

Debates of Fundamental Theories in People, Law and Freedom: Locke and Rousseau

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Abstract

This essay is aimed to discuss the comparative views of John Locke and Jean-Jacques Rousseau's account of freedom within a state of nature and in a civil society. The concept of a state of nature as a starting assumption of a social contract, and the difference in freedom and rights within a state of nature and civil society is crucial to the discussion of social contract theories, the legitimacy of governments, and constitutions.

I shall first explain and analyse both writers' conceptions of the state of nature and civil society, and what freedom do we have in each and how we have them. Finally, by reflecting on both theorists' assumptions and philosophical conditioning I will show that Rousseau's account of freedom in a state of nature and civil society is more convincing depiction of freedom in a state of nature and in a civil society, as it gives a more relevant assumption of human condition and a preferable theory of government that ensures civil freedom.

Keywords: philosophy, philosophy of law, law, state of nature, social contract, Rousseau, Locke

1. John Locke

1.1 *State of Nature for John Locke*

For Locke, the state of nature describes a relation of morality or responsibility between individuals where there is no consented power of arbitrating conflicts, as Locke believed that a state of nature is a condition where there is a "lack of a common judge, with authority, puts all men in a state of nature", where "men living together according to reason, without a common superior on earth, with authority to judge between them"(Locke, J, 1980)¹.

1.1.1 Natural Rights: A Deduction of Philosophical not Theological

As an explicated list of laws of nature was not stated by Locke, I would treat the duties that Locke stated in as a formalisation of Locke's natural laws, which limits natural freedom, and prescribe rights and duty (Locke, J, 1980)²:

- i. The preservation of humanity as a whole is the priority of all mankind
- ii. Each individual has the right and responsibility to self-preserve (including preservation of possessions and liberty but for the preservation of life as the sole primary objective) as a priority of individuals due to (i)
- iii. Each individual is equal and independent, with (i), (ii) and therefore...
- iv. Each individual has the right and responsibility to preserve others
- v. Each individual has the right and responsibility to not conflict with other's goal of self-preservation
- vi. Each individual has the right and responsibility to judge and enforce the law of nature

1.1.2 Natural Rights: Property

Locke claims that the land and resources are entitled to the industrious and the rational ones, as one's labour is inalienable to oneself and mixing it with things can increase them by value and creates ownership; and, the land and resources are given to us by God to cultivate them---to increase them in value. (Locke, J, 1980)³

Combined with the creation of money which prevents wastes and ruins in the accumulation of properties, Locke agrees that it is morally permitted or even obligated as natural freedom and duty by the natural law that people can and should accumulate wealth limitlessly, as he argues that the accumulation of wealth via value creation is adding value to the commonwealth of mankind. (Locke, J, 1980)⁴

1.2 *Civil Society for Locke*

In a state of nature, individuals are to judge and punish each other to preserve themselves and enforce nature law. When there is a violation of the natural law, others can and must seek to punish the transgressor. Since anyone may prosecute such a law in a state of nature, everyone must have a right to do so. (Locke, J, 1980)⁵ This means that in every conflict of involvement of violation of natural law or possible violations, people who are involved are to become the judges of their own case. To avoid this inconvenience of being the judges of each own, Locke supposes that a government is a possible solution (Locke, J, 1980)⁶, and recognising that if a government is to be the solution.

1.2.1 Source of Power of the Government

Locke emphasised two powers of people in a state of nature, the "innocent delights": (1). The power to do whatever the individual could think for self-preservation, and the preservation of the community of the whole humanity; (2). The power to punish the crimes committed that were in violation of the laws of nature. (Locke, J, 1980)⁷

The source of the power of the government is therefore the transfer and partial transfer of the two powers of innocent delights from individuals to the government. Such transfer is legitimate insofar as the governed are consent to be governed (by each consenting to form a community and the majority of such community consents to form a particular government⁸) (Locke, J, 1980); and, the government use such power with the intention of the betterment of everyone's preservation of themselves, their liberty and property, for "the society, or legislative constituted by them, can never be supposed to extend farther, than the common good". The conditions of exercising these powers are also constrained by the end of a government to achieve "peace, safety and public good of the people." (Locke, J, 1980)⁹

In another word, we can understand that the totality of individual civil rights and freedom is the same as the previously natural rights and freedom, excluding what people have consented to transferred to the government.

