

**THE PROBLEM OF JUSTICE
IN THE PHILOSOPHIES OF ROUSSEAU AND KANT**

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ABSTRACT

THE PROBLEM OF JUSTICE IN THE PHILOSOPHIES OF ROUSSEAU AND KANT

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The aim of this study is to make a comparison between Rousseau's and Kant's theory of justice. This thesis defends the arguments of Rousseau's democratic political theory against the claims raised by Kant. Rousseau and Kant formulate how to relieve the tension between individual and society. This tension is the one between individual and political freedom. Rousseau calls it the tension between moral and political freedom and Kant terms it as internal and external freedom. However, Rousseau ensures continuity between two concepts of freedom, whereas Kant seems inconsistent. The main argument of this thesis is that the critical potential of Rousseau's notion of the social contract is jeopardized by Kant's Idea of original contract in which the sovereign authority is taken away from people since Rousseau's notion of the social contract turns into Idea of original contract in Kant's theory of justice. In this regard, this thesis particularly seeks to answer the question of what constitutes the legitimacy of the contract in their theory of justice.

Keywords: Jean-Jacques Rousseau, Immanuel Kant, justice, freedom, social contract.

ÖZ

ROUSSEAU VE KANT'IN FELSEFELERİNDE ADALET SORUNU

Ünlü, Özlem

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Bu çalışma Jean Jacques Rousseau ve Immanuel Kant'ın adalet kuramlarını karşılaştırmayı amaçlamaktadır. Çalışma Kant'ın geliştirdiği savlara karşı Rousseau'nun demokratik siyaset kuramının savlarını savunmuştur. Rousseau ve Kant birey ve toplum arasındaki gerilimin nasıl çözüleceğini formüle etmişler ve bunu bireysel ve siyasi özgürlük arasındaki gerilim olarak belirlemişlerdir. Rousseau, bu gerilimi ahklaki ve siyasi özgürlük arasındaki gerilimi olarak belirlerken Kant içsel ve dışsal özgürlük adını vermiştir. Ancak Rousseau iki özgürlük kavrayışı arasında sürekliliği sağlayabilirken Kant tutarsız görünmektedir. Bu tezin temel savı, Rousseau'nun toplum sözleşmesi kuramının eleştirel potansiyelinin, Kant'ın egemenliği halktan alan asıl sözleşme idesiyle birlikte tehlikeye sokulduğudur. Bunun nedeni Rousseau'nun sözleşme kavrayışının Kant'ın adalet kuramıyla beraber pratik aklın idesine dönüşmesidir. Bu açıdan, bu çalışma iki düşünürün adalet kuramlarında sözleşmenin meşruiyetini oluşturan temeli sorgulamaktadır.

Anahtar kelimeler: Jean-Jacques Rousseau, Immanuel Kant, adalet, özgürlük, toplum sözleşmesi.

*To my mother,
who sacrificed all her dreams in order to make mine come true ...*

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LIST OF ABBREVIATIONS

Jean-Jacques Rousseau

CPG Considerations on the Government of Poland and Its Projected Reformation, in *The Social Contract and Other Later Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 177-260.

DI Discourse on Inequality (Discourse on the Origin and Foundations of Inequality among Man), in *The 'Discourses' and Other Early Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 111-222.

DSA Discourse on the Sciences and Arts, in *The 'Discourses' and Other Early Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 1-28.

PE Discourse on Political Economy, in *The Social Contract and Other Later Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 3-38.

E Emile, or on Education, trans. Allan Bloom (New York: Basic Books, 1979), I have modeled the reference to the text on the abbreviations as the following example; 'E, 4, 247' refers to book 4, page 247.

N Preface to 'Narcissus', in *The 'Discourses' and Other Early Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 92-106.

SC Of the Social Contract or Principles of Political Right, in *The Social Contract and Other Later Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 39-152. I have modeled the reference to the text on the abbreviations as the following example; 'SC, 1.4, 47' refers to book 1, chapter 4, page 47.

Immanuel Kant

CPR Critique of Pure Reason, trans. Norman Kemp Smith. New York: St. Martin's Press, 1929.

CPrR Critique of Practical Reason, trans. and ed. Mary Gregor. Cambridge: Cambridge University Press, 1997.

G Groundwork of the metaphysic of morals, trans. Thomas E. Hill Jr. and Arnulf Zweig. New York: Oxford University Press, 2002.

IUH Idea for a Universal History with a Cosmopolitan Purpose in *Kant Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1991), 93-125.

MEJ Metaphysical Elements of Justice, trans. John Ladd. Indianapolis: Hackett Publishing Company, 1999.

CHAPTER

1. INTRODUCTION

The aim of this study is to make a comparison between justice theories of Jean Jacques Rousseau (1712-1778) and Immanuel Kant (1724-1804). To this end, throughout the thesis some concepts which bear an affinity, such as human being, the free will, moral duty, duty of justice, social/original contract, and finally property are the primary objects of discussions.

It is customary among Kant's scholars to quote a memorable passage below in order to appraise Kant's debt to Rousseau:

I feel a complete thirst for knowledge and an eager unrest to go further in it, as well as satisfaction at every acquisition. There was a time when I believed that this alone could constitute the honor of mankind, and I had contempt for the rabble who knows nothing. Rousseau brought me around. This blinding superiority disappeared; I learned to honor human beings, and I would find myself far more useless than the common laborer if I did not believe that this consideration could impart to all others a value in establishing the rights of humanity.¹

Unlike the customary tendency to point out the conceptual connection between two thinkers, I would like to suggest a different interpretation by citing Kant's passage. At the very first glance it can well be concluded Kant actually did not learn so much from Rousseau who could not possibly consider "common laborer" as "useless". Kant seems convinced that he learned that every human being has dignity, whereas in next line he clarifies how much dignity he ascribes to common laborer. On the other hand, it will be fruitful to look at what Rousseau

¹ Guyer 2005, 7. And Cassirer 1963, 6. Cassirer's remark is similar: "His [Kant's] naive confidence that the cultivation of the mind and its steady progress would suffice to make man better, freer and happier is shaken." Lastly for a striking narrative citation: "Most familiar is the story that he who was a model of punctuality, and accustomed to regulate his daily routine by the clock, departed only once from this regular routine. When Rousseau's *Emile* appeared, fascinated by the study of the work in which he had become absorbed, Kant gave up his daily walk." In addition, Cassirer states that Rousseau was the only one whose portrait hung on the Kant's wall. *Ibid.*, 1.

thinks about common laborer in order that I may distinguish at the outset which motives directed and shaped the ideas of two thinkers. While prescribing how distribution of taxation should be done in his *Political Economy*, Rousseau makes it clear what side he takes; “[a] most important and most difficult calculation which is performed daily by a host clerks who are decent folk and know arithmetic, but which a Plato or a Montesquieu would have dared to undertake only with trembling and calling on heaven for enlightenment and integrity.” (*PE*, 33) As it is further going to be seen, Rousseau’s political project was basically an anti-elitist one in opposition to his contemporaries. He constantly attacks the Enlightenment—its thinkers in particular, as a pillar of despotism or of absolute monarchy.

In connection with this difference between two philosophers, it should be clear from the outset that Rousseau and Kant approach to the concept of human. After praising Rousseau, Kant states that “He proceeds synthetically and begins from the natural human being; I proceed analytically, beginning from the civilized human being”.² To this end, my aim will firstly be to seek and point out the reasons behind Rousseau’s hypothetical inquiry into human history, that is, his synthetic construction of history.

Chapter 2 is a kind of introduction to the important concepts of Rousseau’s moral philosophy in connection with how they take place in Rousseau’s theory of justice. This chapter will question the relation between morality and knowledge. I will begin with Rousseau’s promising criticism of the Enlightenment and its intelligentsia for their solutions to the well-being of humanity. Rousseau’s first criticism will indicate that the Enlightenment’s own deep prejudice about inequality which the intellectuals were thinking that it finds its origin in the nature. These introductory discussions will provide Rousseau conception’s justice.

In connection with his first critique of the Enlightenment, firstly, Rousseau will demonstrate that the origin of inequality lies in civilization. Secondly, he will point out the increasing economic subjection which makes human being the object of utilization. Lastly, designing human conception with the idea of perfection of human

² Guyer, 2005, 7.

is a false one. Perfectibility of human being cannot be identified with progress on moral grounds.

In the first section of Chapter 2, I will elucidate Rousseau's identifying human with autonomy based on freedom of the will in the mouth of Savoyard Vicar by focusing on the concept of passion and the free will. Then, I will argue how the Vicar's creeds turn into three postulates of pure practical reason in Kant's critical project. At the end of the Chapter 1, I will arrive at Rousseau's conclusion about the free will; the free will is in the need of the guidance of *conscience* in order to *know* how to *will* morally good. The determination of compassion as the first principle of justice will also take place in this Chapter.

Within Chapter 3 titled as "Principles of Political Right", I will examine, firstly, Rousseau's hypothetical method, his construction of human history and the emergence of inequality with reference his conception of human in this state. This will provide us with Rousseau's characterization of the state of nature. Accordingly, I will focus on which governs human in this stage, that is to say, how Rousseau describes natural right and what is its place in the political rights. The second division of the Chapter 3, I will discuss Rousseau's theory of justice. First of all, he will develop the conditions of the legitimate political authority and hence that of the social contract. Why human being should enter into civil state at the expense of renouncing his natural freedom. More to the point, does he really renounce his freedom by accepting to obey a political authority? In what conditions, does individual remain as free as before? Thus I will move on his account of body politic. This organized body will show us all necessary elements in Rousseau's theory of justice. I will examine its two basic elements, of the sovereign power, and of the executive one.

Through the divisions of the Chapter 3, I will elaborate the concept of duty; the sovereign power which is composed of the collective will of the people has some duties peculiar to it. In the same manner, the executive power has also duties. Rousseau's account of duty enables us to pass on Kant's moral theory. I will try to show that setting up a social contract which transforms "force into right, and obedience into duty", Rousseau foreshadows Kant.

Chapter 4 focuses on Kant's account of justice. However, it is necessary first of all to examine his moral theory in order to capture his doctrine of right since for Kant, the subject matter of morality and justice is one and the same thing; "the Idea and the principles of a possible pure will". Kant was well aware of Rousseau's new account of man, which "consists of man's ethical and not physical nature"³. This new account has led to "a new epoch in the thinking of mankind [...] totally unknown to the ancients". In Kant's own words, it was Rousseau's "great discovery of our age" that inaugurated a new account of man's essence. This great discovery was no doubt Rousseau's identifying human with autonomy based on freedom of the will. Kant, however, as I made already clear his intimation at the outset that his account of human could not be derivable from natural human; he begins analytically from civilized human being. Kant could not take human as a being historically undergoing transformation in history because this human was not empirically be given to him.

Throughout the Chapter 4, I will try to demonstrate Kant's analytical beginning leads him to develop a theory of justice which legitimizes every political constitution. To this end I will follow three steps; morality, justice and politics. Kant's transition among these three steps will give us respectively his formulations of the moral law, natural law and the law of history, each of which ascribes its duties to us so that we are coerced to obey them. After examining the moral law I will move on Kant's conception of external rights by questioning; what are the rights and duties of individual in the civil state? Why are external laws bound up with the moral law? Lastly, I will delve into Kant's theory of history by means of which we can arrive at "a guiding principle" for history of human actions.

In what follows this examination, I will reflect on the reasons behind Kant's gradual tendency toward justice and politics, with a particular attention to Kant's account of Ideas of practical reason, according to which not only we need to question laws but also we are supposed to support them.

³ Cassirer 1963, 21.

2. THE APPRAISAL OF THE POLITICAL PROBLEM BY ROUSSEAU IN THE AGE OF ENLIGHTENMENT

Rousseau was an eccentric in the Age of Reason. We can clearly see his eccentricity in his *Discourse on the Sciences and Arts*. It is also customary among Rousseau scholars and political philosophers who are mainly concerned with the link between morality and knowledge, and accordingly the crisis of modern societies, to speak of, before anything else, Rousseau's writings as the first serious revolt within the Enlightenment thinkers against the belief in "the Sciences and Arts" enhancing "the purification of morals" (*DSA*, 3). Hence, let us quote Rousseau's most famous passage which he succinctly conveys his deliberation to us:

While the Government and the Laws to see to the safety and the well-being of men assembled, the Sciences, Letters, and Arts, less despotic and perhaps more powerful spread garlands of flowers over the iron chains with which they [men] are laden, throttle in them the sentiment of that original freedom for which they seemed born, make them love slavery, and fashion them into what is called civilized Peoples. (*DSA*, 6)

Jean-Jacques Rousseau's first important enterprise with which he won the prize in 1750 by Académie de Dijon is *Discourse on Arts and Science* or the *First Discourse* from which above passage is taken. Although later Rousseau regarded it as amateur in comparison with *Emile* or *Social Contract*, he has launched with *Discourse on the Sciences and Arts* his peculiar thoughts to be developed later on: "[t]here are then no other Rousseauian principles than those underlying his short discourse on the sciences and arts, however imperfectly, he may have expressed them in that earliest of his important writings".⁴ Thus his denial of civilization in the discourses first appeared as a famous response to "the question whether moral advanced by the rising of the arts and sciences. In the above passage, Rousseau initially gives a sarcastic answer in his own manner to the Enlightenment movement which is characterized with the belief in the inevitability of progress. I think this

⁴ Strauss 1947, 455-56.

conception of progress can be comprehended by glancing at one of the Enlightenment thinkers, who passionately voiced it, rather than by reading the general outline which has been expressed in the vast secondary literature.

In 1795 Condorcet wrote his classical work, *Outlines of a Historical View of the Progress of the Human Mind*, which has traditionally been considered as one of the most important thinkers of the Enlightenment thought. In fact, it is the best work reflecting the Age of Reason in which the idea of “Future Progress of Mankind” is expounded for the first time in the tenth section that lays down the rules of natural sciences for the moral faculties of human. Condorcet’s threefold deliberation is as the following: “the abolition of inequality between nations, the progress of equality within each nation, and the true perfection of mankind”. According to Condorcet the social sciences are so lack of power of providing us with the knowledge of our conduct that these three aims of humanity can hardly be achieved. Only such a social science could have explored possible solutions to three problems so that it could have provided us with “the knowledge necessary for the direction of every man in the common occurrences of life, and for the free and independent exercise of his reason”. In the light of reason the task of the Enlightenment is to free people from prejudice and false opinion whatsoever. As seen, it was believed that the knowledge of natural sciences would bring inevitably the knowledge for being moral and just in a well-ordered society, a society which finds its best example in the Western Europe, specifically in France: “Will not every nation one day arrive at the state of civilization attained by those people who are most enlightened, most free, most exempt from prejudices, as the French, for instance, and the Anglo-Americans?”, asks Condorcet.⁵

In the rest of the above passage Condorcet glorifies reason, points at its universal character and further adds that reason has therefore set the happiness of humans, which must be subject to laws invented by a proper social science. The idea of the Enlightenment is that the fundamental requirements of society all over the world can be satisfied only by a single social science proper. What will be gained when reason eradicates deep-rooted prejudices? Will this cleaning movement bring

⁵ Condorcet 1795.

happiness to mankind? As answers to those questions, in his *Discourse on the Sciences and Arts*, Rousseau argues against the alleged development of the sciences and arts on the moral ground. Starobinski clearly summarizes Rousseau's conclusion as to civilization: "The human mind triumphs, but man has lost his way".⁶ This blind progressive attitude the Enlightenment intellectuals took, according to Rousseau, could not have given us an appropriate prescription for the well-being of humanity. The Enlightenment conceived of humanity as a victim of prejudice and falsehood, whereas humanity is the victim of something else, namely, the inventors of arts and investigators of knowledge.

Rousseau's first critique, then, points at the Enlightenment's own deep prejudice about inequality which the intellectuals were thinking that it finds its origin in the nature. This is his most basic argument as one can see in the opening citation of *Discourse on the Sciences and Arts* from Horace: "We are deceived by the appearance of right." (DSA, 5) It may be summarized Rousseau's criticism about the Enlightenment in three steps; firstly, he will demonstrate that the origin of inequality lies in civilization of which they were too proud. Secondly, Rousseau will criticize their attempt at specifying the universal principles of a proper social science. While people have already been "seduced by a false image of justice,"⁷ what the enlightenment thinkers, lacking historical thought, tried to do is to enhance it by ignoring the increasing economic subjection which makes human being the object of utilization. Lastly, designing human conception with the idea of perfection of human, which would later become a resurrected idea of philosophy, is a false one. Perfectibility of human being cannot be identified with progress in morality.

Rousseau's courage was severely criticized by the *Salon* fellows due to *The Discourse on the Sciences and the Arts*' beginning with a praise to ignorance. It is well known that *Salons* were functioning in France as the academy of philosophy, science and art throughout the 17th and 18th centuries. Rousseau was a queer figure of the *philosophes*, the *Encyclopedists* and, who were the dominant intelligentsia of the *Enlightenment*. It is claimed that the final break with them is Rousseau's *Letter to*

⁶Starobinski 1988, 3.

⁷ Ibid., 4.

d'Alembert on the Theatre, later also known as *Politics and the Arts*, in which he voices his sympathy to religion standing in contrast to the secular movement of the Enlightenment. Although Rousseau attacks science on the grounds of its detrimental effect on religion, he has in mind “civil religion,” that is, religion considered merely as a social bond⁸, the Paris *philosophes* did strongly refuse to make religious commitment and support political reforms.

Especially in books VIII, IX, and X of the *Confessions* Rousseau argues that he was inflicted by “the coterie holbachique”⁹ which produced the atheist and materialist work of the eighteenth century. Rousseau clarifies his attempt to reconcile between “the Encyclopedists and the Christians” but none of them paid attention his attempt. After that, not surprisingly, he finds that the antireligious works of the Encyclopedists adopted a narrow scientific attitude which succeeded neither in understanding nor in articulating the society and even nature.

The descriptive analysis of the mutual interaction between morality and knowledge in *Discourse on the Sciences and Arts* would need to be further elaborated for a consistent understanding of Rousseau’s criticism. This is found in his later *Responses*, especially in the *Preface of Narcissus*¹⁰:

I complain that Philosophy loosens the bonds of society formed by mutual esteem and benevolence, and I complain that the sciences, the arts and all the other objects of commerce tighten the bonds of society through self-interest. And it is indeed impossible to tighten one of these bonds without other relaxing by as much. There is therefore no contradiction here. (*N*, 100)

In this passage, Rousseau clearly summarizes the arguments as to his discomfort with the loose bonds of modern society. His argument implies a relation

⁸ Strauss 1947, 461.

⁹ The term ‘*coterie holbachique*’ or ‘*holbachians*’ first appeared in *Confession* as Rousseau’s own invention by means of which he refers to the *philosophes*, *Encyclopedist*. Kors, 1976, 574.

¹⁰ Narcissus as theatrical play is an important one as regards its title. It refers to those who are dazzled by applause and public recognition like famous intellectuals and performers as the most skilled and most learned people in society: “Anyone who cultivates the agreeable talents wants to please, to be admired, and indeed wants to be admired more than anyone else is. Public applause is to be his alone”. Rousseau, Preface to ‘Narcissus’. In *The ‘Discourses’ and Other Early Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 92-106. See p.99. (Hereafter Rousseau, *Narcissus*.)

of the sciences and arts to economy which is inversely proportional regarding their effects on socio-economical bonds. According to Rousseau, knowledge, when taken by itself, is not worthy of acquiring; we must appraise its origin, ends and effects. With regard to Rousseau's commitment to knowledge, it would be useful to touch upon his epistemology, if there is one. Starobinski marks out Rousseau's thought on knowledge by stating that '[f]or Rousseau, comprehension does not lead simply to intellectual commitment to "fact" but directly to moral opposition on behalf of what is "right"'.¹¹ It is now much more clearer why, for Rousseau, every step human took on the path of civilization in name of perfection is a vice. This kind of approach to knowledge justifies Rousseau's attacks on sciences and arts that he regarded as in the service of trade, namely, "objects of commerce" (N, 100).

Civilization has created a society consisting of a type of individuals who are absorbed into selfishness by commerce in particular. Trade appears to be, for Rousseau, key element to grasp the reasons of unfastening social bonds, since it implies a process characterized by negative detachment of individual for itself from society. Civilization as one of the manifestations of commerce in culture has led people to seek private interest rather than the common ones. While technical and theoretical knowledge is going on surrounding individuals with its tools, that is commerce, philosophy has nothing to say as social critique. Rousseau attributes a particular role to philosophy and to the philosopher who is supposed to see and stand against the destructive effects of knowledge on human relations. He believes that this effect can be seen most clearly in the trade which has turned modern society into a rabble pursuing self-interest and devoid of social virtue. He complains about those who were dazzled by the rising of the Enlightenment and who for this reason unable to see its social effects on the people in its entirety.

As for the role of intellectual in the Enlightenment movement, according to Rousseau, the triumph of corruption of mankind has been supported by "much chatter" of philosophers and intellectuals, and by "rich men", who are merchants and politicians. As the society is in such a condition "where having wealth invariably makes it easier get more, and it is impossible for the man who has nothing to acquire

¹¹ Starobinski 1988, 24.

anything”, Rousseau cannot help expressing his astonishment at the intellectuals’ hypocritical manner (*N*, 101):

All our Writers regard the crowning achievement of our century’s politics to be the sciences, the arts, luxury, commerce, laws, and all the other bonds which, by tightening the social ties among men through self-interest, place them all in a position of mutual dependence, impose on them mutual needs and common interests, and oblige everyone to contribute to everyone else’s happiness in order to secure his own... These are certainly fine ideas... What a wonderful thing, then, to have put men in a position where they can only live together by obstructing, supplanting, deceiving, betraying, destroying one another! (*N*, 100)

Having appealed to Rousseau’s own metaphor of Prometheus¹² Strauss gives an elitist interpretation of Rousseau’s rather complicated attitude toward progress in sciences and arts in his *Discourse on the Sciences and Arts*: Whereas Rousseau considers himself as common man, “simple soul” who tries to warn “the common men of the dangers of science”, Strauss claims that he speaks to a few lover of science, including himself, who know how to make use of scientific and technical knowledge in order to contribute to human happiness.¹³ In this regard “[s]cience is not compatible with the virtue of “the peoples”; it is compatible with the virtue of certain individuals, that is, of “the great minds”. Science is bad, not absolutely, but only for the people or for society”.¹⁴

It is very surprising to read Strauss’ explication that Rousseau was against “popularized science or the diffusion of scientific knowledge”.¹⁵ According to Strauss Rousseau implicitly argues that since people are dominated by mere ‘opinion’ it is dangerous for them to look for ‘knowledge’; knowledge deteriorates public opinion and religious dogmas accepted as faith “in the sacred foundations of

¹² “The Satyr”, says an ancient fable, “wanted to kiss and embrace fire the first time he saw it but Prometheus cried out to him: ‘Satyr, you will weep the loss of the beard on your chin, for it burns when you touch it’”. Rousseau, Jean-Jacques. *Discourse on the Sciences and Arts*. In *The ‘Discourses’ and Other Early Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 1-28. See p.16. (Hereafter Rousseau, *Discourse on the Sciences and Arts*.)

¹³ Strauss 1947, 464.

¹⁴ *Ibid.*, 465.

¹⁵ *Ibid.*, 467.

society”.¹⁶ That is why Rousseau is too eager to praise ignorance and to revile knowledge: “In opposition to the Enlightenment he reasserts the crucial importance of the natural inequality of men with regard to intellectual gifts.”¹⁷ Strauss goes on to argue that Rousseau had in mind a very familiar problematic of political philosophy inherited from the ancient thinkers, namely the inequality of intellectual ability and he avoided the political implication of natural inequality in society by defending political equality as a popular revolt against natural inequality. And this attitude that he took established his unique position among democratic theoretician.

In opposition to what Strauss claims, for Rousseau, the natural inequality among men does by no means justify political inequality, that is, the superior minds’ dominance over the inferior ones as ancient thinkers like Plato and Aristotle advocated. As I will argue through the Chapter 3, Rousseau never explains any social problem by appealing to natural inequality because Rousseau is a theoretician of political right rather than that of natural right. The natural right is basically some rules which govern human being in the state of nature, a state which is amoral and apolitical. For this reason, there can be no question of equality or inequality in the state of nature governed by natural right since what Rousseau understands by the term natural right is not a right in the political sense.

I am rather inclined to adopt J. L. Lecercle’s informative introduction based on a Marxist analysis than Strauss’s unusual interpretation of the problematic in *Discourse on the Sciences and Arts*. Lecercle’s introduction suggests that Rousseau in his relation to the Paris *philosophes*, especially in his critique about d’Holbach’s coterie has always remained a petit bourgeoisie. This is why Rousseau denied the contribution of “the Sciences and Arts to the purification of morals”. The social class, to which Rousseau belonged too, must have manifested itself specifically as antagonistic to progressive facet; for according to petit bourgeoisie, the progress in fact was its own regress in economic terms. Lecercle argues that unlike Voltaire, Helvétius or d’Holbach on the fringe of Parisian society, Rousseau no doubt was

¹⁶ Ibid., 472.

¹⁷ Ibid., 486.

supposed to come closer to democratic and egalitarian principles.¹⁸ Therefore, according to Lecerle's analysis, Rousseau's thoughts represent a desperate attempt to avoid the imbalance of constitutive of capitalism by seeking support in human nature.

Notwithstanding Lecerle's Marxist approach involved in explaining Rousseau's 'desperate attempt', Rousseau has been regarded as the chief intellectual interpreter of the French political revolution and, in fact, he foreshadowed the revolution. Rousseau's courage in blaming scientific development for the sake of morality and in questioning the accepted values differs him from his contemporaries. What he actually foreshadowed was the first crisis of modernity. Pippin put it as follows:

Rousseau sees for the first time how much had been lost in the first modern wave, especially sees the Faustian bargain, how modern man had sacrificed virtue for ease, and had acquired freedom only freely to traffic in goods and money, to trade, to acquire, to lose himself in idleness.¹⁹

Rousseau makes it clear that he has often appealed to rhetorical language in order to explain that irrepressible rising of the arts and sciences has resulted in the privilege of a group of intellectuals:

I showed that the source of our errors [...] is our mistaking our vain and deceptive knowledge for the sovereign intelligence that sees the truth of all things at a glance. Science, taken abstractly, deserves all our admiration. The foolish science of men deserves nothing but derision and contempt. (*N*, 97)

The intellectuals seem to be justified in their impatience to shape society but in fact, they are unjustified in claiming superiority over the people. Although Rousseau maintains that the flourishing of intellectual talents is not a primordial need at all for just state organization, what he claims in essence is that if there are the gifted individual of any kind, their being gifted cannot legitimate their priority over the rest of people.

¹⁸ Rousseau, Jean-Jacques, *İnsanlar Arasındaki Eşitsizliğin Kaynağı*, trans. R.Nuri İleri. İstanbul: Say Yayınları, 2006. See the preface by Lecerle, p. 15-9.

¹⁹ Pippin 1997. 225.

To put it briefly, Rousseau's argument in *Discourse on the Sciences and Arts* is as follows; the more one develops the taste for the sciences, arts and philosophy the more it is likely to affect badly one's morality. The difficulties of this argument tempted Rousseau to elaborate more on the present imperfection of social science, such as its insufficiency to explain the passions of human being. According to Rousseau, we cannot understand the present problems of society without properly examining the true passions of human being; the passion amour propre as the sole source of human evil in Rousseau's theory of justice "grows in direct proportion to his indifference to the rest of the universe. Family, fatherland, become for him words devoid of meaning: he is neither parent, nor citizen, nor man: he is philosopher" (N, 99).

