

TWO FACES OF REPUBLICANISM: ROUSSEAU AND KANT

Luigi CARANTI¹

The relation between Rousseau's and Kant's political philosophies has attracted the attention of different generations of scholars. This is hardly surprising not only because of the stature of the two philosophers, but also because they offer two similar and perhaps complementary versions of republicanism. Despite the abundance of studies, however, the impression is that the real similarities and the real differences between the two philosophers have not been fully grasped. On points that Rousseau and Kant are traditionally cited for their philosophical distance, this paper argues a much closer proximity. In addition, areas considered overlapping are highlighted as points of genuine disagreement. Three theses of the first kind (apparent dissimilarities) and three theses of the second kind (apparent similarities) are offered as examples.² The paper thus naturally falls in two parts and six sections. In the first part, we discuss the following apparent dissimilarities: a) Rousseau's idea that sovereignty cannot be divided Vs Kant's idea that the republican state must be founded on the division of powers, b) Rousseau's dismissal of representative government in favour of direct democracy Vs Kant's harsh criticism of democracy, c) Rousseau's allegedly illiberal idea of "forcing individuals to be free" Vs Kant's liberal commitment to the protection of individuals' pre-political rights. In the second part, we analyze the following apparent similarities: a) Rousseau's and Kant's allegedly identical notions of moral freedom/autonomy, b) their accounts of the reasons why individuals "ought to" leave the state of nature, often considered as nearly indistinguishable, c) the notion of general will seemingly borrowed by Kant from Rousseau without significant modifications. The overall analysis should serve to draw two different, yet complementary faces of republicanism. The composition of the two faces construes a position in political philosophy halfway between standard republicanism and standard liberalism that may have some value on its own terms.

¹ Luigi Caranti (Ph.D. Boston University) is associate professor of political philosophy at the Università di Catania. His current work focuses on Kant, contemporary political philosophy, the theory of human rights and democratic peace theory. Caranti is the author of *Kant and the Scandal of Philosophy* (University of Toronto Press, 2007) and the editor of *Kant's Perpetual Peace. New Interpretative Essays* (Luiss University Press, Roma 2007). He published several papers in journals such as *Kant Studien*, *Theoria*, *Journal of Human Rights*, *Rivista di filosofia*.

² The list is by no means exhaustive. Among other points, one element clearly worth discussing would be their views on history. On this see Kelly (1968).

1.1 THE INDIVISIBILITY OF SOVEREIGNTY

One of Rousseau's most famous (and most criticized) thesis occurs in the first sentence of the second paragraph of Book II of *On the Social Contract* (henceforth SC). Rousseau writes:

Sovereignty is indivisible for the same reason that it is inalienable. For either the will is general or it is not. It is the will of either the people as a whole or of only a part. In the first case, this declared will in an act of sovereignty and constitutes law. In the second case, it is merely a private will, or an act of magistracy. At most it is a decree. (SC, 154)

Rousseau goes on to criticize political theorists of his time (first and foremost Montesquieu) for their tendency to divide sovereignty "in its object" (SC, 154). While they deny that sovereignty can be separated "in principle" – otherwise no superior authority would be available to adjudicate possible disputes between one part of sovereignty with another part – they think that sovereignty could be divided regarding the function or office of different public bodies. As an example, Rousseau cites the division of "legislative and executive power." For Rousseau the division of powers – an idea that was becoming popular among *les philosophes* – appears as a threat to the required generality of the will. If the executive is separated from the legislative, we have two factions each of which has no chance to be the legitimate interpreter of the general will.

Kant seems to think just the opposite. In the context of the First Definitive Article of *To Perpetual Peace*, he writes that a state can be considered as either republican or despotic depending on whether its powers are divided or not:

The second classification depends on the form of government (*forma regiminis*) and relates to the way in which the state, setting out from its constitution (i.e. an act of the general will whereby the mass becomes a people), makes use of its plenary power. The form of government, in this case, will be either *republican* or *despotic*. *Republicanism* is that political principle whereby the executive power (the government) is separated from the legislative power. Despotism prevails in a state if the laws are made and arbitrarily executed by one and the same power. (Kant, PP 100-101)

A few lines later he adds:

[O]ne and the same person cannot at the same time be both the legislator and the executor of his own will, just as the general proposition in logical reasoning cannot at the same time be a secondary proposition subsuming the particular within the general. (Kant PP 101)

Thus Rousseau's state by Kant's standards would be despotic. And in fact, this is how it has been taken from Constant on through a series of liberal thinkers up to Norberto Bobbio.³ On this reading, Rousseau's idea that people who happen to disagree with the general will can be coerced to conform (they would be simply "forced to be free"), his rejection of the separation of powers, let alone his dogmatic idea that "the general will cannot err" (SC 155-

³ In a recent study, De Federicis (2012) argues that the distance of Rousseau from Kant concerning the division of powers and representative government is so evident that only an absent-minded reader could miss it.

156) show nothing but its conservative if not totalitarian tendency. This is to be contrasted -- so the reading continues -- with the more liberal and advanced vision of Kant.

