

Reader's Guide to the

SOCIAL SCIENCES

Volume 2

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Es* (1923; *The Ego and the Id*, 1927)

that there is less concentration on the history or sources of the law and more focus upon laying out the substantive principles of the law. It is suitable both for beginners and the more advanced reader.

DAUBE is a two-volume collection of all of the essays written by Professor David Daube, formerly the Regius Professor of Civil Law at Oxford, on the subject of Roman law. Daube was a scholar of both Roman law and ancient Jewish law. Thus, many of his essays are comparative in approach. They also reflect concerns with such matters as the intersection of law, morals, and religion – subjects not treated by many other scholars in the field.

HOEFLICH presents a biobibliographical study of the history of Roman law studies in England and in the US during the period from 1780 to 1920. He traces the lives and careers of British and American Roman law scholars and examines ways in which Roman law inspired developments in such fields as jurisprudence, legal history, and other legal subjects. The volume is particularly useful for understanding the interaction of Roman and common law ideas on fundamental legal principles.

ROBINSON is an excellent brief introduction to the study of Roman law and Roman legal history. Although Professor Robinson is a lawyer, the work is aimed particularly at historians and classicists. As a result, it is far less complex than works designed for lawyers such as Buckland, and is, therefore, a perfect introductory text for nonlawyers interested in the field.

SCHULZ is a brilliant study of classical Roman law through a close examination of the fundamental principles underlying the substantive law. The book reflects the best of the German Romanist scholarly tradition of the 19th and early 20th centuries. The volume discusses such basic notions as utility, public good, and so on. It is particularly useful for those readers who want to understand the relationship between Roman law, both public and private, and Roman political and philosophical ideas. It is also particularly important for highlighting Hellenistic influences on classical Roman law.

STEIN (1988) is a collection of essays by the former Regius Professor of Civil Law at Cambridge and an expert not only on classical Roman law, but also on Roman law from the Middle Ages to the modern day. The essays are wide ranging both in subject and time and include stories of Roman law in 19th-century England and Scotland, studies of notable Roman law scholars, and studies of the transmission of specific Roman law ideas.

STEIN (1999) is the most recent attempt to provide a broad-based survey of the history of the Roman law tradition from its origins to the present day. Of necessity, the survey is broad rather than profound, but it is, without question, the best introduction to the subject available to the English-speaking reader. Professor Stein is the acknowledged expert on the subject and the volume is written clearly and concisely. It is a perfect starting point for approaching Roman law and gives excellent guides for further research and study as well. At the same time, it offers important perspectives on various aspects of Roman legal history that will be of interest to the advanced scholar.

WATSON (1995) is a wide-ranging interpretative essay outlining the author's vision of the history and development of Roman law. Professor Watson is one of the greatest living interpreters of classical Roman legal texts as well as an expert on comparative law. He combines these two skills in this

volume and produces an impressive synthesis of modern scholarship in several areas, which provides the reader with an illuminating discussion of, and introduction to, the subject. The volume is designed for the general reader, but the specialist will also profit from it. The volume is especially rich in insights gained from close analysis of numerous Roman legal texts.

WATSON (1975) is a superb introduction to the earliest history and substance of Roman law. The book is particularly valuable for historians interested in early Roman society because the approach taken is to relate the law to the society that gave rise to it.

ZIMMERMAN is a magisterial treatment of one aspect of Roman law: the law of obligations, covering what Anglo-American lawyers would classify as contracts and torts. The volume provides a detailed study of the rules of the classical Roman law of obligations and then proceeds to trace that history up to the present. It is not a book for beginners but advanced students will find it a treasure house of information.

M.H. HOEFLICH

Rousseau, Jean-Jacques 1712–1778

French (Swiss-born) political philosopher

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Jean-Jacques Rousseau's political theories, especially his *Social Contract*, loom large in Western political thought, and helped shape the French Revolution. He was likewise a prolific and popular author in many fields and an extremely controversial figure; he influenced virtually every aspect of life and letters from political thought to music, from literature to the taste for botany. LÉVI-STRAUSS even credits Rousseau with founding the study of anthropology.

