, it might crush the very life from our virtue.¹¹ The Second Discourse traces the origin of this artificial character from a "state of nature" where man lived in a savage immediacy that limited his horizon to the impulses of nature--specifically self-preservation and pity (*RPW*,6). What distinguishes man from animal is the human capability to acquiesce to or forego an impulse, and thus to become something other than what he originally was.¹² The combined effect of these faculties is a creature both naturally good (or beyond good and evil) and infinitely malleable.

A plastic human nature, while unselfconscious, helps the species to thrive by imitating the natural defenses of the more fortunate animals; however, when placed in close proximity with other humans, our ability to make comparisons, to acquiesce or assent to images of others, leads to the creation of esteem--the source of all of our inequality and corruption.¹³ Since this esteem is only possible as a result of our faculty of pity, which allows us to sense life outside of ourselves, our knowledge of the opinions of others, of good and evil, could hardly have been avoided. Nevertheless, natural man's compact unity of thought and action, his ignorance of time, death, and most of all himself, is the price of his newfound knowledge. Through the mediation of the opinions of others, he has fallen from his state of perpetual innocence and natural independence into a condition of dependence on artificial passions whose infinite demands leave him forever separated from communion with others or with his own

Romanticism (Barzun, pp. 13-14).

¹¹ Cole, p. 8.

¹² Cantor, p. 6.

¹³ To this point, Rousseau described only the desires of self-preservation and pity as "inherent" in our "nature." This means that a number of things generally considered essential to human life fall under the rubric of "socially constructed" passions. For instance, speech develops in the family which is itself a human invention; love only emerges after the first huts and property (*RPW*, 37); and only late in the socialization of man does government come onto the scene.

existence.¹⁴ This internal and external exile makes Rousseau's hypothetical history of civilization read like a "secularized version of the fall" with civil society representing the second stage in the gnostic myth.¹⁵

By tracing civilization and reason to their origins in our most tender passion, pity, and narrating their gradual inflammation and corruption, Rousseau revalues the traditional ethical relation between the passions and reason. The passions now become more fundamental while reason shrinks to a qualified social creation. But with their source in a natural impulse and in light of our ability to forgo such impulses to become something different, why remain fallen? That is, "Why, when man has it within his own power to change himself, does he continue to endure a miserable condition?"

The power to change, to become other than one was, is the distinctive characteristic of man for Rousseau (and for the Romantics), but this does not mean that this change can be controlled. Because civil man knows "only how to live beyond himself in the opinion of others," he has effectively stifled that guide he had in his natural state, pity, and no longer has any counterweight to his inflamed amour-propre (*RPW*, 56). Thus, self-creation takes place in the infinite structures of societal opinion, impelled by our unbalanced drive to fix ourselves in the minds of others and make them prefer us to themselves.

This valorization of opinion gives rise to decorum and manners which facilitate social discourse and further habituate us to our new artificial character. As habits of the heart, they serve as the indelible education of civil man and lead him further away from that irretrievable natural state from which he came. In his work prior to the *Contract*, this fatal distance seemed intractable:

"[In the] Spartan regime...laws and morals [manners], intimately united in the hearts of the citizens, made, as it were, only one single body. But let us not flatter ourselves that we shall see Sparta reborn in the lap of commerce and the love of gain."

In the "Letter to D'Alembert", Rousseau writes that the

¹⁴ Keith Ansell-Pearson, *Nietzsche Contra Rousseau* (Cambridge: Cambridge University Press, 1991), p. 67.

¹⁵ Ansell-Pearson, p. 5.