What Rousseau terms as amour propre is basically selfishness that is the state of being indifferent to society. He characterizes amour propre as partly unnatural, which means that its danger is felt in society. For this reason, Rousseau defends against his contemporary social scientist that we should search the source of amour propre that is malicious side of human, in society not in nature. Rousseau bases his theory of amour propre on its ever-increasing effects in the life of civilized people. Unlike civil man, savage was not familiar with this passion; human has been gradually corrupted. The people in Rome, for instance, were even more virtuous "in the times of its poverty and ignorance."²⁰

Discourse on the Sciences and Arts is the most extreme critique of civilization found in Rousseau's writings. In fact, Rousseau was seeking an answer to the question why sciences and arts did fall short of understand society. I think it is unavoidable to misunderstand Rousseau's notion of knowledge if one does not bear in mind his distinction between pure knowledge and knowledge which is produced and manipulated by people. He was well aware that knowledge is ultimately a product of the human being. Interest in science, letters, philosophy, says Rousseau, gives rise to "a craving for distinction", a distinction made by "the most learned", "skilled" between themselves and the people (N, 97):

²⁰ Rousseau, *Discourse on the Sciences and Arts*, 11.

In a well-constituted State, every citizen has duties to fulfill; and he holds these important cares too dear to find leisure for frivolous speculations. In a well-constituted State all citizens are so thoroughly equal that no one may enjoy precedence over others as being the most learned or even the most skilled, but at most for being the best (*N*, 97).

Instead of falling short of penetrating into society, the goal of intellectuals as social scientists is to teach “men to perform their duties and the principles of virtue” (*N*, 97). And it was Rousseau who will establish a social theory whose principles enable intellectual to lead citizens to fulfill their civic duties. Therefore, intellectual’s duty is not endless chatter in salons about the alleged superiority of the literate.

Although Rousseau seems to make use of rhetoric, his ultimate suggestion as to the possibility of the joint involvement of morality and knowledge in the well-ordered society comes at the end of the *Discourse on Arts and Science*. He acknowledges that the scientist and the intellectual like Descartes, Bacon and Newton as the guide of mankind are necessary and will always be so to enlighten the individual citizens: “Let us leave to others the care of instructing Peoples in their duties, and confine ourselves to fulfilling our own duties well, we have no need of knowing more.” (*DSA*, 28) Here ‘others’ are nothing but a few enlightened intellectuals who are supposed to inform about their duties, having investigated the true human nature.

Rousseau’s populist and egalitarian introduction embarks on the investigation of human nature in his later writings. To this end, taking into account his influence on Kant, it is better to articulate Rousseau’s conception of human being through what influenced Kant. It was *Profession of Faith of the Savoyard Vicar* through which Kant will construct “moral causality”. The next topic will be an explanation of this transition.

2.1 Metaphysical and Moral Background: Savoyard Vicar and the First Principle of Justice

What does Kant exactly owe to Rousseau in formulating his critical project in its entirety? Savoyard Vicar’s articulation of his creeds has been read as very important pretext for Kant’s critical project. As he gives an accurate account of Kant’s

intellectual debt, it would be appropriate to quote from Ameriks: “Kant turned three basic articles of the simple ‘Savoyard vicar’s’ creed into three postulates of pure practical reason—God, freedom, and the possibility of immortality—that his first *Critique* was designed to make rationally defensible.”²¹

In his Book IV of *Emile* Rousseau introduces three creeds in the mouth of Savoyard cleric who was deeply disappointed in his principles that he once lost and re-meditated on them in the light of his conscience since he believed that conscience is not “the work of prejudices” but to hear the voice of nature, instead of “the laws of men”, so that it is able to remain untouched in the manifold of experience.

Conscience seeks for truth and truth is something attainable only by desire. Those, who believed that there is no truth, lack such desire and thus a pure conscience. For this reason, a skeptic cannot reach a principle. Everlasting doubt refers to a violent and an ill state of mind and indeed to a contradictory state of mind for those with conscience, a pure conscience which is abstracted from passions. Hence, human being with pure conscience cannot endure that skepticism: “How can one systematically and in good faith be a skeptic? I cannot understand it” because believing in nothing is identical with believing in everything and *vice versa* (*E*, 4, 268). This identification into which the mind has fallen seems to be unacceptable for those with pure conscience.

With this identification Rousseau implicitly shows that both dogmatism and skepticism refer to insufficient and contradictory state of mind; the dogmatist claim of proof without insufficient premise suddenly becomes skeptical and the skeptic insistence in not knowing anything becomes dogmatic since the insistence in knowing nothing itself is a dogma. Actually, those insufficient minds are humans who are “triumphant when they attack” and “without force in defending themselves” (*E*, 4, 268). Thus, for Rousseau, the problem of truth is rather the problem of human’s intention than that of epistemology in traditional sense. That is why truth can become attainable only to those whose conscience sincerely desires it.

²¹Ameriks 2006, 112.

The Vicar suffers from knowing “neither its [immense machine’s] first laws nor its final cause” and from “neither our nature nor our active principle”.²² We fancy that we know everything but this is just fancy and imaginary world of human being; for “they are above the region accessible to senses”. He explains those perplexed sentiments in two terms; insufficiency of mind and the pride, both of which can be solvable at once when we accept that “[t]he only thing we do not know is how to be ignorant of what we cannot know” (E,4,268). Human’s pride would vanish if he admitted insufficiency of his intelligence, but “[w]here is the one who set himself any other goal than that of distinguishing himself? Provided that he raises himself above the vulgar [...] what more he does ask?” (E,4,269) Kant was apparently regarded himself as the one whom Rousseau wanted to see as a philosopher who is supposed to know to distinguish what can be known from what cannot.

Rousseau specifies human being by stating that “[t]he distinctive faculty of the active or intelligible being is to be able to give a sense to the word *is*” (E,4,270). The constitution of “IS”ness as an object of cognizance, which pertains to judging, is only possible in comparing the objects of sensation, superimposing them on one another. I judge certain empirical manifolds and transform them into a judgment by comparing them with one another. Thus faculty of judgment (or “*attention, meditation, reflection*”), is of that “the passive being “is lack. This active faculty is “in me not in things, that it is I alone who produce it, although I produce it only on the occasion of the impression made on me by objects” (E,4, 271). In this respect, I am certainly “the master” of giving attention, meditating or reflecting on what I perceive, though I may not be so as regards what affects me in the realm of what is external to me. I am rather active and intelligible being than passive and sensitive one. However, “truth is in things and not in the mind which judges them”; for, were it be otherwise, how would it be possible to be mistaken in judging? Therefore, this reasoning itself is enough to confirm that the less I judge the more I approach truth: “my rule of yielding to sentiment more than to reason is confirmed by reason itself.” (E,4,272)

²² Here “immense machine” simply means cosmos.

With this very obvious idealist commitment which distinguishes himself from blind materialist by stating that “The more I reflect on thought and on the nature of human mind, the more I find that the reasoning of materialist resembles that of this deaf man,” (E,4,280) Vicar determinates two kinds of motion, which direct all bodies; “communicated motion and spontaneous and voluntary motion”. In the former, “the cause of motion is external to” what moves and in the latter, the cause is within it: “I want to move my arm, and I move it without this movement’s having another immediate cause than my will” (E,4,272). For the will’s immediate cause there is no other proof than to say “I feel it!” and this sentiment is immune to any distraction by reasoning. As for the communicated motion in matter, which is also a body without will, its first causes cannot lie in it since, as the names implies, “[i]t receives motion and *transmits* it but it is unable to cause it by itself due to its being lack of the will. Therefore “one must always go back from effects to effects to some will as first cause”. This is Vicar’s “first dogma and first article of faith” (E,4,273). The second article comes when he attributes intelligence to this first cause; active, judgmental, supreme intelligence by which the moved objects harmoniously work like a clock in which “each piece is made for the others” (E,4,275). This is the order that one may believe but may not know.

How could it be possible a will produce spontaneous series of movement? We would not know it if it did not act upon something. The will becomes known “by its act, not by its nature”, that is to say, when it starts a causal series: “The principle of every action is in the will of a free being” and no one can search the determining cause beyond it (E,4,280). This is the third article of Vicar’s faith, namely, freedom. It is not *freedom* which makes us enter into vicious circle but *necessity*. As such, human’s action “does not enter into the ordered system of providence” (E,4,281).

However, Rousseau did not put an end to his meditation on providence afterwards. He goes on to argue the harmonious order which endure and maintain its existence despite human’s free will and be able to resist unharmonious elements from wicked and malicious interferences in the guidance of God. This harmonious state is aimed at the corporation of body and soul. Its harmonious union cannot lose its maintenance, though it be broken if the former perishes since the latter remains intact never perishes and thus immortal. In this regard, what I ought to do and not to

do is the subject of investigation according to the principle of providence. I have will which is supposed to be directed towards what God destines for us. For reaching such good faith, I need not “the principles of a high philosophy”. Human owes his goodness to the guidance of the principle, which is “written by nature with ineffaceable characters” in the depth of [his] hearth”. It is conscience to feel what is good and what is bad. But, what Rousseau means by the term *principle* of conscience and on what ground it is to be determined remain rather obscure because it is just an “inner voice”, a form of consciousness which reminds us of the power of free will, tells us, may it be formulated as, ‘be aware of what to do because you have the power to start a new causal series’.

Notwithstanding Vicar’s abstract definition of the principle of conscience, he holds that “when one haggles with it [...] one has recourse to the subtleties of reasoning”:

One chooses the good as he has judged the true; if he judges wrong, he chooses badly. What, then, is the cause which determines his will? It is his judgment. And what is the cause which determines his judgment? It is his intelligent faculty, it is his power of judging; the determining cause is in himself. Beyond this I understand nothing more. (*E*,4,280)

However the same power of judgment compels human to take into consideration passions as ‘the voice of body’ as opposed to conscience (*E*,4,280). And the voice of passion and that of conscience infinitely pose contradiction. That is why we must always check our judgment out by appealing to conscience. What makes human moral is ultimately his conscience; “I am enslaved because of my vices and free because of my remorse.” (*E*,4.280)

When he meditating on human nature, Vicar sees two exclusive rules within him, and governs him; “one of which raised him to the study of eternal truths, to the love of justice and moral beauty”, whereas “the other took him basely into himself, subjected him to the empire of the senses” and distort what he gained from the first through his conscience. The soul as carrying conscience is the sole substance which is capable of incline human to eradicate contradictions in posing “the first sentiment of justice”, which is “innate in the human hearth”. Why do we still hate Roman Politician Catiline’s murders and conspiracy? Can he still harm us? No! Thanks to

his conscience, human by nature rather hates wickedness than be afraid of it since he shares an affinity with his fellows: “Not only we do want to be happy; we also wish happiness of others.” (*E,4, 288*)

The innate principle of justice is conscience, that is to say, human’s own consciousness of his free will, which inevitably affects others. That is why this state of consciousness innately takes into account not only its own good and interest but also others’. It is not true that “everyone contributes to the public good for his own interest” (*E,4, 289*). How can one explain a just man’s position who contributes to public good at the cost of his own disadvantage? Vicar’s does not totally deny human’s natural tendency to look after his own good but this tendency must be in accord with morally good one, otherwise it would give a way to corruption. Human being has “conscience for loving the good, reason for knowing it, and liberty for choosing it” (*E,4, 294*)

One needs only the distinction between “acquired ideas” and “natural sentiments” to hear the voice of conscience (*E,4,289*). The reason for Rousseau’s inquiry into human nature and its history lies in this idea. Just man is the one who is able to distinguish what is innate within him from what is external to him. Will to what benefits us and what does not pertain to practical acquirement from experience but the will itself is innate to human; we do not acquire it but have it by nature. We shall prepare our judgment through the filter of conscience if we are concerned about how to be just.

At the near end of the Vicar’s creeds, Rousseau remarks that although conscience is innate to us, “[i]t is from the moral system formed by this double relation to oneself and to one’s fellows that the impulse of conscience is born” (*E,4,290*). This makes the reader better understand that human’s conscience by its very nature manifests itself in its relation to other’s one. From that it follows human with his innate conscience becomes sociable, though sociability is not a natural feature of human being like perfectibility. Having made one’s conscience arouse, others deserve utmost respect as humans make one another moral beings: “Without you, I sense nothing in me that raises me above the beast.” (*E,4,290*)

What Rousseau complains about in the *Discourses* become clearer now; the sentiment of conscience, as affection for other, has been erased from the hearth of people. The free will, as well as reason, according to Rousseau, is in the need of the guidance of *conscience* in order to *know* how to *will* morally good. And human's conscience is not independent of other's conscience. So, moral being cannot be moral, even need not justify why I should will morally good if he is alone.

What Kantian moral doctrine intends to do is to turn three creeds into three Ideas of pure reason and later into the postulations of practical reason.²³ With the problematic of free will he developed the formulation of the moral law as addressing Rousseau's tension between natural feeling of conscience and reason. Which one is abler to give the will its laws? Kant tried to fill this abstract notion of conscience which tells us what is right and wrong. We do not hear what Rousseau's conscience tells us; Rousseau just holds that human may not come to a just judgment without recourse to conscience. This is what Kant captured in Rousseauian tension between conscience, reason and will. Rather than resolving it, however, Kant overcame it by leaving aside conscience and giving it the name "the good will" as the highest good. The good will is the one which one cannot beyond in searching for the criteria of good like Rousseau's conscience.

Throughout the Vicar's observance of human, what exactly disappointed him was indeed the eclipse of conscience of the civil man, namely, the distortion of his persuasion in "the duties of man" to fellows. The present condition of humanity cannot enable us to infer any principle of morality; for, the civil man has become the slave of his passions. That is why the Vicar concluded that observation by itself was "no longer sufficient to constitute together a self-sustaining body to come up with principles" (*E*, 4, 267).

At this point, it is suitable to point the main difference between Rousseau's and Kant's conception of morality. Like Kant, Rousseau keeps insisting in non-derivability of the principle of justice from experience. However, Rousseau holds that human being feels affection for his fellows without appealing to any law or

²³ Hereafter the term 'idee', which is peculiar to Kant's philosophy, shall be capitalized as Idea in order not to confuse with the English 'idea'.

principle. In other words, fellow are naturally the objects of human conscience and our affection for others is the sole base of morality: “[...] some act of clemency and generosity strikes our eyes” (E,4,288). On the other hand, Kant holds that if your affection towards others becomes related to the universal maxim to which all actions are subject, then with this maxim, you can relate your particular affection to much more general one so that it becomes duty for you. At its universal stance, this very affection becomes sublime, and as soon as it does so, the feeling gets cold by its being determined in the presence of law. It is true that the acts of “clemency” and “generosity” arouse the conscience of human being but the same actions cannot constitute a basis for morality unless they are governed by the law.

Having kept in mind that conscience is to Rousseau’s moral doctrine, what the good will is to Kant’s, listening to the voice of conscience, according to Kant, does make no sense unless it is determined by the law of practical reason. It may be well this feeling itself which makes me head towards one’s suffering but if one listens to one’s conscience at every particular instance, morality is not possible due to its being instantaneous and dependent on experience.²⁴ At this point it is convenient to point another distinction between Rousseau’s and Kant’s philosophy as regards their conception of duty. As it will be discussed through the coming chapter, for Kant, the moral worth of an action comes from its being done for the sake of duty and duty is one’s duty to oneself, albeit duty of justice to others. On the other hand, due to the very nature of Rousseau’s conception of conscience, duty is essentially one’s duty to fellows. Thus at the very beginning one can see how Rousseau and Kant differ from each other as to two basic concepts, namely, conscience/the good will and duty, which are certainly central importance for their moral philosophy. There will also be some crucial implications of this differentiation in their theory of justice.

Consequently, the truth-seeking meditations in Savoyard Vicar’s mouth tell us the liberation process of human, a process which is no doubt “disturbing and

²⁴ Kant. *Observations on the Feeling of the Beautiful and Sublime*, trans. by John T. Goldthwait. Berkeley and Los Angeles: University of California Press, 1960. See p. 27.

painful” but not last long. Consequently, Kant’s owned his postulations of the critical projects to this painful process, to “the threefold creed of Rousseau’s ‘Savoyard Vicar’”, thereby the basic concept of his moral doctrine, namely, the free will.

3. ROUSSEAU: PRINCIPLES OF POLITICAL RIGHT

In this chapter, I will mainly deal with Rousseau's conception of natural and political right and their roles in his theory of justice. To this end, it is proper to explain initially why I give the title 'Principles of Political Right' rather than that of natural right to this chapter concerning Rousseau's theory of justice. Although Rousseau has been regarded amongst the tradition of the natural right theorists, it was him who, for the first time, replaced the natural right with political or civil right by distinguishing the state of nature from the state of civilization and the savage from civil man. In this way he is able to eliminate the role of natural right in the modern conception of justice.

Before the exposition of Rousseau's contribution to our conception of justice, in the first place I would like to touch briefly on Leo Strauss's interpretation of Rousseau's account of natural right since what is here regarded as a contribution is regarded as a crisis by Strauss. In this way, it is also shown what natural right is and what distinguishes it from political one in general with reference to the very current political problem.

Leo Strauss opens his comprehensive book, *Natural Right and History*, with the examination of the conception of natural right from its being first implied by Plato and Epicurus to the present day, namely, immediately after World War II. His opening passage is very interesting as regards the initial discussion on the difference between natural and positive right. He states that Americans, about a generation ago, —his book published in 1957 and "a generation ago" refers approximately to 1937, middle twentieth-century— were still insisting in the priority of natural right as self-evident truth to judge what is just and unjust in accord with Declaration of Independence, whereas, quoting from a German scholar, Germans had already given up the idea of natural right, even they had found it incomprehensible with humanity as a criteria for justice. Here Strauss implicitly refers to the position Germans took in the Second World War, a position which Germans military leaders justified on the grounds of positive right. The military position of Germany resulted in the genocide which has reminded us of the need of natural right as a superior criterion for human

affairs in accord with the idea of humanity. It was the concept of human that the war bastardized its content by approaching it in racial term. Hence, what Strauss infers from the genocide experience is that “[t]o reject natural right is tantamount to saying that all right is positive right, and this means that what is determined by exclusively by the legislators and the courts of the various countries”. The problem remaining us from the genocide is that, according to Strauss, “the contemporary rejection of natural right leads to nihilism—nay, it is identical with nihilism”.²⁵

Strauss defines ‘natural right’ as a claim “to be a right that is discernable by human reason and is universally acknowledged”. If a right is natural, it is undeniable by “consent of all mankind” since natural right stands as an undeniable principle of justice.²⁶ Although “history (including anthropology) teaches us that no such right exists”, this does not necessarily implies that we are lack of such ground to justify it.²⁷

The tension between political right and natural right refers to the “tension the respect for diversity and individuality and the recognition of a natural right”.²⁸ According to Strauss, the modern conception of political right has been posed serious danger for humanity due to the abolishment of natural right which allows us to come to distinguish what is absolutely just form what is unjust. The “generous” stance of political right defenders, however, says Strauss “compels us to be tolerant of every opinion about good or right or to recognize all preferences or all “civilizations” as equally respectable”.²⁹ Humanity is still looking for what has been lost in the World War II due to this modern concept of political right at the expense of still standing endeavor to preserve it. Strauss terms this ‘baseless’ political situation as a “*the Crisis of Modern Natural Right*”, whose first striking appearance is to be Rousseau’s writing in a continuing and consecutive conception of natural right theories.

²⁵ Strauss 1965, 2-5.

²⁶ Ibid.,9.

²⁷ Ibid., 9.

²⁸ Ibid., 5.

²⁹ Ibid.,5.

Given his arguments against political right theories, in this chapter I will try to elaborate on Rousseau's theory of political right. This examination will be against what Strauss considered as to be *crisis*, a crisis which nullifies "any definite human content".³⁰ In opposition what Strauss claims I will try to show that Rousseau's principal division between natural and political right is his basic contribution to Western political thought and system of justice.

3.1 Characterization of the State of Nature and of the Civil Order

Rousseau's crucial division between the state of nature and that of civilization is closely connected with his moral theory. As it has been discussed in the Chapter 2, conscience as an attribution of the sole substance, abstracted from any "secondary modifications" is the wisest guide for one's own decisions and actions. Rousseau thinks that the principles of this conscience can only be captured by examining human being in his natural conditions. Therefore, one need to return back to the natural human in his natural state in order to see his conscience as the source of the first principle of justice. To this end, in the *Discourse on the Origin and Foundations of Inequality*, Rousseau tries to hear and making us hear what the language of conscience tells us.

3.1.1 Hypothetical Beginning of Historical Construction

Rousseau's reflection on the advent of civilization and its maladies shows up in his *Discourse on the Origin and Foundations of Inequality*. I will lengthily discuss these maladies in the section titled as "The Root of Inequality". Rousseau did hardly believe that the civilization, even in its highest form as the Enlightenment supposed, can carry out the happiness of human being.³¹ Has man really destroyed his nature irreversibly? Before answering whether or not justice can be prevail again, just like once upon time Rome and Sparta, Rousseau offers to take a short survey throughout

³⁰ Ibid., 295.

³¹ The very summarizing end-note about Rousseau's famous answer to the question why we are cursed, so to speak, with unhappiness leaps out at you in his *Discourse on the Origin and Foundations of Inequality*. See the end note IX on p.141, which is documented in p.197-204. For Rousseau's irreversibly corrupt personalities, "vile, obsequious flattery, seductive, insidious childish attentions", "the jealousies, the rivalries, the well-known hatred of artists for one another, sly slander, deceit, treachery", and many others who make justice almost impossible. Rousseau, *Narcissus*, 100.

man's history in order to capture how the civil man has come to his present state from "the condition of nascent man". However, this transition can no longer be captured by a unified, complete articulation from the present view; we all have 'conjectures'. From Rousseau's recurrent phrase of "the various contingencies that can have perfected human reason" (*DI*, 159) it follows that our present condition could have been otherwise precisely because man is a free agent.³²

Therefore, Rousseau's survey is actually a method which enables us to understand how political inequality emerged (*DI*, 161); this method will make clear the rift between "the equality nature established among men" and "the inequality they have instituted". The corollary of this distinction will be that the origin of political inequality among men does not belong to nature but society. Indeed, society was founded on inequality.

According to Rousseau, all thinkers, while searching for human nature, who have ascribed some traits to man by appealing to the present society, have fallen short of capturing man's natural condition, and accordingly they have thought that the origin of inequality lies in nature. In the preface of *Discourse on Inequality* Rousseau asks how it could be possible that we begin seeking the source of inequality in the established society without knowing the nature of man. Shortly after, Rousseau refers the inscription on the Temple at Delphi, says "Know thyself", thereby insuring his detailed treatment of man's nature, and eliminating every change in time it has befallen since its primitive state. This elimination process refers to what he terms as "secondary modification" in *Emile*.

Rousseau appeals to natural man in his "pure primitive state" in order to mark firstly; pre-political state, where there by no means existed any civil and political

³² Starobinski 1988, 24-5. I think that one may neither use "historically logical" nor "the facts whose historical necessity" as regards Rousseau's conception historical facts as Starobinski asserted Having posed the individualization process of modernity as an open-ended movement fashioned through the relation of human to nature, Starobinski argues that the *Discourse on the Origin and Foundations of Inequality among Man* depicts "a history of civilization as a 'progress' in the negation of nature" developed further by Hegel and Marx. However, unlike them, Rousseau considers the history of man as continuum of human that was good and innocence at first, has become wicked at last. Given this explanation how could it possible the same Starobinski speaks of the historical necessity of the fact as regards Rousseau's conception of history.

notion with which the civilized has already been familiar; secondly, to define human nature; thirdly, the rising of political society in accordance with the human nature explicated, and finally and most importantly; the origin of political inequality. This is Rousseau's initial political theory by means of which the natural right or law is clarified.

Having reminded the reader of the necessity of not to ignore the natural qualification of human in its natural condition in order to capture its implications to the present condition, Rousseau proceeds on "meditating on the first and simplest operations of human Soul" (*DI*,127). This meditation presupposes a hypothetical beginning, which is mandatory to understand man who behaves in the civilized way, lacks natural harmony contrary to "certain and unvarying principles" in the primitive order; the civilized man is questionable in his contingency (*DI*,124). How can we properly abstract him from his conditions? Rousseau seems to be convinced of the impossibility of canceling out all acquirements of the civil man. So, the sustainability of the goal of the inquiry turns upon the relinquishment of searching "first changes" among species: "this Subject ought not to be taken for historical truths, but only for hypothetical and conditional reasoning; better suited to elucidate the Nature of things than to show their genuine origin" (*DI*,132). Thus Rousseau is clear about that his hypothetic construction does not provide us with actual historical knowledge:

To know accurately a state which no longer exist, which perhaps never did exist, which probably never will exist, and about which it is nevertheless necessary to have exact Notions in order accurately to judge of our present state. (*DI*, 125)

In this way, Rousseau hypothetically begins locating the source of inequality among people. One can ask why is so essential to investigate "the real foundations of human society" (*DI*,125). In this case, Rousseau would ask, too; how, then, can you judge civil man in his constitution without a supposed natural man? The key aspect of this hypothetical distinction is to open up the historical field for moral and political investigation of the civilization and other similar movements about which society has brought. Rousseau's distinction seems to be "necessary for undertaking a speculative reconstruction of human history" and his proof requires "tracing all

phenomena back to their simple and necessary sources”.³³ Furthermore, the distinction provides us with a comparison between natural man and civil man by which we come to an accurate judgment in our present institutions.

3.1.2 The Principles of Natural Right

The principles that Rousseau depends primarily upon in accounting for human nature, thereby from which derives “the *rules* of natural right”, are “two principles prior to reason”; one is for our well-being and thus to set in motion natural self-defense mechanism. The other is “a natural repugnance” for sufferings of the others. Rousseau argues that Hobbes overlooked one of the human basic sentiments governing natural right; instead of solely appealing to the principle of a natural inclination to self-preservation as the grounds of natural right, he additionally appeals to another principle, namely, compassion.

In order to understand Rousseau’s theory of natural right these two passions self-love and compassion must be further elaborated. In *Emile* in which an ideal of the civilized man has been grown by his tutor, Rousseau marks self-love: “The sources of passions, the origin and the principle of all the others...is self-love...which all others are in a sense only modifications.”³⁴ (*E*,4,212) Compassion for others as to be descended from self-love is the basis for social relations. In the state of nature, compassion, together with self-love, is a moderating passion to the extreme man in order to protect the entire species mutually. Thus human being naturally preserves not only himself but also his species. For Rousseau, in the civil state the notion of compassion is also the ruling passion of the moral and social life. Hence, the moral dimension of human comes from a feeling of pity for others. This feeling tells us the first maxim of justice:

[...] pity that, in place of that sublime maxim of reasoned justice *Do unto others as you would have them do unto you*, inspires in all Men this other maxim of natural

³³ Starobinski 1988, 14.

³⁴ Here Rousseau seems to pose contradiction in defining the sentiment of compassion as modification, while meditating on first and simple rules which governs human. However, what Rousseau tried to show it is not selfishness that human feels when his look turns toward others, it is compassion, still ‘first’ in tandem with self-love with respect to reason’s secondary place.

goodness, much less perfect but perhaps more useful than the first: *Do your good with the least possible harm to others.* (DI, 154)

Now for better understanding of Rousseau's notion of justice, it seems necessary to turn to *Emilé*; the following passage is the justification of compassion which "[f]rom this single attribute flow all the social virtues" (DI, 153):

Even the precept of doing unto others as we would have them do unto us has no true foundation other than conscience and sentiment; for where is the precise reason for me, being myself, to act as if I were another, especially when I am morally certain of never finding myself in the same situation? And who will guarantee me that in very faithfully following this maxim I will get others to follow it similarly with me? (E,4, 235)

This is the identification of self with other through self: "I am interested in him [my fellow] for love of myself". Thus the natural sentiment pity for other "derived from love of self, is the principle of human justice" (E, 235). More to the point, Rousseau defines pity or compassion as identification; "this identification must, clearly, have been infinitely closer in the state of nature than in the state of reasoning" (DI, 153). Human being owes this identification capacity to his conscience. Thus, in Rousseau's theory of justice, the role of conscience becomes clear; conscience is naturally filled with compassion toward fellows and its commands finds its formulation in this statements; "*Do your good with the least possible harm to others* (DI, 154).

As I will discuss in Chapter 3, Rousseau's formulation of the criterion of natural right will bring broader implications about natural and political history of human being.

3.1.3 Human Passions and Natural Law

Rousseau's hypothetical survey of history becomes the survey of how many centuries must have elapsed before man took to the idea of property. Thus Rousseau's investigation turns out to be the investigation the human nature which has underwent through the ages.