Of the many collections of Rousseau's works published in French the Pléiade edition (GAGNEBIN) is the latest, and

possibly the most complete. Although not free from errors and omissions, the Pléiade edition is nevertheless indispensable for the serious scholar; it presents some documents never previously published. In translation, carefully annotated editions such as those of Gourevitch (see ROUSSEAU 1997) and of Masters & Kelly (see ROUSSEAU 1990–99) are extremely useful, especially for students. The latter's *Collected Writings* series provides a standard set of translations (some of which have already been published elsewhere), including translations of some writings that have never before appeared in English.

CRANSTON (1983, 1991, 1997) offers one of the best overall accounts of Rousseau's life and work in his careful, well-written, and thoroughly researched three-volume intellectual biography.

Starting with Edmund Burke (*Reflections on the Revolution in France*, 1790), Rousseau is often seen as an eminently abstract thinker, one fraught with strange, possibly unresolvable paradoxes, which he asserted formed one philosophical system. On the basis of his autobiography, the *Confessions* (published posthumously), Rousseau is likewise said to have led a very strange life. In laying bare this life, Rousseau both differentiates himself from others and at the same time reflects on common dilemmas of social life. In claiming he broke the mould in which nature made him, Rousseau presented his enemies with the ammunition they required to condemn him as a social pariah and a hypocrite.

Despite his reputation for abstraction, many such as VAUGHAN, COBBAN, ROSENBLATT, and FERMON argue that an examination of context helps resolve Rousseau's apparent paradoxes and shows him to be grounded in practical life. Others, such as Shklar, see him as a utopian thinker.

One of the major debates in Rousseau scholarship concerns the conflict between unitary and dualist views of Rousseau. Many readers agree with Rousseau's own assertion that he created one unified system, but some find his ideas so contradictory that they cannot resolve the individualist claims found in the *Reveries* with the collectivist claims of the *Social Contract*.

Many studies of Rousseau have taken Rousseau's personal experiences and extensively documented foibles into account in the shaping of his political views. STAROBINSKI gives a broad, but psychologically reductionist interpretation of Rousseau's philosophy, which concentrates on the "images, obsessions, and nostalgic desires that more or less constantly governed Jean-Jacques's conduct and work" (p.xi). KELLY turns the tables on this approach by drawing the broader philosophical implications out of Rousseau's personal testament; Kelly provides a particularly useful comparison of Rousseau's *Confessions* with those of Augustine, arguing that Rousseau makes his life serve as an exemplar of his moral and political teachings.

Rousseau began his relatively short and turbulent writing career in 1750 with his *Discourse on the Sciences and Arts* (the *First Discourse*). This short work launched Rousseau's career; its thesis came to him in a revelation experienced on the road to visit Diderot, who was imprisoned in the fortress of Vincennes.

While a friend of the leading philosophers, Rousseau challenged their faith in progress and technology by asserting that the sciences and the arts had failed to improve mores, and had

turned man's sights away from "the duties of man and the needs of nature . . . the Fatherland, the unfortunate and . . . his friends" (Gagnebin, vol.3, p.17; my translation). Against Athens he held up ancient Sparta and the early Roman Republic as ideals. This essay won the prize of the Academy of Dijon and launched a controversy that kept Rousseau focused on society and its ills. Rosenblatt argues that "Rousseau became Rousseau some time between the *First Discourse* and the *Second*, when he made the critical transition to a sociological perspective on human problems, and, in particular, turned his attention to politics" (p.47).

Rousseau's *Discourse on the Origins and Foundation of Inequality among Men* (1755) failed to win another prize, but delineated more clearly the tenor of his political thought. Rousseau asserts the centrality of this work: "All that is daring in the *Social Contract* was previously in the *Discourse on Inequality*" (Gagnebin, vol.1, p.407; my translation). Rousseau henceforth concerned himself with inequality in civil society, and the means to redress it.

