

# Basic Elements, Comparative Study and Limitations of The State of Nature in the Perspective of Rousseau and His Conception of Public Law

## Based on Rousseau's The Social Contract, On the Origin and Foundation of Human Inequality

Yiting Pang<sup>1,\*</sup>

<sup>1</sup> East China University of Political Science and Law Business School

**ABSTRACT:** Equality and law have always been an important proposition of human concern, which embodies the relationship between human beings and is an important guarantee of social harmony and stability. Rousseau, as an 18th century French Enlightenment thinker and an important representative of the doctrine of natural law and social contract theory, constructed the hypothesis of the state of nature and systematically put forward the concept of social equality and the concept of public will law, which together with Hobbes, Locke and other scholars' theories. They have profoundly influenced the formulation of laws and the construction of administrative systems in Western countries. The study of this work will help to understand the underlying logic of Western institutional settings and clarify the purpose of equality and law. This article uses both documentary research and comparative analysis to review Rousseau's views on equality and law and to return to primary sources. The study also compares and contrasts Rousseau's views with those of Hobbes, such as the state of nature and the state.

## 1. INTRODUCTION

Rousseau was a prominent bourgeois Enlightenment thinker in 18th century France and a pioneer of the French Revolution. His political, juridical, literary and educational ideas led the development of the French Revolutionary movement, provided references for other capitalist revolutions in the West, and became the theoretical basis for the American Declaration of Independence and the French Declaration of Human Rights. Rousseau's political and jurisprudential thinking is reflected in *The Social Contract* and *On the Origin and Foundations of Human Inequality*, a modern theory of the social contract that was developed by Hobbes and developed by Locke, and finally consolidated and systematized by Rousseau. *The Social Contract* is an exploration of the reasons for being born in chains and the search for a free and egalitarian social system, and *On the Origin and Foundations of Human Inequality* is an exposition of the inevitability of the transition from equality to inequality and from inequality to equality. It is important to study the legal and equality views of Rousseau, a thinker who has had a significant impact on social progress and development throughout history. In the core socialist values, both equality and the rule of law are included as requirements at the social level, which shows that the Party and the government have developed a high

level of concern for equality and the rule of law, which is a long process, and therefore it is necessary to understand the thinking of those who came before us.

Using the methods of documentary research and comparative analysis, this paper returns to first-hand materials through a review of Rousseau's concept of equality and law, which allows for a clear discussion of the main elements discussed in Rousseau's concept of equality, namely the two types of inequality that exist among human beings, the idea of private ownership and the creation of private property as the root cause of inequality, the development of inequality and its inevitable consequences; and its sources of law, its definition and the legitimacy of government. It also summarizes the main features of Rousseau's view of equality and law, and compares it with Hobbes' related studies such as the state of nature and the view of the state, in an attempt to discover the inheritance and transcendence of Rousseau's views, and concludes with a brief evaluation of them.

## 2. CURRENT STATUS OF DOMESTIC AND FOREIGN RESEARCH

### 2.1. Current status of domestic research

He believed that political thought was the core of

\* Corresponding author Email: Valarm@163.com

Rousseau's thought, and that Rousseau's theory of social contract and law were aimed at pointing out the unreasonableness of the feudal autocracy and hoping to establish a state based on social contract and reflecting people's democracy. The state of the people. Zhang Zhiyuan and Wang Xiaoyun (2006) provide a more comprehensive analysis of Rousseau's concept of law, from the beginning to the development to the maturity of the concept of law, expounding on the definition, characteristics, classification and the relationship between equality, human rights and law, arguing that Rousseau took the theory of human rights as the cornerstone of his legal thought, and then proposed He argues that Rousseau took human rights as the cornerstone of his legal thought and then proposed equality before the law. Liu Ying-ying (2007) discusses the relationship between equality and freedom from three aspects: equality in the state of nature and inequality in the state of society, the realization and connotation of equality, and the gains and losses of Rousseau's theory of equality, arguing that Rousseau clarified the importance of equality to freedom and designed an equality mechanism to achieve the purpose of freedom [1]. The above academic studies mainly discuss the specific connotation of Rousseau's concept of equality and law, and make it clear that Rousseau wanted to build a form of society in which all people are equal through the form of contract, but they are mostly a collated analysis of the content of Rousseau's thought, lacking further exploration of his deep logic and philosophical outlook.

Contemporary research focuses on Rousseau's theoretical fallacies and Marx's renunciation of Rousseau. For example, Zhang, Haili et al. (2021) examine Rousseau's view of equality and illustrate the logical and empirical limitations of his main ideas. The contradictions of Rousseau on the survival of original human emotions and the difficulties of applying his theory of public will in practice are clarified. It also discusses Marx's succession and transcendence of Rousseau. The current domestic research focuses on the comparative study of Rousseau and Marx. However, in-depth studies on Rousseau's concept of equality and law are still relatively rare in China.