The savage man who is able to feel an affinity towards others, his fellows is in direct conflict with the civil man who is almost completely selfish. So, where and

when did this conflict arise from if man is good by nature? According to Rousseau, human being two distinct passions; *amour propre* [vanity] and *Amour de soi-même* [self-love]; the latter, his humanitarian notion self-love, is natural, intrinsic to both man and animal, and instinctively exists for preservation of self. As for *amour propre*, it is rather the distinctive passion of the civilized man. Thus it can be concluded that the more we are determined by *amour propre*, the less compassion we feel towards others.

After determining two kinds of passion, Rousseau goes on to argue the distinctions between the savage and the civilized human as regards their passions. Rousseau specifies that the origin of passions lies fundamentally within our needs. In the state of nature savage's passions as physical necessity are limited "by simple impulsion of Nature" (*DI*, 142). He leads "the simple, uniform, and solitary way of life prescribed to us by nature" (*DI*, 138). Even if a savage gets sick in the hopeless condition in nature, unlike the civilized man there is no fear he felt other than his illness. This pre-social man's needs are all satisfied with "food, a female and rest" and once satisfied, he is tranquil with calm and peace and do not bide his fellow men's times of misfortune (*DI*, 142). He fears only pain and hunger:

Savage man desires only the thing he knows, and knows only the things the possession of which is in his power or easy to achieve, nothing must be so calm as his soul and nothing so limited as his mind. (*DI*, 212)

Rousseau gives the example of the Native Americans in order that the savage's moral superiority comes from the simplicity of his passions; the savages of America are naked and can manage only with hunting; "Indeed, what yoke could be imposed upon men who need nothing?" (*DSA*,7) The savages live alone and go around forest or wetlands with their ax so as to get food. There is no need of the other's hand for anything and even of speech since they do not need to communicate each other.

Like Hobbes Rousseau holds that in the state of nature the savage man can do physical harm his fellow creatures but he aims at mechanically defending his self. The savage's original intention cannot be to do harm his fellows. It must be self-preservation his only care. The savage's "most developed faculties" are to be

attacking his prey and defending himself. Thus, unlike Hobbes, Rousseau maintains that “[s]avages are not wicked precisely because” neither do they know what it is to be good nor what is to be evil (*DI*, 151); they are ignorant of all civic notions. This simply amounts to say that one cannot desire what one does not know: “We seek to know only because we desire to enjoy, and it is not possible to conceive why someone who had neither desires nor fears would take the trouble to reason (*DI*, 142).

On the other hand, human as a passionate being has always been on the way that carries out a progress which is negatively characterized by joint participation of passion and knowledge. In the germinal state the savage man is limited to “pure sensation” for running fast, fighting prayers, and swarming up tree. To put shortly, the savage is a survivor. But he has potential reason that manifest itself at the level of “mechanical prudence” in order to keep himself safely (*DI*, 162). This is cunning such as trap, trick just for security and food. However, this is at the same time “his first look at himself” with pride; for from this pride follows his higher rank than the other species (*DI*, 162).

Human’s faculty of understanding, which provides him with knowledge, is in close cooperation with passion. In fact, by means of passion “our reason perfects itself” (*DI*,142). It is really hard to comprehend Rousseau’s conception of reason and when it became a part of human activity since “[e]very animal has ideas, since it has senses; up to a point it even combines its ideas, and in this respect man differs from the Beast only as more does from less” (*DI*, 140). Reason must be something progressive by means of which human *perfects* himself. However, passions as prior to reason has primordial role in fashioning human. Without desire to utilize it, reason is nothing: “Progress of the Mind proportioned itself exactly to the needs, which Peoples received from Nature, or to which circumstances subjected them, and consequently to the passions, which inclined them to satisfy these needs.” (*DI*, 142)

It is clearer now why the cooperation between understanding and passion inevitably comes up with unbridled desires for superfluous objects. The cooperation of reason with *amour propre* accounts for how men have slowly eroded away over

time. This ‘relative’ passion, from which the multiple manifestations of evil have been arising, finds its root in society as the source of running man into trouble:

Self-love, which regards only ourselves, is contented when our true needs are satisfied. But *amour-propre*, which makes comparisons, is never content and never could be, because this sentiment, preferring ourselves to others, also demands others to prefer us to themselves, which is impossible. (*DI*, 213)

Having made the distinction between three passions, namely, self-love, compassion and amour propre, Rousseau commits himself to the inceptive principle of his inquiry on inequality; the savage who is endowed with the natural passion of compassion has turned into the civil man due to the mutual cooperation between amour propre and reason.

Focusing not on reason but on sentiments³⁵ Rousseau’s move appears as a justification of man’s natural goodness³⁶ even without ascribing sociability to man. Sarcastically, says Rousseau as if he had a premonition of what Kant claim ahead, there exist man’s duties toward others before our philosophers described those duties by appealing to the rules of reason; “if I am obliged not to harm another being like myself, this is so less because it is a rational being than because it is a sentient being” (*DI*, 128).

Rousseau’s determination of human as sentient being before rational one is also crucial to define the concept of natural right; natural law as to be law is not “that for it to be law the will of him whom it obligates must be able to submit it knowingly” (*DI*, 127). This means that the established political right assumes the consciousness of it. How can one knowingly commit oneself a law who makes the very same one slave? For that reason, the true culprits of current inequality cannot be

³⁵Likewise the concept of understanding, which is identified with the faculty of reasoning, the concepts of sentiment and passion are used as the same meaning. Here one can ask whether we can ascribe or not any consistent philosophical position or systematization to Rousseau; despite his haphazard using of philosophical concepts, he, I hold, is able to approach the challenge with consistency. His formulations follows a consistent development and though his thoughts are deeply buried in his complex character, diverse experience and multidirectional concentrations; music, poetry, dramatic literature, linguistics, pedagogy, economy politics, botanic, chemistry.

³⁶ Rousseau’s natural man is good even before he becomes social. He is a “deer-man”. This term I think it has a explanatory power for Rousseau’s natural man belongs to my supervisor Halil Turan.

sought in nature in the name of natural law. Properly speaking, Rousseau is mocking of the idea of natural law based on a contract:

One begins by looking for the rules about which it would be appropriate for men to agree among themselves for the sake of common utility; and gives the name natural Law to the collection of these rules, with no further proof than the good which in one's view, would result from universal compliance with them. (*DI*, 127)

So, natural law is “that for it to be natural it must be speak immediately with the voice of nature” and “the will continues to speak when nature is silent”³⁷ (*DI*, 140). This connection implies the marked contrast between and man's nature and his capacity of willing. Only through the former the natural law and through the latter enacted laws can only be understood. Therefore, it is clear that the voice of conscience as the first principle of justice tells us that your hearth is naturally filled with compassion because you love yourself. Your fellow as one who provokes you to compassion deserves respect because he reminds you of your humanity.

Nevertheless, one's appealing to oneself conscience, when legislating, infinitely remains indispensable principle for just action:

No constitution will ever be good and solid unless the law rules the citizen's hearth. So long as the legislative force does not reach that deep, the laws invariably be evaded. [...] justice, even of the utmost integrity, does not achieve it, because justice, like health, is a good which one enjoys without feeling it, which inspires no enthusiasm, and the value of which one feels only once it has been lost. (*CGP*, 179)

Rousseau is not concerned only with the natural right but rather seeks to be reasoning on “*Principles of Political Right*” as expressed in the subtitle *Of Social Contract*. Although it may be the case, he resurrects an absolute role for natural law in the present legal order as the foundation of a universally valid moral code. It might be said Rousseau conceives of himself as the last line of defense of natural law against the metaphysics danger bodied forth by the moderns.

3.1.4 The Root of Inequality

³⁷ See Starobinski 1988, p.24. Starobinski made also the same remark. For Rousseau, language is related to reasoning and sociability and refers to a break with nature.

Human for Rousseau is a machine but not totally explicable by the laws of mechanics. The properties of man and animal cannot be distinguishable at all if the comparison is made in their instinct nature. Human passions project human's animal heritage, they belong to not necessarily to human being; there are some passions shared by both human and animal. What specifically distinguishes man from a beast is his property of being "a free agent". Human being often turns from the rules prescribed to him by nature even when this deviation itself would be disadvantageous to him. Another specific faculty which has carried human above nature is "the faculty of perfecting oneself". Rousseau thus did "replace the classical definition of man as the rational animal by the definition of man as a free agent, or the idea of human perfection by that of human perfectibility".³⁸ However, it would be more accurate to morally distinguish human from animal in terms of the free will only; for the faculty of perfectibility is by definition destined to develop and it differs human from animal in quantitative terms. For instance, thanks to perfectibility, human can find to hunt an animal more quickly than any other species can. Yet the free will distinguishes him in qualitative aspect; that is morality.

Rousseau ironically regards self-perfecting property of man as the very same one which certainly makes him "imbecile", "lower than the Beast" (*DI*, 141). It is curious that Rousseau honors human being with the faculty of perfectibility, which leads the mind to ascent above animal. Given the distinction, Armstrong makes an important point that Rousseau considers the humanly property of perfectibility in its ironic content. In fact, it is a fateful faculty and unfortunate human was somehow endowed with it: "It is difficult to comprehend why certain historians still persist in claiming Rousseau as 'progressivist'. *Perfectibilité* is a bitter irony, and 'progress' is surely what history is not—or, better, history is an expression of the human condition run amok."³⁹ In this way, Armstrong criticizes Marxist interpretation of Rousseau in terms of progressivist conception of history. Armstrong is right on the grounds that if

³⁸ Strauss 1947, 486. It is very striking that the same Strauss claims that "the argument of the Second Discourse is not based on the assumption that freedom of the will is of the essence of man [...] he [...] replaces freedom by perfectibility; no one can deny the fact that man is distinguished from the brutes by perfectibility". Strauss 1965, 265.

³⁹ Kelly 1968, 349 and 357.

Rousseau's depiction of history was a progressive movement of human towards better, it would be to deny Rousseau's criticism about social upheaval of modernity and hence what makes Rousseau Rousseau.

Why, then, unlike what its name implies, has the faculty of perfectibility made human lower than animal? It is "the source of all of man's miseries" because it is "almost unlimited faculty" (*DI*, 141). In this way, Rousseau's the notion of perfectibility opens up a path that he is going to follow to enhance the antagonistic arguments against civilization:

[I]t is the faculty which, by dint of time, draws him out of that original condition in which he would spent tranquil and innocent days; that it is the faculty which, over the centuries, causing his enlightenment and his errors, his vices and his virtues to bloom, eventually makes him his own and Nature's tyrant. (*DI*, 141)

In the progression of reason, the primitive idea of property first appeared as sleeping in trees and caves. This is "first revolution" which eventually will result in families rising, and accordingly "the habit of living together" (*DI*, 164). This new state is certainly the first idea of collective life which will leads to the establishment of society.

In this state, men meet "the first yoke" and "the first source of evils" (*DI*, 164). The yoke of parental control annoys young men. This is at the same time Rousseau's first attack on paternal rights, family and marriage. He regards them as "badly formed unions that are product of our political conditions" (*DI*, 201). Living together provided them with great conveniences and thus plenty of leisure time. Meanwhile, mankind enjoyed all the comfort and convenience of simple cooperation without being aware of falling into a destructive habit. It is destructive just because it served as the substitution of "true needs" (*DI*, 165). Rousseau holds that "all the conveniences" have made man settled and domesticated: "As he becomes sociable and a Slave, he becomes weak, timorous, groveling." (*DI*, 138)

So far Rousseau has discussed savage with regard to physical attributes. From now on, he will start dealing with human being in his morality. Rousseau calls this intervallic state the beginning of society in which there appears some moral notions; 'public esteem', 'duties of civility', 'vengeance', 'punishment', etc. Yet, it is too

early to claim that these settled people are in the need of law and political order; for, there is not yet the idea of private property. As ‘wise’ Locke suggested, “*Where there is no property, there can be no injury*” (*DI*, 166). Nevertheless, Rousseau qualifies this period as “the happiest and the most lasting epoch” also known as ‘Golden Age’ in the literature (*DI*, 167). It was the time there were no the craft in agriculture which gives us more than we need and requires us so much labor for reaping crops. It cannot be the savage “with no idea of future” who occurs to cultivation: “How can this situation possibly dispose man to cultivate the Earth so long as it has not been divided among them, that is to say so long as the state of nature is not abolished?” (*DI*, 144) So, when did humans begin dividing the earth among themselves?

The first man who, having enclosed a piece of ground, to whom it occurred to say this is mine, and found people sufficiently simple to believe him, was the true founder of civil society. How many crimes, wars, murders, how many miseries and horrors Mankind would have been spared by him who, pulling up the stakes of filling in the ditch, had cried out to his kind: Beware of listening to this impostor. (*DI*, 164)

From the above passage it can be inferred that with the cultivation and accordingly recognition of necessity of cooperation, the relationship among people begins dramatically changing. It is the most important spark of inequality: “equality disappeared, property appeared” (*DI*, 167). There is a direct relation between established property which necessarily implies the need for cooperation and inequality which is founded on the balance of power in this cooperation. Human’s free will is subject to other wills through “[e]stablished property and hence [s]ociety” (*DI*, 197). Private property brings inexorably about one’s dependence on another and “[m]en is weak when he is dependent”⁴⁰ (*DI*, 151). Therefore, the idea of property paves the way to answer the question of how have free beings become slaves;

[T]ies of servitude are formed solely by men’s mutual dependence and reciprocal needs that unite them, it is impossible to subjugate a man without first having placed him in the position of being unable to do without another. (*DI*, 159)

⁴⁰ Here by the qualification ‘weak’ Rousseau refers to moral weakness.

Henceforth men have asked more than they need: artificial desires of civilized man range over between “first necessities” and “sole master of universe” as “the secret aspiration of every Civilized man’s heart” (*DI*, 199). All these together luxury as “the worst of all evils in any State” appears as complementary to inequality. It only provides a paradoxical remedy for feeding servants and indigents that it has made. Now social relation comes to such a point where “[p]ublic calamities” such as epidemics, holocausts, wars and famines became the hopes of crowds of people. All these are what Rousseau calls the traumas of civilization.

Turning to the subject-matter of the *Discourse on the Origin and Foundations of Inequality among Man*, Rousseau relates to the issues that “[t]o mark, in the progress of things, the moment when Right replacing Violence, Nature was subjected to Law”. If in the first and second words of two statements the time expression ‘when’ tags are taken separately and then made couple within them, the result is as the following: right/nature and violence/law. That is, natural right and illegitimate law which Rousseau investigates when the latter displaced the former. The investigation of this replacement of natural law with enacted law leads Rousseau to assert that the replacement indicate us the origin and attributes of inequality in historical term.

Rousseau determines two kind of inequality; the first is natural or physical since, as the name implies, it is by nature and hence as old as human history. The second is moral or political inequality established and governed by humans’ *consent*. Thus the prevailing inequality humanity has already suffered from is conventional not natural. A multitude of passions makes conventional laws necessary. What we now ought to carry out is to conceive of the necessity of laws as remedy this political inequality and establish a legitimate political authority in accordance with laws. At this very point we are for the first time encountered with Rousseau’s unique contributions to moral and political thought, namely, the general will. In the *Discourse on the Origin and Foundations of Inequality among Man* Rousseau implies the need for the general will:

What is one to think of dealings in which every private person’s reason dictates to him maxims directly contrary to those the public reason preaches to the body of Society, and in which everyone profits from the other’s misfortune? (*DI*, 198)

Rousseau was well aware of humanity at a point where there is no return.⁴¹ It is not possible to abolish society and accordingly thine and mine and to live in jungle. But, on the other hand, he admits “the order of social conditions forever in contradiction with the order of nature” (*DI*, 200). It has been the most common error as it is today, to commit Rousseau’s attitude toward civilization without concentrating upon its content. As yet, Kant, who may also be considered as a Rousseau scholar, seems to have understood Rousseau:

[O]ne certainly need not to accept the hypochondriac (ill-tempered) picture which Rousseau paints of the human species. It is not his real opinion when he speaks of

⁴¹ While Rousseau had already made his suggestion of the general will even in an early writings, Strauss argues that “[t]he modern state presented itself as an artificial body which comes into being through convention and which remedies the deficiencies of state of nature. For the critique of the modern state, therefore, a question arose as to whether the state of nature is not preferable to civil society. Rousseau suggested the return to the state of nature, the return to nature, from a world of artificiality and conventionality. Throughout his entire career, he never was content merely to appeal from the modern state to the classical city. He appealed almost in the same breath from the classical city itself to “the man of nature”, the prepolitical savage. [...] The farewell to society, authority, restraint, and responsibility or the return to the state of nature remains therefore for him a legitimate possibility.” Strauss 1965, 254-55. Whether or not we ought to return to state of nature is, for Rousseau, out of question. Of course we cannot go back anywhere. It is true Rousseau himself sometimes enjoyed a lonely, simple and solitary life in green zones but it is no more than his own manner as a phase of his life he never defends the solitary life of savage against well-ordered state. In fact, unlike Strauss’ claim, he was very content with classical cities as I will elaborate on his explication of Romanian classical way of citizen life.

It has been very trendy to argue Rousseau’s political and educational ideas in accordance with his personal and private life which generally pursues, they think, “raptures of solitary contemplation”. Pippin 1997, 225 (qtd. from Strauss). As Pippin cleverly and humorously told us, “[o]f course such contemplation is not philosophy, but the general issues replay the Straussian theme, with civil society ‘good’ only for a certain individual, a type of man who ‘justifies civil society by transcending it,’ by ‘living at its fringes,’...” Shklar, partly Cassirer and Kukla known as popular Rousseau scholars are primal figures to do it and Rousseau is very fruitful to be read in that way. This is a kind of autobiographical reading I do not understand why some scholar is very keen on revealing the connection between one’s some period of life and one’s developing ideas corresponding that period. I admit this reading could be very funny but one must bear in mind that to try to understand ideas of thinkers by relying constantly on their autobiographical data may lead one to absurdly conclude, like Cassirer, that “[o]nly a few of his [Rousseau’s] works, like the *Emile* and the *Social Contract*, ripened slowly in his mind. All the rest are the expression of a spiritual or intellectual crisis which took place suddenly, and unexpectedly overwhelmed him”. Cassirer 1963, 3-4. Who dares to claim the *Discourses*, the *Political Economy* or the *Consideration on Poland Government* are sudden and non deliberative products, whose motivation is of personal depression? Rousseau never became a man in a state of utter disconnect with social reality or who developed a “paradoxical relation to society”. *Ibid*, p.9. This attitude that many scholars have taken, I think, is due to the fact that Rousseau handed down plenty of autobiographical texts, which give us many obvious clue as to which of his ideas corresponds which state in his life. With reference to his conflict with the Parisian philosophes, Cassirer further exaggerated by claiming [w]hat even Rousseau’s closest friends could not understand and forgive him was solitude in which he took refuge”. *Ibid*, p.7. I explained in detail why Rousseau came to hold off the Paris philosophes in the discussion of the *Discourse on Arts and Science* and *Narcissus* as a reply to all the critiques directed against him.

the human species as daring to leave its natural condition, and when he propagates a reversal and a return into woods. Rousseau only wanted to express our species difficulty in walking the path of continuous progress toward our destiny... Experience gathered in ancient and modern times must fill every thinking person with embarrassment and doubt as to whether our species will ever fare better.⁴²

However, what Kant understood as “the path of continuous progress toward our destiny” is not a destiny for Rousseau. Human nature is good in essence but has constantly been gone astray as a result of civilization. Is it possible to eradicate malicious nature of human in its entirety? In other words, “[w]hat then will count as the achievement of freedom in a social setting?”⁴³ Is independence ever possible in the present constitution? Pippin fascinatingly links the contingent nature of civilized life and human history with the problem of freedom. He claims that behind Rousseau’s endeavor to erase the entire contingencies gained by the civilization in the act of individuals, there was an insight into the necessity of being autonomous, “directing life in a way wholly self-imposed and self-regulated”. Rousseau’s attempt was, according to Pippin, “a political satisfaction of this [being autonomous] criterion”, namely, the general will.⁴⁴

Rousseau seems to keep his hopes alive because he has three proposals for human salvation from its corrupt state⁴⁵; first is personally achievable freedom, a freedom which represents Rousseau’s own choice of partly isolated life. The second is to educate individuals so that they become good citizens as he proposes in *Emile*. The third is to establish a just political order as expressed in the *Social Contract*. Rousseau’s second and third proposals go in tandem with one another, namely, becoming virtuous citizen and a just political order.

⁴² Kant, Immanuel. *Anthropology from a Pragmatic Point of View*, trans. Victor Lyle Dowdell. the USA: Southern Illinois University Press, 1978. See p. 243.

⁴³ Pippin 1997, 94.

⁴⁴ *Ibid.*, 95.

⁴⁵ Starobinski 1988, 13.

3.2 Characterization of Political Association as Body Politic

Pippin claims that “[n]o writer, after all, has had more to say about the “tensions” between individual and society than Rousseau”.⁴⁶ A political association is body politic (*corps politique*) which is nothing but a possibility in which ‘tensions between individual and society’ is resolved by body politic itself:

The body politic, taken by itself, can be looked upon as an organized body, alive, and similar to man’s. The sovereign power represents the head; the laws and customs are the brain, the principle of the nerves and the seat of the understanding, of the will, and of the senses, of which the judges and magistrates are the organs; commerce, industry, and agriculture are the mouth and stomach which prepare the common subsistence; public finances are the blood which a wise *economy*, performing the function of the hearth, sends out to distribute nourishment and life throughout the entire body; the citizens are the body and the members that make the machine move, live and work, and no part of which can be hurt without the painful impression of it being straightway conveyed to the brain, if the animal is in a state of health. (*PE*, 6)

The body politic, then, contains every single element in a political order, an order moral in character because it has a will, which “always tends to the preservation and the well-being of the whole and of each part, and which is the source of laws, is, for all the members of the state, in relation to one another and to it, the rule of what is just and what is unjust” (*PE*, 6). This organized body will show us all necessary elements in Rousseau’s theory of justice. I will examine its two basic elements, of the sovereign power, and of the executive one.

3.2.1 The General Will: the Justification of Political Right

Rousseau, when explaining the origins of political inequality, has argued the first social contract is proposed by the rich due to the civil war between the rich and the poor. This is, indeed, a struggle that has endangered both sides with a difference; what is at stake on the part of the poor is their life whereas for the rich both their life and property. The rich were aware of losing in ongoing fighting whereas the poor has nothing to lose other than his life. The parts have already been unequal and thus his

⁴⁶ Pippin 1997, 225.

pact is illegitimate. Despite the seemingly agreement of both parties, this unanimity can never give legitimacy to the contract. It cannot oblige the people to obey the laws it imposes. It is a system of slavery posing as remedies and advocating so-called civil measures as the very form of fighting against injustice. So this kind of reciprocal agreement would not suffice the legitimacy of any state. It must be more than agreement in order to sign the pact concerned. Then, what are the conditions to obey laws proposed by a social contract? In other words what is the legitimacy of a social contract?

It is Rousseau's custom to open his treatises with a classical quotation and *Social Contract's* is from Virgil; *Foederis æquas Dicamus leges* (Let us set equal terms for the truce). The quotation implies there cannot be any contract before setting equal terms. This is absolutely necessary for every civil order if its political authority will be legitimate. Why is it so? Why must the contract be made among equal parts? Rousseau's answer informs us the place of natural right in a legitimate political order: "To renounce one's freedom is to renounce one's quality as man, the rights of humanity. [...] There can be no possible compensation for someone who renounces everything." (SC,1.4,45) Hence, human's freedom is natural right and cannot be renounced.

If we are born free, then what is the source of inequality? I have already argued that Rousseau determines the political problem of inequality as to be convention and inequality is to be sought in these conventions. But why do conventions contain unequal terms? Rousseau's justification goes very logically; "The right of stronger" is based on force, a concept whose definition and effects lies in nature not in moral domain; nature is the domain of physical necessity, whereas morality is of the will whose rules cannot be determined by necessity (SC,1.3,44).

Let's suppose, the stronger's right is the cause for slave's obedience to it. And slave's obedience to it is the effect of this cause. But this, then, is a tautology; the relation between cause and effect becomes true in every instance since "the stronger is always right" (SC,1.3,44). Therefore, this relation does not produce any right but only absolute obedience; it becomes an obedience which has nothing to do with morality since if human is determined by a necessary relation like absolute

obedience, then he is no more called a free agent. Right and obedience as the concepts of morality cannot be considered as the relations in nature and thus cannot be explained by necessity.

Having relied on natural right, that is, freedom, Rousseau's justification suggest that if there is no one's "natural authority" over others and force cannot make right, then the legitimate authority can be sought only in conventions. Human "can obey only legitimate powers" (SC,1.3,44). In fact, Rousseau's justification of political right proves the illegitimacy of the present conventions.⁴⁷ According to Rousseau, these conventions, which have justified illegitimate political authority, belong to Grotius and Hobbes⁴⁸. While referring to Grotius' reasoning on political

⁴⁷ In his *Philosophy of the Enlightenment* Cassirer depicts where the Paris *philosophes* stand in the *Enlightenment* and their contribution to modern philosophy. Cassirer 1979, 234-253. Among touched upon the wide range topics Cassirer holds that instead of the Hobbessian social contract, which gave absolute power to the monarch and thus made natural right null, the Paris philosophes as the defenders of natural law tradition followed Grotius, who "denies that all human power is established for the sake of the governed" and offers a method of reasoning "to establish right by fact". Rousseau *Of the Social Contract or Principles of Political Right*, 42. Rousseau, rather than being in the mainstream of the Paris *philosophes*' thought, stands out as one with radically different ways of conceiving new political and social dimension. Until Rousseau, the rationality of the political doctrine consists in its being agreeable to passion. Human passions serve as the basis of rational political authority. With Rousseau's political principle rational political authority became the free will.

⁴⁸ Rousseau determines some specific thinkers and politicians who are responsible for inequality among people. The forerunners of the establishment dangerous system, which set the privileges among people, are Leucippus, Diogenes, Pyrrho, Protagoras, Lucretius. But, above all, Grotius and Hobbes are main ones; Hugo Grotius is well-known Dutch jurist and statesman of the seventeenth century, and author of *On the Rights of War and Peace* (1624). In his mature writings, Grotius like Hobbes had become a prime object of Rousseau's attack. Hobbes' portrayal in *Leviathan* of a "natural" war of "everyone against everyone" and Grotius' debate on "private war" and "public war" provoked Rousseau's thought that there is no such thing as 'natural' or 'private' war. Since human beings are "naturally good, calm and peaceful, they could not possibly have such an idea like war. War based on the free will to do harm another, is something that only states, not individuals, engage in. Another aspect of Hobbes' and Grotius' writings problematical for Rousseau was their argument that those conquered in a war could legitimately be enslaved by the conquerors. As for Hobbes, he asserts that despotic force is a legitimate means of establishing sovereignty. Finally Rousseau disputed Grotius' assertion, based on Biblical examples, that individuals or nations have the right to submit voluntarily to slavery. Rousseau argues forcefully that since human beings are born free, they cannot have the right to enslave themselves. No one can possibly enslave oneself: "I say nothing about slavery; because it is contrary to nature, and no right can authorize it" (PE, 4). By Book I Chapter 4 of *On Social Contract*, Rousseau's assessments of Hobbes and Grotius converge. The argument against Hobbes that force cannot be lawful blends easily into the argument against Grotius that slavery cannot constitute a right. Thus Rousseau can assert that Hobbes' and Grotius' "principles are exactly alike": "They only differ in their manner of expression. They also differ only in method. Hobbes bases himself sophism and Grotius on poets. They have everything else in common." Rousseau, *Emile or On Education*, 458.

authority, Rousseau evaluates his method as “to establish right by fact” as well “favorable to tyrants” but not “consistent” at all. As for Hobbesian contract, which defends to obey laws due to security of life, Rousseau’s respond comes quickly; a despot can possibly justify his powers by asserting himself as the guarantee of “civil tranquility” and want subjects to alienate to him. “Life is also tranquil in dungeons; it that enough to feel well in them?” (SC,1.4,45) Freedom as a natural right is superior to human’s concern with preservation. Therefore, to unconditionally alienate oneself to someone or something is “absurd and inconceivable” (SC,1.4,45). With this specification, Rousseau denies Grotius and Hobbes’s conception of state which finds its legitimacy in preservation of subjects; preservation by itself cannot be a legitimate reason for political authority unless people have right of “accepting or rejecting it” (SC,1.4,45).

