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Roman Censorship, Spartan Parallels and Modern Uses in Rousseau's *Social Contract*

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Just as the general will is declared by the law, public judgment is declared by Censorship. Public opinion is the kind of law of which the Censor is the Minister Therefore the censorial tribunal, far from being the arbiter of the people's opinion, merely declares it, and as soon as this body departs from that opinion, its decisions are useless and ineffective.

There is no use in distinguishing between the morals of a nation and the objects of its esteem, for all of these things stem from the same principle and are necessarily intermingled. Among all the peoples of the world, it is not nature, but opinion that determines the choice of their pleasures. Reform men's opinions and their morals will purify themselves

A people's opinions arise from its constitution. Although the law does not regulate morals, it is legislation that gives rise to them. When legislation weakens, morals degenerate, but then the judgment of Censors will not be able to do what the force of law has not done. It follows from this that Censorship can be useful for preserving morals, but never for reestablishing them. Establish Censors when the Laws are in full vigour. As soon as the laws have lost it, the situation is desperate; nothing legitimate has force any longer when the laws no longer have any.

Censorship maintains morals by preventing opinions from becoming corrupt; by preserving their rectitude through wise application; sometimes even by determining them when they are still uncertain

I have said elsewhere that since public opinion is not subject to constraint, there must be no vestige of constraint in the tribunal established to represent it. The art with which this mechanism, altogether lost among modern peoples, was set to work among the Romans and better still among the Lacedemonians cannot be sufficiently admired.¹

In this text, Jean-Jacques Rousseau draws a parallel between a special kind of common judgement that constitutes the general will to assent to fundamental laws and a more diffuse kind of 'public opinion' which is expressed in the mores and customs that a Censor – in the ancient Roman sense – can uphold. In choosing to focus here on 'censorship' in its ancient Roman sense of the arbiter of mores, Rousseau did not do so out of unfamiliarity with censorship in the specific modern sense of prohibition or restriction on publication. Both his native city of Geneva and his long-time host France deployed censors of the press. Rousseau had sought to avoid such interference where possible, for example by not submitting his *Discourse on the Origins of Inequality* to the Genevan government for censorship in advance.² Yet, ironically, both *Du Contrat Social* and *La Nouvelle Héloïse* would be subjected to censorship in this sense, being placed on the Vatican's *Index Librorum Prohibitorum* (Index of Prohibited Books) listing the books that Catholics were forbidden to read.

Yet, while Rousseau was well aware of these contemporary institutions and practices of press censorship, his reflections on censorship in his theoretical writings about politics are for the most part focused instead on the ancient Roman institution of the Censorate – together with the ancient Spartan institution of the Ephorate that Rousseau (like many other authors) assimilated in function to the Roman one – and on their roles as political models. This is the theme of his chapter 'On Censorship' in the *Social Contract* (book IV, Chapter 7), from which the quotation above is drawn. To distinguish, I will use 'Censorship' for his theoretical discussions derived from these ancient models, and 'censorship' for publishing prohibitions.

The line between the ancient and specific modern usages is not absolute, of course. The Roman institution is the original source of the term that was adopted by the Church and later by modern governments for the specific meaning of press censorship. Moreover, common to the ancient institution and this more specific meaning is the role of 'censoring' *mores*, the customs of a people that would be at risk of corruption by the prohibited institutions or publications. The ancient application of such censorship in the form of sanctions on luxury, in particular, would also be broadly associated with 'censorship' in modern conditions, even though the problem of luxury and the problem of press censorship became separate and distinct.

Despite his occasional embroilment with press censorship, Rousseau's reflections on ancient Censorship depart from discussions primarily focused on that topic in two distinct ways. On the one hand, his understanding of Censorship was in many ways faithful to the ancients. On the other hand, in sketching how

ancient Censorship might be emulated in modern institutions, he drew on the ancients in one particular way – the purported absence of compulsion – that was less true to them than to certain contemporary practices in France and to his own ideas about the nature and power of public opinion. We will consider these aspects of his reflections on Censorship – the more historically faithful and the more theoretically original – in turn.

Consider, first, Rousseau as an avid reader of the ancient historians and philosophers, one familiar with the actual duties of the ancient institutions in ways that many of his modern readers are not.³ He knew that the Romans charged their Censors with evaluating and sanctioning not publications but persons and contracts. The two Censors elected to a dual magistracy every five years had the power to sanction grossly licentious or immoral behaviour. But they did so not by prohibiting publications or ideas. Rather, the most powerful sanction available to them was demotion of the status of an individual, specifically 'expulsion from the Senate or the equestrian order'.⁴ This power derived from the original and primary function of the Censors, which was to carry out a quinquennial census of population and property, assigning each person a status related to their birth and property.