2. Jean Jacques Rousseau

2.1 *A Primitive State of Nature*

Rousseau believes that the state of nature is primitive and free of all relationships of people. There will be no causes of conflict either in terms of competition for survival or vanity (no scarce resources and relations). In such a state, Rousseau argued that there is a lack of ability for people as primitive human beings to reason, and understand rational principles. (MacAdam, J I, 1972)¹⁰

Freedom in a state of nature, for the "savages" means that there is no existence of any laws or the influence of will of others that guides or dictates what they can do or should do, only their preferences and ability could limit their freedom.

2.2 *A State of Man: A New State of Nature*

In the State of Man, savages gradually live together and come to become "sociable men" 1st & 2nd-118, ones who know and know how to be satisfied with themselves on the comments or opinions of the others instead of their own; where while the savage lives only with coinciding needs, wants and interests, the sociable ones only live with the esteem of the others. Vanity, is thus, born in this state of man by relations and interactions of mankind. (Rousseau, J-J, 2002)¹¹

In the state of man, possessions become a way of domination: to have is to be, and having something different means being different from others. It makes some to be superior, as others view those who possesses as superior because of their possessions. The dominated are happy to remain in a position as they, in turn, makes some below them by domination; and those few who live on the top will become even more of a slave to their vanity. (Rousseau, J-J, 2002)¹²

Rousseau from here argues that it is impossible to return to the state of nature as mankind is already accustomed to the way of the social and no longer savages (Rousseau, J-J, 2002)¹³. Humanity, thus, must find a way to find freedom and equality in a social world.

2.3 Legitimate Civil Society and the General Will

To understand how Rousseau formulate his conception of civil freedom, we must first understand what is a legitimate civil society for Rousseau, why is it legitimate, and how we are free in that society; knowing what Rousseau tries to accomplish can be helpful:

How to find a form of association that will, with the whole common force, defend and protect the person and goods of each associate, and through which each individual, while uniting with all, will nevertheless obey himself alone and remain as free as before?

2.3.1 What is the General Will?

For Rousseau, the general will is different from the will of the all and the will of the majority. The general will only take account of the common interest while the will of all also takes account of private interest; it is a mere sum of particular wills (Rousseau, J-J, 2012)¹⁴. The general will and can manifest itself, as Kain (Kain, P J, 1990)¹⁵ formulated as such by consulting Rousseau's writing, under these conditions:

1. *All Citizens as Sovereign Legislators:* Each citizen must vote within the legislature (as the sovereign body) as informed, equal individuals, with no representative and factions or associations, and private discussion.
2. *General in reference to its object:* Laws coming from the legislature must be abstract, universal and non-particular to person or facts, and in equal relation to all members of the society.
3. *The quest for the Common Good:* The laws being determined by the legislature must be decided in such that it only takes account of the common interest, not particular ones.
4. *Equal enforcement:* The law must be strictly and equally enforced among all citizens so that in the legislature, each citizen who voted would understand that everyone must be subject to the conditions put by any others or him/herself.

2.3.2 Why and How Are We Free Under the General Will

As Rousseau would argue that since we all give up our will entirely to the formulation of the general will, by obeying the general will, we are obeying our own will, not any other's will or our private will (one can have both private will and general will), or the will of any factions or associations. Thus, the society has a sovereign, that is all the "rational will" of the people (excluding the private wills) acting in a collective.

What man loses through the social contract is his natural liberty and a limitless right to all that tempts him and that he can reach. What he wins is civil liberty and ownership of all that he possesses...Apart from the foregoing, to the gains of the civil state might be added moral liberty, which alone makes man truly master of himself; for the impulsion of mere appetite is slavery, while obedience to the law you have set yourself is liberty. (Rousseau, J-J, 2012)¹⁶

To Rousseau true civil freedom, freedom from our being the slave of our natural inclinations and abilities, and freedom by choosing to obey the law we decided for ourselves.