Having set equal terms in the civil order, Rousseau’s task now requires proposing a convention, which transforms “force into right, and obedience into duty” (SC,1.3,43). Rousseau’s convention precedes what will be political right to establish equality among people if natural right appears to be insufficient to ensure justice? The question of freedom now turns to be that of justice; if each single human being asserts himself as to be free, what would happen?

The following passage about *Discourse on the Origin and Foundations of Inequality among Man* depicts what Rousseau’s distinction between natural right and political right is:

Thus there are two terms of reference in the *Discourse*; *nature*, from which history has caused man to depart, and *justice*, or law, which reveals the size of the gap. Obviously Rousseau has split the classical notion of “natural law” in two. Natural law was not matter of justice; it was rather the law that natural man (now vanished) spontaneously obeyed. Far from being in contradiction with natural law, civil law reestablishes it on different bases; reason, reflection and enlightened will. Because man is naturally good, the whole edifice of justice can based entirely on man’s will.⁴⁹

Although natural right did not vanish, it is true that the primitive human with his natural freedom cannot justly become a part of the civil order any more. There

⁴⁹ Starobinski 1988, 301.

must be an authority to justify their claim for freedom. The opening passage of the *Social Contract* may lend an insight to what must be a legitimate authority if people are free and equal:

I want to inquire whether in the civil order there can be some legitimate and sure rule of administration, taking men as they are, and the laws as they can be: In this inquiry I shall try always to combine what right permits with what interest prescribes, so that justice and utility may not be disjoined. (SC,1,41)

While point out to have taken “men as they are”, he must refer to human, who is here and now, free and hence equal at the same time. In this respect, Rousseau has restored human natural rights to the present procedure in his theory of justice; the natural rights will be “true foundation of body politic” and “the reciprocal rights of its members” (DI, 128). Of *Social Contract* the opening passage, where Rousseau is once and for all quite definitely distinguished from Kant clearly depicts Rousseau’s aim with *contract*; in conjunction with justice-utility, Rousseau’s positing solidarity as opposed to “false image of justice” aims at providing with the conditions of the well-ordered society and determining what most conduces the commonwealth.

As to be expected from a social contract, Rousseau’s contract requires formulating a kind of consistent relationship between parts as opposed to the relation of “absolute authority” to “unlimited obedience”, which obviously contradictory because this relation “nullifies the act” (SC,1.4,46). If a pact has two parts, then it has to recognize both of them. Otherwise, it would not be a pact at all. Nevertheless, if people have alienated their right to a ruler so far, then there must be a previous pact which transformed ‘aggregation’ into ‘association’, through which “the law of majority rule is itself something established by convention”⁵⁰ and which “presupposes unanimity at least once” (SC,1.5,49). So, Rousseau will establish a

⁵⁰ Rousseau’s account of the general will has been inviting many misunderstandings; it is not uncommon interpretation that at the end of the day the general will comes to suggest that the will of the majority has been forcibly imposed on the minority. The meaning of ‘common force’ turns out to be legal sanction by the majority. However, by the term general will Rousseau does not understand the majority rule. It is only a supposition for the possibility of social contract. What Rousseau says about the majority is that “a will to be general, it is not always necessary that it be unanimous, but it is necessary that all votes be counted; any formal exclusion destroys generality.” Rousseau, *Of the Social Contract or Principles of Political Right*, 58.

contract onto the previous contract. What Rousseau's contract offers is "[t]o find a form of association that will defend and protect the person and goods of each associate with the full common force, and by means of which each, uniting with all, nevertheless obey only himself and remains as free as before (SC,1.6, 49).

The legitimacy of this contract lies in its promise of the protection of both person's good and freedom *by full common force*. This is a contract that "the slightest modification" is enough to give right to those, who compose it, to abolish it and return to state of nature by relinquishing the conventional or political freedom (SC,1.6,50). This is the point Rousseau introduces the conception of the general will into his social contract theory as the sole condition of independence; "each, by giving himself to all, gives himself to one" (SC,1.6,50). In other words, if it is to be thought together with the concept commonwealth, everyone submits his own will, which is directed toward his own good, to the general will, which is directed toward the common good. The general will is not the total sum of each particular will yet it is by no means an alien power holding somewhere remote from each particular will. With the idea of the general will Rousseau found a way to restrain particular wills by their own agreement; each will commits itself to far more general will. Rousseau's *volonté générale* is a collective desire whereby each member of body politic acquire freedom by willing and acting in accordance with this collective will.

"The people is a people before" putting government into effect, that is, before governmental activity (E,5,460). So, the general will is the sole condition of establishing of a body politic. There are "two contracting parties" in the formation of it; "each individual and the public" (E,5,461). This establishment the act of association or the social contract is made among people, not with any external or superior power. As "the basis of every civil society" without exception, Rousseau introduces the social contract and the general will at once. These are two concepts, on which other political concepts are founded on them in Rousseau's theory of justice: "[...] the nature of the society it [the social contract] forms must be sought in the nature of this transaction" (E,5,460). Rousseau terms this transaction, namely, the formation of the general will through the social contract as "public reason" or "body politic"; "its members call it *State* when it is passive, *Sovereign* when it is active, and *power* when it is compared with other body politics". Further, its members, taken as

collectively, become *people* and as individually, as long as they involve in the sovereign authority, *citizens* and lastly *subjects* as long as they are subject to the same authority or themselves (*E*,5,460).

What includes this action of body politic is “a reciprocal commitment of the public and the individuals” each of who “[contract] with himself” (*E*,5,460). Given that, citizens get involved in twofold political action; first is, “as a member of sovereign” the commitment to other individual members of the state, and second is “as a member of state” to the sovereign power. This twofold action of citizen implies twofold identification by making him both a member of state and of sovereign power (*E*,5,460). With the former I am a subject who obeys what laws prescribes me and with the latter, I am a citizen who forms the border of this prescription. This formulation gives us Rousseau’s autonomous being, or, let’s call this being autonomous citizen/subject. To form the sovereignty is citizen’s political right and to obey its laws is subject’s duty. This twofold action must remain twofold: “Whoever refuses to obey the general will shall be constrained to do so by the entire body: which means nothing other than that he shall be forced to be free” (*SC*,1.7,53). This is the case when someone is eager to form the sovereign power without obeying it. Rousseau calls it injustice and the sovereign cannot allow injustice. If someone does not fulfill both of them, then he becomes nothing other than the one in the state of nature. This state of nature is not the one which Rousseau depicts as the early time of human history but which one is left no choice other than to submit oneself to a particular will.

This force to make one free can only be exercised by the laws. Injustice is only possible when one make an exemption for oneself; for, “[a]n individual could not directly injured by the sovereign without everyone’s being injured” because it is impossible for one to injure oneself. Rousseau’s argumentation is as the following:

Everyone is subject oneself to the sovereign body.

The Sovereign authority is nothing but the general will.

Therefore, one obeys only oneself by obeying the general will.

Notwithstanding the logical consistency of argument, without which Rousseau’s political theory remains baseless, it has been argued that Rousseau’s

depiction of the general will is so strict that individuals are abandoned melting down in the powerful existence of the general will. In his *Emile* after the above reasoning what he asserts is that he has compared “natural liberty to civil liberty” (*E*,5,461). Hence the Sovereignty makes people free citizen who were once “a stupid and bounded animal” and now “an intelligent being and a man” (*SC*,1.8,53). In this respect a citizen as a rational being is the one who is aware of the necessity to live freely together with his fellows and accordingly the one who is supposed to think and act according to this awareness. He lost natural freedom but gain “civil freedom and property”.

Why should one pursue to become a part of legal constitution by forming the general will? Why is one forced to be free? According to Rousseau the meaning of “to live and die free” is to subject to the laws that no one could possibly make an exception their yoke (*DI*, 115). It is this yoke that gives the citizens their freedom by which “they are made to bear none other”. No one could regard himself as to be superior to the law. And even, “if there is a single person who is not subject to the law, all the others are necessarily at his discretion” (*DI*, 115).

Contrary to autonomous citizen who has no choice other than political autonomy, the sovereign power cannot engage in the twofold relation since it would be “contrary to the nature of the body politic for the Sovereign to impose on itself, a law which it cannot break. [...] the Sovereign can consider itself only in terms of one and the same relation” (*SC*,1.7,52). Therefore, “[...] there is not, nor can there be, any kind of fundamental law that is obligatory for the body of the people, not even the social contract” (*SC*,1.7,52). If the sovereign power wants to abolish the contract, then it is abolished. There can be no superior power than people’s sovereignty.

The question of freedom thus turns out to be the question of the general will; it can only establish a State, Republic or City, where society is governed. And those laws is nothing but “the exercise of the general will”, that is to say, sovereignty. “The most general will is also the most just” because it always seek the common interest by its nature (*PE*, 8). For the same reason sovereignty is inalienable and indivisible; inalienable because the general will always belongs to people, who have

nontransferable legislative right for establishing the sovereign authority; indivisible because the general will either general or particular. Since the general will is unconditionally entitled itself to constitute laws, it express itself through sovereign in the form of the most general laws whose object must be also general, non-specified so that it “relates equally to all the members of the state”. The general will as legislative power refers to all embracing character of the laws; they must embrace all members of political community. This means that if it were a particular will other than the general one, it would have to make particular judgment for specific article, and accordingly it would not relate justly to each subject of which composes it:

It must issue from all in order to apply to all, and that it loses its natural rectitude when it tends toward some individual and determinate object; for, then, *judging what is foreign to us*, we have no true principle of equity to guide us.⁵¹ (SC,2.4,61)

Therefore, the inalienability and indivisibility of the general will are the most basic characteristics of the general will. These two features give the general will the qualification of being just; the general will can carry out justice by means of laws insofar as it is general so that its object is also general. Rousseau is very critical about politicians who confuse the particular political cases, such as, declaration of war or peace with laws themselves. These kinds of actions are not the objects of the sovereign authority but they are subject to laws which are enacted by the sovereign power. These particular cases as the object of this enactment occupy the application of laws. Thus politics dominates the particular cases, whereas justice the general ones. It can be concluded that Rousseau’s theory of justice is based on this characterization of the general will, namely, its inalienability and indivisibility.

Citizen’s involvement in politics is their participation in the general will by forming it. Citizens have political rights provided that he participates in the general will, the sovereign power. In this respect, the rights of citizen “are all subordinate it, and always presuppose supreme wills which these rights simply implement” (SC,2.2,59). Therefore, the relationship between the general will and justice can be

⁵¹ My italics.

formulated as the following; if there is no general will, then, there is no need to speak of political right and accordingly justice.

From Rousseau's distinction between the general and particular object within the jurisprudence, it is clear the laws enacted by the sovereign power but executed by the government which is also power inferior than the sovereign but no less important for the endurance of the State. So, the act of the government has a role within the state's jurisprudence as the executor, whereas the sovereign is jurisprudence itself when voting laws as the legislator (*E*,5,462).

In *Discourse on Arts and Science* and his other early writings such as *Narcissus*, what seemed to be problematic in Rousseau's political thought is that all good intentions of a particular will toward another one are sudden or instantaneous in the character of "mutual esteem and benevolence"⁵², about which Rousseau complains their absence in the present society. These maxims fail to express anything to those who has suffered from injustice; for these maxims fail to be law apart from ethical law which express 'what ought to be' at some particular times and conjunctures. With his *Social Contract*, the theory of the general will binds each particular will to the laws enacted by the general will. The social contract "either obliges or favors all Citizens equally"; it cannot "single out any of those who make it up". It is basically this principle that gives the legitimacy to the social contract and makes it just. Thought in this manner, it is the grounding principle of justice.

Neuhouser argues that Hegel depicts Rousseau as "an epoch-making" innovator in the history of political thought just because he comes up with the idea of the free will as "the fundamental principle of political philosophy". Neuhouser strongly defends Rousseau's reflection on twofold dimension of the free will, which introduces two arguments; "a rational state realizes the freedom of its members" and "a free will can exist *only* as a part of rational political order". The State as rational existence is the condition of actualization of the free will and the free will demands the existence of the state. It is important to notice that the free will in its relation to

⁵² See p. 8 in this thesis.

the general will become the justification of the state's existence as a medium in which the legitimate recognition of the state's members become possible.⁵³

The free will, if it is not determined under more general one, remains free. In the state of nature human being had also free will. However, does it make sense at all? The free will is free but with respect to what? As the Vicar has already stated it, the free will in the absence of others is to be moving one's arm: "I want to move my arm, and I move it without this movement's having another immediate cause than my will" (*E*,4,272). Thus what gives the moral dimension to the free will is to act in the presence of others, that is to say, to act by taking into account others. As a political philosopher Rousseau tries to develop a theory of justice which explains how each particular free will can justly come together by means of laws in a political association, that is, a state.

Although human being intrinsically has "conscience for loving the good" and for feeling compassion for others, he knows neither what it is good nor what it is evil in the state of nature.⁵⁴ Therefore human in his natural condition is neither moral nor immoral, he is amoral in that he even does not communicate his fellows. It is true that for Rousseau human being is natural good but his goodness is limited by his being not doing harm to his fellows intentionally. In contrast to the state of nature, in the civil state human is a moral being in the sense that he is consciousness of the necessity of the collective life. However, being moral by itself is not enough to live together with others; for, human being is a free and particular will, a will which is by nature limited to look after its own interest, though it has conscience for others. As long as there is no will which gathers each particular will under much more general one, namely, body politic, the collection of the particular wills remains an aggregation, not political association.

Rousseau's achievement is its contrasting the particular wills with the general will; his conception of moral freedom refers to that contrasting stage. That is,

⁵³ Neuhouser 199, 363-66.

⁵⁴ See p. 19 in this thesis. Human being has "conscience for loving the good, reason for knowing it, and liberty for choosing it".

Rousseau describes human being as a free in the sense that he is able to prescribe law to himself and obey it. In this respect, moral freedom is not enough to constitute a just political order, which is the only possibility to avoid the state of nature where the obedience is determined by force. Hence, moral freedom by itself cannot justify rights of human being. If it cannot justify rights, then it cannot impose duty on individual; for, according to Rousseau, only right can impose duty on individual as duty is one's duty for others. Civil or political freedom, on the other hand, refers to the possibility of reconciliation of the contrasting parties; the particular wills consent to submit the general will. Rousseau's theory justice finds its main arguments in the formulation of this reconciliation, a reconciliation which can transform "force into right, and obedience into duty" by means of laws (SC,1.3,43).

In fact, Rousseau makes one remind of one's being free in ascribing such significant enough powers to each particular will. Individuals, if they are asserting itself to be free, have to commit the political association, must be ready and willing to direct the general will by joining and forming it.

As for Strauss's alleged crisis, it should be clear from the articulation of his conception of the general will, Rousseau's theory of justice cannot nullify the content of the concept of human. Conversely, Rousseau's theory fills the concept of human with the free will and defines it in terms of its relation to other free wills. Strauss's criticism basically depends on Rousseau's insistence in the return to state of nature. Strauss argues that Rousseau's conception of human being always stand on the edge of returning to the nature which is "something indefinite and indefinable".⁵⁵ That is why the definition of the concept of human remained obscure. But why did Rousseau write *Social Contract* if he wanted everyone to come back to nature? Strauss further adds that since this indefinite natural state was lack of any definition of natural right (because "there is no natural law, properly speaking, which antedates the human will"⁵⁶), what humanity understood by the suggestion of the return to nature also remained obscure and therefore humanity, so to speak, remained aimless. This is exactly the first step which has led humanity to nihilism.

⁵⁵ Strauss 1965, 294.

⁵⁶ Ibid., 280.

I have already stated Rousseau was well aware that there cannot be a return for humanity. As for Strauss criticism about Rousseau's natural law, it is true that there is no natural right, i.e., self-preservation, in the sense that human will is assumed before anything else (otherwise, it would be impossible to prove the contradictory nature of the principle of political inequality⁵⁷), though self-love is a natural rule which governs human in tandem with *compassion*. However, what Strauss claims indeed is that the lack of natural law/rule implies the lack of duty which "must be conceived of as derivative from rights". That is, the aimless condition of humanity pertains to humanity's suffering from lacking of duties due to its derivativeness from political right. I have difficulty in understanding why duty cannot be inferred from political right for the sake of other member of society.

Rousseau affirms that liberation process as human's awareness of the power to make law by taking into consideration others is so extremely poignant one that many is likely to ignore their autonomy, to avoid their duty and relinquish 'inalienable' rights on the path to freedom, especially in the presence of a tyrant who orders their life on behalf of them. The formations of the general will a painful collective and political process which is easy to avoid but hard to achieve. For this reason, it is important to examine Rousseau's account of duty in his theory of justice. In the next Chapter, I will focus on the dutiful citizen who is necessary element of body politic.

3.2.2 The Right of Property

As shown, what is gained the social contract is "civil freedom and property". This is why one should pursue to become a part of legal constitution by forming the general will. In the previous section, I explained the conditions of civil freedom. The other acquisition, private property, is the one which Rousseau firstly regards it as the true source of inequality. Now he must justify the right of property in accord with the concept of civil freedom because he claims that civil society was founded on inequality, hence private property.

⁵⁷ See the beginning of this section titled as the General Will.

According to Rousseau, civil freedom is only possible provided that one commits oneself to the general will. This commitment now is described in terms of property right; one gives one's property to the general will; for, "the State is master of all their [members'] goods by the social contract which serves as the basis of all rights within the State" (*SC*,1.9,54). Through the social contract "usurpation changes into a genuine right, and use into property". Rousseau calls it "legitimate possession" (*SC*,1.3,56).

Therefore, "the sovereign authority is founded on the right of property, this right ought to respect most" provided that "it remains a particular, individual right" (*E*, 461). It has also been discussed that in his *Political Economy* Rousseau is in direct contradiction with what he tell us regarding private property in the *Discourse on the Origin and Foundations of Inequality among Man*. In *Political Economy* he states that "the right of property is the most sacred of all the rights of citizens, and more important in some respects than freedom itself", whereas in *On Origin of Inequality*, private property is the source of inequality among men.

However, this is one thing to make this specification and another to defend the right of property provided that the limitations on the acquiring treasure and property remain open to be questioned by the general will. And, no body may claim that Rousseau did not fulfill this point; for, the fact that the right of property being sacred does not mean it remains completely immune to intervention by law. Property may remain in the use of citizen in accordance with the limitation imposed by the sovereign power. In this respect, this right is not *sacred* in such a way that nobody may restrict its usage. The regulation of its use is granted on legal grounds. It is sacred in the sense that the accountability of citizen finds its justification in possessing private property; "property is the true foundation of civil society and true guarantee of the citizens' commitments" (*PE*, 23). If individuals were not accountable to public for their belongings, it would be absurd to expect one to fulfill one's duty and respect the laws. Therefore, property right is the first condition of possibility of citizen's commitments just because it is "the foundation of social pact" together with civil freedom; everyone obliges himself [...] to contribute toward the public needs" (*PE*, 29-30).

The property right is to be justified only with its relationship with “the right of sovereignty”. The sovereign as “eminent domain” has also right over individual’s property as “individual domain” even right to seize it when needed. Although Rousseau does not argue in what conditions the sovereign power can infringe on private property, he gives an example from Lycurgus of reserving the right to seize, if not a squat, property; Lycurgus took them away from Spartans, yet parceled them out to all with equal proportion. It was due to Spartans’ standing on the edge of a new and mandatory political formation towards a correction on Solon’s favoring the rich (*E*, 462,494).

Thus the rights of civil freedom and possession constitute the political rights as the foundation of the sovereignty provided that both of them are reserved by the social contract.

3.2.3 Duties of Citizen

From the tension between morality and knowledge described in the *Discourse on Arts and Science*, it follows a series of conflicts which will be analyzed throughout Rousseau’s other political writings; “between good and evil (and between the righteous and the wicked), between nature and society”.⁵⁸ And eventually history itself is divided into two parts; “a *before* and an *after*: before there were fatherlands and citizens, now there are none.”⁵⁹ Who, then, were these citizens? What distinguishes them from modern individuals? What was their role they play in their country in order to turn it to be a political association in which justice prevails? What made them feel this role to be incumbent on them? In order to understand what Rousseau’s conception of duty is in his theory of justice, it seems necessary to answer these questions by inspecting the impression of ancient cities on Rousseau.

Rousseau believed that Rome as “the virtuous republic, beguiled by glittering appearances, is doomed by luxury and conquest”⁶⁰: “Fools, what have you done?”⁶¹

⁵⁸ Starobinski 1988, 4.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid., 4. (qtd. from Rousseau *Discourse on the Sciences and Arts*, 13.)

What does Rousseau have in mind when stating that humanity lost many things on the way of civilization? As Strauss suggests too in agreement with most of Rousseau scholars, he charged modernity with lacking of two fundamental classical conceptions, of which ancients possessed; the city life and virtue.⁶² By means of the unity of two concepts Rousseau found the remedy in classical political philosophy which offers solutions for small cities in particular. Although the relation of Rousseau's political philosophy to classical political philosophy is beyond the scope this thesis, it is obligatory to explore his favorite ancient cities, namely, Rome and Sparta reigning in the Golden Age, in order to grasp what he means by being virtuous:

In his later writings Rousseau explicitly distinguishes between "goodness" and "virtue": goodness belongs to man as a natural being, whereas virtue or morality belongs to man as a citizen, since it essentially presupposes the social contract or convention. The good man as distinguished from the virtuous man is only good for himself, because he is good only as long as he derives pleasure from being good or, more generally expressed, because he cannot do anything which he does not do with pleasure. A being is good to the extent to which he is self-sufficient, 'solitary', or not in need of others and hence absolutely happy. A man who is good and not virtuous is therefore unfit for society or for action.⁶³

As the above passage suggests, Rousseau distinguishes natural human being from citizen by stating that "we are born with our talents, only our virtues belong to us" (*N*, 98). Virtue is the qualification of the civil man who is "in the need of others" as we see Rousseau's discussion of virtue on his comparison of Socrates with Cato; both Socrates and Cato the Younger were among the most virtuous men with a

⁶² Strauss 1965, 253. Moreover, as the previous parts of this thesis have also made it clear, although Rousseau is a lover of ancient thinkers and highly influenced by them, yet the basic presupposition of classical political philosophy barely fit Rousseau's political thought. Strauss explains the fundamental contrast; according to classical thinkers "the natural inequality of intellectual powers is, or ought to be, of decisive political importance. Hence the unlimited rule of the wise, in no way answerable to the subjects, appears to be the absolutely best solution to the political problem". Strauss 1947, 485. For Rousseau, on the other hand, the absolute sovereignty of people appears to be no doubt the best solution to the modern political problems, namely, inequality and pervasive injustice. For this reason, unlike ancient thinkers, Rousseau considers himself as "the first theoretician of democracy" in one of his letters. Strauss 1947, 455.

⁶³ *Ibid.*, 475-6.

difference that the former was more philosophers and the latter more citizen; they died for the sake of something valuable. Yet, a discipline of Cato “would seek his happiness in that of all”, whereas that of Socrates’ in his own. Socrates as a leading figure was one of Rousseau’s virtuous men in regard to his being both citizen and philosopher; he always told us that I know nothing, but no doubt he did not die for the sake of nothing. What Rousseau wants to convey us that Cato’s will is to be directed according to more collective ideal; because he resisted the death until he no longer found “a fatherland to serve” (*PE*, 16).

What, then, constitutes the criteria of being virtuous? Rousseau believed that “men’s morals can be very accurately gauged by how much business they have with one another” (*N*, 101) and “the words virtues and vices are collective notions which arise only in dealings among men” (*N*, 103). Therefore, virtue is a quality, which belongs to citizen rather than social individual. This means that virtue is only possible in a political association, albeit its imperfections. Citizen learns to how to become virtuous not for himself but for society. Fabricius, the elder Cato are among Rousseau’s favorite virtuous citizen. The elder Cato, the Roman statesman, was famous for his military agricultural facilities, “his frugal and simple life, and his traditional principles”. Unlike the modern counterparts, who favors “the arts of pleasure and of pure skill” “at the expense of the useful and the arduous trade” and sacrifices “agriculture” to commerce (*PE*, 19), Cato did not spend so much money on arts but military and agriculture. In this respect, ancients had a virtue of which modern “[h]appy slaves” are lack.

From his favorite politicians, it follows that for Rousseau virtue is heroic and fostering immortal action: “The greatest marvels of virtue have been produced by love of fatherland: this gentle and lively sentiment... makes it the most heroic of all the passions. It is patriotism that produced the many immortal actions” (*PE*, 16). Proper education of passion amour propre is very likely to lead citizens to possess virtue and to establish a sense of community in such a way that fosters patriotic sentiments. On that ground, Rousseau’s conception of ‘love of fatherland’ can only be conceived by experiencing it. This deep affection of human for fatherland is the ground from which other virtues derive: “even the purest virtue does not radiate when separated from love of fatherland” (*PE*, 16). Rousseau’s conception of love of

fatherland is not a null one, neither chauvinistic nor nationalistic; a people become virtuous only if they love the territory in which they live and, above all, whose laws are established by the very same people. Otherwise, it is “nothing more to them than it is to foreigners” (*PE*, 16). Rousseauian patriotism bears to be the feeling of being at home:

O Emile, where is the good man who owes nothing to his country? Whatever the country it is, he owes it what is most precious to man—the morality of his actions and the love of virtue. If he had been born in the hearth of the woods, he would have been lived happier and freer. But he would have had nothing to combat in order to follow his inclinations, and thus he would have been good without merit; he would not have been virtuous; and now he knows how to be so in spite of his passions. (*E*,5,473)

Being a citizen requires being virtuous; sensitivity and hence expectation of reciprocity can enable individual to engage in social solidarity. Reasonably enough, according to Rousseau, those virtues cannot be extended to the nations of the world. Rousseau’s state is such that “[t]he life of the ones as well of the other is the self common to the whole, the reciprocal sensitivity and the internal correspondence of all the parts” (*PE*, 6). Given that, citizen as a human being has a limited capacity for compassion: “the dominate passion of human, compassion, cannot be extended to the whole humanity. For this reason, it is better to concentrate this inclination on “fellow-citizen” so that contributes the worldwide justice:

It would seem that the sentiment of humanity dissipates and weakens as it spreads to the whole earth, and that we cannot be as touched by the calamities of Tartary or Japan as we are by those of a European people. Interest and commiseration must in some way be constricted and compressed in order to be activated. (*PE*, 15)

As seen, virtue is a sentiment, which requires to be activated and this activation is only possible through a relatively small and hence healthy political community. In his essay *Politic Economy*, Rousseau describes the first essential rule of healthy economy politics as the formation of the general will as the sole legislative authority. Rousseau calls the endurance of the general will “second essential rule of public *economy*”, which is to ensure that all particular wills participate legislative activity and the permanence of this participation. The second essential rule means the

reign of virtue; to keep the general will alive requires virtuous citizens. A citizen who ignores the general will and pursues his own particular will is no more a citizen and “unfortunately personal interest is always inversely proportional to duty” (*PE*, 8); for in this case he is clearly in contradiction with himself, which logic of body politic denies without exception. In abolishing the social contract with which citizen initially engages, he does not only contradict with himself, but also *corps social*.

Participation in legislative activity thus enhances citizen’s virtues; otherwise he will be a foreigner. On the other hand, instead of a part of the general will, if a citizen prefers to join another association, citizen experiences a sense of alienation, lack of community, and inability to find ways of organizing society for common ends; “the association grows narrower and the commitment less sacred”, the individuals tend to seek self-interests (*PE*, 8).