Are things so simple? By all means, no. Rousseau gives many indications that what he is opposing is not what Kant calls the division between the executive and the legislative. In fact, in the first section of book III, devoted to “government in general,” and premised by the intimation to the reader to be attentive “because I don’t know the art of being clear to those who do not want to be attentive,” Rousseau endorses the very distinctions that he seemed to have rejected a few pages before. Defined “the government or supreme administration as the legitimate exercise of executive power and the magistrate or prince the man or the body charged with that administration” (SC, 174), he sharply distinguishes this power from the legislative power. The latter is distinct from the former like the will is distinct from the force that brings about its determinations. The legislative power gives the general rule, the executive implements the rule by deciding how it is to be put into effect. For example, it is up to the legislative to decide to strengthen penalties against tax evasion, but it is up to the executive to decide the specific means to do so. Moreover, Rousseau warns that the conflation of the powers in the same body is ruinous for the state: “If the sovereign wishes to govern, or if the magistrate wishes to give laws [...] disorder replaces rule, force and will no longer act in concert, and thus the state dissolves and falls in despotism or anarchy (SC 174, emphasis added).

Like Kant, Rousseau thinks that the distinction between legislative and executive is best captured in terms of the dichotomy generality/particularity. Laws are general, governmental decrees are particular in that they are nothing but applications of a general rule to specific circumstances.⁴ *Mutatis mutandis* the same could be said about the relation between the legislative and the judiciary power. To decide in general terms what counts as a crime is the task of the law. But to decide whether a concrete event is an example of that crime is a judgment about the *casus legis*. To borrow familiar Kantian notion from a different context, while shaping a law is an act of reflective judgment, the decision whether something is a *casus legis* is an act – to be sure, by no means mechanical – of determinative judgement.

This distinction of generality is a guarantee that laws are at least potentially made to serve the general good. To see this, imagine that the legislative passes a law with the secret intention to damage political opponents. If the legislative power also decides the means through which this law is to be implemented, than it won’t be difficult to find a way to save political friends from the application of the law itself. For example, if the law is about tax evasion, the body could decide ways of tracking tax evasion that don’t threaten the illegal practises of friends. In contrast, if the two powers are sharply distinguished, the application of a law made for damaging political enemies could damage also friends. And this is an incentive not to pass a law whose intention is contrary to the very idea of the general will. Similarly and more evidently, if the same power makes a law and judges whether it has been violated in a tribunal, it can very easily interpret it in ways that, again, benefit friends and damage enemies.

⁴ Rousseau writes: “when I say that the object of the law is always general, I have in mind that the law considers subjects as a body and actions in the abstract, never a man as an individual or a particular action” (SC 161).

Thus Rousseau, like Kant, is worried that if the two powers are unified the space for arbitrary rule is unbearably high and the state is bound to degenerate into despotism. Actually, given that Kant gives a very similar definition of despotism, as we saw in the passage above, it is very likely that he borrows his definition from Rousseau, in particular from his analysis of the virtues implicit in the separation of powers. Ultimately, on this issue, Kant doesn't depart from Rousseau. Actually, he learns from him.

1.2 REPRESENTATIVE GOVERNMENT AND DIRECT DEMOCRACY

Like the issue concerning the separation of powers, Rousseau's famous dismissal of the 'modern idea' of representative government, along with his preference for direct democracy, are often cited to show the 'evident' difference with Kant's philosophy (De Federicis 2012). After all, the contrast could not be more clearly stated. Rousseau claims that the use of deputies and representatives, opposed to a direct involvement of citizens in the affairs of the state, is an unmistakable sign of state's decline and corruption.

The cooling off of patriotism, the activity of private interest, the largeness of states, conquests, the abuse of government: these have suggested the route of using deputies or representatives of the people in the nation's assemblies. (SC, 198)

Or more succinctly:

Sovereignty cannot be represented for the same reason that it cannot be alienated. It consists essentially in the general will, and the will does not allow of being represented [...]. The deputies of the people, therefore, neither are nor can be its representatives; they are merely its agents. (SC, 198)

Hence, only the direct involvement of citizens in the assembly is the proper form of participation and "any law that the populace has not ratified in person is null: it is not a law at all" (ibidem, my emphasis). Direct democracy, exercised in small communities/states, is the only form of just government.

Apparently, Kant is on the opposite side of the barricade. He often claims that a government that is not based on the principle of representation cannot be just. As he puts it in *Toward Perpetual Peace*, "Every form of government which is not representative is essentially an anomaly" (PP, 101); or "if the mode of government is to accord with the concept of right, it must be based on the representative system" (PP, 102). And, to make the point even clearer, he claims that, of the three possible forms of government (*formae imperii*) – monarchy, oligarchy, democracy – democracy is necessarily the worst because it makes "the spirit of representation" impossible. To use his words:

[E]ven though the other two constitutions are always defective in as much as they leave room for a despotic form of government, it is at least possible that they will be associated with a form of government which accords with the spirit of a representative system. Thus Frederick II at least said he was merely the highest servant of the state, while a democratic regime makes this attitude impossible, because everyone under it wants to be a ruler. (PP, 101)

Finally, he completes his criticism of democracy by claiming the following:

Of the three forms of the state, that of democracy is, properly speaking, necessarily a despotism, because it establishes an executive power in which “all” decide for or even against one who does not agree; that is, “all,” who are not quite all, decide, and this is a contradiction of the general will with itself and with freedom. (PP, 101)