"knowledge of these relations [between the *force* of the laws and the force of the vices] constitutes the true legislator's science."¹⁶ Anyone can give laws, the "problem is to adapt this code to the people for which it is made and to the things about which it decrees to such an extent that its execution follows from the very conjunction of these relations." Rousseau follows Montesquieu in this concern for adaptation to the local and empirical qualities of a people.¹⁷ He also accepts Montesquieu's distinction between the proper sphere of legislation and that of moeurs:

We have said that the laws were the particular and precise institutions of the legislator and the mores and manners, the institutions of the nation in general. From this it follows that when one wants to change the mores and manners, one must not change them by the laws, as this would appear too tyrannical; it would be better to change them by other mores and other manners.¹⁸

In short, Rousseau imitates Montesquieu's version of what I would call an "Enlightenment Legislator" with its emphasis on the proper collation of perspectives, attention to sociological conditions, and even his concern over the proper means of reform.¹⁹ On this last count, however, Rousseau's preoccupation with corruption begins to deflect the accent away from exteriority.

Rousseau introduces the "true legislator's science" in the midst of a discussion of whether laws can force actors to be decent men (*P&A*,65). Earlier we described civil man as being forever "outside himself," living in the minds of others and flattering their vanity so as to receive their esteem; this is also his description of the talent of the actor. In "putting on another character than his own,...appearing

¹⁶ Bloom, p. 66.

¹⁷ Montesquieu, *The Spirit of the Laws*, ed. Anne Cohler, Basia Miller, Harold Stone (Cambridge: 1989), Part III, Bk. 19, ch.14.

¹⁸ *Ibid.*

¹⁹ In his *Emile*, Rousseau writes, "The necessary relations between morals and government have been so well expounded in the book *The Spirit of the Laws* that one can do no better than have recourse to this work to study these relations" (p. 468).

different than he is, ...[the actor forgets] his own place by dint of taking another's" (*P&A*, 79).

The Philosophes, particularly Diderot but also Montesquieu before him, viewed the act of playing the Other as a form of critical self-reflection wherein one might come to see from another perspective and become more fully self-aware.²⁰ Their concern was to sift through prejudice and bring the buried principles of human society to light.²¹ Theaters, as schools of morals, became a microcosm as well as an instrument of the general Enlightenment experimentation with "the Other"--a science that sought not merely to enjoy local color but through it to cultivate a taste for the universal.

Rousseau appreciated the empiricism of Montesquieu with regard to laws, force, and external conditions, but the cultivation of virtue required a different model than that of the theatrical observation:

By what means can the government get a hold on morals [manners]? I answer that it is by public opinion. If our habits in retirement are born of our own sentiments, in society they are born of other's opinions. When we do not live in ourselves but in others, it is their judgments which guide everything. Nothing appears good or desirable to individuals which the public has not judged to be such, and the only happiness which most men know is to be esteemed happy.²²

The belief in an underlying set of external mechanical laws to be uncovered by observation could not be applied to the will or to

²⁰ Michael Brint, *Genealogy of Political Culture* (Boulder: Westview, 1991), pp. 15-16.

²¹ The 18th-C. fascination with travel illustrates its concern with gathering diverse experiences. By contrast, Rousseau's discussion of travel in *Emile* qualifies travel as a means to enlightenment and allows it only after the self has become mature. See Allan Bloom, trans. and ed., *Emile: or On Education* (New York: Basic Books, 1979), p. 455.

²² Montesquieu also realized that morals [manners] should not be challenged with force and he uses the example of Peter I who flattered rather than forced women of his empire to change their customs; nevertheless, the influence of the passions on vanity is not explored for its pedagogical value generally (Cohler, pp. 315-16); Rousseau quotation (*P&A*, p.67).

consciousness because in the power to choose "one finds only acts which are purely spiritual;" and these, we have seen, materialize only in society.²³

Adding to his earlier social history of the interiority of consciousness, Rousseau emphasizes here the social foundation for the *force* of laws by showing their dependence on morals, and the dependence of morals on public opinion (*P&A*, 66-67). Thus, rather than erecting a moral code, the legislator's primary interest should be to mould the public opinion from which their laws will receive their life-giving force. Of course, the natural question arises, "How?," to which Rousseau replies to D'Alembert, "As to the choice of instruments proper to the direction of public opinion, that is another question which it would be superfluous to resolve for you and which it is not here the place to resolve for the multitude" (*P&A*, 67). He returns to this question in the *Contract*.