2.4 Property in Civil Society and Before

In a state of nature compared to civil society, it seems Rousseau allows freedom of private property to an extent. However, it is not the case. For Rousseau, he sees possessions and property differently. "Possession" is owning something by force and the first occupancy, it is natural freedom for one to hold possessions as much as one can. However, only by all fully alienating themselves to the community, including their land and things, can each gain in exchange proper ownership of things, as their own "property". Such ownership of property is more of a relation to the trusteeship of a portion of the commonwealth. (Rousseau, J-J, 2012)¹⁷

The ownership of the community to anything is superior to an individual's ownership, as otherwise there is no solidarity in the social bond, and; otherwise, the general will would not have the absolute sovereignty over this particular land or property. Other than that, the individuals' property is being protected, as a legitimate civil society is "a form of association that will... defend and protect the person and goods of each associate". (Rousseau, J-J, 2012)¹⁸

Thus, I believe Rousseau is arguing civil freedom to property insofar as the ownership of the whole community to all land and property is supreme; and the freedom of ownership of one's property does not undermine other individuals' "person and goods".

3. Compare and Contrast: Freedom in the State of Nature

For Locke, the state of nature is a hypothetical examination of the moral relations of individuals in the absence of government. The (primitive) state of nature for Rousseau, is rather a conjectural history, where he supposes how things would have been, prior to all social relations and how freedom is like in that state.

Some may also refer to his idea of a “state of man” as a new state of nature--- a philosophical formulation of a modern social society that lacks legitimate government. It may be perfectly describing a condition in a social world before legitimate government for “man as they are”.

In a state of nature, Locke accepts the existence of natural laws that dictate people’s behaviour. People have perfect freedom as long as it does not conflict with the duties of natural law. When faced with transgressors of these natural laws, people will have a natural freedom and the moral obligation, to punish the wrongdoer.

For Rousseau, freedom of the savage in a state of nature is a form of autonomy, to act only in accordance with one’s need, want and interests perfectly coincide. (Rousseau, J-J, 2002)¹⁹ For Rousseau, freedom is also to have the free agent to his own operation, to have the openness to change and to become, as freedom is rooted in the human goodness and capacity of perfectibility which sets mankind and beasts apart, among another quality, compassion. (Rousseau, J-J, 2002)²⁰ There is, for Rousseau, no moral element of mankind’s perfect freedom in the state of nature, which contrasts Locke’s ideal of natural law.

If we treat the state of man also as a kind of state of nature, one key difference in freedom in such a state compared to Locke’s state of nature is that there is no freedom at all in the state of man. As all are either in the domination of others or slavery their vanity. (Rousseau, J-J, 2002)²¹

For Locke, in a state of nature, people have the freedom of property, moral permission and the obligation to accumulate wealth with no limit. (Locke, J, 1980)²² For Rousseau, in the state of nature there is no freedom of property, as for him, property means a legal and perpetual proper ownership of things, and in a state of nature, there are only possessions of things by one’s ability and the principle of the first occupancy.

4. Compare and Contrast: Freedom in Civil Society

For Locke, civil society is entered by the consent of the governed by a social contract of the governed giving up part of their individual’s natural freedom in exchange for civil freedom. For Rousseau, implicitly, a (legitimate) civil society is a solution to end the state of man and form a society where the general will be the sovereign.

For Locke, civil freedom is almost the same as natural freedom, except for lacking the freedom to punish the transgressors of the law and part freedom to self-preservation. One key difference between Locke and Rousseau is the freedom to exit from the social contract. Locke’s social contract is based on consent. This means that if a member of the society chooses not to give positive and tacit consent, he/she can withdraw from the social contract. (Locke, J, 1980)²³

For Rousseau, in civil society, under the general will, people have the freedom to obey the laws they prescribe to themselves. In the case of disobedience to the law, Rousseau sees the individual as being enslaved by their private will and appetite. In such a case, this individual will be forced to be freed, to protect their freedom, and to prevent the sovereignty of the general will from being undermined (Rousseau, J-J, 2012)²⁴. This is very different from Locke: while Locke believes that freedom in civil life begins where the law ends, Rousseau believes that civil freedom only begins where the law starts.