Rousseau rejects representation. Kant rejects any form of government that is not based on representation. Rousseau praises direct democracy, Kant claims that democracy is necessarily despotic. Could the two philosophers be more distant? Once again, one must look beyond appearances. To begin with, what Kant calls the “spirit of a representative system” is nothing but the attitude of legislators to represent the general will and to enact laws to which each and every citizen could give her consent. He seems to assume that in a democracy, people vote and express preferences by taking only their private interests into account. They are, so to speak, required to do so by the logic of electoral competitions. As a consequence, laws often reflect the will of the majority and there is no incentive to make them at least in principle acceptable to all. Obviously, if this is what is wrong with democracy, then Rousseau could not agree more. Kant’s criticism of the partisan spirit that characterizes democracy reminds so closely of Rousseau’s warning against the danger of factions that Kant appears again, like in the case of the division of powers, to be rephrasing Rousseau rather than taking distance from him. What Kant calls the representative system is just Rousseau’s government by the general will and what Kant calls democratic system is nothing but a government that lost its unity in the competitions among factions, Rousseau’s political nightmare.

Finally, notice that Kant and Rousseau share the idea that it is not so important whether government is of one, some or all. For Kant the *forma imperii* – how many are in power – is way less important than the *forma regiminis* – the way in which power is exercised, i.e. with the general will in mind or otherwise (PP, 101-102). For Rousseau, size, wealth, climate (!) of a state determine whether it is best administered through a democracy, an aristocracy or a monarchy. This clearly shows that he had the ideal of the city state administered through direct participation of its citizens but also that he was open to other forms of government in different contexts. Rousseau and Kant, in short, agree that what matters is that sovereignty belongs to the people while a secondary issue is how government is constituted and how many are in power. As Rousseau puts it very clearly: “I therefore call every state ruled by laws a republic, regardless of the form its administration may take” (SC, 162).

1.3 FORCING PEOPLE TO BE FREE

Probably the passage that liberal readers have found less acceptable in all of Rousseau’s writings occurs in the context of his discussion of the relation between the private wills of individual citizens and the general will. Rousseau famously writes: “whoever refuses to obey the general will will be forced to do so by the entire body. This means merely that he will be forced to be free” (SC 150).

What the liberal mind finds unacceptable is not that the state obliges even reluctant citizens to comply with the law. Even less the idea that one may not exit the social contract at will or act as a free-rider. Coercion and liberalism are compatible, actually, the latter presupposes the former. What puzzles the liberal, at least those à la Berlin (1969), is that in forcing citizens to comply with the general will, Rousseau thinks that the state realizes their true freedom. In other words, reluctant citizens will X, the state imposes on them Y and they shouldn't be sorry because what they really wanted is Y, even if they thought otherwise. In willing X, they were not truly free or faithful to the interests of their true self.

In contrast, the state envisaged by Kant seems to have no ambition to improve the level of autonomy of its citizens. By requiring compliance with its laws, the Kantian state merely asks for external conformity between the behaviour of citizens and the laws. Relevant here is the difference between juridical and moral duties in Kant. While moral duties are not fulfilled if the agent acts merely "in conformity with duty," external conformity is all that is required to fulfil juridical duties. In other words, it seems that Kant does not assign to the state the role of educating people to freedom, to force them to a certain behaviour to change their inner preferences. The social life Kant envisions seems to be that of independent individuals who are free to live according to their own conception of the good life and, most importantly, according to their own conception of what it means to be free, with the only constraint that their view about human happiness and freedom should not limit the freedom of other consociates. Very crudely: Kant's conception of political freedom is negative, Rousseau's conception is both negative (civic freedom) and positive (moral freedom).

While this alleged difference between Kant and Rousseau has some more basis than the two just cases previously discussed, it is nonetheless highly exaggerated. Kant fully shares Rousseau's view that laws have the potential to educate individuals to be faithful to their autonomy. In an extremely inspired passage Rousseau states that "He who dares to undertake the establishment of a people should feel that he is, so to speak, in a position to change human nature [...] to substitute a partial and moral existence for the physical and independent existence we have all received from nature." (SC 163). Kant fully agrees. In the first supplement to PP he states

[W]e cannot expect their [human beings] attitudes [to produce a good political constitution: on the contrary, it is only through the latter that the people can be expected to attain a good level of moral culture. (PP. 113)

The temporal priority of institutions over moral development is precisely what Rousseau has in mind when he talks about forcing people to be free. After all, in addition to the idea – fully accepted by liberals – that the state is legitimized in using means of coercion for securing law abidance, he merely adds the idea that citizens, by being forced to conform, are objectively helped to chose what they would chose if they could discern their fundamental interests – life, security, cultivation of their higher faculties, and moral autonomy. Rousseau's crucial section on civil society explains clearly how humans cannot help but preferring the civil society over

the state of nature (a paragraph that signals the change of mood from the Second Discourse). As Rousseau puts it:

Although in this state he [man] deprives himself of several of the advantages belonging to him in the state of nature, he regains such great ones. His faculties are exercised and developed, his ideas are broadened, his feelings are ennobled, his entire soul is elevated to such a height that, if the abuse of this new condition did not often lower his status to beneath the level he left, he ought constantly to bless the happy moment that pulled him from it forever and which transformed him from a stupid, limited animal into an intelligent being and a man. (SC, 151)

Given humans' fundamental interests to perfect their higher faculties, and the fact that these interests can be effectively defended only in civil society, it follows that every human being would freely endorse the laws that enable the existence and persistence of the civil state. The disagreement of reluctant citizens is nothing but a case of weakness of the will and as such it displays a will that is not fully in control of itself.⁵ If one combines this with Rousseau's idea of how just institutions can turn humans' instinctual nature into a higher, more autonomous condition, we find nothing but Kant's idea that moral people are to be expected from good institutions and not vice versa.

