

THE SPECIFIC ASPECTS OF THE JEAN-JACQUES ROUSSEAU'S SOCIAL CONTRACT THEORY

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Jean-Jacques Rousseau was the great thinker that finished the formation of the social contract theory, giving to this doctrine a conceptual finality. On the one hand, the philosopher's ideas represent the continuation of Thomas Hobbes and John Locke's theories. On the other hand, the originality of Jean-Jacques Rousseau's doctrine manifests in the finality of his theory and in the analysis performed. Only this philosopher described the modern society as a degradation of the pre-state's order. The importance of Jean-Jacques Rousseau theory is manifested in the completion of the conceptual development of democratic ideology, which is the main philosophical base of the Great French Revolution, American Revolution, the revolutionary legislation of France, theories that followed these revolutions and modern constitutionalism. This article is a study dedicated to determining the specific aspects of the social contract theory in the background of the idea's history. In this context, we have outlined the following objectives: to identify the essence of the social contract theory, to analyze the concept of humans' rights in the thinker's point of view, to determine the importance of the philosopher's ideas in the modern constitutionalism. As a result of this research, we aimed to determine the role of the theory of social contract in the constitutional law, in general, and Jean-Jacques Rousseau's philosophy, in particular.

Keywords: *state, humans rights, social contract, constitution, philosophy, revolution, democracy.*

ASPECTELE SPECIFICE ALE TEORIEI CONTRACTULUI SOCIAL ÎN VIZIUNEA LUI JEAN-JACQUES ROUSSEAU

Jean-Jacques Rousseau a fost un mare gânditor, care a contribuit la cristalizarea teoriei contractului social, dând acestei doctrine o finalitate conceptuală. Pe de o parte, ideile filosofului reprezintă continuarea teoriilor lui Thomas Hobbes și John Locke. Pe de altă parte, originalitatea doctrinei lui Jean-Jacques Rousseau se manifestă în finalitatea teoriei sale și profunzimea analizei efectuate. J. J. Rousseau a fost unicul filosof, care a descris societatea modernă ca o degradare a ordinii pre-statal. Importanța teoriei lui Jean-Jacques Rousseau se manifestă în dezvoltarea conceptuală a ideologiei democratice, care reprezintă fundamentul filosofic al Marii Revoluții Franceze, Revoluției Americane, legislației revoluționare a Franței, al teoriilor ce au urmat aceste revoluții, cât și al constituționalismului modern. Acest articol reprezintă un studiu dedicat determinării specificului teoriei contractului social în istoria ideilor. În acest context, am tras următoarele obiective: identificarea esenței teoriei contractului social, analiza conceptului drepturilor omului din perspectiva gânditorului, determinarea importanței ideilor filosofului în constituționalismul modern. În cadrul acestei cercetări, ne-am propus să determinăm importanța teoriei contractului social în dreptul constituțional contemporan, în general, și în filosofia lui Jean-Jacques Rousseau, în special.

Cuvinte-cheie: *stat, drepturile omului, contract social, constituție, filosofie, revoluție, democrație.*

Introduction

Jean-Jacques Rousseau is one of the brilliant thinkers of humanity, which contributed to the devotion of political philosophy, in general, and democratic democracy, in particular. The philosopher argued the importance of the human's rights and the state's obligation to ensure respect for fundamental rights. The thinker's philosophy corresponds to the general directions of the philosophy of the XVII century. So, we should analyze the historical context and the premises that influenced the formation of the Jean-Jacques Rousseau's doctrine.