The contrast of these two ideals of civil freedom ideal example of the comparison and conflicts of negative liberty (Locke), the absence of restrictions; and, positive liberty (Rousseau), a prescription of possibilities of actions (Berlin, I, 1969)²⁵. In Rousseau's case, individuals within his legitimate civil society only have the choice of obeying the laws that the general will (the people themselves as a collective legislature) prescribes them or being forced to “be free” and obey those laws.

In terms of civil freedom of property, for Locke, the formation of a government protects and maintains the freedom of property. For Rousseau, the legitimate civil society also defends and protects individual’s goods, and by giving in entirely to the community, the individuals gain in return a legal and formal sense of ownership of things that were previously lacking, people have property rather than possessions, which is similar to Locke up to this point. The key difference would be that the all-private ownership is subordinate to the ownership of all things to the community whereas, for Locke, the property is the sole, the individuals’.

5. Rousseau: Better Assumptions& Theoretical Construct

5.1 Rousseau’s Two Accounts of State of Nature

By comparing the conditions of a state of nature, one can easily see that Rousseau takes a more detailed way to design an assumed humanity in its natural state, which I am more subscribed to, whereas Locke’s state of nature is only a hypothetical of statelessness. Locke assumes a set of natural laws that govern people’s morality, as he assumes that these laws are self-evident in the face of reason.

Rousseau rejected any arbitrary assumptions of principles of this kind, as he would argue even the most basic laws of nature regarding human interaction are only possible if mankind is in any social relations. Only by assuming a state of nature with no relations, can one truly deduce the natural freedom in a state of nature prior to

any effects of relations.

Rousseau's state of man is also an excellent attempt to portray mankind "as they are". It is more of a realistic assumption than Locke's industrial and rational men that naturally obey the law of nature. I believe that Rousseau's argument of the absence of freedom in the state of man is a more convincing depiction of freedom in a (new) state of nature.

5.2 Theoretical: Rousseau over Locke

At the first glance, Locke's ideal of a consent government may seem more realistic to form than Rousseau's society with general will as the sovereign. However, if we read carefully, Locke's ideal has its problem of realism as well. For example, the when and how exactly does the tacit consent starts and ends? What if one objectively cannot give up tacit consent (give up the rights of the law) without contradicting self-preservation? Furthermore, by satisfying some conditions, Rousseau's society under the general can be, by comparison, a more realistic (Rousseau, J-J, 2012)²⁶.

To dismiss a philosophical ideal due to reasons of realism alone is not reasonable; however, by showing Locke's ideal is also subjected to critics of realism, I wish to convince the readers that we should keep the discussion of the formal ideals of government in a theoretical sense.

It may seem paradoxical, as I have just attacked Locke's premise of a state of nature on the ground of realism. For this, I shall say that the assumption of the state of nature is intended differently from the philosophical conditioning of a theoretical form of government: The state of nature assumptions defines, philosophically, what subjects are under a theoretical regime are like. It is essential for it to align with the reality of humanity, otherwise such theory will be designed for some hypothetical creature merely slightly resembles mankind; to set out the philosophical limitations or conditions for a theoretical formal government is merely proposing what the ideal form of government should be like. To a reasonable extent, whether or not such government can be realistically formed does not diminish the worth of the philosophical arguments themselves.

Therefore, I would like to argue that, by treating both government's theoretical conditions satisfied, Rousseau's ideal of a legitimate civil society is a more convincing theory of civil freedom as it is more preferable.

5.2.1 Moral Obligation of Wealth Accumulation VS Community Ownership

One advantage of Rousseau's ideal is on freedom of property. For Locke, the endless accumulation of property is morally obliged. The formation of the government does not deal with the problem of accumulated wealth directly, rather, it protects it by addressing conflicts arising from it.