The analysis of this famous passage completes our non-exhaustive list of apparent dissimilarities between Rousseau and Kant. Let us move the discussion to the apparent points of overlapping. If we are correct, precisely when the two philosophers seem to be nearly indistinguishable they depart profoundly from one another.

2.1 ROUSSEAU'S AND KANT'S NOTIONS OF MORAL FREEDOM

Rousseau's idea that citizens do not lose any bits of their freedom in signing the social contract, together with his emphasis on the idea that only in civil society do humans gain a particular kind of freedom, moral freedom, led interpreters to believe that Kant's notion of autonomy is identical to Rousseau's notion of moral freedom. Cassirer, with his famous essay on Rousseau, is probably the founding father of this line of interpretation. On his reading, freedom for Rousseau is "the overcoming and elimination of all arbitrariness, the submission to a strict and inviolable law which the individual erects over himself." (Cassirer 1954, 55). It follows that "man must find within himself the clear and established law before he can inquire into and search for the laws of the world" (Cassirer 1954, 55; emphasis added).⁶

Despite the similarity of approach and terminology, Rousseau's and Kant's accounts of moral freedom/autonomy are still significantly different. To begin with, Rousseau seems to assume that autonomy is the ability not to be determined by desires and inclinations alone (Kaufman 1998, 33). He never says that autonomy entails the ability to act for reasons other than sensuous inclinations or desires. In *Emile* he even says that natural passions, i.e. those still

⁵ See on this F. Newhouse, "Freedom, Dependence, and the General Will," *The Philosophical Review*, 102 (3), 1993, 363-395 and also Rawls, *Lectures on the History of Political Philosophy*, Harvard University Press 2008, 214-229.

⁶ I owe these references to Kaufman (1997, 33).

uncorrupted by unjust and corrupted societies, are “the source of our freedom” (Emile, 212). To be sure, natural passions cannot fully determine an autonomous action, but they can still be part of the motivational package. This notion – evidently – is not identical to Kant’s notion of autonomy. Autonomy, as defined in the *Groundwork* and in the *Critique of Practical Reason*, entails more than independence of pathological necessitation, a feature displayed by all kinds of rational behaviour and to be found in any *arbitrium liberum*. It entails more than the ability to take distance from our contingent inclinations in view of some distant, yet still empirically motivated end. For the mature Kant, an agent whose freedom is limited to this ability is free but irremediably heteronomous. The agent is free because her inclinations (no matter how strong) do not exhaust the causal story behind her actions (it always takes a free rational act of endorsement), yet the agent is heteronomous because inclinations are a necessary component of the motivational story behind the action.

To the contrary, being autonomous for Kant entails the ability to act in complete independence from inclinations. Positively expressed, this means to be able to find a sufficiently strong motivation in a very special kind of non-empirical interest, that is, the respect for the moral law, or ability to be determined by the authoritative force of morality. As Allison puts it, a “will with the property of autonomy is one for which there are (or can be) reasons to act that are logically independent of the agent’s needs as a sensuous being.”⁷ This is what Kant expresses with a slightly different language in one of the official definitions of autonomy in the *Groundwork* where this form of freedom is presented as “the property the will has of being a law to itself (independently of every property belonging to the objects of volition)”.⁸

Secondly, and more significantly, Rousseau seems to assume that autonomy can only be achieved by humans in civil society. It is through the choice of and obedience to laws that guarantee our fundamental interests – the rules that institute and preserve civil society – that humans first become autonomous. As Rousseau puts it:

This passage from the state of nature to the civil state produces quite a remarkable change in man, for it substitutes justice for instinct in his behaviour and gives his actions a moral quality they previously lacked. Only then, when the voice of duty replaces physical impulse and right replaces appetite, does man, who had hitherto taken only himself into account, find himself forced to act upon other principles and to consult reason before listening to his inclinations. (SC, 150-151)

Or more clearly later in the same section:

To the preceding acquisitions [in the passage from the state of nature to the civil society] could be added the acquisition in the civil state of moral liberty, which alone makes man truly the master of himself. (SC, 151)

Rousseau is not saying that morality is altogether absent in the state of nature. There, however, morality does not require the silencing of our inclinations. Actually, morality needs

⁷ H. Allison, *Kant’s Theory of Freedom*. Cambridge: CUP 1990, p.97.

⁸ I, Kant, *Grounding for the Metaphysics of Morals*. Indianapolis: Hackett, 1781, p.44 (AA IV 440).

them because it is based on the feeling of compassion. Only piety and sympathy ground non-egoistic behaviour. In civil society, however, more than compassion is required. It is only when particular wills freely conform to the general will that the very experience of autonomy arises. This is to be contrasted with Kant's view of humans as autonomous beings even before the constitution of civil society. We are autonomous because the moral law is always and in all circumstances authoritative for us. The moral law in us, so to speak, not civil society, constitutes us as autonomous.