We should note that the brilliant thinkers such as Voltaire, Charles Louis Montesquieu, Jean-Jacques Rousseau, Denis Diderot lived in the Enlightenment epoch. For this intensive period of humanity's thinking

is characteristic the appeal to reason as the major criterion of understanding the world and society, popularization of knowledge, which should bring benefit to the entire society. In addition, we could note the tendency presented in the Enlightenment to systematize the knowledge accumulated during the humanity's development. In this period, France becomes the cultural center of the world. Thinkers wanted to find the principles of man's natural life, searching for the natural religion and law. We should mention the criticism and denial of positive law, formed during the historical development of humanity, in favor of natural law. French philosophers such as Voltaire, Charles Louis Montesquieu, Jean-Jacques Rousseau, Denis Diderot argued the ideas of rationalism, the development of political-social ideas and religious tolerance. Their primary goal was the progressive development of humanity and the creation of rational society. Indeed, these considerations highlight a link between the ideas that dominated the political thought of the Enlightenment and those promoted by the great thinkers, who founded the concept of natural and inalienable human rights, perfectly blend into the context of the French Enlightenment Society of the XVIII century.

The essence of the theory of social contract

Certainly, Jean-Jacques Rousseau is one of the most important thinkers of Enlightenment whose doctrine represents the base of the actual democratic regime. The thinker developed the theory of social, according to which the state appears as a result of the drafting of social contract by people. So, the state is the creation of people's will. Based on these considerations, the philosopher claimed that the state should guarantee to people their fundamental rights, which were presented before the state's foundation.

Jean-Jacques Rousseau started with the Thomas Hobbes' ideas of the natural state and the social contract, but gave them an entirely original interpretation [1, p. 53]. The theory of the social contract of Jean-Jacques Rousseau departs from the individual and seeks to base the entire state order of rights that concern the individual. So, the philosopher elaborated and developed the concept of the rights inherent in human being [2, p. 25].

Jean-Jacques Rousseau's political thinking is based on two assumptions: a) civil society has corrupted the natural state; b) civil society is not acceptable unless it is based on „a social pact” [3, p. 68]. Jean-Jacques Rousseau starts from the opposition between being and appearance, between the „natural man” and the „social man” in elaborating the theory of the social contract [4, p. 172]. So, the philosopher believes that the first is free and independent, the other is a prisoner in a world of appearances, in a factitious and oppressive society. In a modern society the man is badly governed, artificial needs are superimposed on natural needs; each individual is no longer himself, but plays a role and wears a mask [5, p. 110]. In Jean-Jacques Rousseau's opinion, the first source of evil is the inequality from which comes wealthiness. According to this idea, the words *poor* and *rich* are relative and if people are equal, there will be neither rich nor poor [4, p. 171].

In contrast to the person who lives in modern society, the natural man is superior to the one who lives in civilized society. For finding the man in his true hypostasis, the philosopher constructed a theoretical model of the being of primitive man, and then applied it to concrete society. In his natural state people are free and independent, [4, p. 172-178] being born free and equal [6, p. 414]. The philosopher describes primitive man as a kind of animal dominated by physical instincts [4, p. 172-178]. The human essence is defined by certain necessities, prior to reason: individual preservation, rejection of suffering and death. These causes represent the basis of natural law and determine the person to act according to his essential needs, his natural passions and desires [7, p. 122].

Compared to the modern society, Jean-Jacques Rousseau created the concept according to which in the pre-state period people lived isolated from each other in the forests, knowing neither family, nor property, nor prohibition. Man could do whatever he wanted, and in this he was free, being neither moral, nor immoral, but pre-moral. The start of the human was characterized by self-love, indifferent to good and evil [4, p. 172-178]. According to Jean-Jacques Rousseau's point of view, people lived in isolation in the pre-state period, but not because of their fear, as Hobbes asserts, but because man simply had not needed of other people. Rousseau considered that man is good from nature [8, p. 169], he cannot be a wolf to other people. The person's life in the pre-social period is not a fratricidal war, but a peaceful life [1, p. 74]. However, the natural state is governed by a natural law, the philosopher considering that there is no freedom outside the

law, no place where ones can escape of the rule of law. Even in the natural state man is free only through the intercession of the natural laws that govern everything.