This means that theoretically speaking, there can be extreme legitimate inequality. For example, a society could end up with only one person having almost all wealth and all others having properties that barely satisfy survival and basic needs; as long as the commonwealth of mankind as a whole is protected and advanced, everyone's property is being protected, and everyone is being satisfied at least to their minimal requirement of self-preservation, such government would be considered legitimate. Locke indeed permits revolutionary possibility; however, one must first be able to be aware of the need for a revolution. By manipulating property and wealth, it is possible to limit and mislead the awareness of the ones who have fewer.

For Rousseau, the general will as the sovereign and legislative body will protect property, simultaneously, produce laws to limit or reallocate unreasonable allocation of wealth. In such a society, inequality and (endless) accumulation of can be permitted, as long as it is beneficial in the interest of the public impartially (resonates to some form of Rawlsian different principle).

5.2.2 Standard of Governance

The case of 6.2.1. is an example of a grander problem of Locke's limited government. By limiting government responsibility to maintaining negative liberties, the government are held to a very low minimal standard of being legitimate. By not interfering where the law does not apply, it permits and legitimises the possibility of inequalities and informal dominations.

Rousseau's government which set out positive laws constantly, through public deliberations and rational popular votes, on the other hand, can operate the general will as a dynamic sovereign that addresses all issues at hand impartially, rationally and timely.

In sum, civil freedom in a limited government (Locke) only protects freedom to a certain point of formal minimal. This can permit informal restrictions on freedom as long as it does not violate the laws of the government. Thus, I would conclude that Rousseau's legitimate civil society under a general will is a more preferable theory of government that entitles civil freedom.

6. Conclusion

By examining the differences in the assumptions of the states of nature, I compared and contrasted John Locke

and Jean-Jacques Rousseau's views on natural freedom: while Locke subscribe to an ideal of natural law that entitles natural freedom, Rousseau believed that natural freedom (in a primitive state of nature) is a state of autonomy and the capacity to perfectibility, and there is an absence of freedom in a state of man as the new state of nature.

By evaluating both writer's theoretical formulation of civil society, I see a contrast of thoughts between negative liberty (freedom until the punishment and some part of self-preservation) on Locke's side, and positive liberty on Rousseau's side (obedience to the law we prescribe to ourselves by the general will).

It is upon evaluation that I found Rousseau's ideal of freedom in a state of nature and civil society more convincing: Rousseau depicts a more realistic assumption man as savages and "men as they are" as social men, where he deduced according natural freedom in each cases; Rousseau's civil society under a general will, after theoretical examinations, is more convincing, as it is a more preferable theory of government that ensures civil freedom: it encourages good governance and provide more protection to individual freedom when compared to Locke's limited government.

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¹ Locke, J, (1980), Section 4-5

² Locke, J, (1980), Section 6-8

³ Locke, J, (1980), Section 34

⁴ Locke, J, (1980), Section 35-51

⁵ Locke, J, (1980), Section 7

⁶ Locke, J, (1980), Section 7-13

⁷ Locke, J, (1980), Section 128

⁸ Locke, J, (1980), Section 35-99

⁹ Locke, J, (1980), Section 131-142

¹⁰ MacAdam, J I, (1972), p309-313

¹¹ Rousseau, J-J, (2002), p138

¹² Rousseau, J-J, (2002), p136

¹³ Rousseau, J-J, (2002), p144

¹⁴ Rousseau, J-J, (2012), Book 2 Chapter 3

¹⁵ Kain, P J, (1990), p317-319

¹⁶ Rousseau, J-J, (2012), Book1 Chapter 8

¹⁷ Rousseau, J-J, (2012), Book 1 Chapter 9

¹⁸ Rousseau, J-J, (2012), Book 1 Chapter 6-9

¹⁹ Rousseau, J-J, (2002), p138

²⁰ Rousseau, J-J, (2002), p269

²¹ Rousseau, J-J, (2002), p136

²² Locke, J, (1980), Section 35-51

²³ Locke, J, (1980), Section 95-142

²⁴ Rousseau, J-J, (2012), Book1 Chapter 7

²⁵ Berlin, I, (1969), Section I-II

²⁶ Rousseau, J-J, (2012), Book2 Chapter 7-10

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