According to Rousseau, any kind of chief, magistrate, or leader of any association pious foundation, charitable institution, proficient endowment, congregation or brotherhood communion, manifesting himself independently of the laws before the public should bear in mind that he relates himself directly to other wills that grants consent to his particular will on the ground of the natural law and thus he immediately leaves civil society and comes back to the state of nature “where obedience is never prescribed except by necessity” (*PE*, 10). Even if they prescribe structures and mechanisms of a social order on legal ground, they would inevitably damages the general will by impairing it. Above all, they vanish themselves because thanks to the sovereign authority they exist: “To violate the act by which it exists would be to annihilate itself, and what is nothing produces nothing”. (*SC*,1.7,52). Fragmental society is one from which the general will can barely emerge. Therefore, “[i]t is important [...] there is no partial society in the State, and every Citizen state only his own opinion” (*SC*,2.3,60). The content of the term chief, leader whatsoever as such becomes, so to speak, a null concept in the eyes of public reason; for not consent but ‘obedience’ of particular will, which is subject to chief in question, turns out to be absolute obedience sooner or later. The separation of a particular will from the general will and its being coming under another particular would come to specify a new relation identifiable the relation between master and slave who has to swear to his master by necessity.

In his *Consideration on Poland Government*, Rousseau holds that “Reforming the Government of Poland” means to give “to the constitution of a large kingdom the solidity and vigor of that of a small Republic” (CGP,189). Rousseau’s favorite republican state organizations are small, thereby free, Sparta and Geneva, which allows people to take part in body politic. Since the ideal examples are of classical, especially Romanic times, Rousseau’s endeavor for sketching out virtuous citizen has been interpreted as a return to classical thought and, accordingly as romantic. “Spartans’s strongest or rather their sole passion” was “ardent love of fatherland” (CGP, 181). This love was so strong that made them “beings above humanity”, all Greek cities, for which Sparta legislation served as a model. And Romans carried out the treaty obligation toward the end *maiestas populi Romani*, great and powerful Rome, and therein lays Roman essential political and, thus moral values; *virtus, libertas, gloria, pietas, fides, dignitas* to achieve the supreme maxim; *salus populi suprema lex*, “the welfare of the people shall be the supreme law” by which they can attain *Res publica*.

Having insisted in small city organizations, in fact Rousseau tries to keep people in legislative activity. In this regard, it is easier for citizens to become virtuous if they live in small political associations. In this way they are to learn and become wiser and wiser how to legislate by keeping the pulse of society, its tendency, custom and unwritten tradition. Rousseau’s declaration of his duty makes it clear what a citizen’s duty is:

Born a citizen of a free State, and a member of the sovereign, the right to vote in it is enough to impose on me the duty to learn about public affairs, regardless of how weak might be the influence oh my voice on them. (SC,1,41)

Rousseau suggested the Polish to enter into federative system. Unlike unitary state system which determinates the laws for the whole state, federative state is capable of making room for local, self-governing localizations to make its own peculiar laws proper to region own conditions, though accepting one and the same constitution: “The first reform you need is reform in the size of your country. Your vast provinces will never tolerate the severe administration of small Republics.” Because of the disadvantageous condition of Poland in size, population and territory, Poland Government requires to “seek to extend and to perfect the system of

federative Governments, the only system which combines the advantages large and of small States” (CGP,194).

Rousseau’s reflections that morality as being virtuous seems to be possible and likely to be improved only in small political formations deserves more examination to understand his conception of political virtue. I think that by the category ‘small’ Rousseau does not merely qualify size of population or total area of a country as determining ground for the morality of citizens living in it. Otherwise, he would not glorify some period of Rome, which was not too small at all. He rather refers to political organization; more localized, more closed like the cities of Rome, responsive to the exigencies of political life. For examples, Ancient Romans and Spartans were more concerned with their fatherland than with their private and domestic life, whereas the members of modern states are “bourgeois rather than citizens”.⁶⁴

Rousseau’s admiration for ancient cities is to be understood in their opposition to the modern states. Rousseau holds that a body politic can be healthy provided that “it has a character of its own.”⁶⁵ Unlike the Enlightenment ideal of universal principle valid for every society, Rousseau insists in preserving traditional values and particular character of political association:

There are no more Frenchmen, German, Spaniards, even Englishmen, nowadays, regardless of what people may say; there are only Europeans. All have the same tastes, the same passions, the same morals, because none has been given a national form by a distinctive institution. (CGP, 184)

Civil society requires a kind of bondage and of transformation of natural human into citizen, a transformation, which is possible only through legislative

⁶⁴ Strauss 1965, 253.

⁶⁵ Strauss 1947, 473. Strauss continues his sentence; “this requires that its individuality be produced or fostered by national and exclusive institutions”. I think individuality produces itself in its relation with others. It is true that only in *Poland Government* Rousseau suggests to Government members that people have attached one another with emotional bonds developed by “distinctive practices” such as “religious ceremonies” and memorial of ancestral history, reading poems of, similar with Western tradition, Homer and tragedies of Aeschylus or of Sophocles. Rousseau, *Considerations on the Government of Poland and Its Projected Reformation*, 181,182. However, these are the suggestion given to a country in the phase of establishment. And people are endowed with legislative power. This simply means that if they do not want to do “distinctive practice”, then they do not.

activity. And, it is impossible to establish laws which bind every country up. This transformation as the conditions of bondage of civil society is peculiar to each people's legislative activity in each country. For this reason, Rousseau holds that politics is not a universal activity; only "the political laws of each country" can constitute the bonds of common legislation between people (*E*, 5,458):

It is important to note that this rule of justice, dependable with respect to all citizens, can be false with respect to strangers; and the reason for this is clear: that in that case the will of the state, although general with respect to its members, is no longer so with respect to the other states and their members, but it becomes for them a particular and individual will that has its rule of justice in *the law of nature*, which is equally consistent with the principle established: for in that case the great city of the world becomes the body politic of which the law of nature is always the general will, and of which the various states and peoples are merely individual members.⁶⁶ (*PE*,7)

Here Rousseau's reasoning leads him to deny a civil law which includes every political society and produces the universal principles to judge the morality of every single being for the commonwealth of the world citizens. There exist no such general will to preach universally in order to bring about peace all over the world. That is why war is dominant when it comes to international relation or the foreign affairs.

In order to guarantee political jurisdiction of citizens, it does even matter for people where to live as regards their duties; for citizen cannot form the general will if they do not feel they are a part of body politic. It is remarkable to see how Rousseau transforms the Latin proverb *ubi bene, ibi patria* into *ubi patria, ibi bene*; the former means that *where a man lives well, there is his country* and the latter *where a man's country is, there he lives well* or "wherever (my) homeland, there is (my) well-being". In the same vein, citizen cannot integrate into a political order unless he does his duties: "Do not ask then, 'What difference does it make to me where I am?' It makes a difference to you that you are where you can fulfill all your duties, and one of those duties is an attachment to the place of your birth." (*E*,5,473)

⁶⁶ My italics.

Rousseau had already made a contrast between “moral freedom” and “civil freedom” before Kant stated it:

[O]ne might add to the credit of civil state moral freedom, which alone makes man truly master of himself; for the impulsion of mere appetites is slavery, and obedience to the law one has prescribed to oneself is freedom [...] and the philosophical meaning of the world freedom is not my subject here. (*SC*,1.8,54)

In fact, moral freedom, as expressed above, hardly becomes a topic for Rousseau. He “takes merely externally correct actions to have a degree of moral worth”⁶⁷. We ascribe thus the moral worth to *political* action. That is, moral action is political action in Rousseau’s philosophy. So, what is the relationship of political action to duty in Rousseau’s philosophy? What is the difference between Rousseau’s and Kant’s conception of duty? First of all, as I will focus on in the Chapter 3, Kant’s distinction between “moral and purely prudential action” is very similar, “though not identical”, to Rousseau’s moral human and virtuous citizen.⁶⁸ Kant’s moral action in accord with duty refers to Rousseau’s conception of virtuous citizen; the citizen, as such, does his duties not from duty but in accord with duty in terms of Kantian morality.

According to Rousseau’s conception of duty, virtuous citizen is identical with dutiful human being; he acts from duty that prescribes participation in legislative activity. However, unlike Kant, the determining ground of principle, motive for action is both passion and reason; citizen can be virtuous due to his passions, namely, the passion of love of fatherland and due to rational aim, that is, participation in public reason for the commonwealth. In this regard, for Rousseau, the moral worth of an action comes from its being done from duty but the action itself is not done for the sake of duty. Rousseau believes that the moral worth of the action depends on some collective ends; citizen “is in some way motivated by ‘the voice of duty’, or by ideas of right and justice”, expressed in *Social Contract*.⁶⁹ Therefore, for Rousseau, there is “an ethical hierarchy among the various motivations that can lead to morally worth

⁶⁷ Neuhouser 2008, 231.

⁶⁸ *Ibid.*, 230.

⁶⁹ *Ibid.*

action” because duty as the content of obligation can express some collective ideal which may change from one society to another or one time to another.⁷⁰

Citizen’s action does not require acting according to “a maxim that abstracts completely from one’s own interest or happiness”⁷¹; for his happiness and interest is the commonwealth including himself. This suggests that citizen is virtuous and moral provided that he *will* the well-being of other citizens, a good will, which can only be achievable by forming the general will, the logic of which embraces the same citizen’s well-being, too. In fact, the name of this Chapter 3 have already pointed out that Rousseau’s moral human is a citizen rather than human who is “motivated what is right” in accordance with the general will. Therefore, Rousseau’s conception of duty is directly motivated by the idea of justice with reference to the general will.

3.2.4 Duties of Government

Rousseau’s social contract will bring about not only formal conditions of the legitimate coexistence of people but also focus on the material, that is, economical condition. Rousseau begins *Political Economy* with explaining etymologically the term economy, that is to say, *ethics* and *politics* as the derivation of οἰκός, house and νομός, law. The government of household as the task of father has demanded morality and laws which govern it. Therefore, our using the term economy refers directly to both ethics and politics. That is why Rousseau prefers the usage of economy politics or ‘public *economy*’ to economy alone.

It is crucial to notice that Rousseau’s examination of governmental activity in *Political Economy*. Economy as one of the most important determinant in designing a body politic is the subject matter of the conduct of governmental art and virtue. Just as the government of household, body politic requires to be governed in economical term. Rousseau attributes this task to the executive power. Rousseau in his essay *Political Economy* specifies the qualification of legitimate body politic with a special focus on the duty of administration, which is governmental staff. In this respect,

⁷⁰ Ibid.

⁷¹ Ibid., 231.

Political Economy is both a promising guide for government members, and a warning guide for citizens who constantly check them out.

The principles that Rousseau depends upon in accounting for “the end of every system of legislation” are “*freedom and equality*”. The laws thus legislated must be executed in the same way. Here what Rousseau terms as freedom is civil freedom, one’s commitment to the general will. As for equality, it is something without which “freedom cannot subsist” (SC,2.11,78):

[W]ith regard to equality, this word must be understood to mean that degrees of power and wealth should be absolutely the same, but that, as for power, it stop short of all violence and never be exercised except by virtue of rank and the laws, and that as for wealth, no citizen be so very rich that he can buy another, and none so poor that he is compelled to sell himself. (SC,2.11,78)

Just as the principles according to which the general will legislates laws, the principles according to which the government executes them is the same. They differ in their objects; the sovereignty has “the legislative right and in some cases obligates the very body of nation”, whereas government “has only the executive power and, and can only obligate individuals” (PE,6). For example, “the act by which the sovereign decrees that a chief will be elected is a law, and the act by which that chief is elected in execution of the law is only an act of government” (E,462).

Rousseau gives an important role to the executive power. Nevertheless, He drives the rights of the executive authority from the sovereign. The Magistrates are not sovereign but “the people’s officers” whose task is to carry out the laws enacted by the sovereign will. The right of proposing new laws should belong to the Magistrates. However, this is not to say that the citizens are devoid of the right of legislation. Conversely, Rousseau’s ideal is “a Country where the right of legislation was common to all Citizen” (DI,116). Therefore, the duty of government is as the following:

Indeed, while the voice of nature is the best counsel a good father should heed in order to fulfill his duties well, it is for the magistrate nothing but a false guide which constantly tends to distance him from his duties, and sooner or later drags him to his own and to the state’s ruin unless he is restrained by the most sublime virtue [...] he

should be wary even of his reason, and follow no other rule than the public reason, which is the law. (*PE*,5)

Rousseau specifically warn people of the illegitimate governmental risk; the most dangerous situation in politics with which the body politic has frequently faced is that in order to legitimize their political action regardless of the general will the magistrates may preach to people that they had to take the necessary precaution for the sake of state perpetuity. In such case, Rousseau suggests the people to ask the officers what they understand by “for the sake of state”; “[y]ou will see that they will finally reduce it to a small number of men who are not the people” but public officers. Therefore, “the pretext of the public good is always the people’s most dangerous scourge” (*PE*, 19). The government members should keep in mind “[o]ften, when it [the general will] is too flagrantly crossed, it allows itself to be perceived in spite of the dreadful curb [on it] by the public authority” (*PE*, 12).

The declaration of newly proposed laws enables the Magistrates to grant the People’s consent to them (*DI*,117). Accordingly, the citizens show “the salutary trust which reason owes to virtue” for their magistrates. Rousseau wants citizens to “remember that you have chosen them, that they justify your choice” (*DI*,119). With this harmony, in a Republic so constituted there ought to be no vacancy of execution of the laws, which means lack of authority in the administration of civil affairs; for “where the laws lose their vigor and its defenders their authority there can be neither security nor freedom for anyone” (*DI*, 119).

It is true that, Rousseau admits, there will be many details of political and of economical topics which are left to the will of government members to deal with. In those cases, “two infallible rules” for acting on behalf of the people guides politicians; the first is “the spirit of the law, which should help decide the cases it could not anticipate” and the second is “the general will, the source and the supplement of all the laws, and which should always be consulted in their absence” (*PE*, 12).

A government which is not under control by citizens’ legislative power cannot guarantee the freedom of citizens. If any member of government as a reformist intends to set some goals about which the members of society do not know

anything, even if it is believed to increase the commonwealth, then the government in question would deny the general will, that is, the freedom of each single particular will.⁷²

The most important task of every government is to prevent “extreme inequality of fortunes” The economic principle of equality which declares that “no citizen be so very rich that he can buy another, and none so poor that he is compelled to sell himself” (SC,2.11,78). In fact, the tension between wealth and poverty penetrates into Rousseau’s writings as expressed in *Political Economy*:

The greatest evil has already been done where there are poor people to defend and rich people to restrain. The full force of the laws is effective only in the middle range; they are equally powerless against the rich man’s treasures and the poor man’s misery; the first eludes them, the second escapes them; the one tears the web, the other slips through it. (PE, 19)

Rousseau thus specifies poverty as ‘the greatest evil’ which ought to be fought by the government. In this regard Rousseau holds that “[w]here we search for the causes of evil is not society but ill-governed society” (N, 101).

⁷² Berlin, Isaiah 1958.

4. KANT: DOCTRINE OF RIGHT

I gave the previous Chapter concerning Rousseau the title of “Principles of Political Right” since Rousseau devotes his whole theory of justice to the justification of political right. Now, throughout this chapter I will examine Kant’s theory of justice as articulated in his *Metaphysical Elements of Justice* also known as *Rechtslehre*. Kant’s book *Metaphysical Elements of Justice* is the first part of *Metaphysics of Morals* in which Kant distinguishes the duty of justice from that of virtue. According to Kant, the justification of right is meant to establish a doctrine of law, as a part of complete system of duties. Like his moral system, Kant develops his theory of justice by centering on the concept of duty.

Moreover, it is important for the aim of this thesis to note that Kant’s theory of justice had not been intimately involved in Kant’s *Critique* enterprise at all until he met Rousseau. Since Kant regarded philosophy of law as inevitably dependent on morality, he wrote most of his work in these areas only late in his life. In fact, he wrote on law and politics only after he completed his studies in moral doctrine. Kant has gradually improved his theory of freedom through his conception of ‘will’ borrowed from Rousseau’s conception of ‘the general will’. Rousseau thus foreshadows Kant in insisting that the distinctive quality of human is the free will.

4.1 Priority of Morality

According to Kant the subject matter of metaphysics of moral is “the Idea and the principles of a possible pure will”, a will which is stimulated by the moral law and determined by pure a priori principle regardless of any empirical motives (*G*,192). Moral philosophy as to be defining the laws of the will insofar as it is subject to nature has empirical basis. However, unlike this kind of empirical philosophy, pure philosophy develops its theory on the basis of a priori principles. And, pure philosophy, when taken as to be “limited to specific object of understanding”, is metaphysics. Metaphysics is also divided into two parts, empirical and rational; like physics, ethics has twofold department; empirical and rational. The latter as being both pure and rational, is called pure moral philosophy; metaphysics of moral as a prior science whose profession is to distinguish everything empirical from rational

one (G, 189-190). Therefore, Kant's moral theory is to examine 'a possible pure will' on a priori grounds. For the reason that this pure will is going to be a basis of Kant's theory of justice, we firstly need to dwell on his moral doctrine.

Through his moral theory, Kant will place free being as a noumenal self into a domain which requires no public recognition for his being free. Human is free with his own reason not together with others. This is a turning point for the conception of human; the idea of autonomous individual is replaced by that of heteronomous one. This examination will give us Kant's bold promise about the superiority of morality over justice. However, Kant will have to develop theory of justice which puts this free being into society. This time, the free being will be taken as homo phenomenon, who is in the need for others in order to be externally free. Moreover it is necessary to capture this transition in order to understand Kant's theory of justice and indicate some difficulties throughout this transition.

4.1.1 Freedom as an Idea of Reason

My central concern in this section is Idea of transcendental freedom in its relation of other Ideas, at which speculative reason arrives, so to speak, as its destination in its transcendental journey to find the unconditioned in a given sum of conditioned, rather than with the details of Kant's arguments for the legitimate resolution of the third antinomy. Further, I would like to scrutinize how Ideas of speculative reason turns to the postulation of practical reason. Given this, it seems to be necessary to look at elsewhere than our main book *Metaphysical Elements of Justice* for a better understanding of Kant's constitution of Idea which gives the political dimension to his critical project.

Freedom is such a central 'concept' to Kant's transcendental project that one may not understand its construction from the very beginning if one does not turn to the *First Critique*. In the following, I will therefore first sketch out his definitions of freedom as the premises that constitutes the starting point of Kant's theory of justice.

Kant's conception of freedom is initially presented as the Idea of pure reason. Freedom in the *Critique of Pure Reason* is something for the sake of which "the object is to be taken in twofold sense, namely as appearance and as thing in itself" (CPR, 28). In fact, Kant's approach to object as an element of knowledge implies

that the whole critical project is for the sake of the justification of freedom. In the *Critique of Pure Reason* Kant determines the terms and conditions of speculative employment of reason. It is *conditioned* by experience; since the thing in itself is never known, we should remain agnostic regarding whatsoever transcends the object of experience. But “the perplexity” of reason is its bizarre but rightful and inevitable intention of transcending the limits of possible experience for its destination and of attaining the knowledge of *the unconditioned*:

For what necessarily forces us to transcend the limits of experience and of all appearance is the *unconditioned*, which reason, by necessity and by right, demands in things in themselves, as required complete series of conditions” (*CPR*, 24).

Faculty of reason aims at completeness or totality when it comes to the phenomenal world. The problem arises when it convinces itself that the unconditioned is accessible and has the objective reality, not when it merely attempts to find it. So how is reason allowed to think the unconditioned if it is not given in experience and in space and time? According to Kant, of what speculative reason is lack is to justify objective reality of Ideas; the task of negative use of pure reason is to think and know what is contradictory, the positive use of practical reason is to determine what ought to be. Speculative reason thinks itself as free being but can never know whether be so or not. This is Kant’s account of the legitimate form of thinking as regards the employment of faculty of theoretical and practical reason.

Unlike concepts of understanding *Verstand*, which are limited application to what is given by means of intuitions, concepts of reason *Vernunft* are Ideas which are speculative and practically realizable in character; e.g., freedom, duty, God, belief, faith. Those are fundamental concepts of traditional metaphysics supposed to be known were merely Idea that can be ‘thought’ but not known. Idea contains the unconditioned, it is concerned with “something to which all experience is subordinate, but which is never itself an object of experience” (*CPR* 308-9).

Unlike the theoretical reason, the practical reason can acquire practical knowledge by questioning “what ought to be”. Reason in its theoretical employment determines objects under concepts, whereas practical reason employs Ideas in order

to make them actual under Ideas, e.g., by means of the concept of duty, reason makes freedom actual; we intend to do act for the sake of duty.

[...] this [a priori] knowledge may be related to its object in one or other of two ways, either as merely *determining* it and its concept (which must be supplied from elsewhere) or as also *making it actual*. The former is *theoretical*; the latter is *practical* knowledge. (CPR, 18)

The distinction between the phenomenal and noumenal realm has to do with the way the Ideas are used; once reason distinguishes thing in itself from the object of experience, it produces Ideas and uses it in regulative manner. *I* as a noumenal self is capable of thinking the ideal (Idea) insofar as Ideas remain ideal. If 'what ought to be' and 'what is' were identical, then freedom would be out of question. As such, the distinction between theory and practice appears to be the guarantee of remaining free; it sustains the possibility of being free. Kant exemplifies the distinction between ideal and real as the following:

A constitution allowing *the greatest possible human freedom* in accordance with laws by which *the freedom of each is made to be consistent with that of all others...* is at any rate a necessary idea, which must be taken as fundamental not only in first projecting a constitution but in all laws. [...] This perfect state may never, indeed, come to being; none the less this does not affect the rightfulness of the idea, which, in order to bring the legal organization of mankind ever nearer to its greatest possible perfection, advances this maximum as an archetype. (CPR, 312)

Ideas of reason *regulate* representations and seek the unity of all representations. Ideas are regulative not constitutive like the concept of understanding. In that regard, all concepts in Kant's doctrine of justice are Ideas of reason; they as teleological Ideas regulate our political domain. The original contract, Republican government or State, and peace are all Ideas of reason.

As for Idea of freedom, once reason distinguishes thing in itself from the object of experience, the antinomy of freedom is solved; freedom as an Idea of reason belongs to the noumenal realm because the concept of freedom cannot be deduced from intuition but "freedom as a property of a being to which I attribute *effects* in the sensible world" (CPR, 28). This means that there is a possibility for me as a noumenal self not to be determined by the principle of causality. In a very

similar way to Rousseau, Kant describes noumenal self or will as a capacity to start a new causal series in the world of experience. *I* is a will, which is a pure practical reason, and is capable of legislating and determining itself, that is to say, I am capable of freedom as long as I distinguish the noumenal self from the phenomenal self.

This is the account of freedom with reference to spontaneity of human mind in *Critique of Pure Reason*. However, in this account of freedom there is not yet a corresponding object to this Idea of freedom. In other words, in this formulation Kant has not yet described how Idea of freedom becomes actual or how this Idea finds its object. As I going to argue in the next Chapter, the will as being not to be determined by natural causality, that is, the laws of nature is determined by a different kind of causality, moral one, that is, the law of freedom.

Having established the connection between speculative and practical employment of reason through Idea with a specific focus on freedom, Kant indeed turns Idea of speculative reason into postulation of practical one by which we determines what ought to be in accordance with the moral law. The postulates as necessary conditions of execution of the will “give objective reality to the ideas of speculative reason in general (by means of their reference to what is practical)”, which means the ideas speculative reasons turns out to be postulates when it comes to the pure practical reason; Idea is “*transcendent* for speculative reason *immanent* in practical reason” (*CPrR* 5:133).

Apart from two ideas of speculative reason the existence of God and immortality, the idea of freedom is the only one whose possibility is practically *known a priori*; for the idea of freedom as postulation of practical reason is “the condition of the moral law”; Kant’s justification is this; “[...] were there no freedom, the moral law would not be encountered at all in ourselves” (*CPrR* 5:4).

With this specification of the postulation of freedom, Kant makes a crucial remark by stating that the other two postulations, God and immortality are by no means “conditions of the moral law but only conditions of the necessary object of a will determined by this law” (*CPrR* 5:4). Having delved into *Critique of Practical Reason* as regards Idea in the section *On the Postulates of Pure Practical Reason in*

General, Kant emphasizes that the postulates of pure practical reason are not “theoretical dogmas but *presuppositions*” according to which the will executes its principles, while the moral law immediately determines the same will (*CPrR* 5:132). In this respect, the postulations of practical reason except for freedom are not the determining ground but the necessary conditions of the will’s execution. What is important here for the subject matter of this thesis is that Ideas of reason including original contract, state, and peace are the necessary but not sufficient conditions of execution of the will: they are not sufficient as they presuppose Idea of freedom, that is, moral law, as the determining ground for the free will.

Before focusing on the formulation of moral law, in the next section I will examine what is the distinction between Kant’s two accounts of free will. In this way, I will be able to pass the explication of the moral law, which includes Kant’s account of how to determine *Wilkür* if it is not to be determined by causal necessity and secondly how to execute *Wilkür* determined by moral law which is formulated by *der Wille*.

4.1.2 The Distinction Between *der Wille* and *Wilkür*

One cannot understand properly Kant’s distinction between *der Wille* and *Wilkür* unless one reads *Metaphysical Element of Justice*.⁷³ The difference between two accounts of the will that Kant made will bring a new conception of freedom, namely external freedom which must take into consideration the freedom of other rational beings.⁷⁴

Kant maintains that human nature is the subject matter of anthropology not moral philosophy. But it can be the object of application of moral laws; for, from the anthropological point of view human is always exposed to “sensible impulses”. However, there is the possibility to not to determine by them. The condition of this possibility is practical reason itself; “*The faculty of desire*” in its cooperation with other faculties of reason works mainly with representations which the faculty of sensibility passively receives from the object of experience. However, practical

⁷³ Beck 1993, 38.

⁷⁴ Hereafter the Will with capital letter refers to *der Wille* and the will to *Wilkür* when necessary.

reason constitutes moral laws through this unique faculty: “The faculty of desire relative to concepts, insofar as the ground determining it to action is found in the faculty of desire itself and not in the object, is called the faculty of *doing or forbearing as one likes*.” (MEJ, 12)

The faculty of desire is completely different from both the faculty of understanding and sensibility; different from understanding because the knowledge acquired by the faculty of understanding must be through concept and different from sensibility because sensibility can only intuit the sum of possible object of experience. Unlike both, *desire* can desire independently of any effect of object (as “it does not matter whether or not its object actually exist”) and thus become its own cause.

Having specified the faculty of desire as capacity to desire regardless of any object external to it, Kant holds that there remains only one term in order to turn *wish* into *Willkür*; the consciousness of its own capacity: “Insofar as it is combined with the consciousness of the capacity of its action to produce its object, it is called will [*Willkür*].” (MEJ, 12) *Willkür* is not identifiable with mere wish, though they find their origins in the faculty of desire, since *Willkür* is a capability not to be determined by any external object. As for *der Wille*, since *Willkür* pertains to action, there must be an a priori ground of legislation that “has no determining ground” other than itself: “Without a priori principles, how could he believe that he has a universal legislation within himself?” (MEJ, 9). This a priori condition which directs all executions of *Willkür* is *der Will*:

The faculty of desire whose internal ground of determination and, consequently, even whose likings [...] are found in the reason of the subject is called the *Will* [*der Wille*]. Accordingly, the *Will* is the faculty of desire regarded not, as is will, in relation to action, but rather in relation to the ground determining will to action. The *Will* itself has no determining ground; but insofar as it can determine will, it is practical reason itself. (MEJ, 13)

In fact we are familiar with *der Wille* in the *Critique of Pure Reason*. As Kant states, it is practical reason “that makes a rule of reason the efficient cause of an

action by means of which an object can be realized or by means of which one goes from mere idea to the state of affairs envisaged in it”.⁷⁵ Thanks to the postulations of practical reason, namely Ideas *Willkür* can execute the maxims which are established by the same practical reason itself through Ideas. Therefore, it can be said that *der Wille* is the condition of the possibility of executive capacity of *Willkür* according to moral principles.