The difference is not insignificant because it will affect, as we shall see in a moment, the difference between the two philosophers regarding 1) the reasons that lead us out of the state of nature and 2) the very notion of general will.

2.2 TWO KINDS OF NECESSITY TO ENTER CIVIL SOCIETY

At first sight, Kant and Rousseau have similar, if not identical accounts of why we ought to enter the civil state. Even readers like Kaufman (1997), interested in pinpointing unnoticed differences between the two philosophers, speak of a “common contractarianism” and of an identical narrative that describes the transition from the state of nature to civil society. After all, both philosophers ground their account on the intuition that there is some sort of rational necessity that should lead us to accept the transition. The nature of such necessity is, however, significantly different.

Rousseau characterizes the reasons that lead us to sign the social contract more or less in prudential terms. Let us recall the section “On the Civil State” which we already cited. There Rousseau weighs the advantages of the natural state lost in the passage to the civil state with the advantages one gains to show how the change is most convenient. Thus the development of one's faculties, the ennoblement of one's feelings, the elevation of one's soul overcome the loss of an unbounded yet primitive kind of freedom. He even talks of a balance sheet to weigh credits and debits of the deal. The column of debts only shows natural freedom and a right to everything while that of credits, in addition to the things already mentioned, shows civic and moral liberty, and security in one's possession, or better the transformation of one's possession into property.⁹ The passage to civil society is therefore a rational necessity because it fosters individual happiness. Like in Hobbes, it is basically a good deal.¹⁰

For Kant this is a mistaken way of conceptualizing the necessity to abandon the state of nature. The section in which he takes issue with Hobbes on this point could be very easily reformulated and used against Rousseau. Kant, in fact, argues that abandoning the state of nature is not “a good deal” that any rational person should accept for her own sake. It could be that too, obviously, but this is not the real issue. Kant says that entering the civil state is an

⁹ In various sections of *MM* (part I, sections 9 and 15 in particular) Kant expresses the same idea of civil society as what enables the transformation of possession into property.

¹⁰ Cohen (1996) argues that Hobbes' and Rousseau's accounts are different because unlike Hobbes presupposes that individuals are interested not only in protecting their lives and goods, but also and primarily their freedom, understood as independence or self-rule.

“absolute and primary duty in all external relationships whatsoever among human beings.” (TP, 73). The union is “an end in itself” (ibidem). It is not good because it brings about some other good. It is a good in itself. This is because for Kant individuals already have rights in the state of nature and it is only through the civil union that they have a way in which possible disputes on the coexistence of these rights can be non-arbitrarily adjudicated. In other words, it is not happiness, which de facto all human want, that grounds the civil state. Happiness could not do it anyway, because for Kant this is an empty concept: what makes me happy is not necessarily what makes you happy. As he puts it

Men have different views on the empirical end of happiness and what it consists of, so that as far as happiness is concerned, their will cannot be brought under any common principle, nor thus under any external law harmonising with the freedom of everyone. (TP, 73-74)

It is the innate right to freedom humans already have in the state of nature that grounds the necessity to abandon a condition in which “what is mine and what is yours,” to use Kant’s terminology, cannot be rightfully determined and adjudicated. It is not the common pursue of happiness, combined with our rationality, that for Kant creates the obligation to leave the state of nature. It is the protection of innate prerogatives that Rousseau does not seem to assign to ‘natural man’. Although he does speak of the “rights of humanity” and of a “dignity” of man before the establishment of the civil state (SC 144), his insistence on man’s unlimited freedom and “right to everything that tempts him and that he can acquire” (SC 151) resonates much more Hobbes’ description of the state of nature than Kant’s.

2.3 THE GENERAL WILL

The general will – the central concept of Rousseau’s political philosophy – plays a significant role also in Kant’s writings. A role *prima facie* hardly distinguishable from that assumed by Rousseau. We have already seen, for example, how the general will’s “contradiction with itself” makes democracy “necessarily a despotism” (PP 101). In PP, Kant makes two more references to this concept: he argues, like Rousseau, a) that it is an act of the general will that turns a mass into a people/nation and b) that any political system based on hereditary nobility could not be accepted by the general will. Moreover, what we said about the fact that only a representative system can be just has a lot to do with the same notion. It is only when power in a state is exercised by adopting the viewpoint of the general will (or at least when a sincere effort to do so is made) that the state has a chance to be just. The attitude of Frederick II to be the servant of the state is the only one compatible with justice. Politicians – Kant seems to hold – must try to be good interpreters of what the general will would say in this or that circumstance anytime a political decision is required. This seems to makes Kant’s notion of the general will indistinguishable from that of Rousseau. Is that really so?