In the *Second Discourse* Rousseau argued for the social origins of inequality (as contrasted with Aristotle's view that hierarchy is based in natural inequalities). Rousseau attributed self-aggrandizing behaviour not to natural man (as had Hobbes) but to social man. Natural man was at worst amoral, and free of conscience, foresight, and rationality, although MASTERS and MELZER, among others, argue that Rousseau sees natural man as naturally good, rather than amoral. In the hypothetical evolution of human society in the *Second Discourse*, Rousseau finds only one, all-too-brief phase of early collective life in which human society was at once social and yet relatively free from inequality. With the development of language and vanity (*amour propre*) people turned from their own immediate welfare (*amour de soi*) to the opinions of their neighbours. Other factors, including challenges of climate and physical adversity, helped lay the groundwork for innovation, a division of labour, and exploitation of one man by another. Hence, "for the Philosopher it is iron and wheat that have civilized men, and spoiled the human Species" (Gagnebin, vol.3, p.17; my translation). The *Second Discourse* concludes with a condemnation of the false social compact: "it is manifestly against the Law of Nature, however one defines it . . . for a handful of people to overflow with superfluities, while the famished multitude lacks necessities" (Gagnebin, vol.3, p.194; my translation).

Rousseau did not stop there, however. For the revolutionaries of 1789 and many since, Rousseau's greatest political statement lies in the opening of *On the Social Contract* (1762): "Man was/is born free, and everywhere he is in chains" (Gagnebin, vol.3, p.351; my translation). This explosive work presents a republic of free men ruling themselves in the common interest; Rousseau believes men will only first be truly free when they live under a law they have given themselves in relative equality of condition; this law conforms with the common interest, or general will, which is not the same as the sum of the particular interests or wills of each, and may even oppose or outlaw those interests and wills.

The guidance of the general will and its exercise by the sovereign people with regard to particular citizens pose central problems for Rousseau's readers. Rousseau's concept of the general will makes three important assumptions: (a) superior political

wisdom (for example, that of a lawgiver or elective aristocracy) is required to guide and shape not only the institutions of the republic, but also the general will; (b) the most important laws are not created in assemblies, but are embedded in the hearts of men; and (c) the sovereign people is justified in forcing recalcitrant citizens to adhere to the general will.

The *Social Contract* has therefore given rise to one great problem above all others: what is Rousseau's position on individual freedom, and the relation of the individual to the community? Is Rousseau really a totalitarian thinker, an exponent of the power of the absolute state in the manner of Hobbes? These questions have taken on particular salience in the 20th century. Yet many authors argue that to understand Rousseau's political theory as simply a variant on that of Hobbes is to misread his project.

Vaughan is one of the progenitors of this debate in the introduction (in English) to his edition of Rousseau's political writings in French. Vaughan set the terms of debate in declaring, "For the purpose of founding the State, and as the indispensable condition of its foundation, [Rousseau] had reduced the individual to a cipher" (p.56):

The relation of the individual to the State is, on his showing, one of unmitigated slavery . . . he is, in fact, the sworn foe not only of individualism, but of individuality. The individual is, for him, absolutely merged in the community, his freedom utterly lost in the sovereignty of the State. This is against all reason and all experience. A State of which this were true would be a State without freedom, without life, without hope of progress (p.59).

Against Vaughan, Cobban holds that

Rousseau's end is always the individual and his liberty. It is true that the community has to play an essential part in his liberation; but the state or the community is never more than a means to an end . . . His political theory starts with the individual and it ends with the individual. (p.8)

CASSIRER (1945) provides a neo-Kantian view of Rousseau, in which Rousseau prefigures Immanuel Kant's autonomous, self-legislating ethical will. Cassirer takes Rousseau's teaching as only superficially problematic in creating an absolute state to which citizens surrender all rights and that controls their entire lives, including religious belief. CASSIRER (1954) argues that Rousseau's state preserves individual freedom: "The state claims the individual completely . . . However, in doing so it does not act as a coercive institution but only puts the individual under an obligation which he himself recognizes as valid and necessary" (p.55).

MASTERS concurs with Cobban and Cassirer in offering a positive reading of Rousseau, in which a perpetual right to revolution and the criterion of utility restrict the sovereign. Masters starts from the proposition, provided by Rousseau himself, that the first and second *Discourses*, together with *Émile*, form the centre of his philosophy. Masters believes the political writings must be discussed within the context of these works and the questions they raise, especially that of the status

of civil society; on this account, Rousseau teaches the limits and necessary imperfection of all political arrangements. Masters insists upon the autonomy of Rousseau's thought from his personal history.