## **2.2. Status of foreign studies**

Compared with domestic studies, foreign studies on Rousseau are older and have accumulated more knowledge over a long period of time, with richer research materials and more diverse perspectives. Melissa Schwartzberg (2003) proposes a model of revelation to address the limitations of law, which can be interpreted as constitutively and morally transformative and used to understand norms that do not take the form of fundamental law. In *The Rousseau Question* (2009), Ernst Cassirer argues against the previous critique of the inconsistency of Rousseau's thought. He argues that Rousseau's thought is coherent and consistent and that the fundamental task is to establish legal and moral equality between human beings. In, Emily Hartz (2016) and others further discuss comparing how Hobbes, Rousseau and Rawls justify the legitimacy of a political community imposing limits on

natural freedom and how these thinkers conceive of the connection between the question of justification and the question of motivation. The aforementioned scholarship examines Rousseau's view of law and equality in some depth, comparing the motivations and justifications for Hobbes', Rousseau's, and Rawls' views of equality. There is a paucity of relevant research in China, and there is still a need to continue research in this area.

## **3. THE BASIC CONTENT OF EQUALITY AND LAW FROM ROUSSEAU'S PERSPECTIVE**

### **3.1. Rousseau's discussion on the concept of equality**

#### *3.1.1. Two kinds of human inequalities*

Rousseau believed that there were two kinds of inequalities among human beings, namely natural or physical inequalities and spiritual or political inequalities. The natural inequality is based on nature, arising from differences in age, state of health, physical strength and intelligence or mind; the spiritual inequality is based on a specific institutional arrangement, set in place by the consent of people, or at least his existence is recognized by all. It is thus clear that Rousseau believes that human beings are unequal from birth and that this inequality is inevitable, so it is pointless to discuss natural inequality. What he wanted to discuss was "when, in the course of things, power has replaced violence and nature has submitted to law; to show what series of miracles have been experienced that the strong have been willing to serve the weak and the people have been willing to give up their existing happiness for an imaginary peace." [2] Rousseau began his study with the natural state of mankind, he believed that primitive man and social man were different, there was only natural inequality in primitive man, not mental inequality, but natural inequality did not affect the life of primitive man, so Rousseau referred to primitive man as a collection of equals, using primitive man as a standard to explore the difference between social man and primitive man.

Physically, because of the extreme inequality in the way of life of the social man, it has led to the many misfortunes and diseases that man has inflicted on himself. From the spiritual and intellectual point of view, there are three main differences between humans and animals. Firstly, humans have the freedom to decide on trade-offs whereas animals can only submit to nature; on the one hand, it is because humans are aware of this freedom that they show the spirituality of the human spirit; on the other hand, humans often violate the rules of nature by doing things that are harmful to themselves, "for the spirit can make the senses to suffer damage, and the will to make demands when the needs of nature have already been met." [3] Secondly, human beings possess the capacity for self-development. This capacity has allowed man to have unlimited possibilities and has taken him out of the simple,

natural state of life of primitive man, allowing him to display the wonders and evils of the spirit and all the misfortunes that have come to him. Thirdly, primitive man possesses natural emotions, while social man possesses intelligence as well as excessive lust. Natural emotions are what make primitive man tend to be sensual and thus moderate the strong selfishness of the individual; wisdom strengthens human reason and makes man focus on the self and lack empathy, and excessive lust causes madness within man and intensifies social inequality.

### **3.1.2. Private ownership as a source of inequality**

Rousseau directly points out the effect of private ownership on equality from the beginning of the second part, "The true founder of civilized society was the first to enclose a piece of land and declare that it belonged to him, and he made some simple-minded people believe his words." The idea of private ownership needs to be traced back to primitive times. Social man had the ability to develop himself, so when he encountered difficulties, he began to learn to use his natural endowments to create new tools and learn new skills, which gave social man a sense of his superiority over other animals. At the same time, in the process of human interaction, humans began to learn gradually to co-operate and compete, recognizing the advantages and disadvantages of interaction. The rapid objective and subjective progress of mankind created the conditions for the emergence of private ownership. When mankind was content to live in a state of self-sufficiency, life was equal, but when co-operative relationships emerged and mankind discovered the benefits of one person having more material goods, equality disappeared and private ownership emerged. Rousseau believed that the change that led to the emergence of private ownership was propelled by two technological inventions, metallurgy and agriculture. One part of society began to engage in agriculture and the other in metalworking. The emergence of the division of labor in society then broke up the primitive subsistence way of life, while the emergence of agriculture brought with it the question of the distribution of land, and once private ownership was established, "it showed that by the distribution of land men acquired a right, a right of ownership, which was not the same as that which arose from natural law." But human talents are different, the rewards for the same labor are different, the inequalities of nature widen the differences in the human condition, and a distinction of status and rank emerges between people. "This distinction is based not only on the amount of property and the extent of each man's ability to influence others, but also on the various natures of individual talent, beauty, physical strength, skill, worthiness or wisdom" The creation of social status is bound to widen social inequalities, and the rich begin to exercise against the poor. The excessive lust of human beings intensifies social contradictions, and conflicts between human beings of different status begin to occur constantly, and social equality and fairness are broken, and these are the misfortunes that private wealth brings to human beings.