To answer this question it is sufficient to reflect on the limits Kant and Rousseau set for the general will. What is it that the general will cannot will? What are the constraints, if there are any, that restrict the discretionary power of the general will? Probably the place where

Rousseau most clearly addresses this question occurs in the section “On the Limits of Sovereign Power.” There Rousseau offers a claim that makes him sound as a sensible liberal. After having repeated the idea that “the social compact gives the body politic an absolute power over all its members” (SC 156), he qualifies that claim as follow:

But over and above the public person, we need to consider the private persons who make it up and whose life and liberty are naturally independent of it. It is, therefore, a question of making a rigorous distinction between the respective rights of the citizens and the sovereign, and between the duties the former have to fulfil as subjects and the natural right they should enjoy as men. (SC 157)

Passages like these have led liberal thinkers like Rawls (2007) to think that after all Rousseau is a liberal friend. Over and above the rhetoric that he himself sometimes uses of the state’s absolute power over individuals, Rousseau is saying that individuals keep a sphere of freedom “naturally independent” of the body politic. Moreover, the inviolability of the spheres of freedom is justified by “the natural right” individuals “enjoy as men”. Finally, Rousseau grants that “each person alienates, by the social compact, only that portion of his power, his goods, and liberty whose use is of consequence to the community” (SC 157). This does sound like a well ordered constitutional state in which political power is strictly limited and individuals keep their rights that had even before entering the civil condition. The state can only take away from individuals what is “of consequence to the community,” namely what is necessary for the preservation of the state itself and of its function as guarantor of individuals’ fundamental interests and rights. Beyond that, its authority ends.

Right after the passages quoted, however, comes a clause that makes Rousseau much less a friend of liberals, and that sheds a completely different light on his whole theory. Certainly, he claims, the state can take away from individuals only what is “of consequence to the community,” “but we must also grant that only the sovereign is the judge of what is of consequence.” (SC 157) In other words, the state regains its full and unbounded authority on individuals by claiming for itself the power to judge what is necessary for its own survival and well-functioning. The general will seems to have no predetermined limit and the individual can only hope that it does not decree the full alienation of basic freedoms and of goods.

This is hardly compatible with Kant’s commitment to an innate pre-political right to freedom and more importantly with his approach to the justification of political power in terms of defence of basic fundamental rights, freedoms and possessions. We touch here the major point of departure between the two philosophers. Rousseau reveals that, no matter how sensitive to the “private persons whose life and liberty are naturally independent of the public person”, he is not ready to impose pre-determined limits to what the state can ask from the citizens. To be sure, he is confident that this won’t endanger individual basic freedoms because the general will – to remain general – cannot ever become the will of an oppressive majority. But one wonders whether this is enough as a guarantee of individuals’ prerogatives. After all, to determine whether a law or a decree is the faithful expression of the general will is still in the hands of the state. We just saw that the identification of “what is of consequence” for the preservation of the state still lies in the hands of the public authority. Now, because nobody

– private or public – is infallible in the divination of the general will, the evaluation of “what is of consequence” for the preservation of the state can easily become a source of oppression. Instead of leaving the determination of its own limits in the hands of the state, Kant would like to draw clear constitutional limits, all turning on the defence of individuals’ innate rights, which are grounded not in the general will but in practical reason. These rights ultimately have a moral foundation, not a political one and this puts them on a level that even the general will must take for granted. In the end, Kant seems to be an orthodox liberal compared to Rousseau, although he acknowledges most of the republican intuitions of his great predecessor. Despite his sincere preoccupation with the liberties of the private persons, Rousseau is an orthodox republican compared to Kant, at least in the sense that there are no prefixed boundaries to what the political body can do preserve the community’s security and well being.

3. THE TWO FACES COMBINED

If this reconstruction of the main similarities and differences between Rousseau and Kant is correct, it is tempting to investigate whether a synthesis of the two positions produces a philosophical stance of some interest. Does a political philosophy exist that can incorporate the best intuitions offered by the two philosophers and still remain a coherent whole? Perhaps the best way to approach this question is to ask whether Kant has something to learn from Rousseau and vice versa. Let us see.

The main lesson Kant may learn (and to a certain extent did learn) from Rousseau is that the inviolability of our spheres of freedom is not to be conflated with a permission to act in the political sphere as a merely prudential agent, interested in the maximization of private interests only. With his clear perception of the dangers of partisanship, Rousseau reminds Kant that a political body in which citizens merely care about the maximization of their particular interests is doomed to produce conditions of domination even if formally their endeavour is conducted well within constitutional limits. Rousseau highlights for Kant that a just society cannot be merely a society that does not violate fundamental freedoms. It also needs to make political decisions that all citizens could accept as respectful of their fundamental interests, which is another way of saying that it should be inspired by the general will. Additionally, Rousseau has a clear view of how existing divisions of power and opportunities within the society, even if formally legal, can be the result of former exploitation of natural and human resources against the interests of the poor, combined with an acceptance of these conditions dictated by some form of adaptive preference. While Kant and Rousseau share the idea of the social contract as a tool to evaluate existing institutions, Rousseau has a better idea of how the protection of property rights at any point in time can be nothing but the protection of former injustice, exploitation, and passive acquiescence. While both think that private property needs to be protected by the state (actually for Kant property of external things is construed as the necessary condition of the exercise of our external freedom), and both know that secure access to material resources is a condition of personal independence (think of Kant’s exclusion of ‘dependent’ workers from full citizenship), only Rousseau is ready to draw the necessary conclusion from this thought, i.e. that excessive socio-economic inequality endangers even

formal equality, and that for this reason (and perhaps others) ought to be countered. Had Kant taken this point seriously, he would have had a different view on how perfect formal equality among citizens is “perfectly consistent with the utmost economic inequality of the mass in the degree of its possessions” (TP 75).