From Kant’s distinction between mere wish and the will, it follows that the object of the will can be anything, any objects of desire. However, if the will is not directed by the practical reason, then the will cannot execute the maxim according to a priori principles and thus it cannot produce morally worthy actions. Therefore, we may call *Willkür* “as an executive faculty”, whereas to *der Will* “as a legislative faculty”.⁷⁶ This explains why Kant often uses the concept of *der Wille* in the place of *Willkür*, it is possible the other way around because he later identifies the Will with the will when the will can completely be determined by the practical reason.⁷⁷

Thus *Willkür* and *der Wille* cannot be thought without each other; *der Wille* as practical reason is a “morally-practical discipline” for *Willkür* in two ways; practical reason has both the negative and positive character with regard to its object, namely the freedom of *Willkür*. These are negative and positive concept of freedom. The capacity of *Willkür* in action refers to the possibility of its own restriction on itself in such a way that it can only by this restriction become free. By self-limiting capacity it rids itself of empirical determinations. This is a possibility for *Willkür* not to be determined by the law of nature, which means that *Willkür* has a capacity to negate nature.

This is “the negative concept of freedom” but does not suffice to ensure the complete freedom of *Willkür*. It also has to be determined by another law if not the natural causality. This law is moral law by which “the maxim of every action” of *Willkür* is subject “to the condition of its fitness to be universal law”. This is Kant’s account of positive freedom by which *der Wille* and *Willkür* can be identifiable. Here

⁷⁵ Beck 1993, 39.

⁷⁶ *Ibid.*, 41.

⁷⁷ *Ibid.*, 39-40.

Kant refers to *Willkür*'s self-legislating activity which is possible only through *der Wille*, an innate faculty to legislate universally. It amounts to say that *der Wille* determines *Willkür* in an unconditional way. In other words, *der Wille* makes the maxims for *Willkür*: "A will that can be determined by pure reason is called free will [*freie Willkür*]." (MEJ, 13) The next section will delve into the justification of this positive freedom.

However, before examination of the justification of the moral law, it is convenient to probe some conceptual affinities between Rousseau's and Kant's accounts of the free will. It has been already stated that Rousseau did not dwell on moral freedom, which is "obedience to the law one has prescribed to oneself" in his philosophy just because his way of philosophizing is political in character (SC,1.8,54). Nevertheless, like Kant, Rousseau insists in the determination of the free will by the general will for the sake of justice; for each free will has a natural disposition to pursue its own interest, whereas the general will always seeks common interest for society. Therefore, in Rousseau's political thought the will can be truly free provided that it is restricted by the general will. In other words, a will is free with the presence of other will's limitation on the same will. Although Rousseau terms this sort of freedom as civil freedom other than moral one, it is not possible for human being to experience liberation apart from his fellows. Apparently, Rousseau gives a priority civil freedom over moral one for the sake of justice and other beings since Rousseau believes that human 'without his fellows, sense nothing in him that raises him above the beast'.⁷⁸

As regards the concept of will from its constitution as a capacity to start a new causal series to its liberation process as being autonomous being, "[t]he central point of the Kantian philosophy was anticipated only by Rousseau".⁷⁹ Rousseau was saying that "[w]e are not obliged to obey any law in whose establishment we have not participated". However, Kant develops his theory of freedom regardless of other rational being. As seen in the difference between *der Wille* and *Willkür*, the free will or *Willkür* is constituted in its relation with nature, that is negative freedom, and in its

⁷⁸ See p.20 in this thesis.

⁷⁹ Beck 1993, 44.

relation with *der Wille*, that is positive freedom. It can therefore be concluded that unlike Rousseau, Kant's justification of freedom and free will has initially nothing to do with justice. For Kant, the problem of freedom is that if there is a freedom of choice, then how am I able to be subject my will to a law so that become free.

4.1.3 The Moral Law and Duty of Ethics

One can ask why it should first be inspected the formulation of Kant's justification of freedom as moral law if it has initially nothing to do with his theory of justice. First of all, Kant always holds that we have to justify freedom as the ground of justice and "[a] true system of politics cannot therefore take a single step without first paying tribute to morality" (*PP*, 125). Kant's system of morality plays its role in terms of duty. In fact, Kant's moral philosophy is nothing but a consistent doctrine of duties; duty of ethics, justice and virtue; last two of them derive their foundations from the first. Therefore, Kant's theory of justice is a doctrine of duty for which moral duty provides a basis.

Kant begins the justification of the moral law with a question; by what right metaphysics of moral is required for the formulation of moral law as determining ground of the will at all, while practical anthropology can provide us with empirical principles for "the common idea of duty and moral laws" which is supposed to govern human will? Kant's answer is that it is required since it would be for all rational being as "a basis for obligation", not necessity. Therefore, proper moral philosophy must formulate the ground of this obligation so that the very ground itself is able to justify the obligation for human action. In this respect, there is no other ground "for a metaphysics of moral than the critique of pure practical reason" (*G*,193). *Groundwork* will become sole ground for the supreme principle of morality.

According to Kant, what is to be gained through experience cannot be primarily employed in determining the will because a judgment, which is supposed to voice moral law, has no "moral significance" insofar as it is arrived from the experience of "the natural drives for food, sex, rest" or of "enjoyment of the true joys of life" (*MEJ*, 8). A moral law as a judgment could be formulated through particular personal practices and thus would be only an empirical generalization by induction. Therefore, the deficiency of so-called moral laws is to grant possible exceptions of

anyone's life, inclination or interest. Yet, reason already possesses the capacity to choose what is in favor of us. Hence, it is absurd to think that reason meets moral criteria for right or wrong without its negative character. Rather, reason is expected to "counterweight to inducements to do the opposite of what is moral (*MEJ*, 8).

Although the owner of such judgment may not be lacking in worldly wisdom on the subjective ground, he is too lacking in constituting moral law to be a universal legislator on the objective ground. According to Kant, when the maxim of human's action comes from on subjective principles based on life experience, "subjective causes" and thus they consist of a system from the perspective of various people. For this reason, moral laws are indifferent to the matter of law, that is, the objects of experience. This is why *wish* can become *Willkür* insofar as it has its own cause regardless of any object external to it. So, as I going to be argue, moral law is only about "the form of law". This is the form of supreme moral law, the categorical imperative; "Act according to a maxim that can at the same time qualify as a universal law" (*MEJ*, 18).

As he generally does when examining any topic Kant proceeds analytically from a presupposition; there must be no reason or motivation prior to Idea in question as a starting point. This is nothing but a postulation of practical reason; Idea of good will. Kant begins analytically with the good will, which is "common knowledge" available in every healthy mind, with the aim of formulating the supreme principle of morality.

The first presupposition is the unconditional goodness of a good will. It is unconditioned in the sense that it remains indifferent to its outcome and sufficiency to fulfill the end toward which it is directed: "It is good only by virtue of its willing—that is, it is good in itself" (*G*,196). There must be nothing good other than a good will without which all other talents and temperaments as the features of an innately gifted character as well as character with "gifts of fortune" would be useless and even dangerous. This is the presupposition even the most common mind can conclude, namely, "the absolute worth of mere willing" (*G*,196).

Notwithstanding unconditioned goodness of the will, it has yet to be put its purpose, which is directed by reason to the critical examination; having been based

on natural equipment of human for life, Kant's reasoning is as the following; if the purpose of the will as to be appointed by nature were destined toward mere preservation and welfare, both of which can be summarize as happiness, reason itself would certainly be the most unsuitable instrument to that purpose since instinct is well equipped for that purpose of natural inclination of human⁸⁰; for it were not so, "[n]ature would herself take over not only the choice of ends but also that of means, and would with wise foresight have entrusted both to instinct alone" (G,197). So, it must be a function of reason other than to contribute happiness. At this point Kant comes up with an idea of reason whose usage cannot be determined by nature but whose "private ends must be subordinated to" the supreme condition set by nature.

The ultimate subordination of the will governed by reason to the supreme condition as the unconditioned makes the good will the condition of all other inclination including happiness. This is enough by itself to set the good will as the highest good. Once reason reaches this deduction it cannot be satisfied by insipid fulfillment of instinctive temptation by virtue of reason's awareness of its power. As such, it is important to note Kant's emphasis on immanence of such concept of the will in one's reason. One need not make this deduction to become aware of its power as it is mere 'common knowledge'. The deduction functions as "not so much instruction as merely clarification" (G,198):

[...] in the first place, the former critique [*Critique of Pure Reason*] is not as indispensable as the latter [*Critique of Practical Reason*], since even the most ordinary human intelligence can easily be brought to a high degree of correctness and completeness in moral matters. (G, 193)

⁸⁰ Here what Kant claim as to reason's ability for determining what makes us happy is complete opposition with what he claims in *Metaphysical Element of Justice*. Kant *Metaphysical Elements of Justice*, 8. He emphasizes the negative character of reason in determining our moral action. Besides, in his *Groundwork* which term Kant uses to refer to happiness is Glückseligkeit, which is described as, for example in that passage, that "[c]onsidered in itself it [good will] is to be treasure as incomparably higher than anything it could ever bring about merely in order to satisfy some inclination or,... the sum total of all inclinations. Kant, *Groundwork*, 196. As the passage implies, happiness is defined as satisfaction of inclinations or of all. Archaically reading, the interpreter notes that the adjective 'happy' refers a mood in between blessedness and felicity. However the most suitable translation for happiness in English is, if we take into consideration Kant's own criticism, "the principle of one's own happiness". See, translator's notes, in p.195.

Given that, one may tend to ask when reason satisfies; reason thus constituted can reach its peculiar satisfaction only when it achieves its end that it alone determines. How could it be possible that reason as the faculty of desire unconditionally determines its end by itself in spite of natural inclination? Since the good will as highest one is the natural end of reason and since it is good in itself, it is not possible to seek such goodness in the end towards which the willing intends for itself through action but in the maxim according to which the will decides how to act. This is the only constitution of the will which has the unconditional moral worth.

Together with the first (the determination of the good will as the highest good) and second proposition (the possibility of the will's determination its end with reference to the maxim), the third proposition is Kant's ultimate definition of duty; since I respect neither the end of action nor inclination which set the will on the way but only the law itself, through which reason ultimately determines the activity of willing. I am now fully conscious of the obligation of action since I respect the law. So, duty is one's obligation to act "done out of respect for the law" (*G*,202).

The practical law determines the will objectively; for, reason take over the faculty of desire of all rational beings, and arouse subjectively "pure respect" in each individual rational being due to its being rational (*G*,202). As for this maxim which we seek goodness, it is the formal principle of the faculty of desire; I ought to will that the maxim, which determinates my will, becomes a universal law.

The simple question that the most ordinary human reason, which neither needs philosophy nor science, is capable of asking is the following; can I will that my maxim become a universal law? As Kant puts it in the example, "I can indeed will the lie but I cannot will a universal law to lie" since "it cannot fit as a principle into a possible universal legislation" (*G*,204). But for what reason is to tell a lie unacceptable to legislate universally? Kant's answer is that it does not arouse respect in me to such legislation. I ought to act according to a maxim reason determinates which "forces me to offer my immediate respect to such legislation" (*G*,204-5). The sole object of respect is nothing but the law and hence this respect can only be what constitutes duty.

There may very possibly be some cases that action appears in conformity of that law and yet this conformity would become mere accident unless it is done for the sake of the respect for the moral law, namely duty. A good will reveals itself in action which can only be considered as morally worth provided it is done for the sake of duty not in accord with duty or “out of inclination”. Duty “can be expressed only in categorical imperative”⁸¹ (G,226). For any action, the conformity of action to the moral law does not suffice for rational being to be moral. Human is required to act for the sake of the moral law.

Reason is now conscious of its dignity, its own power, and in being so rational being is the only one that is able to act according to the law other than natural law. Human has a distinctive dignity which distinguishes him from other creatures in nature. However, is it really necessary to act according to the maxim in accordance with which all rational beings will so that it becomes a universal law? By what right does reason come up with a law claiming that the rest of the will of rational beings obeys? The answer to this question lies in the statement ‘I ought to will that the maxim, which determinates my will, becomes a universal law’. In other words, the maxim, which *Wilkür* executes, ought to be a universal law, which *der Wille* legislates; *Wilkür* ought to be in conformity with *der Wille*. This means that *Wilkür* as a particular will ought to be restricted by *der Will* in formal way; the subjective principle of *Wilkür* should not contradict with the objective principle of *der Wille*. Only in this way, the obedience of moral law is demanded of other rational being. Therefore, *der Will* guarantees the moral law as it gives it formality and accordingly universality. *Wilkür* without the determination of *der Will* can only

⁸¹ The formulation of categorical imperative as not preceded by any proposition, as it is the case with hypothetical imperative, is possible only on a priori grounds, through which the necessary connection between the action and the will can be made. Having claimed a universal law, the categorical imperative is the possibility of the decisive canon “for moral judging of action”. However, I do not agree with the common view that depicts Kantian morality as a testing procedure which introduces universality criterion for the action in every instance. It is, I am tempted to think, rather to aim to make one be aware that every action cannot be considered as to be morally worthy. Kant’s initiative forces us to think twice when you attribute to actions moral value in itself, especially actions which claim the high ground with other actions; when the principle morality is derived from human intentions, it will be easy for those who flatter themselves that they are perfectly moral being “to substitute for morality a bastard patched up from limbs of very diverse parentage, looking like anything one wishes to see in it”. Kant, *Groundwork*, 226.

execute (act) according to what it instantaneously intends at particular space and time:

Practical principles are *formal* when they abstract from all subjective ends; they are *material*, on the other hand, when they are based on subjective ends and consequently on certain driving-springs. Those ends that a rational being at his own discretion sets for himself as what he intends to accomplish through his action (material ends) are in every case only relative; for what gives them worth is only their relation to some subject's particularly constituted faculty of desire. Such worth can therefore provide no universal principles, no principles valid and necessary for all rational beings and for every act of the will. (*G*, 228)

The will, when determining its ground, must objectively be called an end. What Kant means by the term objective is the necessity of the end's being "equally valid" for all others. On the other hand, the end of action that the will intends on subjective ground is a thing. If this end becomes another will, then it cannot be called a thing but an end. What can be equally valid end for everyone other than rational human being? Nothing but human only can be an end in itself. However, why is human being only conceived as end in itself? Is it not possible to come up with a thing which can be a common end for humanity?

A rational nature distinguishes itself from others by the fact that it sets itself an end. That end would be the matter for every good will. But in the idea of an absolutely good will, good without any limiting condition (the attaining of this or that end), we must abstract completely from every end that has to be brought about (for such an end would make any will only relatively good). Hence proposed end must here be conceived, not as an end to be produced, *but as a self-sufficient* end. (*G*, 228)

The above passage is crucial for understanding Kant's moral philosophy. Kant here specifies the distinctive faculty of human being as 'self-sufficient', that is, rational. At the center of his doctrine of morality, it can be claimed that rationality of human is even more important human being itself because otherwise, human cannot be constituted as an end in itself, which is the basic aim of Kant's moral doctrine.

At this point we can dwell on some important differences between Rousseau's and Kant's conception of human being. It would be useful to compare their conceptions of human being in its relation with the concept of duty and respect

in order to capture the place of human being in their theory of justice. For Rousseau, human being is a sentient being rather than rational one. Unlike Kant's rational human whose spontaneity makes him aware of his free will, according to Rousseau it is the sentient being who *feel* the power of the will; "For the will's immediate cause there is no other proof than to say "I feel it!" and this sentiment is immune to any distraction by reasoning."⁸² As for the concept of respect, human being deserves at most respect just because he reminds his fellows of his humanity. In other words, human being reminds his fellow of the basic sentiment of humanity, namely, compassion. As already stated, this feeling of compassion also constitutes the first principle of justice. Therefore, Rousseau's conception of respect is a feeling which arouse only in human in his relation with others.

On the other hand, Kant's concept of respect is rather, so to speak, solitary feeling, which is directed to one's own obedience of law: "What I recognize directly as a law for myself, I recognize with respect, which means nothing more than the consciousness of my will's submission to the law, without the mediation of any other influences on my mind" (G, 203). I respect for the law so that I act from duty not in accord with duty since duty is the unconditional obedience to the moral law by virtue of respect for this universal law.

As for respect for others, which is going to be the subject of the next section of this thesis, Kant holds that human does not show respect for human itself (this would be null feeling) but the determining principle of consciousness of his will. When we respect a person, we respect the principle which determines his will, indeed: "All respect for a person is actually only respect for the law (of righteousness, etc.) that that person exemplifies" (G, 203). Human becomes, so to speak, the embodiment of the moral law. That is why we cannot view any rational being as a means but always as an end. Human can only be an object of the will as end in himself and hence the object of respect as an "example of a law".

This is why I claim that Kant thus gives superiority to reason, that is to say a priori universal laws of reason, over human being even. In a similar vein with the

⁸² See p.17 in this thesis.

formulation of respect for the moral law, the relationship between the conception of human and that of respect and duty can be drawn as the following; I respect for the principle which determines the consciousness of other's will so that I act in accord with duty of justice since duty is the obedience to the supreme principle of justice by virtue of respect for this universal law.

At the end of Kant's account of moral duty, we arrive at the conception of human as autonomous, self-directing, self-legislating and, above all, rational being to appropriate other rational being's ends as it is own in *the Kingdom of End*. In Kant's depiction of this kingdom, since every rational being's end is others' end, this end cannot be happiness whose material content can be change from one person to another:

[A]s regards meritorious duties to others, the natural end that all human beings seek is their perfect happiness. Now the human race might indeed exist if everybody contributed nothing to the happiness of others but at the same time refrained from deliberately impairing it. This harmonizing with humanity as an end in itself would, however, be merely negative and not positive unless everyone also endeavors, as far as he can, to further the ends of others. For the ends of any person who is end in himself must, if this idea is to have its full effect in me, be also, as far as possible, my ends. (*G*, 231)

As seen, what Kant term as 'meritorious duties' is duties of virtue which Kant left its classification of duties to "a future *Metaphysics of Morals*" (*G*, 222). Persons seek and contribute other's happiness by virtue of duties of virtue not duty of morality. For this reason, happiness as an end is excluded from the moral sphere and even the sphere of justice by Kant. The next section will pertain to duty of justice, which accepts to grant moral duty for its ultimate basis.

4.2 From Morality to Justice

Rechtslehre or the doctrine of justice is an attempt for determination determines the condition of possibility of persons' external relation; *Recht* means law that one is entitled to exercise upon others, that is, our legal capacities, or legal boundaries. *Lehre*, refers to jurisprudence, that is, science of law, doctrine about principles. In

addition, *Recht* “carries with it the connotation of moral rightness, that is, justice”⁸³. Therefore, *Metaphysical Elements of Justice* refers to the science of laws which rational being morally and legally exercises upon other rational being.

As already shown, the moral execution of the will is “[a]iming at *the highest good*, made necessary by respect for the moral law” (*CPrR* 5:132). The object of the will as the highest good is a presupposition of Kant’s doctrine of duty. Hence, when the will executes any maxim including maxims of justice, it presupposes this highest good, that is the good will. Thus Kant always holds that the doctrine of justice inevitably presupposes the doctrine of morality; for, the doctrine of justice is the set of rules which determines the condition of possibility of *free* people’s in their external relations; these people are presupposed to be free as constituted in the moral doctrine by Kant.

It is crucial to notice that Kant made the distinction between two conceptions of will in his *Metaphysical Elements of Justice*, in which the freedom of every rational being in their sociality is to be justified. It seems that Kant’s main point in distinguishing *Wilkür* from the *der Wille* is the distinction between two distinct traits of practical reason; executive and legislative functions. While *der Wille* is legislating laws, *Wilkür* executes the maxim in accordance with these laws. What will distinguish Kant’s theory of justice from his moral theory is the descriptions of duties.

As I going to discuss, there is also a universal principle like the moral law in this theory of justice, namely, the universal principle of justice; “act externally in such a way that the free use of your will is compatible with the freedom of everyone according to a universal law.” (*MEJ*, 30) However, *Wilkür* is not required to adopt this principle as its maxim as the subjective principle; it acts *in accord with* (not from) duty of justice. Because, as the universal principle of justice states, *Wilkür* is already free and its action is not required to be done for the sake of duty of justice. The question of whether an action just and unjust still depends on its conformity with the moral law. It should be clearer now why Kant made a distinction between *Wilkür*

⁸³ Translator notes in *Metaphysical Elements of Justice*, xxi.

and *der Wille*. Thus the universal principle of justice determines where the coercion can be applied when one violates what the law of morality prescribes us. Thus the question which is going to be answered throughout the examination of Kant's theory of justice is as the following; what distinguishes the duty of morality from duty of justice? What constitutes right?

4.2.1 Duty of Justice and the Concept of Right

Kant begins his theory of justice with a crucial distinction about the concept of human:

In theory of duties, persons [*der Mensch*] can and should be represented from the point of view of property of their capacity for freedom, which is completely supersensible, and so simply from the point of view of their humanity considered as a personality, independently of physical determinations (*homo noumenon*). In contradistinction to this, persons can be regarded as subjects affected by these determinations (*homo phenomenon*). (*MEJ*, 25)

Thus from now on *homo phenomenon* will be examined in “[t]he juridical relationship of persons to beings who have both rights and duties”. Kant calls external duties “indirectly ethical”. This ‘indirectness’ of duties is the “duty to others”, that is, duty of justice. As Kant states, *homo phenomenon* is rather person than human in his being subject to duties and rights. The theory of justice focuses on “the relationship of a will to another’s will” in accordance of a priori principle of reason. Kant gives it the name “universal principle of justice”: “[...] act externally in such a way that the free use of your will is compatible with the freedom of everyone according to a universal law.” (*MEJ*, 30)

Kantian theory of right is, then, that persons’ awareness of their capacity for mutual subjection one another to law in their external relation in the sphere of external laws. We speak of justice only if this external relation is possible. Kant’s theory of justice is the determinations of these external laws, which are inseparably linked to the moral law. With Kant’s doctrine of justice, the types of action also become diversified; an action which is done in accord with juridical or external law is called legal action. On the other hand, action which is done from moral law is called moral action. The function of practical reason is to legislate both internally

and externally laws, whereas the function of *Willkür* is to determine the maxims under the authority of practical reason: “Law proceeds from the Will; maxims from the will.” (MEJ, 19) For this very reason, an action takes its moral character through its maxim. *Person’s Willkür* lays out its maxims according to universal moral principles whose basis lies within the categorical imperative.

As shown in the section titled as the Moral Law and Duty of Ethics in this thesis, an action, insofar as it is not done from duty, it cannot be attributed any morality to it because it is impossible to know the motive of action whether it comes from duty or from some other purposes:

All legislation (whether it prescribes internal or external actions...) consists of two elements: first, a law represents objectively the action that is to be done as necessary, that is, that makes the action into a duty; second, a motive that subjectively links the ground determining will to this action with the representation of the law. So this second element amounts to this, that the law makes duty the motive. (MEJ, 22)

This universal principle of justice is the maxim of *Willkür* whose basis lies in moral legislation. This means that *Willkür*, when legislating, is not required to adopt this principle; it acts *in accord with* (not from) duty of justice. This is why Kant specifically remarks that “[t]he agreement of an action with the *law* of duty is its *legality*” not *morality*” (MEJ, 19).⁸⁴ The universal principle of justice has already presupposed the morality of action.

Therefore, ethical legislation embraces duties that originate in external legislation in such a way that it can “take them, insofar as *they are duties*, as motives in its own legislation” (MEJ, 23). At this point, Kant explains the real difference between moral and external (juridical) legislation. Although the moral duty and duty of justice, as being dutiful, are involved in morality, their legislative process cannot always be classified as moral. The following passage is Kant’s example that a duty from the juridical legislation can be taken by moral legislation as its motive: “Ethics command me to fulfill my pledge given in a contract, even though the other party

⁸⁴ The term ‘law’ my emphasis.

could not compel me to do so; but the law and the duty corresponding to it are taken by Ethics from Law [*Rechtslehre*].” (MEJ, 23)

Here “to fulfill my pledge” is considered as a duty of justice not directly that of ethics. But morality indirectly imports it from “*ius*” into its internal legislation process as a motive of *Willkür*. Though moral legislation cannot be external, “it may adopt *duties*” (MEJ, 23). If the mere motive of juridical legislation were “external coercion”, one would not attribute any morality to justice; even in the condition which lack any external coercion, ethical legislation is enough for one’s personal assurance about the state of affairs between people due to the Idea of duty.

Kant argues that duties of morality and justice intersect in such a way that the latter’s juridical laws or external laws are subsumed under the former’s moral law and all those cannot contradict each other; Kant uses the terms *ethical* and *juridical* in order to characterize respectively “the determining grounds of action” and “external action”: “The freedom of which juridical laws relate can only be freedom in its external use; but the freedom to which ethical laws refer is freedom in both the internal and external exercise of will.” (MEJ, 13)

This simply amounts to saying that even the juridical legislation is impossible without ethical legislation; though they are remain dissimilar in legislative fashion. Otherwise, all action done from the duty of justice will turn out to be “actions of benevolence” which is done in accordance with “the duty of virtue”. For example, “to fulfill my pledge” is an act of justice not an act of benevolence, though it is virtuous in the sense that it is “where no coercion can be applied” (MEJ, 24). Kant’s theory of justice thus contains the possibility of being coerced; if you are not willing to act in accord with duty of justice, the positive laws can compel you to do so. On the other hand, if moral legislation did not constitute the basis for external legislation, there would be a sheer danger that the actions of justice turn into the actions of benevolence. Kant’s substantial contribution to contemporary justice theories has been appreciated as the distinction between moral duty and duty of justice apart from duty of virtue.

Here one can rightly ask: what is the significance of juridical legislation to person’s action if ethical legislation is all sufficient for the same person’s all actions?

The significance of the distinction lies in the fact that “one can be coerced to perform” the duty of justice, that is, “the external duty”. Both internal and external duty must be performed; the necessity of the former is that just because “it is a duty” and the latter is also accepted as necessity due to its involvement in the ethical duty as to be subsumed under it. Therefore, the will’s external legislation is mediated by its internal legislation in “the *manner of being bound to*” external duties (MEJ, 23).

Therefore, the significance of juridical laws attaches to the concept of right: “The capacity to obligate others to a duty, that is, the concept of right, can be subsequently derived from this [moral] imperative.” (MEJ, 25) The indirect relation of external duty with internal duty is pertaining to this ‘others’. It may refer to the relation between a person placing in the rather isolated moral system and a person living in civil society. The moral person can have the authority to claim coercive right to obligate others to act in accord with external duty, namely, duty of justice. This is what precisely constitutes the path to justice with from the moral point of view. Indeed, since the right means “entitlement to use coercion” the possibility of justice is based on the possibility of external coercion. On what basis does person have the right to coerce other persons to act in accord with duty of justice will be explained in the next Chapter.

4.2.2 Natural Law

If it is a practical obligation that each *Willkür* coincides with every other *Willkür* under the name of society, then this must happens under “a universal law of freedom”. Kant’s justification for the universal law of external freedom is a question; how could the present society be possible, if there were not be an a priori law of external freedom in every person’s mind? As seen, this justification is also the justification of the origin of society. Juridical legislation and accordingly external duty is the condition of this legal coexistence of all wills. The universal principle of justice, orders the maxim of action by means of external duties in such a way that *Willkür* has to executes its maxim by taking into consideration all *Willkür*. Thus, for Kant, the civil society has also come into being by means of a priori principle of practical reason.

Having relied on Roman jurist Ulpian's rules Kant offers three duties of justice for any person living in civil society; "*Be an honest person*", which means "maintaining in relation to others one's own worth as a human being". The first duty of justice clearly shows us Kant's attempt to reduce the categorical imperative to the principle of justice, which orders to act without forgetting that human is an end in itself. The second is that "*Do no one an injustice*". Finally, the third of which Kant derived from the first two constitutes the sole concern in his theory of justice; "*enter into a society with others in which each person can get and keep what is his*" (MEJ, 37).

This society is "a condition in which each person has what is his guaranteed against everyone else". This condition is a civil condition all its "Positive Law" "proceeds from the Will of a legislator". This legislator is a legitimate one on the condition that this moral person's legislation is grounded on "Natural Law", that is "a set of a priori principles" (MEJ, 37).