The *Contract's* reconciliation of civil and moral freedom would fulfil the gnostic dream of a higher synthesis were it not for the paradox on which the General Will hinges, namely that to follow the General Will and make good laws, the citizens must be virtuous; but, in order to make the citizens virtuous, there need to be good laws (*RPW*, 107). As Rousseau wrote in a chapter he deleted from the *Contract*, "Where is the man who can separate himself from himself?"²⁴ With no natural sentiment of pity to carry men outside themselves (you will remember that civilized man had stifled it, *RPW*, 7), the sense of solidarity needed for the contract must be implanted within them...Human Nature *transformed*.²⁵ The superior intelligence charged with this creative mission is the legislator.

In Book II, chapter 7 of the *Contract*, Rousseau retells the history of political ordering, creatively juxtaposing the main characters so that they point beyond the traditional notion of legislation. He begins with Plato and makes the point that the legislator "who invents the machine" is even more praiseworthy than the "worker who sets it

²³ See the passage from the *Second Discourse* as cited in Brint, p. 27.

²⁴ Cole, p. 174.

²⁵ Cole, p. 175: "Will he listen to his inner voice? But it is said that his voice is only formed by the habit of judging and feeling in the bosom of society and according to the laws; it cannot, then, serve to establish them."

up and makes it run" (RPW,108). This seemingly insignificant point takes on new meaning when placed against Machiavelli's assertion that a "legislator" [ordinatori] lives off the virtue of the "founder," a fierce and warlike character who can countenance the necessary violence to found a people.²⁶ In revaluing this relation, Rousseau shifts the credit for founding to the legislator, equating Machiavelli's Romulus figure with Caligula, or at best a cipher. The process of elimination issues from the concern with violence and results in the legislator's transformation into a *nonviolent founder*.

Rousseau then quotes Montesquieu on the role of founding institutions: "At the birth of societies, the rulers of republics create the institutions, and afterwards the institutions mold the rulers" (RPW,108). But while this affirms Plato's architectonic claim against Machiavelli, it also unearths the problem which created the necessity for the Legislator in the first place--namely, that of legitimacy.

For an association to be legitimate, "the people who are subject to the laws should be their author" (RPW,107). Montesquieu's concern with the spirit of the laws as an underlying spring in a political community, despite its suppleness with regard to mores and character, remains external to human consciousness--an invariable duty man can forget but not change.²⁷ As a result, sovereignty for Montesquieu can reside in a lawgiving individual as long as his laws reflect the pre-existing nature of things.²⁸ For Rousseau, since no invariable and pre-existent nature could sanction laws, regardless of their utility, the important initial hurdle for the legislator was to gain the consent of the people (RPW,109). For this reason, his "office, which sets up the republic, does not enter into its constitution" and he should "have no legislative right" (RPW,108-9).

This stringent respect for popular sovereignty refocuses the paradox: if the legislator must rely on the free vote of the people to educate them, how will he be able to convince them in the first place (RPW,109)? Rousseau's answer is that "the legislator, incapable of appealing either to force or reason, must have recourse to an authority

²⁶ Machiavelli, *The Discourses*, trans. Leslie Walker (New York: Penguin, 1988), p. 165.

²⁷ Cohler, pp. 3-5.

²⁸ Cohler, p. 3. On sovereignty see Brint, p. 21.

of another order, which can lead without compelling and persuade without convincing" (*RPW*,109). This authority is superhuman. By placing his decisions in the mouth of a divine authority, the Legislator is able to lead the "vulgar herd" (*RPW*,109-110).