What can Rousseau learn from Kant? Mainly the point that rigid constitutional limits to popular sovereignty, limits meant to avoid the risk of oppression of all kinds (including those inspired by paternalism), are a necessary element of political justice. It is unwise to grant the sovereign a full, unlimited power to determine what it can take from private individuals (the passage we commented on above), because this can easily become a road to serfdom. The fact that the general will cannot will something that is against the fundamental interests of people is not good enough as a guarantee. Even granting that there is a general will, and that it never errs, the way in which concrete human beings render this will can very well be mistaken. Kant – the moral philosopher – reminds Rousseau – the political philosopher – that politics remains an instrument to serve the inherent prerogatives of individuals, of those “natural men” the early Rousseau was so fond of. The liberal element Kant could very well lend to Rousseau is thus the idea that political systems can never be self-validating. An external moral perspective – what we call today the perspective of human rights – must be the ultimate judge.

Rousseau’s republic, if unconstrained by Kantian liberal elements, risks becoming a despotic state in which the chains of the general will are no less burdensome than those of imposed by despots. If the reader fears that we are unfair to Rousseau, thereby exaggerating the risks linked to the idea of a general will let us mention three points: 1) Rousseau’s denial of freedom of conscience (and in particular of religion), 2) the fear of a true debate among citizens, 3) the ideal of a republic closed to economic and cultural interchange, characterized by closure towards foreigners, absence of commerce, and citizens’ dismissal of any interests in erudition, philosophy, and sciences.

1. To begin with, Rousseau thought that the state must impose a “profession of faith” (CS IV 8). This civic religion is supposed to stand above any revealed religion practised within the state. It has few dogmas (regarding the existence of God, the afterlife, rewards for the good people, punishments for the evil ones and so on). The sovereign acts as supreme religious authority, preaches tolerance among revealed religions, but is intolerant towards citizens who don’t embrace the civic religion. If one openly rejects its dogmas, then the citizen must be expelled from the state. If one professes to accept them, but then publicly violates them, then death is the only commensurate punishment. This incredible amount of religious intolerance, that places Rousseau miles away from the Enlightenment’s general attitude towards religion, is introduced because individuals are believed to be not fully rational creatures. Their allegiance to the laws cannot rest merely on the Hobbesian calculus relative to the advantages of living under a supreme authority. A fear that speaks to the passions of individuals, such as the one generated by an Almighty Judge, is necessary for the state’s stability.
2. We have here a good example of how the general will can easily shows its despotic face. It may be true that the common good is served if all citizens adhere to the same civic religion.

It may likewise be true that the best interest of each and every citizen, perhaps construed along prudential lines, would be best served if civic religion were enforced. But would this be a sufficient reason to violate their freedom of conscience?

3. Compare now Rousseau's civic religion and Kant's project in *Religion within the limits of reason alone*. Common is the attempt to define a religion slimmer and more 'rational' than historical revealed confessions. Completely different are the goals the two pursue, let alone the paths they suggest to potential believers. Kant defines a rational, or, "natural" religion (Religion 170) as a disposition that interprets the commands of the moral law as divine commands. To be sure, he claims that the Christian faith is the only one compatible with natural religion. In this sense, it legitimately aims to universal acceptance. Kant, however, would never make adherence to such faith a legal duty. In fact, such an imposition would be incompatible with the free and voluntary transformation of one's heart and intentions that can only make humans worthy of God's benevolent judgment (Religion 175). And it would obviously be an infringement of individuals' inviolable sphere of freedom. In Kant, a religion imposed by the state violates justice and betrays the essence of faith.
4. Rousseau has a profound distrust for common people and in general for the opinions of individuals expressed in a public context (Barry 1964, Pinzani 2006). Despite his insistence on direct democracy, the assembly is supposed to ratify (or reject) the proposals that deputies (ministers) have crafted. No space for an authentic deliberation is foreseen (CS III, 18; 169). *Délibération* for Rousseau means decision (Manin 1987, 345). It is therefore quite inappropriate to cite Rousseau as one of the noble predecessors of contemporary deliberative democracy. Compare this with Kant's emphasis on the importance in - *What is Enlightenment* – of the "freedom to make *public use* of one's reason in all matters". This is the freedom one can and must use in a republic to scrutinize existing laws and policies. If exercised by all citizens who make use of their reason, it contributes to the wisdom of public decisions. Kant makes this point very forcefully in the context of the first critique, but there is no reason to see the validity of the claim as restricted to the theoretical use of reason: "Reason must in all its undertakings subject itself to criticism; should it limit freedom of criticism by any prohibition, it must harm itself, drawing upon itself an damaging suspicion. Nothing is so important through its usefulness, nothing so sacred, that it may be exempted from this searching examination, which knows no respect for persons. Reason depends on this freedom. For reason has no dictatorial authority; its verdict is always simply the agreement of free citizens, of whom each one must be permitted to express, without let or hindrance, his objections or even his veto." (A738f/B766f).
5. Finally, it is easy to contrast Rousseau's national closure with Kant's cosmopolitan spirit; the apology of autarchy by the former, with the emphasis on the 'right to visit' due to foreigners who visit our country by the latter, not to mention the importance of the 'spirit of commerce' for the promotion of international peace. What matters here is not the difference between the two, because it is evident and huge. It is the inspiration that is telling. As noticed by Pinzani (2006), this ideal of an excluding and unwelcoming

community is close to Bergson's notion of closed society in which members are always in a defensive and therefore potentially aggressive attitude towards "others", namely those outside of the group. The exact opposite of the right "to present themselves to society" [sich zur Gesellschaft anzubieten] (Ak. VIII 358) Kant recognizes to foreigners with an eye to foster a broader, more peaceful, and ultimately cosmopolitan community. And more importantly, the ideal of a never changing state that can ensure its continuation without transformation only with a considerable amount of censorship. Not accidentally Rousseau's ideal state has a magistrate that has precisely that task (Pinzani 267). Again, opinions who diverge from the 'right' public opinion are simple mistakes, opinions individuals wouldn't have, had they been helped to form and uphold the right ones.