Kant uses the term "juridical laws" in order to refer to external relation of people and to external laws which provide people who live in "a civil society" with their external freedom: "[...] binding laws for which an external legislation is possible are called external laws." (MEJ, 18) However, these laws cannot be ultimate laws since even external laws have an unconditionally constituted basis:

Among external laws, those to which an obligation can be recognized a priori by reason without external legislation are *natural laws*, whereas those that would neither obligate nor be laws without actual external legislation are called *positive laws*. (MEJ, 18)

Kant's notion of natural law constitutes the ultimate ground for external laws; for, they "have to be preceded by a natural law providing the ground of the authority of the legislator (that is, his entitlement to obligate others through his mere will)" (MEJ, 18). The notion of "Natural Law (*Ius naturae*)" and positive law is introduced at once as external laws. Unlike natural law, positive law refers to the application of "the actual Law of the land [...] at certain time and at a certain place". An expert in positive law, that is, jurist may not be able to know forever whether positive law is

just or unjust unless he extracts all empirical additions from it and turns to be “the sources of these judgment in pure reason” (*MEJ*, 29).

Like the question what is moral and immoral, the question what is just and unjust cannot be answered by appealing to “empirical principles”. As noted above, since natural laws require no external legislation, they are enacted by pure reason in a priori manner. Therefore, the natural law must provide “immutable principle for all positive legislation”. Hence what is just and unjust in a given positive juridical system is legally definable through the same supreme principle justice: “Every action is just [right] that in itself or in its maxim is such that the freedom of the will of each can coexist together with the freedom of everyone in accordance with a universal law.” (*MEJ*, 30)

Kant makes a distinction between *Innate* and *acquired* rights. Innate right comes from nature and acquired rights pertain to external action. Everyone has only one innate right “by virtue of his humanity”; *freedom* as being independent of “the constraint of another person’s will” providing that this independence is kept in accord with the universal law of freedom. So, from this formulation it can be followed that Kantian natural right is nothing but an a priori normative concept of practical reason because it is a postulation. This is why it is a priori.

It seems to be underlying principle of external freedom Kant had in mind when formulating this ‘original’ right; for the sole natural right, freedom, is linked with the right of *equality* by means of the term ‘reciprocity’. Everyone is independent of “being bound by others to do more than one can also reciprocally bind them to do” (*MEJ*, 37). Freedom and equality are introduced at once into theory of justice in the form of natural right. Thus natural right of freedom and of equality, derivative from freedom is the basis for the universal principle of justice. At this very point, Kant introduces internal “innate Mine and Yours”. Kant had already explained before he postulated it; an innate right that everyone naturally possesses “independently of any juridical act”. Thus three innate rights has been introduced under the title of natural law by Kant.

4.2.3 Property Rights

It can be said that by the concept of natural right Kant understands ‘a priori’ natural right. Thus everyone naturally possesses “what is his”. Then, how does Kant insert the concept of Mine and Yours into the theory of justice? As explained above, Kant states that the subject-matter of theory of justice is the relationship of *Willkür* to another *Willkür*. The sole concern of theory of justice is their external relation. What could it be “external object of my will” other than external Mine and Yours? Kant hereby divides *Rechtslehre* into two; Private and Public Justice by explaining what is externally mine and thine. The concept of property belongs to theory of justice due to the fact that it is the object of *Willkür*. Since the external Mine and Yours finds it’s a priori basis innate Mine and Yours, theory of justice is nothing but Natural Law;

Note that theory of justice is divided into natural law (private law) and civil law (public law) but not into natural and social law; for, there may possibly be a social condition governed by natural law as opposed to civil law. In this case this society is not a civil society that “guarantees Mine and Yours through public law” (*MEJ*, 41).

What Kant terms as natural law as private justice is a possession external to *Willkür*. This possession is either that the object is “*different and distinct*” from subject or that the object is “in another place” in spatial and temporal terms: “An external thing would be mine, however, only if I can assume that it is possible that I can be injured by someone else’s use of the thing *even when it is not in my possession.*” (*MEJ*, 42)

Here by ‘possession’ Kant refers to “intelligible possession”. Unlike natural or empirical possession, “intelligible possession” is the possibility of external acquisition even without empirically acquiring an object. Accordingly one can do harm another by using what is his even without which he does not empirically possess it: “[...] if there is to be anything externally mine and yours [i.e. belong to me or you], we must assume that intelligible possession (*possessio noumenon*) is possible (*MEJ*, 46). If human beings already have an innate right of acquiring objects as their belongings, justice is about the possession of object in intelligible way. This

will be an a priori justification of property and enable us to access what Kant understand by “the freedom of will” with regard to universal principle of justice.

Kant’s deduction of the concept of ‘juridical mine and yours’ is highly interesting; its justification goes with a question; by what right I exclude someone from using my property, and thus interfere with his object of free will without postulating that this is mine? According to Kant it is not possible to mention “the external Mine and Yours” without “Juridical Postulate of Practical Reason”:

It is possible to have any and every external object of my will as mine. In other words, a maxim according to which, if it were made into a law, an object of will would have to be in itself (objectively) ownerless (*res nullius*) conflict with Law and justice. (*MEJ*, 47)

The juridical postulation turns out to be the condition of any intelligible possession and thus of the possibility that I *am* a householder even when not living in that house or that I owe a pencil when I do not hold that pencil. This is the question for Kant of *noumenal* possession, which as the name implies, cannot be explained empirically. Hence, the security of possession as the basis of a civil society become reduced both to the question of freedom since this is the restriction on the object of the will and to the question of utility due to the impossibility of *res nullius* for any rational being.

On this score, Kant specifies the unacceptability of the theory of justice without this “a priori assumption of practical reason”, that is “permissive law of practical reason” as the condition of the possibility of any intelligible possession: “[P]ure practical reason can contain no absolute prohibition concerning the use of an object of this type [*res nullius*], inasmuch as to do so would constitute a contradiction of external freedom with itself.” (*MEJ*, 48)

If the will restricts itself to *res nullius*⁸⁵, it also restricts itself in utmost absurd way; for, *res nullius* is something which is bound up with natural causality, and the will has already negated this causality by means of firstly negative concept of

⁸⁵ The concept of *res nullius* is something that reason denies: “As far as physical objects on the land are concerned, if the land is already mine, they belong to me unless they belong to someone else”. Kant, *Metaphysical Elements of Justice*, 68.

freedom. Therefore, the will must assume that “every object of my will be viewed and treated as something that has objective possibility of being mine and yours” (*MEJ*, 48). This is the a priori assumption of practical reason without which a theory of justice is impossible. In this regard, even the possibility of acquiring provisionally mine and yours is inferred from the categorical imperative (*MEJ*, 49).

As has been noted, a civil society is necessarily composed of rational persons whose action is in accord with duty of justice. Now, from the concept of ‘innate equality’ Kant derives a duty of justice imposed by practical reason; “the juridical postulate of practical reason: “It is a duty of justice to act toward others so that external object (usable object) might also become theirs” (*MEJ*, 49). But what is the function of this duty and in what way does it place in individual’s action? These will be seen through repeatedly introduced duties of justice.

Kant asserts that in the state of nature there can be only a provisional mine and yours as natural right. Natural right, then, is provisional in character. In a civil society, on the other hand, individual’s acquisition is guaranteed by “the juridical condition”; for, who refuses his belongings to be legally secured? Maybe, those who are definitely irrationals want to come back or stay in the state of nature. This is why each person has a duty of justice to expand “usable objects” in intelligible term as much as possible under “a juridical condition of society”.

Natural right as such is innate, given and basis for every political legitimacy in civil society. What is a real right, then? First of all, a right is “the right to private use of a thing” “against every possessor of the thing” (*MEJ*, 58); another Kantian a priori justification of coercion goes with this real right; if some person claims a right in a thing, which provisionally belongs to me, to use it without my consent, this injures me. On the one hand, I cannot forbid them to use the thing; it would be contradictory to obligation from duty of justice. But this time, it would be “a right in thing as if the thing had an obligation to me”. This would be obviously absurd that a thing obliges the will to be inflicted. Real right, or civil right as an obligation is only possible under “the united will of everyone in a common possession” (*MEJ*, 59). Hence it is irrational and contradictory not to turn provisional mine and yours into real right unless there is only one person who lives on the earth.

Beginning with innate mine and yours, Kantian justification of property went on with provisional, juridical or peremptory possession, and culminates real provisional possession. Provisional possession is external but not in literal sense; in the *possession noumenon* it is only “distinct from me”. This pure concept of property is produced by reason and constitutes a civil right for persons. However, property is still a thing, though *possession noumenon*. In this respect, it cannot oblige me to do anything in accord with duty; it cannot produce any duty of justice. I have to recognize it through another person:

[A] relationship of a Person to *objects*, which do not have obligations, is really a relationship of a Person to *Person*, all of which are bound through the Will of the first [Person] with respect to the use of things in accordance with the axiom of external freedom, the postulate of the capacity and the universal legislation of a Will thought of a priori as a unified Will Person. (*MEJ*, 67)

Thus property right turns the relation of person to thing into the relation of person to person and hence constitutes the basis of civil society through the postulation of permissive law by practical reason. With the transition of the possession relation, the last step of juridical acquisition of property finds its expression in that “the appropriation as an act of an externally universal legislative Will (as an Idea) through which everyone is bound to agree with my will” (*MEJ*, 67). So, my declaration that this is mine is based on a priori principle of practical reason.

In Kant’s theory of property, this last determination about the acquisition of property, that is, the acquisition by the Will in agreement with others’ wills, is only possible in civil state. The next section will describe Kantian state.

4.2.4 Kantian State

This section will explain the legitimacy of the state in Kant’s theory of justice. There are many points especially in this section that bear some similarities between Rousseau’s account of the general will and Kant’s formulation of the united Will of all people. Rather than a comparison between them, I will examine Kant’s concept of the Will of the people in its relation with sovereign power, Idea of state and of the original contract, the concept of right, Public Law all of which justifies Kantian state. After that, I will try to demonstrate two contradictions which arise from the unity

between Kant's doctrine of ethics and that of right. As for the comparison in question I postpone it to the last Chapter.

As shown in the beginning of the previous section Property Rights, Kant develops his theory of justice in two main parts; Natural Law and Civil Law. Natural Law can possibly govern a society. However, this society should be presented in the state of nature. According to Kant, the state of nature is where there is no civil law. In this respect a social condition does not pose contradiction with the state of nature but with civil state. Natural Law dominates the state of nature in the sense that it is concerned with the property right of private person. That is why Kant terms Natural Law as private law. On the other hand, Civil Law rules over the affairs of civil persons. Kant terms Civil Law as public law as civil people constitute public or civil society rather than society. Civil people thus gather under the roof of a state:

A state (*civitas*) is union of a group of people under laws of justice. Insofar as these laws are a priori necessary and follow from the concepts of external justice in general (that is, are not established by statute), the form of the state is that of a state in general, that is, the Idea of state as it ought to be according to pure principles of justice. This Idea provides an internal guide and standard (*norma*) for every actual union of persons in a commonwealth. (*MEJ*, 118)

A state is constituted by a united people under "laws of justice". This act of unification is the *original contract*: "Properly speaking, the original contract is only the Idea of this act, in terms of which alone we can think of the legitimacy of a state."⁸⁶

It [original contract] is in fact merely an idea of reason, which nonetheless has undoubted practical reality; for it can oblige every legislator to frame his laws in such a way that they could have been produced by united will of a whole nation, and to regard each subject, in so far as he can claim citizenship, as if he had consented within the general will. This is the test of the rightfulness of every public law.⁸⁷

⁸⁶ Kant, Immanuel. *The Metaphysics of Morals*, trans. Mary Gregor. New York: Cambridge University Press, 1991. See p.127, see §47. Interestingly this part of text is somehow missing in Ladd translation.

⁸⁷ Kant. On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice'. In *Kant Political Writings*, ed Hans Reiss, 61-92. See p.79.

According to Kant, persons in civil society are the people who have previously founded a society according to the universal principle of justice just because reason says so; this principle is given to them a priori. People thus gathered *regulate* representations regarding the society by means Ideas of practical reason. Here representation is the representation of a state. Kant goes on to argue that one's own pure a priori Ideas of practical reason, that is, Idea of state as a "guide and standard" that goes in tandem with Idea of original contract, prescribes to oneself to enter into a civil society as a duty, even to keep and endure it.

Such constitution may never exist. Nevertheless, an actual constitution is, if not perfectly, represented in Idea. That is why any revolt against the continuation of state is absolutely forbidden in Kantian State. According to Kant, once person adopts a duty by means of Idea of reason and makes the duty the motive of his action by postulating Idea, the same person is irrational if he does not act in accord with this duty.

Idea of "provisional external Mine and Yours" is enough for practical reason to give up the state of nature. This Idea by itself explains why it is a duty to enter into civil society through "the original contract" (*MEJ*, 66). "Therefore, he need not wait until he finds out through bitter experience about the hostile attitude of the other person." (*MEJ*,115). Bad experience does not make "public lawful coercion necessary": "The necessity of public lawful coercion does not rest on a fact, but on an a priori Idea of reason." (*MEJ*,116). Therefore, to abandon the state of nature is meant to accept the principle of justice so that what belongs to person is secured by "an outside power" other than him.

Idea of original contract protects the state from unreasonableness as returning to the state of nature; since civil persons have postulate Idea of contract, they thus *consent* the juridical possession for every other rational person including himself by entering into civil society. Here what constitutes irrationality is that civil people would abandon the right of juridical possession which was once gained. Kant's approach to the natural right through the possibility of "juridical possession" results in some

crucial implications; the right of revolution or rebellion may be thought by irrational persons. In fact even the resistance of unjust procedures in the state is not a right at all (*MEJ*, 125, 127-28). What constitutes injustice in Kant's theory of state is to quit a juridical condition as it is the abandonment of right, namely, the right of juridical possession:

They are really acting in the highest degree wrongly [and unjustly] by wanting to be and to remain in a situation that is not a juridical condition, that is, a situation where no one is secure against violence with regard to what is his." (*MEJ*, 115).

What is secured by Public law if the return to the state of nature is irrational? Kant argues that there can be some legitimate societies where distributive legal justice does not pervade. It is not true that, according to Kant, the state of nature justice is completely lack of justice. But the problem about non-juridical state of affairs is that one cannot come to judge what is just and what is unjust; "there is always a controversy concerning rights" (*MEJ*, 116). "For this reason, everyone may use violent means to compel each other to enter into a juridical state of society" for the sake of justice (*MEJ*, 116). Otherwise, the acquisition always remains provisional and hence an object of violence if "there is no sanction of Public Law".

Public law contains the conditions of "possibility, actuality, and necessity of the possession of objects" as the objects of the will (*MEJ*, 113). Kant terms the last of them, that is, the conditions of the necessity of the possession of objects as *distributive legal justice*. It appears as to be a criterion which distinguishes nonjuridical state of affairs, that is, state of nature from juridical state of affairs, that is, civil society. Distributive legal justice guarantees for civil persons what belongs to them under the laws.

The last step of the previous section of this thesis was the reciprocal acquisition, juridical possession (the acquisition by the Will in agreement with others' wills). It is an element of the original contract since it is only possible in civil society. The juridical possession is included in Public Law under the name of "*reciprocally acquisitive*". Now by means of the court, the juridical possession is legally distributed.

Kant states that there is no difference at all between public and private law as regards their subject matter: in both of them the object of the will is one and the same thing; property. Public law does not even impose persons any additional duty; it is only “the juridical form of their living together (the constitution)” (*MEJ*, 114). These two systems of laws originate also in Idea of justice “as contrasted to violence” (*MEJ*, 115). The only difference is the legal determination of the condition of the right of acquisition by Public Law in constitution.

Public Law is a sum total of laws which need to be promulgated by public to determine a juridical state of affairs. In this respect, it is “a system of laws for a nation” (*MEJ*, 117). It is a requirement for a nation to execute “the actual Law of the land”. This execution becomes possible in a juridical state of affairs by means of a constitution; “a Will that unites them [people]”. A civil society in which people thus united under Public Law is a state. So, a state is where persons are related to each other and the whole is related to each person by Public Law under a constitution. Like civil society in which is the united civil people by Public law, a state, in addition to that, is also a commonwealth which is the united civil people by Public Law by virtue of *common interest*. However, if the form of Idea of state did not proceed from a priori Idea of justice, it would not be a commonwealth.

Kant divides Public Law into three parts; Municipal law, the Law of Nations and Word law or International Law. Kant calls the set of laws which is concerned with internal relations of a state, Municipal law. It contains three authorities:

[T]he general united Will is composed of three persons (*trias polititca*). The sovereign authority resides in the person of the legislator; the executive authority resides in the person of the ruler (in conformity to law), and the juridical authority (which assign to everyone what is his own by law). (*MEJ*, 118).

Thus Kant identifies state with these three authorities which compose of “a syllogism”; the main premise is “the *law* of sovereign Will”; the secondary one is “the *command* to act according to the law”; the conclusion is juridical or court decision, that is, “the actual Law of the Land”. (*MEJ*, 118). Kant is never certain about there being any hierarchy among them.

The legislative authority can be attributed only to the united Will of the people. Since all of justice [and rights] is supposed to proceed from this authority, it can do absolutely no injustice to anyone. Now, when someone orders something against another, it is always possible that he thereby does the other an injustice, but this never possible with respect to what one what one decides for oneself. [...] Hence, only the united Will of all people by which each decides the same for all and all decide the same for each—can legislate. (*MEJ*, 119)

The members of state are called citizens. Kant attributes to citizens three juridical qualifications; freedom, equality, and civil self-sufficiency. The first two of them comes from the duty of justice that Kant determinate by appealing to the Roman jurist Ulpian. The last one, that is, civil self-sufficiency is a sufficiency for continuing one's own existence in a commonwealth by means of his vote. Here comes Kant's unfortunate declaration about the distinction between active and passive citizen. According to Kant, to vote means to be active in a commonwealth by virtue of qualification of person to vote for deputy. However, some citizens, though they are still citizens, are inadequate to vote:

An apprentice of a merchant or artisan; a servant (not in the service of state); a minor [...]; all women; and generally anyone who must depend for his support (subsistence and protection), not on his own industry, but on arrangements [management] by others [...] all such people lack civil personality, and their existence is only in the mode of inherence. The woodcutter whom I employ my estate; the smith in India who goes with his hammer, anvil, and bellows into houses to work on iron, in contrast to the European carpenter or smith, who can offer the products of his labor for public sale [...].(*MEJ*, 120).

Kant's list extends until there is too little people left to vote. This is the same attitude Kant took when he praises Rousseau for his instructing to honor human being. Those people are depraved to vote as they are insufficient. Kant gives no explanation about why those people are insufficient.

The executive authority is the agent of the state; it is the government or ruler whose decrees are "decisions about particular cases" (*MEJ*, 121). Kant claims that 'the sovereign of the people' cannot be the ruler; for, the ruler is subject this sovereign to law (*MEJ*, 121). Now, Kant's sentence implies two controversial things

about the sovereign authority; first of all, Kant speaks of the sovereign of the people, which contradicts the account of the sovereign power as “the *law* of sovereign Will”. Who is this moral person? Is it the united Will of the people or a king or a legislator? Kant never gives a certain answer to this question in his *Metaphysical Elements of Justice*. Hence, the legislative authority infinitely remains uncertain. Secondly, if there is any sovereign power over the people, and if he cannot be the ruler because the ruler is subject him to laws, then who is subject the ruler to laws? Although the rulers execute laws in accordance with laws, what if do some rulers make an exception for themselves? Kant already declares theirs exceptional status: “To punish the ruler would mean that the highest executive authority itself would be subject to coercion, which is a self-contradiction.” (*MEJ*, 122) Thus nobody can coerce the rulers to do anything. The rulers are, so to speak, free from laws except for laws laid down by their own practical reason.

There are also further statements declaring some other controversial phrases concerning legislative power: “There can therefore be no legitimate resistance of the people against the legislative chief of the state.” (*MEJ*, 125) Who is the legislative chief of the state can hardly be understood. And: “It is the people’s duty to endure even the most intolerable abuse of supreme authority.” (*MEJ*, 125) what Kant means by supreme authority is obscure. He may be a monarch or despot, whoever he is; he is supreme one whom people are supposed to tolerate forever.

The united Will of all people is supposed to come under a *civitas* through the idea of original contract. It follows that this idea obligates every lawgiver to decree his laws in such a way that they arise from “the united Will of the people”. This is the legitimacy of every public enactment. However, Kant explicitly distinguishes the legislative authority from the sovereign. Consideration some obscure point about the sovereignty, the following passage indicates for Kant it makes no difference who legislate laws. The sovereign can be the people or a supreme authority since what is important as to external legislation is its lawmaking activity and law itself:

A law that is so holy and inviolable that it is a crime even to doubt it or to suspend it for an instant is represented a coming, not from human beings, but some kind of highest perfect legislator. That is the meaning of the statement, “All authority comes from God,” which is not a historical explanation of the civil constitution, but an Idea

that express the practical principle of reason that one ought to obey the legislative authority that *now* exist, regardless its origin.⁸⁸ (*MEJ*, 124)

Kant's uncertainty about the sovereign power lies in his conception of Idea. Idea itself forever forbids me to question any juridical condition because Idea is common to every rational being; what is rational for me must be rational for everyone because we are all rational. It is only Idea of practical reason which ensures justice. Therefore, what I rationally regard as just must be rationally regarded as just by every other rational person. This leads Kant to legitimize, so to speak, every civil state provided that it guarantees the possibility of juridical possession because the right in a thing is a principle of practical reason, which leads humanity sooner or later to realize its Ideas.⁸⁹: "All human beings originally have a common possession of the land of the whole earth (*communio fundi originaria*) along with the Will of each person, warranted by *Nature*."⁹⁰ (*MEJ*, 70).

As we have already seen Kant strictly holds that his theory of justice grows out of his moral philosophy. Indeed, his theory of justice becomes the triumph of

⁸⁸ My italics.

⁸⁹ In current scholarship, attention is being given to problem of utopianism. Baynes concludes that "Rousseau's theory is utopian in ways that Kant's is not. Baynes 1992, 44. Of course Kant's theory of the original contract is not utopian. Kant legitimates every civil state because it guarantees the possibility of juridical possession.

Along with Baynes, Some scholars have insistently put Rousseau among Utopians. See Shklar , 1969, 1-33. Although Shklar states that "Rousseau did not apply the word utopia to his own work", she regards *Social Contract* as utopia. Utopia as the thought experiment in political reasoning has a special meaning in political philosophy; utopianism is about a perfect state by means which a perfect society can only be realized. It offers perfect social arrangement, whereas Rousseau well-regulated body politic whose principle is partly derived from the passion of the very human being. He never claimed that his Republic is the best one for perfect society. Rousseau admits his specification hardly achievable but not impossible as More's Utopia, not grounded on realistic principles. Unlike Utopian works, Rousseau's *Social Contract* is capable of giving us the account of how the problematic of freedom has come emerge. It is true that almost every political philosophy offers an ideal order for society, that is to say 'what ought to be' along with analyzing current political conjecture, 'what is'. This does not mean that every political philosophy is utopian and dreamlike in character. Furthermore, Rousseau actually adopted the very careful attitude toward utopianism by stating that "[I]et us avoid, if possible, rushing into chimerical project" when thinking about what reformative and constitutive precautions could be suitable for Poland administration. Rousseau, *Considerations on the Government of Poland and Its Projected Reformation* ,193. Although Rousseau suggests to "[r]esume your ancient and first innocence since it is in your power to do so". Rousseau, *Discourse on Inequality*, 203. He believed amour propre is transformable to virtue; "Let us extend amour-propre to other beings. We shall transform it into a virtue". Rousseau, *Emile*, 252. Above all, is it really too utopian to design a political organization in which every subject is less self-interested more society-oriented?

⁹⁰ My italics.

practical reason whose Ideas constitutes constitutions, societies and states with reference of which we judge what is just and unjust.

It is true that “[r]eason commands how one ought to act, even though no instance of such an action might found” (*MEJ*, 8). The main moral law formulates how one ought to act with respect to Idea of duty; “Act in such a way that you treat humanity as an end never as a means”. If this is the formulation of how to act, the moral law is required to tell us that we ought to replace existing justice system whose external laws treat rational being as a means with the legitimate one which treats rational being as an end. Then, why has Idea of original contract commanded us never revolt against the existing civil society as a duty but keep and endure it? How could it be possible that even the united Will of the people is not permitted to demand reform? Kant’s universal principle of justice clearly prohibits the people from demanding both revolution and reform at once: “An alteration in a defective constitution of a state, which may sometimes be required, can be undertaken only by the sovereign himself through reform, and not by the people through revolution.” (*MEJ*, 8) It follows that Kant’s moral theory infinitely remains at odds with his theory of justice.

The another contradiction between Kant’s theory of justice and moral theory can be explained as the following; as indicated in the section titled as Duties of Justice, “[w]e may not and ought not to represent this law of justice as being itself a motive.” (*MEJ*, 30) This is why people can legally compel each other to be free externally; though it is not the case that human being who has a motive within himself can be compelled to be morally free. Thus the deduction of the moral law declares that no rational being can possibly be coerced to be free, whereas the deduction of law of external freedom (universal principle of justice) from the moral law gives the same rational being the right to compel others to be externally free: we compel each other to what...; to seize “the land of the whole earth” and make it the use value. In conclusion, Kant’s theory of justice basically centers on the natural right of possession since he thinks that the natural human rights of freedom and equality has already been justified by the moral law.

Then, if we are supposed to keep and endure the existing system of justice in order not to return the state of nature, how is the improvement possible? How to change for the betterment? The next section will seek the answers for these difficulties in Kant's theory of justice.

4.3 From Justice to Politics

Kant remind us that the method to be used in the *Metaphysical Elements of Justice* is also used in the *Metaphysical Elements of Natural Science* which explains "what that is" in accordance with a priori principles of reason in contradistinction with the moral doctrine which is about what ought to be. Kant seems to go back his word on his purity obsession with moral principles in his theory of justice:

The concept of justice is a pure concept which at the same time also takes practice (i.e. the application of the concept to particular cases presented in experience) into consideration, it follows that, in making a subdivision [of its concepts], a metaphysics system of justice would have to take into account the empirical diversity and manifoldness of those cases in order to be complete in its subdivision. (*MEJ*, 1)

Where do we find this "application of the concept to particular cases presented in experience"? Kant states that unlike natural law, positive law refers to the application of "the actual Law of the land [...] at certain time and at a certain place" (*MEJ*, 29). Then what is "the actual Law of the land"? In order to answer to this question we need to turn Kant's conception of commonwealth.

Before making people happy, a theory of justice is required to justify the basic human rights. Human is a member of Kingdom of Ends due to his rationality not for the sake of happiness. As we saw, these are three natural rights, namely, freedom, equality and the property right. Nevertheless, Kant admits that a state recognizes the necessity of happiness and interest of the citizens who composes of a nation. What promotes the happiness of people is also laws. Public Law is a sum total of laws which determine a juridical state of affairs. In this respect, it is "a system of laws for a nation" (*MEJ*, 117). It is a requirement for a nation to execute "the actual Law of the land". Thus the application of the positive laws is the task of the executive authority, that is, politicians. The executive authority applies laws to

the particular cases by means of a constitution; “a Will that unites them [people]”. A civil society as a nation thus becomes a commonwealth. Therefore, a constitution is does not only guarantee the basic human rights but also provides them with happiness by looking after *common interest*.

Now, the difficulty of Kant’s theory of justice is to design such constitution that the citizens both enjoy their rights. The design of constitution will be able to handle the challenges from the application of laws:

And as far as reason is concerned, the result is the same as if man’s selfish tendencies were non-existent, so that man, even if he is not morally good in himself, is nevertheless compelled to be a good citizen. As hard as it may sound, the problem of setting up a state can be solved even by a nation of devils (so long as they possess understanding). It may be stated as follows: “In order to organize a group of rational beings who together require universal laws for their survival, but of whom each separate individual is secretly inclined to exempt himself from them, the constitution must be so designed that, although the citizens are opposed to one another in their private attitudes, these opposing views may inhibit one another in such a way that the public conduct of citizens will be the same as if they did not have such attitudes.”⁹¹

It is already indicated that on what ground persons can be compelled to become good citizens. They can be coerced to act in accord with duty of justice. To be good citizen apparently means to act in accord with the duty of justice. Kant now claims that we can compel people to be good citizens only in a state, even if they are not morally good. From the above passage, it follows that only a perfect constitution can solve all the problems of humanity. This constitution is a Will that unites people under a state. So, the political problems as the application of laws are the problem of establishing a state; “a good constitution is not to be expected from morality, but, conversely, a good moral condition of a people is to be expected under good constitution.”⁹²

⁹¹ Kant. *Perpetual Peace in Kant Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet. Cambridge: Cambridge University Press, 1991, 93-125. See p. 113.