The unfortunate aspect of Rousseau's treatment of the founding act is that Corsica is the only herd that comes close to fitting the intricate requirements for the legislator to sully his hands (*RPW*,110). To begin with, he dismisses all but "barbarous" peoples as corrupt and beyond any hope of redemption (*RPW*,111). And even then, he remarks of Peter's attempt to civilize Russia, "[he] had a genius for imitation; he did not have true genius, which creates and makes everything anew....[but rather] attempted to bring it under law and order when it needed only to be trained" (*RPW*,111). Even under the best conditions, the legislator cannot simply rely on imitating the laws of other peoples; rather, he must create anew while preserving the internal fabric of a people.

I want to suggest that Rousseau's distinction between "barbarous" and corrupt peoples and the latter's exemption from any possibility of freedom misleads us if we take him as being engaged in the straightforward project of presenting an external code to a barbarous people under the guise of religion. While he obviously thought that Enlightenment legislation with Montesquieu's sensitivity to context could develop a strong foundation for a willing and uncorrupted people, particularly Poland and Corsica, he viewed the primary and more applicable project of the legislator from a different angle--one at once more personal and romantic.

I shall be asked if I am a prince or a legislator, to write on politics. I answer that I am neither, and that is why I do so. If I were a prince or a legislator, I should not waste time in saying what wants doing; I should do it, or hold my peace.²⁹

Rousseau disavows that he is engaged in a project of legislation and precludes those places where he lives from any possible liberation. But given the malleable view of human nature he presents us with, not to mention his efforts to develop an elaborate thought project on the social contract, this fatalism sounds hollow. Rather than fatalism, if one views Rousseau as rejecting the feasibility

²⁹ Cole, p. 81.

of "Enlightenment Legislation," a new possibility opens up.

The "Letter to D'Alembert" left a major question hanging involving the "instrument" for directing public opinion (*P&A*, 67). In the *Contract*, we saw that the device for leading the masses without reason, virtue, or force was Religion. Religion is able to perform this role because the myths of Christianity have become bound up in our opinions of ourselves in such a way that its edicts have authority for us. The great legislator will be someone who is able to use these internalized tropes to lead us.

Along with [political, civil, and criminal laws] goes a fourth, most important of all, which is graven not on tablets of marble or brass, but on the hearts of the citizens. This forms the real constitution of the State, takes on every day new powers, when other laws decay or die out, restores them or takes their place, keeps a people in the ways in which it was meant to go, and insensibly replaces authority by the force of habit. I am speaking of morality, of custom, above all of *public opinion*; a power unknown to political thinkers, on which none the less success in everything else depends. With this *the great legislator concerns himself in secret, though he seems to confine himself to particular regulations*; for these are only the arc of the arch, while manners and morals, slower to arise, form in the end its immovable keystone.³⁰ (my emphasis)

Rousseau published *Emile* the same year as the *Contract*. He put his notions about the malleability of human character into practice in creating a "natural man."³¹ This attempt at nature by design failed to induce the desired effect of encouraging the "Spartan mothers" in Geneva and Paris to imitate his teaching. As he had learned with the theatre earlier, the distance provided by willing suspension of disbelief also allowed one to excuse oneself from uncomfortable ideas.

Rousseau was thus struck by his growing realization that one cannot persuade even poetically through a medium which allowed one to dispassionately observe the text. What was needed was a device which could not only narrate a certain habitual pattern, but that would place the reading in proximity to the author. This proximity had been successfully achieved by Christianity (and most recently by Calvin);

³⁰ Cole, p. 228.

³¹ Ansell-Pearson, p. 75.

however

it is not anybody who can make the gods speak, or get himself believed when he proclaims himself their interpreter. The great soul of the legislator is the only miracle that can prove his mission.³²

The Confessional became the secular medium by which Rousseau hoped to breathe life into the community. Through the aesthetic appeal of his experiences he hoped to lure individuals in and show them an exemplary life that might foster the concern necessary for education and eventually citizenship. His project needed an instrument more delicate than laws and more powerful than civil agreements for it had to reshape the habits of the heart that form the fabric of a people, and to this end he began to experiment with modern literary genres.

Tim Collins
University of Virginia

³² Cole, p. 216.