Quite apart from the historical and personal reasons that led Rousseau to hold these views, we – contemporary readers – tend to see them as dark spots in an otherwise inspiring and thought provoking political philosophy. If we have to use *On the Social Contract* for constructing a political philosophy worth spending, it must be a more liberal (Kantian) version of Rousseau. Conversely, if we want to use Kant's political philosophy today, then thick republican (Rousseauian) elements need to be inserted, mainly turning around provision against practises of exclusion, marginalization, domination. A more republican liberalism (Rousseau complementing Kant) and a more liberal republicanism (Kant complementing Rousseau). The two faces have become one.

ABSTRACT. The relation between Rousseau's and Kant's political philosophies has attracted the attention of different generations of scholars. This is hardly surprising not only because of the stature of the two philosophers, but also because they offer two similar and perhaps complementary versions of republicanism. Despite the abundance of studies, however, the impression is that the real similarities and the real differences between the two philosophers have not been fully grasped. On points that Rousseau and Kant are traditionally cited for their philosophical distance, this paper argues a much closer proximity. In addition, areas considered overlapping are highlighted as points of genuine disagreement. Three theses of the first kind (apparent dissimilarities) and three theses of the second kind (apparent similarities) are offered as examples. The paper thus naturally falls in two parts and six sections. In the first part, we discuss the following apparent dissimilarities: a) Rousseau's idea that sovereignty cannot be divided Vs Kant's idea that the republican state must be founded on the division of powers, b) Rousseau's dismissal of representative government in favour of direct democracy Vs Kant's harsh criticism of democracy, c) Rousseau's allegedly illiberal idea of "forcing individuals to be free" Vs Kant's liberal commitment to the protection of individuals' pre-political rights. In the second part, we analyze the following apparent similarities: a) Rousseau's and Kant's allegedly identical notions of moral freedom/autonomy, b) their accounts of the reasons why individuals "ought to" leave the state of nature, often considered as nearly indistinguishable, c) the notion of general will seemingly borrowed by Kant from Rousseau without significant modifications. The overall analysis should serve to draw two different, yet complementary faces of republicanism. The composition of the two faces construes a position in political philosophy halfway between standard republicanism and standard liberalism that may have some value on its own terms.

KEYWORDS: Kant, Rousseau, general will, representation, democracy

REFERENCES

- Barry, B. (1964) "The Public Interest", in Proceedings of the Aristotelian Society, Supplementary Volume 38, 1-18.
- Caranti, L. (2011) "Kant e l'agire politico", *Rivista di filosofia*, 77-104.
- Caranti, L. (2011) "Kant's Theory of Human Rights," in T. Cushman (Ed.), *Handbook of Human Rights*, Routledge, 35-44.
- Charvet, J. (1999) "Rousseau, the Problem of Sovereignty and the Limits of Political Obligation", in Ch. W. Morris (ed.), *The Social Contract Theorists. Critical Essays on Hobbes, Locke and Rousseau*, Lahnam, Rowman & Littlefield, 205-218.
- Rousseau, J.J. (1987) *The Basic Political Writings*. Trans. D.A. Cress. Indianapolis: Hackett Publishing Company.
- Berlin, I., 1969, 'Two Concepts of Liberty', in I. Berlin, *Four Essays on Liberty*, London: Oxford University Press. New ed. in Berlin 2002.
- Cohen, J. (1986) 'Reflections on Rousseau: Autonomy and Democracy', in *Philosophy and Public Affairs*, 15: 275-288.
- Cohen, J. (2010) *Rousseau: A Free Community of Equals*. Oxford New York: OUP.
- Kelly, G.A. (1968) "Rousseau, Kant, and History", *Journal of the History of Ideas*, 29 (3): 347-364.
- Manin, B. (1987) "On Legitimacy and Political Deliberation", in *Political Theory*. 13/5, 338-368.
- Pinzani, A. (2006) *Ghirlande di fiori e catene di ferro. Istituzioni e virtù politiche in Machiavelli, Hobbes, Rousseau, and Kant*. Firenze: Le Lettere.
- Rawls, J. (2007), *Lectures on the History of Philosophy*. Cambridge (MA): Harvard University Press.
- Shklar, J. (1985) *Men And Citizens. A Study of Rousseau's Social Theory*, Cambridge (MA): CUP.
- Viroli, M. (1993) *Jean-Jacques Rousseau e la società ben ordinata*. Bologna: Il Mulino.
- Viroli, M. (1999) *Repubblicanesimo*. Roma-Bari: Laterza.

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