⁹² Arendt argues that Kant’s turn from morality to justice and politics is Rousseau’s influence on him: “One would think that Kant’s problem at his late time in his life—when the American and French

I understand by ‘a good constitution’ that it is such designed that it is to leave as little space as possible to the will of the executive power by perfecting positive laws according to Ideas of practical reason and by making them as suitable as possible for the application. In this way, we enjoy our rights in our public life even if we are “a nation of devils”.

In fact, Kant has hardly accorded the superiority to politics over morals. Conversely, he claims that “[a] true system of politics cannot therefore take a single step without first paying tribute to morality” (*PP*, 125). However, Kant seems to give up the necessity of morality when it comes to the state organization since the members of ‘a nation of devils’ cannot be morally good persons but bad guys who make an exception for themselves to the moral law.⁹³ If we are concerned with a just state organization, then we seek for not the morality but legality of actions as presented in the duty of justice. At this point, when it comes to politics, it is clearly seen how Kant undermines the basis of his theory of justice; throughout the Section From Morality to Justice in this thesis, it has been shown that Kant derives all propositions of the doctrine of justice from the moral law. the moral law is the foundation of the universal of justice, which regulates external relation on a priori ground.

In conclusion, our malicious conducts in public domain pose a danger for the basic right of others. Kant offers the solution that our conducts can justly be arranged by a good constitution which leaves little room to the will of politicians who applies the laws and to the will of peoples who are devils. However, Kant’s solution for the

Revolution had awakened him, so to speak, from his political slumber, and Rousseau had aroused him in his manhood from moral slumber)—was how to reconcile the problem of the organization of the state with his moral philosophy, that is, with the dictate of practical reason. And the surprising fact is that he knew that his moral philosophy could not help there. Thus he kept away from all moralizing and understood that the problem was how to force man “to be good citizen even if [he is] not a morally good person” and that “a good constitution is not to be expected from morality, but, conversely, a good moral condition of a people is to be expected under good constitution.” Arendt 1992, 16-17.

⁹³ I customize this sentence from Arendt’s: “The bad man is, for Kant, the one who makes an exception for himself.” Arendt, 1992, 17.

malicious conduct of human is of utmost mechanic that it falls short of the dynamism of politics.

Yet, Kant has still not offered his solution for the greatest evil ever, namely, war. It will be analyzed on much more general ground; from now on Kant moves to history. He will develop an idea of history which determines war as the greatest evil. Kant will claim that the forces of evil including war can be overcome only by a great federation of the world constitutions. So, “the problem of setting up a state” thus turns to be the problem of setting up a great federation. Only in this way, citizens are expected to act in accord with the duty of justice. In the next section I will try to clarify Kant’s idea of history through which Idea of this great federation is to be introduced.

4.3.1 Conjectural Construction of History: Hope for Progress and Peace

The greatest evil as an everlasting threat to humanity, according to Kant, is “the result of war—not so much of actual wars in the past or present as of the unremitting, indeed ever-increasing preparation for war in future” (*CBH*, 231-32). While waiting the possible wars no constitution of the state can be expected to promote justice and secure the rights of citizens. How to put an end wars? If the states only can declare war against one another, then the same states can keep peace in the world. Therefore,

In Idea for a Universal History with a Cosmopolitan Purpose, Kant proposes an *Idea* to look at history of human being by introducing theory of history with nine propositions. According to Kant, history is neither progressive for betterment nor retrogressive for worse. Nevertheless, it is better to envisage history progressive as an Idea of reason that regulates our answers to the question “what can I do”.⁹⁴ In this respect, history as a total sum of human past actions, under the hopeful enough gaze of philosopher, may be allowed to turn into “a regular progression among freely willed actions” toward a cosmopolitan order. Yet this can be only a hope for human

⁹⁴ Deveci 2004, 21-2. Deveci also argues that Kant was not concerned with how to change world; his main concern was how to find our way in today’s world which was once governed by some guidance such as traditional metaphysics, revelations and natural law that no more exist. Today, according to Kant, the enlightened world is suffering from without guidance in the middle of possible future wars.

moral and political development. Only a hopeful mind can present humanity as to be to gradually approaching the idea of cosmopolitan order.

History is nothing but an account of “the will’s manifestation in the world of phenomena” as the appearances of human conduct in any matter. But how could be derived any principle which is supposed to govern history; human actions throughout history are neither governed by his instinct which completely determinates him like an animal nor determinable like purely “rational cosmopolitans”: Human as rational and moral actor cannot be assumed to follow “any rational purpose of its own in its collective actions”. However, philosopher may assume is “a purpose in nature” so that attribute a possible history to human action, which is aimless in itself.

Thus the conducts of human, which have been recorded so far as are the manifestations of “nature’s original intention”. Kant proposes that nature appoints us to realize Ideas of reason and history can be considered as “the development of man’s original capacities” (*IUH*,41). Human is intended “to produce everything out of himself. Everything had to be entirely of his own making” (*IUH*, 43).

As constantly developing towards their ultimate ends—the first proposition, natural capacities of human, such as growing up, shaping up in physical terms, and reproducing etc., are naturally inclined to urge him to use his reason. Whereas reason cannot be satisfied with functioning instinctively and limitedly, human is a limited being whose physical existence must come to an end. This poses no contradiction in the assumption of purposiveness in nature; for at this point, as the second proposition, Kant introduces natural capacities which have a developing tendency in species on the whole but not in single individual. Therefore, the full development of reason can only be seen not in a short life of individuals but in generations, each of which would “[pass] on its enlightenment to the next” (*IUH*, 43).

Kant argues that human being by nature is always in the attempt of bequeathing his masterpiece to the next generation; or else, how could it be possible that he still goes on to work, even when it is not obligatory or when producing more than he needs. Rational beings are “mortal as individuals but immortal as a species” (*IUH*, 44). In his third proposition Kant thus finds the answer in nature which intends for human a capacity of conveying humanity to the next stage.

Nature has set human free and at the same time prescribed the direction for him; human's rational development toward moral perfection. Kant attributes to human a kind of nature, namely, "unsocial sociability"; human being has a tendency to gather in a social order, but on the other hand, he may suddenly want to interrupt it. These two tendencies are at odds with each other; living together with his fellows as a possibility of improving his capacities and living in isolation as "an unsocial characteristic". The former refers to human's original demand for others, whereas the latter demand for keeping everything concerned with him under his control.

Kant's phrase "unsocial sociability" finds its best expression in that human "cannot bear [his fellows] yet cannot bear to leave [them]" (*IUH*,44). He knows that he can only improve his taste of civilization among and with others because he knows that in cooperation with others he has underwent painful transition process "from barbarism to culture" as "a continued process of enlightenment" (*IUH*,44). And he is now aware that this painful process never comes to an end. We find ourselves steadily beginning a new epoch, establishing a new "way of thinking", transforming "the primitive natural capacity for moral discrimination into definite practical principles" and thus "a pathologically enforced social union into a moral whole" (*IUH*,44).

If human cannot tolerate his fellows but at the same time he cannot continue alone, then he is supposed to produce laws and maxims which allow him to live together with his fellows. Kant thus describes "unsocial sociability" as the basic human characteristic which has carried humanity towards civilization. Therefore thanks to rationality this development is directed towards a moral end, namely, "a cosmopolitan purpose". Only from a cosmopolitan point of view we can attribute to human both 'unsocial' and 'sociability' worthiness at once. They complete each other; without the former we would not have gone one step further than Arcadians whose characteristics were "perfect control" on pastoral life, "inactive self-sufficiency" and nonsense "mutual love", without the latter as referring to "continual resistance" no talents would have developed; we would be "good-natured" like a flock of sheep and remain "in a dormant state" like an animal. Therefore, "[n]ature

should thus be thanked for fostering social incompatibility, enviously competitive vanity, and insatiable desires for *possession* or even power” (IUH,44).⁹⁵

The highest task of which nature has set for mankind must therefore be that of establishing a society in which *freedom under external laws* would be combined to the greatest possible extent with irresistible force, in other words of establishing a perfectly *just civil constitution*. (IUH,45-46)

Hence the ultimate aim of nature intends human to enjoy external freedom in “a perfectly just civil constitution”. Thanks largely to his unsocial nature, rational being has been able to impose external laws on themselves in their collectivity.

All external laws are applied into particular cases by a supreme authority, which is supposed to be “just in itself” but at the same time, an individual existence. He will both be human and just in itself. Kant admits that the problematic of supreme authority is the one “a perfect solution is impossible” (IUH, 46) for the reason that supreme authority infinitely remains at the hands of a politician or some politicians. For this reason “[n]ature only requires of us that we should approximate to this idea” (IUH, 46). Humanity is always on the way towards more just societies.

Kant views politics as a formative motive of human in history; thanks to politics, we can hope that humanity approximates the “correct conception of nature of a possible constitution” “after many unsuccessful attempts” (IUH, 47):

[W]hy this task must be the last to be accomplished is that man needs for it a correct conception of the nature of a possible constitution, great experience tested in many affairs of the world, and above all else a good will prepared to accept the findings of this experience. (IUH, 47).

In a similar vein, Kant comes up with the external relation of a civil constitution to other civil constitutions. This is a kind of relation which subordinates all other particular legitimate constitutions. The peaceful agreement between different constitutions has absolutely priority over all on the path of the ascent to a perfect civil constitution. Thus the ultimate solution of the most difficult task lies in a

⁹⁵ My italics.

legitimate arrangement of the external relation of a commonwealth to other commonwealths.

This arrangement appears to be the most difficult task of humanity just because we are encountered with the very same problematic of unsociable nature of human, both as a gift and calamity. It now turns out to be that of unsociable nations, which tends to seek unrestricted freedom. Just as unsociable nature of man which urged him to enter into legitimate civil state, the same thing is now forcing particular nations to enter into a juridical condition. Kant describes it as “a federation of peoples” in which every single commonwealth “could expect to derive its security and rights not from its own power or its own legal judgment, but solely from this great federation” (*IUH*, 47).

What he terms as *Fœdus Amphictyonum*—great federation—is Idea of reason, too. Idea of cosmopolitan order presents a new kind of legitimate external relation, which becomes a possibility to avoid involving in war with other members of federation in the future phase of civilization. However, it will not be easy for “these new bodies” to come to agree on the legitimate unification:

But these new bodies, either in themselves or alongside one another, will in turn to be unable to survive, and will thus necessarily undergo further revolutions of a similar sort, till finally, partly by an optimal internal arrangement of the civil constitution, and partly by common external agreement and legislation, a state of affairs is created which, like a civil commonwealth, can maintain itself *automatically*. (*IUH*, 48)

Here we can clearly see Kant’s aim; just as in the case of particular constitution whose articles are expected to arrange our conducts in public domain so that they do not pose a danger for the basic right of others, it should be the same thing in the case of the unification process of each particular constitution. In this instance humanity should seek “a cosmopolitan system of general political security” (*IUH*, 49). However, once again Kant’s providence for this new unified Will of all constitution is of utmost ‘*automatic*’ that it falls short of the dynamism of the world politics. One can say Kant’s providence is just a hope. Nevertheless, it may be better not to become too hopeful concerning politics. This ‘perfect’ process for politics

seems to be more than enough to hope. On the other hand, one can also claim Kant's view of history is more than a hope:

When it is little beyond the half way mark in its development, human nature has to endure the hardest of evils under the guise of outward prosperity before this final step (i.e. the union of states) is taken; and Rousseau's preference for the state of savagery does not appear so very mistaken if only we leave out of consideration this last stage which our species still has to surmount. (*IUH*, 49)

It should be clear now why Kant has rigorously insisted in one's duty enter into a civil society as a duty, even to keep it and endure "the hardest evil". This destination of humanity legitimizes all existing political constitutions just because we are on the edge of perpetual peace; all of them will sooner or later conclude an agreement on improving "a cosmopolitan system of general political security".

Consequently, what we saw at the end of Kant's theory of justice was the duty to obey the external laws for the sake of justice (the legitimate preservation of the natural rights; freedom, equality and the right of property). Now in the case of the worldwide justice or peace (the natural rights guaranteed by "a universal *cosmopolitan existence*") what we see at the end of Kant's theory of history is exactly the same thing: humanity "has to endure the hardest of evils under the guise of outward prosperity before this final step (i.e. the union of states) is taken" (*IUH*, 49).

This conception of history leads Kant to view freedom as not something which human has acquired on the path of domination throughout history but as an Idea nature gave him at the very outset along with other natural capacities which are destined to develop by nature.

5. CONCLUSION

In this thesis I tried to examine the ways in which Jean Jacques Rousseau and Immanuel Kant develops the theory of justice which formulates how to relieve the tension between individual and society. In fact, this tension is the one between individual and political freedom. Rousseau calls it the tension between moral and political freedom and Kant terms it as internal and external freedom.

It has been long claimed that Kant's critical project aims at improving Rousseau's conceptions of the free will and the general will.⁹⁶ If this claim is true, the main argument of this thesis is Kant's theory of justice is bound to fail due to their different conceptual framework since Rousseau's notion of the social contract turns into Idea of original contract in Kant's theory of justice. The critical potential of Rousseau's notion of the social contract is jeopardized by Kant's *Idea* of original contract in which the sovereign authority is taken away from the people and is attributed to the legislator and executor of the laws. In this regard, a single question, 'what constitutes the legitimacy of the contract in Rousseau and Kant's theory of justice' can show us whether each thinker can assure us of a legitimate political constitution.

Demanding democracy, equality and freedom for all people in an age of monarchies in Europe, Rousseau is a revolutionary thinker whose belief in human as sentient being inspired Kant. Advocating the "general will," for the happiness and freedom of the society as a commonwealth rather than one's own, the insights of Rousseau is found in almost every corner of Kant's theory of justice. Although in common Rousseau and Kant share theories on the state of nature where human existed prior to civilization and the social/original contract, many specific topics from the human rights to the ownership of property differ among two philosophers.

⁹⁶ Rawls and Riley are among those who defend this claim: "Kant's main aim is to deepen and to justify Rousseau's idea that liberty is acting in accordance with a law that we give to ourselves" Rawls 1999, 225. Riley argues Rousseau's influence on Kant throughout his article; Riley 1973, 450-471.

It is convenient to start Rousseau's and Kant's conception of the state of nature leading to dissimilar notions of equality and democracy. For Rousseau human had been much more happy and free before it entered into a social condition. For this reason, if people obey a political authority, it should deserve it by guarantying the freedom and possession of people and hence promoting their happiness. It must make people as free as before (*SC*,1.6,49). Rousseau develops a moral theory in order to provide a basis for the sound justification of principles of political authority. This moral basis for the determining ground of natural law is the investigation of human as passionate and rational being. It thus centers on human which is taken in both states, that is, natural and civil one. In fact Rousseau's inquiry into human aims at revealing human condition in both states by comparing them with each other.

At this point it is important to remember what Kant said about Rousseau's comparison between the natural and civil state: "He proceeds synthetically and begins from the natural human being; I proceed analytically, beginning from the civilized human being."⁹⁷ Kant could not have taken human as a being historically undergoing transformation in history because this human was not empirically be given to him. In his article *Conjectures on the Beginning of Human History* Kant's attitude against Rousseau's hypothetical beginning of history is clear; "to base a historical account solely on conjectures would seem little better than drawing up a plan for a novel. Indeed, such an account could not be described as a conjectural history at all, but merely as a work of fiction".⁹⁸ However, I think that this synthetic beginning enables Rousseau to critically and historically survey the history of man from the state of nature to the present condition of civilization. Thanks to his hypothetical beginning Rousseau is able to demonstrate the root of inequality. On the other hand, Kant had to assume that human is already free and equal in his relation with others before the original contract is established.

⁹⁷ Guyer 2005, 7.

⁹⁸ *Conjectures On the Beginning of Human History*, ed. Hans Reiss and trans. H.B. Nisbet. Cambridge: Cambridge University Press, 1991, *In Kant Political Writings*. See p. 221.

This difference between two philosophers leads to different conception of right. According to Rousseau even though the foundation of the political rights, namely, civil freedom and property right depend on the natural right, which is freedom, in civil society rights are political rights in the sense that civil persons *consent* them. The state of nature is where human is not aware of his right because the concept of right assumes the consciousness of it. In this respect, Rousseau's main aim is to discover "the moment when Right replacing Violence, Nature was subjected to Law". If in the first and second words of two statements the time expression 'when' tags are taken separately and then made couple within them, the result is as the following: right/nature and violence/law. That is, natural right and illegitimate law which Rousseau investigates when the latter displaced the former. The investigation of this replacement of natural law with enacted law leads Rousseau to assert that the replacement indicate us the origin and attributes of inequality in historical term.

This is the point that Rousseau is once and for all quite definitely distinguished from Kant. For him, thanks to natural law, rational human beings are already free and equal. Kant makes a distinction between public (civil) and private (natural) law in term of property by claiming that "[...] the division of the elements of justice [theory of justice] will be concerned only with external Mine and Yours." (*MEJ*, 39); for, everyone has already had innate idea of property. And without this idea one cannot mention a civil society at all. On the other hand, for Rousseau the idea of property historically is the source of all evils. In the state of nature there exist no "[e]stablished property and hence society" (*DI*, 197). As for Kant in a state of nature there was a society, but not "a civil society that guarantees mine and thine through public law.

Kant and Rousseau, both describes human as autonomous being; one's obedience to the law which one prescribes oneself. In both thinkers' theory of justice, the implication of this conception of autonomy is that one's being accountable to others. Both of them unavoidably asked the possibility of bringing to bear the autonomous being to society, that is, of taking his in his relation to others. Then, the question is how this accountability is constructed in Rousseau and Kant' doctrine of justice. Indeed, in their moral theory Rousseau is more concerned with the

individual's relation with the rest of people than individual alone, whereas Kant rather with human as rational being than his public relation.

In his *Social Contract*, Rousseau left the question of autonomy at inner level for philosopher to investigate, though where Rousseau and Kant surprisingly converge is in their conception of good intentioned will is where we look for human goodness. Rousseau calls it conscience, whereas Kant good will. However, Rousseau's conscience is awakened with others, whereas Kant's good will is good in itself. This distinction led Kant to distinguish two kinds of freedom; internal and external one, though the latter's basis lies in the former. Therefore, for Rousseau, human is moral in its relation with other, whereas, for Kant, rational being becomes moral by itself by discovering the moral law within itself.

Kant's theory of justice presents the justification of the external freedom or, in other words, that of how to legislate externally. This external legislation turns out to be the conformity of particular *Wilkür* to *der Will*, which rational beings universally have in common. In fact, Kant's concept of *der Wille* is an obvious reproach on a priori ground that one essential and distinctive part of Rousseau's analysis on the general will. But Kant's *der Wille* comes under his transcendental project. That is to say, the general will as an actual agreement people is a conceptualization which is exactly what Kant rejects on the philosophical grounds; as far as the contract is concerned Kant relies on the Idea of *der Wille*, that is, practical reason, whereas for Rousseau the legitimacy of a social contract lies in the actual consent of the people. Despite the direct influence Rousseau, the term 'Idea' sharply distinguishes Kant from Rousseau; for in Kant's political philosophy the original contract is an 'Idea of reason' which provides a standard for judging the legitimacy of the states. Since the legitimacy of a state is its approximation to Idea, and since every state somehow approximate Idea, every state becomes, so to speak, legitimate.

Accordingly, the act of unification of people under a state is the original contract. If they did not have Idea of original contract, there would not be any society at all. This Idea alone gives the legitimacy to the contract. In this respect, every contract is legitimate because it protects us from returning to the state of nature. It is true that for Kant "the legislative authority can be attributed only to the united Will

of the people. Since all of justice [and rights] is supposed to proceed from this authority, it can do absolutely no injustice to anyone” (*MEJ*, 119). However, Kant does not attribute the sovereign authority to the united Will of the people; for Kant thinks that it is enough to have Idea of the original contract to legislate. As far as everyone has Ideas of practical reason in common, they can sufficiently oblige everyone to legislate as if the laws have been created by the united Will of the people. Who and how checks these laws is missing in Kant’s theory of justice because laws is not required to be voted. What is rational for me must be rational for everyone because we are all rational. It is only Idea of practical reason which ensures justice.

What we infer Kant’s introduction of Ideas into his theory of justice is they function as ultimate basis for laws which are ready for execution not for the discussion among citizens. Thus in Kant’s political thought, justice and equality as the Ideas of reason may easily become the means of illegitimate coercion; for, if one is irrational then he can be coerced to be rational for the sake of the endurance of juridical condition.

As for Rousseau, having relied on natural right, that is, freedom, his justification of political right suggest that if there is no one’s “natural authority” over others and force cannot make right, then the legitimate authority can be sought only in conventions. Human being as a free will can obey only legitimate political authority. If the moral freedom of human being is his obedience to laws that he prescribes himself, then in the same way the political freedom is his obedience to laws that prescribes himself. The question of freedom thus turns to be that of justice; if each single human being asserts himself as to be free, what would happen?

Rousseau formulates a kind of consistent relationship between parts who engage in a treaty. The legitimacy of this contract lies in its promise of the protection of both person’s good and freedom *by full common force*. If each particular will “by giving himself to all, gives himself to one” (*SC*,1.6,50). This is the formation of the general will as the sovereign power. The right of the sovereign power is legislation and cannot be alienated. Citizens’ involvement in politics is their participation in the general will by forming it. Furthermore, the formation of the general will include

citizens' legislative authority. In this respect, Rousseau always remains loyal to his conception of human which he developed at the beginning of his theory of justice, whereas Kant does not. He thinks that only Idea of practical reason ensures justice. As for Rousseau, nothing but the general will can produce righteous laws.

Rousseau is motivated by the ideal Republican State for the citizen's common freedom and hence happiness and interest. Everyone who wants to be free and independent should passionately pursue the experience of belonging to a well-defined legal constitution. On this point, Rousseau is distinguished from Kant's Idea of state which guarantees the external freedom of citizens. The subject matter of the external freedom is the property right along with the natural right of freedom and equality. Thus the Kant's natural right theory excludes happiness, interest and disposition, that is to say, anything empirical when establishing the principles of justice; they can be sought under a commonwealth after guaranteeing innate rights.

Rousseau is clear that the social contract is made among the people itself not with any superior person or authority. Submitting or trying to forming the legitimate condition for submitting to social order is an action moral in character. This civil action gives birth to "a moral and collective body" which is the embodiment, so to speak, "body politic": "The social order is a sacred right, which provides the basis for all others. Yet this right does not come from nature; it is therefore founded on convention" (SC,1.1,41). Therefore, the public reason carries out the unity of morality and politics. Citizen must use public reason as we come to a judgment about political phenomenon as right and wrong or just and unjust. In fact, citizen becomes citizen proper when he keeps his finger on the pulse of society: "Virtue is nothing but this conformity of the particular will to the general will." (PE, 13)

Thus the general will can compel one to be free not because of the danger of the return to the state of nature, as Kant holds, but because of the danger of slavery: "It is therefore incontrovertible, and it is the fundamental maxim of Political Right, that Peoples gave themselves Chiefs to defend their freedom, and not to enslave them. *If he have a Prince*, said Pliny to Trajan, *it is so that he may preserve us from*

*having a Master (DI, 176).*⁹⁹ So, the general will as the possibility of avoiding slavery in society. Kant's reason, on the other hand, commands us to keep the current political condition for the sake of external freedom, or provisional possession right. Above all, Idea of reason absolutely denies returning to the state of nature since it is defined as what is not reason, that is, irrationality. Therefore, Rousseau and Kant differ in the right of coercion.

According to Kant, there may possibly be a social condition governed by natural law as opposed to civil law. In this case this society is not a civil society that "guarantees Mine and Yours through public law" (*MEJ*, 41). However, this kind of society can be just. As for Rousseau, although there must be a previous pact which transformed 'aggregation' into 'association', which presupposes the majority "at least once", his justification of political right proves the illegitimacy of all present and past conventions which did not attribute the legislative authority to the sovereign. Rousseau describes the first illegitimate contract as a struggle between the rich and poor, which has endangered both sides with a difference; what is at stake on the part of the poor is their life whereas for the rich both their life and property. Therefore, whereas Rousseau's justification of political right is the justification of the illegitimacy of all present and past conventions, Kant's Idea of original contract turns out to be the justification of all contracts through human history. That is, Rousseau's hypothetical investigation of origin of political authority denies its legitimacy, whereas Kant's analytic investigation of human approves all political authority established so far. This has also been argued Kant's approach to historical political constitutions in the division of From Justice to Politics under the section of 'Conjectural Construction of History'.

Rousseau's citizen rationally consent and submit to the general will just because "[t]he commitments which bind us to the social body are obligatory only because they are mutual, and their nature is such that in fulfilling them one cannot work for others without also working for oneself" (*SC*,2.4,61). Kant's citizen does not consent at all because he is already civilized, that is to say, he is already a social

⁹⁹ This chief is only an metaphor. Rousseau's citizen does not give himself to chief or prince but only to the general will.

condition; he has an innate right, given him a priori, in thing and reason commands him to turn this provisional possession into juridical one under juridical condition.

Kant claims that “[s]trict justice is admittedly founded on the consciousness of each person’s obligation under the law” (*MEJ*, 31). Like moral laws, the public laws originate in *der Wille*. It is both the condition of moral freedom and of a free people living together. According to moral law, we ought to shape our conduct by such a maxim that all rational beings adopt. The universal principle of justice is suitable for those who act according to this supreme moral principle. Thus the rational beings who are already free and equal are supposed to enter into juridical condition. This means that a rational being’s *Willkür* can by no means fall into contradiction with *der Wille*, if it is determined by the moral law. What Kant falls short of is his theory does contrast the particular *Willkür* with *der Wille* due to the infallible nature of Idea of practical reason. Kant’s characterization juridical condition is fashioned as the following; each particular will is in conformity with a universal will, that is, *der Wille*.

Therefore, it can be concluded that as for Rousseau, each particular will is in conformity with the general will. Therefore, for Kant, only the principles of universal practical reason can ensure us justice. For Rousseau, on the other hand, the general will can embrace the most basic principle for all political association. The principle of the general will as the condition of legitimate authority is suitable for all political/civil order in their diversity: “That there are different peoples implies that the determinations of the general will differ. The diversity of life preserved, but man is not left without moral guidance; in the diversity there is the unity which is everywhere the same, the general will.”¹⁰⁰ Thus the united Will of all people has a universal character, whereas the general will has a general character peculiar to each distinct society. That is why Kant tries to move toward a cosmopolitan order through the united Will of all people.

I think Rousseau’s main achievement is his seeking possible condition of unification of each particular will. And it is not possible without once contrasting

¹⁰⁰ Bloom 1972, 546.

between the general will and the particular will: “One ought rather to presume that the particular will will often be contrary to the general will, for private interest always tends to preferences, and the public interest always tends to equality” (E 462). That is why the legislative activity of the general will is the sole possibility for justifying all-embracing nature of the laws which can provide us with a just political constitution. The laws are sufficiently justified if the people legislates them. People are endowed themselves with unalienable rights *by and for* themselves.

Contrasting both parties, namely, each particular will against the collective will Rousseau tries to formulate the general will. On the other hand, Kant presupposes the unity of two parties by virtue of their rationality. But, when it comes to politics in history, he suddenly contrasts two parties; each will against others’. Because He noticed that if each *Wilkür* has innately obligated itself to *der Wille*, it is not possible that politics becomes a formative motive of human in history. Therefore, in his theory of justice Kant is well assuring us of the unity of morality and justice but not justice and politics since this unity leads us to accept almost any political constitution insofar as it assures us of juridical possession.

Kant’s theory of justice culminates his theory of history, which leads him to view freedom as not something which human has acquired on the path of domination throughout history but as an Idea nature gave him at the very outset along with other natural capacities which are destined to develop by nature. But from Rousseau’s vantage point of view, political freedom is completely human’s own historical achievement.

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