The Roman Censors also had a traditional role of regulating the morals of the people in areas including marriage and childbearing. Accompanying this was a set of sumptuary laws from 217 BCE onward, continuing into the reign of Augustus. Note that these were laws passed by the people, not rules imposed by the Censors. But the most famous censor of antiquity, 'Cato the Censor' (Marcus Porcius Cato, or Cato the Elder: see Chapter 1) extended the role of such a moral regimen by 'a distinctive and seemingly unprecedented application when he systematically overvalued particular categories of property and then imposed a special tax upon them'.⁵ His goal was to prevent luxurious consumption from undermining the simplicity, uprightness and hardihood of republican citizens.⁶ Many writing before Rousseau, for example Montesquieu in *The Spirit of the Laws*,⁷ had stressed the role of the Roman Censors in proposing sumptuary laws to be passed by the Roman people, especially those directed at keeping women frugal.

Rousseau's own proposal for taxes on luxury goods, made in his *Discourse on Political Economy*, published in 1755 in the fifth volume of Diderot and d'Alembert's *Encyclopédie*, bears a striking resemblance to Cato's measures. He argues that taxes on luxury will rightly fall more heavily on the rich than on the poor. The result will be either that the rich give up their luxuries, in which case 'the tax base will have produced the effect of the best sumptuary

laws' and will simultaneously decrease the expenses of the state in dealing with corruption in society; or else they won't, in which case the public revenues from the luxury taxes will support the increased state expenditures needed to cope with a more corrupt society.⁸ It has been observed that with this proposal, Rousseau pointedly rejected the existing sumptuary laws in patrician-dominated Geneva that were framed according to a threefold division of property classes, in which some luxuries were permitted to 'people of quality' (the top group) only while taxes were more consistently imposed on staple food rather than on luxuries.⁹ Indeed, in preferring luxury taxes over sumptuary laws in this text (though not everywhere in his writing), Rousseau can be seen to be mirroring Cato's Roman innovation while at the same time modernizing the republican concern with luxury that had become mired in class-dominated and ineffective sumptuary laws.¹⁰

Yet for all his concern with the corrupting effects of wealth, inequality and luxury, Rousseau did not make these the primary focus of his reflections on censorship. Instead, his primary concern with Censorship was the one expressed in the head quote: that Censorship is the expression of public opinion and judgement, serving to complement the law in maintaining *mores*. We will expand upon this role of Censorship in Rousseau's thought, as he explored it in diverse contexts. In all of them, it is crucial to note that this function of Censorship expresses the second and more original aspect of his reappropriation of the ancient institutions: for he stresses that the Censorship he recommends must be exercised by an institution using 'no vestige of constraint' (215). Whereas the ancient Censors had powers of sanctioning persons, limited though they were to demoting men from the Senate or equestrian order, Rousseau envisages a variety of new models of Censorship that all abstain from any use of coercive force.

In the chapter on Censorship in the *Social Contract*, Rousseau gives four examples, omitted for space from the opening quotation above, that we must now consider. The two that conclude the chapter from which the text is taken are drawn from ancient Sparta (or Lacedaemonia, as Rousseau refers to it). Apart from their general executive duties, the role of the Spartan Ephors that fascinated Rousseau was their overseeing of mores, embodied in various functions (about which Rousseau's admired Plutarch recounts many stories, although we know too little that is certain): overseeing the educational system for all Spartan boys; important religious functions; and the sort of general injunction to all Spartans 'to shave their moustaches and to obey the laws'.¹¹ In this same chapter of the *Social Contract*, Rousseau recounts two stories in

which the Spartan Ephors used clever means of honour and shame, rather than coercive sanction, to criticize bad morals (those of a particular Spartan and of drunkards from another Greek city). In an earlier pair of examples in the same chapter drawn from more recent times, he first suggests that the same kind of non-coercive judgement of honour was successful in abolishing the use of seconds in duels by the French king. But whereas that edict, describing the use of seconds as cowardly, succeeded in determining the public's judgement because in fact it anticipated the public's inchoate view, an attempt to abolish the actual fighting of duels by describing it also in an edict as cowardly failed, because in that case (the second example), 'the public scorned this decision, upon which its judgment was already formed' (215).

The absence of coercion in Rousseau's description of this aspect of ancient Censorship, and in his wish to reappropriate it in new variants, is striking – in that it is so different both from the press censorship of his day (ecclesiastical and civil alike) and also from the way that his discussion of 'censorship' is often understood by scholars, who tend to read it precisely as involving the very kind of coercion that he here explicitly abjures. Scholars also tend to think of 'censorship' in Rousseau as something that can establish good morals, whereas he is very clear in the quotation that opened the present chapter and elsewhere that it cannot. It can only maintain good morals, not establish them in the first place or correct them once corrupted. Occasionally the Censor may be a tiny bit ahead of public opinion, as in the example of abolishing seconds in duelling, but Rousseau insists that they will never succeed in contravening public opinion that is firmly formed, as in the example of failing to abolish duelling that follows. As he remarks in one of his *Political Fragments*: 'With regard to Peoples once they have been corrupted, it is very hard to see what could be done to make them better. I do not know what Laws could perform this miracle, but I do know very well that everything is irremediably lost once it is necessary to have recourse to the gallows and scaffold.'¹²