The pre-statal period is followed by the transitional period. People got into an intermediate situation between the wild state and the classical society because of two faculties: freedom to accept or resist free will and / or the faculty to perfect themselves. These faculties make people to approach each other to make family and access a minimum of morality. The rapprochement of relations between people led with time to the emergence of society which, in the perspective of Jean-Jacques Rousseau, was the source of Man's decay. The thinker considered that the establishment of wealth inequality is being the key to the mechanism of society's formation [8, p. 127]. The philosopher believed that the emergence of private property is the first factor of human unhappiness, that along with the political domination, generated by an artificial regime of inequality [1, p. 74].

Therefore, the natural state in which people are free, equal and independent is followed by the emergence of political institutions that had the role of socializing people [4, p. 172-178]. According to Jean-Jacques Rousseau, man is born free, but he is in chains everywhere. The principle of the philosopher's anthropology is the belief in the natural goodness of man, which society, civilization perverted, made him evil and unhappy. Civilization is for Jean-Jacques Rousseau a wandering, a degradation of the situation of man from the natural state. The major consequences of this degradation are considered as comprising the loss of initial freedom and equality.

Moreover, the purpose of the creation of the theory of the social contract is the search for the way to restore to the current civilized man his fundamental natural rights – freedom and equality – and to protect them by appropriate means [1, p. 74-75]. We should note that the ideas of freedom and equality are one of the most important ideas of this thinker. In contrast to these ideas, the inequality existence in society is positioned. We should highlight the conflict between the ideal world and the material one, between the tendency towards equality and the struggle against inequality [4, p. 171].

The theory of the social contract represents an ideal form of association, in which belonging to a political body does not destroy the individuals' freedom. According to this theory, individuals entrust for a moment their rights to the state, which then renders them to all with changed names (not as natural rights, but as civil rights). So, this procedure guarantees people's equality. Everyone keeps his freedom, because the individual submits only to the face of the state, which represents the synthesis of individual freedom. By transforming natural rights into civil ones, the state provides citizens with those rights that they already possessed by them from nature. After drafting the social contract, people remain free and equal as in the natural state, while their rights gain a protective guarantee [6, p. 410]. Thus, referring to Jean-Jacques Rousseau's concept of the inalienable rights of man, we note that it differs cardinally from that elaborated by Thomas Hobbes, who considered that the single inalienable right is the right to self-defense [9, p. 96].

In total, the idea of the social contract represents the reconstruction of the society, as it was based on a contract entered between people. This theory created the foundation that allows the society's establishment that ensures the security of every person without renouncing the original freedom and equality [1, p. 74-75], because the man, entering the contract, reserved certain individual rights prior to the state [2, p. 26]. The „social contract” should be based on the free people's will who have agreed to submit to a common will charged in the state [10, p. 174].

We can conclude that thinker solves the fundamental dilemma related to the emergence of the state – the problem of human freedom and the necessity of submission to state power. In contrast to Thomas Hobbes ideas, Jean-Jacques Rousseau's state does not submit human's freedom. On the contrary, the people's liberty represents the base of state, its foundation. People are no longer forced to choose between freedom and the minimum guarantees provided by a totalitarian state. The most important contribution of this thinker is the foundation of the concept of human rights, popular sovereignty and the social contract as the foundation of state, which must be strictly respected. So, the philosophical and juridical vision of Jean-Jacques Rousseau is rightfully included in the group of theories that substantiate democracy as a political regime and that represent the foundation of modern constitutionalism.

The importance of the Jean-Jacques Rousseau's theory in the contemporary constitutional system

The actuality of the theory of the social contract, in general, and the Jean-Jacques Rousseau's ideas, in particular, has been expressed by the great Romanian constitutionalist Constantin Stere. According to him, „*The Great French Revolution formulated these principles, these rights, which man reserved, entering the state, in the great Declaration of the Rights of Man and of the Citizen. This declaration of human and civil rights in various forms represent the component part of a majority of written constitutions of our time ... Thus, we can say that modern positive law is permeated with this concept of the foundations of the state and rights, born from the individualistic concept, the concept of individual rights*” [2, p. 26].