### **3.1.3. Society and law are a further development of inequality**

"This is the origin of society and law. They gave new chains to the weak and new rights to the rich. They annihilate forever the natural liberty, so that freedom can never be restored; they set down forever the laws guaranteeing private property and recognizing inequality, and turn artifice into an irrevocable right." The rich create new institutions to resolve human contradictions and instill new ideas for their opponents to preserve their rights in the name of protecting fairness and peace. The rich use the law to keep mankind completely enslaved mentally, while the rich gain greater power to sanction the creation of unequal laws, so that their own property receives the protection of the law and further oppression of the poor is launched.

### **3.1.4. Authoritarian politics as the end result of inequality**

Rousseau argued that despotism was never established by the will of the people, because it only harmed the enslaved and made the enslaved bear all the obligations, a system that was extremely irrational and the validity of the contract extremely difficult to guarantee. "Despotic power is nothing but the result of political corruption, the ultimate form of governmental degradation." At this stage, human inequality is evident. Government officials were placing their own family members in important positions in order to keep gaining power, grasping it in their own families; and the people had begun to become docile, accustomed to dependence and inequality, and lacked the courage to break the shackles of society. At this point, the goodness and justice of society are completely destroyed, and only the tyrant becomes the most powerful ruler of society, who will eventually be overthrown by the people with violence.

## **3.2. Rousseau on the concept of law**

### **3.2.1. The origin of law**

In primitive societies, human beings were ignorant, there was no such thing as evil or virtue, and people only acted in accordance with their nature to avoid harm. These methods, when used repeatedly or in similar activities, become a pattern of behavior that is consciously observed by the people. Customary law then became the main means of regulating social relations, until social classes became increasingly divided, the nobility monopolized the legislative power, the public will be violated and the people demanded statutory law to safeguard their rights. In the Middle Ages, religious theology emerged and rationalism sprang up in religious thought in order to resolve the wars brought about by the Reformation. The emergence of rationalist religion contributed to the birth of the idea of natural law, with freedom, reason and tolerance as its core concepts.

### 3.2.2. *The definition of law*

Rousseau saw law as an act of public will. The public will be an important concept in Rousseau's political thought, and he compared it with the public will, arguing that "the latter considers only the general interest, while the former considers private interests, and is nothing but the sum of many specific wills", and that the public will preserves the sum of different wills, and is therefore public and universal. Since the law derives from the public will, the object of its application is also universal, and the law is not directed to a specific object. Thus, the law has two characteristics: firstly, the universality of the will, i.e. the law is the public will of the whole people and reflects the public interest; secondly, the universality of the object, i.e. the law applies to the whole people and thinks about the act in an abstract sense, rather than a specific person or act. At this point, the enactment of the law is public, and it always tends to be egalitarian.

## 4. CONCLUSION

Rousseau, the master of the social contract theory, critically inherited and developed his own social contract theory based on Hobbes' theoretical doctrine. Hobbes argued that in order to prevent the people from harming each other they should transfer all their rights to the sovereign, make a contract between them and establish a monarchical government, because the interests of the sovereign and the state were linked and the imposition of a monarchy meant the unification of private and public interests. The rights of the monarch were supreme and inalienable, and any cession or division of rights could lead to a loss of rights and a return to a society of war and disorder. Rousseau believed that the people should transfer all power to the collective, so that the people were merely obeying themselves and could still be free. In the collective, all human actions were subordinated to the public will, thus guaranteeing the people's rights to the greatest extent possible, as the people were sovereign and would not harm the interests of all or anyone else, hence Rousseau's advocacy of a democratic republic. Rousseau recognized that Hobbes' cession of rights would eventually lead to a despotic dictatorship, and that once rights were ceded, the people lost their right to resist the government. Under a monarchy, the state generates so much power that it is extremely easy to cause serious consequences if the monarch abuses his power and uses it in an improper way. From the point of view of the establishment of the system, a democratic republic is a more perfect system than a monarchy.

## REFERENCES

1. Melissa Schwartzberg. Rousseau on Fundamental Law[J]. POLITICAL STUDIES: 2003 VOL 51, 387-40.
2. Emily Hartz. Carsten Fogh Nielsen. From conditions of equality to demands of justice: equal freedom, motivation and justification in Hobbes, Rousseau and

- Rawls[J]. Critical Review of International Social and Political Philosophy, 18(1), 7-25.
3. Jean Jacques Rousseau. A DISCOUESE UPON THE ORIGIN AND THE FOUNDATION OF THE INEQUALITY AMONG MANKIND[M]. 2012.
4. Jean Jacques Rousseau. The Social Contract[M].2017.
5. Liu YINGying. The correlation and blocking of "From Equality to Freedom" -- The reasoning and evaluation of Rousseau's equality thought [J]. Journal of East China University of Political Science and Law,2007(04):90-96.