We may illustrate these points with the two most extensive discussions of a role for Censorship (and its confusion with press censorship) outside the *Social Contract*: in the *Letter to d'Alembert* and in *On the Government of Poland*. Discussion of the former by scholars often manifests a more subtle form of confusion of Rousseauian Censorship with what is often misunderstood as a variant on press censorship, to wit, Rousseau's suggestion to prevent a theatre from being established in Geneva.¹³ This is not a suggestion to ban any particular play, on a par with Plato's suggestion that major chunks of Homer and Hesiod should be banned from Kallipolis in the *Republic*; nor is the restriction of

reading material in Emile's education, in *Emile*, a suggestion to ban publication of any particular book, although this is sometimes misunderstood. What Rousseau proposes in his letter to d'Alembert is rather that a public theatre should not be opened in Geneva at all. While this would prevent plays from being performed in practice, shielding Genevan citizens from them, it would not infringe the authors' ability to write or publish.

In this context Rousseau does discuss the informal role of public opinion in maintaining Censorship in well-ordered virtuous cities (all individuals in small cities are 'born censors of one another'; women 'almost perform the role of censors in our city [Geneva]').¹⁴ But Rousseau is clear that an institution of Censorship would not be able to rectify the dissolution of mores that he argues the establishment of a theatre, and the attendant presence of actors in the city, would impel. As he observes, the Genevans already have both ecclesiastical and civic Censorship institutions (the Consistory and the Chamber of the Reformation). Yet he asks rhetorically: 'if the whole force of this tribunal barely suffices to maintain us as we are, when we have added a new inclination to the penchant of morals, what will it do to arrest this progress?'¹⁵

Finally, in *Considerations on the Government of Poland and on Its Planned Reformation*, written in 1771–1772, Rousseau returns to the original and primary function of the Roman Censors, that is, in enrolling the citizens by means of the census and assigning them to property classes (something he also discusses briefly in the *Social Contract*). He proposes the establishment of a 'censorial or beneficent committee' of the elect of each province who are not yet deputy senators, together with those priests 'judged most worthy of this honour' and perhaps also 'the elders and notables of all stations'.¹⁶ Each of these provincial committees would have several functions, including assembling reports on the conditions of the province and providing for welfare out of freely-given donations by the rich. Their key duties for our present purposes would be making lists of those whose conduct is worthy 'of honour and of recompense', of which the most important list, as Rousseau himself qualifies it, would be of the most virtuous peasants, from whom a number (fixed by law) are to be chosen by the Diet for enfranchisement, and similarly to ennoble or honour a certain number of the bourgeoisie. Rousseau insists that these committees 'would never be occupied with punishments or reprimands, but only with benefits'.¹⁷

This is a fascinating extension of the principles of ancient Censorship to fit the conditions of a modern country still burdened by peasant serfdom, on the one hand, but also featuring an ambitious and impatient bourgeoisie, on the other. Rousseau here appropriates the Censor's role, which in Rome

was to demote unworthy citizens to a lower rank, to the purpose of a gradual enfranchisement and ennoblement that will allow peasants to become free men, suitable to serve in the militia, and the bourgeoisie to become represented in the Diet and so attached 'by affection to the fatherland and to the maintenance of the constitution'.¹⁸ Rousseau is all too aware that such a 'department of beneficence ... to the shame of Kings and of peoples, has never yet existed anywhere', and reinforces again that, as these censorial committees would be composed of citizens not yet advanced to magistracies, they 'would not be vested with any coercive power'.¹⁹ This is consistent with a note to the *Second Discourse* in which Rousseau had observed that the full powers of magistracy in Roman Censorship could not be tolerated by modern men, who are willing to allow the magistrates to determine the ranks of citizens only on the basis of 'the real services that they render to the State' rather than directly on 'personal merit'.²⁰ His sense of the difference between ancient and modern mores is summed up in the same note thus: 'Only morals as pure as those of the Ancient Romans can bear Censors; such tribunals would soon have overthrown everything among us'. Instead, he observed, it should be not a coercive magistracy but rather a body expressing 'public esteem' that is made responsible 'to establish the difference between evil and good men'.²¹ The Censorial committees proposed in *On the Government of Poland* exemplify the kind of non-coercive mobilization of public opinion for which my *Social Contract* opening quotation calls, in the form of a mechanism to be supplied to 'modern peoples' imitating that of the 'Romans and ... the Lacedemonians' (215). It would be a tribunal bringing public opinion to bear with 'no vestige of constraint' (215), which is a parallel example to that offered in *On the Government of Poland* of 'the manner in which one can proceed so that ... virtue might be capable of opening all the doors that fortune is pleased to close'.²²