Correspondingly, the most important contribution of Jean-Jacques Rousseau's for the modern doctrine of law is manifested in the justifying, substantiating the concept of the rights of man, founded on the belief that every human being is sacred and inviolable by its existence, because men are born and remain free and equal in rights. The great thinker attempted to protect us from the absolutist power, from the totalitarian regime, from the situation in which the existence of a state becomes more important than the good of citizens, from the times when people sacrifice their lives to ensure the existence of the great, almighty, but cruel and ruthless Leviathan.

So, the exhortation of Jean-Jacques Rousseau was legally embodied in The Constitution of the Commonwealth of Massachusetts, which had preceded the Constitution of the United States of America by seven years, being the first written Constitution in the world. According to the Article I of The Constitution of the Commonwealth of Massachusetts: „*All men are born free and equal and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness*” [11].

The same idea triumphed on July 4, 1776, being enshrined in The United States Declaration of Independence, representing one of the most important pylons of American democracy: „*We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness*” [12].

Later this idea was enshrined in The Universal Declaration of Human Rights of December 10, 1948 proclaimed by the General Assembly of the UN, which in art. 1 proclaim: „*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*” [13]. This article represents an echo of the French Revolution, which proclaimed as national motto “*Liberté, Egalité, Fraternité*” that was included in art. 1 of The Declaration of the Rights of Man and of the Citizen (August 26, 1789): „*Men are born and remain free and equal in rights. Social distinctions can be founded only on the common good*” [14].

Therefore, the ideas of the great French philosopher Jean-Jacques Rousseau triumphed the political and legal thinking of humanity, being proclaimed, respected and guaranteed at local and worldwide level, giving people rights, protection and equality, representing at the same time a Triumph against absolutism and contempt for human dignity.

References:

1. GEORGESCU, Ș. *Filosofia dreptului. O istorie a ideilor din ultimii 2500 de ani*. Bucharest, ALL BECK, 2001.
2. STERE, C. *Curs de drept constituțional*. Chișinău: Ed. Cartier, 2016.
3. NEGRU, B., NEGRU, A. *Teoria generală a dreptului și statului*. Chișinău: Bons Offices Publishing House, 2006.
4. POPA, N., DOGARU, I., DĂNIȘOR, G., CLAUDIU DĂNIȘOR, D. *Filosofia dreptului. Marile curente*. Bucharest: ALL BECK, 2002.
5. PASCAL, O. *Nouvelle histoire des idées politiques*. Ed. Hachette, 1989.
6. AVORNIC, G. *Tratat de teoria general a dreptului*. vol. 2. Chișinău: Central Printing House, 2010.
7. GOERGESCU, D., ș.a. *Marii filosofi ai lumii*. Bucharest: Didactic and pedagogical publishing house, 1995.
8. ROUSSEAU, J. -J. *Discursul asupra originii inegalității dintre oameni*. Bucharest: Scientific Publishing House, 1958.
9. HOBBS, T. *Leviathan*, Thought Publishing House, Moscow, Hachette Typography, 2001.

10. ARSENI, A. *Drept constituțional și instituții politice: Tratat*. Chișinău: Edition Second, CEP USM, 2019, vol. 1.
11. *Massachusetts Constitution 1780*. Disponibil: <https://malegislature.gov/laws/constitution>
12. *Declaration of Independence: A Transcription, In Congress, July 4, 1776*. Disponibil: <https://www.archives.gov/founding-docs/declaration-transcript>
13. *Universal Declaration of Human Rights 1948*. Disponibil: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
14. *Declaration of the Rights of Man and of the Citizen 1789*. Disponibil: http://www.emersonkent.com/historic_documents/declaration_of_the_rights_of_man_and_of_the_citizen.htm

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