Melzer offers a creative reading of Rousseau's seemingly paradoxical prescriptions by suggesting the debate has found misleading answers to the question "who rules?": in fact, no one rules; rather, Rousseau, like Montesquieu, proposes a balance of powers among direct rule (the sovereign people), indirect rule (the lawgiver), and the day-to-day rule of the executive.

FERRARA and ROOSEVELT apply Rousseau's thought to current problems. Ferrara uses Rousseau to show the inadequacies of the neoconservative critique of modernity. He provides a lucid explication of Rousseau's egalitarianism and his notion of freedom in relation to Isaiah Berlin's positive and negative freedoms (*Two Concepts of Liberty*, 1958). Ferrara sees Rousseau as less totalitarian than does Vaughan, although, unlike Cassirer, Cobban, and Melzer he is unwilling to dismiss the charge entirely. Roosevelt examines Rousseau's writings on peace and war against traditions that have seen him as pacifist or realist; he is neither, but rather, a "political educator who provides his readers both with an analysis of the structural persistence of war and with a vision of the political possibilities for peace" (p.9).

Natural law dominated political discussions in Rousseau's day; some interpreters see Rousseau as working within the natural law tradition, while others emphasize his rejection of it. DERATHÉ examines Rousseau's relation to Grotius and Pufendorf, as well as Hobbes, Locke, and others. On this reading, Rousseau articulates his theories within a natural law discourse that held "the State fulfilled its mission when it assures the protection of citizens and provides for their security," whereas "[the State] becomes with Rousseau the essential condition of intellectual and moral development of man" (p.377). This claim raises the question of Rousseau's relation to Aristotle, who saw man as by nature a political animal; Cranston argues that Rousseau is closer to Hobbes than to Aristotle in this regard, as man is not naturally social, but must become so.

ELLENBURG, WOKLER, and Rosenblatt likewise take up Rousseau's response to natural law theory. Wokler contributes a useful discussion of Rousseau's reception of Diderot's idea of natural right, and Rosenblatt examines concrete contexts and applications of natural law. Ellenburg presents Rousseau's thought as a legitimate response to the principal inadequacy of liberal theory – its elevation of individual concerns over common ones. Ellenburg claims that "[t]he essential unifying structure of Rousseau's political philosophy is nonindividualist" (p.51) – rather than being anti-individualist, Rousseau grants collective values and norms their proper emphasis in political life, which is by its very nature a collective rather than an individual endeavour.

The relation of individual to community pervades Rousseau's other works as well: Rousseau's novel, *Julie, or The New Heloise*, brought noblemen to tears with its tale of the virtues of self-sacrifice for family and social duty. In *Émile, or On Education* Rousseau raised the pedagogical issues implicated in the attempt to create first a man and then a citizen. Book V contains a condensed version of the *Social Contract* to which the tutor introduces Émile at the end of his course of instruc-

tion. Rousseau maintained that the many strands of his thought, embracing education, music, and even works of science, all formed one whole. Commentators on Rousseau's political thought have therefore examined virtually every area of his thought for insights into his political views.

SHKLAR reads works such as *The New Heloise* and the *Letters to Malesherbes* alongside the traditional political works in order to explicate what she sees as the central, and ultimately unresolvable, tragic dichotomy in Rousseau's thought – the impossibility of combining the roles of man and citizen. For Shklar "Rousseau was the last of the classical utopists" (p.1). Her discussion of utopia and opinion is particularly insightful.

FERMON offers a provocative, feminist rereading of Rousseau's works by looking beyond the exclusion of women from the civic sphere. Fermon argues with Vaughan (in contrast to Shklar) that Rousseau's project is one of conscious social reform but, unlike other authors, she emphasizes Rousseau's interest in reforming the French aristocracy. Fermon sees Rousseau's reform project as predicated upon a subtle reordering of the sentiments as outlined in *Émile* and *The New Heloise*.

MORGENSTERN studies authenticity in Rousseau with particular reference to his theory of language and his view of women. In contrast to earlier feminist critics such as Okin (*Women in Western Political Thought*, 1979), she sees Rousseau offering a transformative project in which women are empowered as educators of the young; this project raises the everyday to the level of the political. Morgenstern differs from Shklar in allowing the possibility of interpenetration of the realms of man and citizen or public and private.

ALEXANDRA COOK

Rule of law

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