

# The Paradox of “Just War” in Rousseau’s Theory of Interstate Relations

BLAISE BACHOFEN *University of Cergy-Pontoise, Centre de Philosophie Juridique et Politique*

*In the Social Contract, Rousseau declares that he has given up the idea of discussing the “external relations” of states. Yet numerous texts—including a recently reconstituted work about the law of war—show that he thought very seriously about the question of the nature and origin of war and of the possibility of making war subject to the rule of law. Rousseau, in contrast to Hobbes, links war’s appearance to that of the sovereign states; the state of war is therefore the necessary result of international relations. Moreover, he considers the international law as chimerical. How can he then conceive a non-utopian theory of “just war”? My hypothesis is that his conception of the law of war is deduced from principles of internal political law and arises from pragmatic necessity. The state that discredits itself in its manner of waging war weakens itself while believing that it is reinforcing itself.*

Rousseau’s reflections on war and peace, and more broadly on what he calls in *The Social Contract* the “external relations” of states (1997d, 152/470),<sup>1</sup> have been little studied, at least in comparison with the immense Rousseau bibliography. There are certainly a few notable exceptions. Several of his best-known theses have been thought sufficiently important to be considered as significant milestones in modern theories of war by some major authors in that field, notably Schmitt and Aron. Schmitt (1988, 121–22) considers Rousseau to be the first thinker to systematically formulate an idea that would come to have an increasing influence on his age: that war is the exclusive business of states, so that states have a sovereign right to wage war, with no theory of just war being able to limit that right. However, I show later that this is not at all Rousseau’s thesis. Schmitt also makes a substantial error in reconstructing the reasoning that leads Rousseau to link the existence of war with that of the state. Aron cites a quotation from Rousseau’s *Fragments on War* in the preface to the eighth edition of his work *Paix et guerre entre les nations* and also mentions Rousseau’s invocation of the common principles of *jus in bello* concerning

the legal distinction between the treatment of civilians and soldiers in war (Aron 2001, 1 and 601–2). However, he neglects to mention Rousseau’s principal original thinking on both the origins of war and the non-utopian effectiveness of a law of war. Other commentators have made some contributions to understanding this aspect of Rousseau’s work.<sup>2</sup> Even so, the literature still lacks a systematic study covering Rousseau’s theory of interstate relations, including his analysis of the origin of war, an understanding of the connections between his theory of war and his political theory, and finally the foundations of his skepticism concerning the political conditions for peace. Through a consideration of the law of war and notably his reappropriation of the theme of just war, I propose to sketch out here the principal lines of such a study.

To say that there is a “paradox” in Rousseau’s theory of just war means several things. Even if the theme of just war is found in Rousseau, we must recognize that it is there only as something marginal and atypical. Therefore we must then ask ourselves whether Rousseau’s reflections are sufficiently substantial to merit considering him as a significant theoretician of just war. A positive response would have to rely on the originality of his approach. Yet if we stick closely to the *content* of his rules for just war, he remains relatively elliptical and not very original. His contribution rests instead on how he approaches the questions of the nature of war, its origin, and what factors may limit it or bring it to an end.

His reflections on the law of war are contemporary with several works that ushered in a new era in the theory of the law of war and managed to bury the

Blaise Bachofen is Assistant Professor of Philosophy, Faculty of Law, University of Cergy Pontoise, 33 bd. du Port, Cergy-Pontoise, France 95011 (blaise.bachofen@u-cergy.fr)

I thank the three anonymous reviewers who read my article closely and made suggestions that enabled me to improve it. I am grateful to Jean-Vincent Holeindre, who generously took time to reread my article and who provided valuable advice and bibliographical information. I thank Bruno Bernardi and Gabriella Silvestrini, who gave me the opportunity to work with them on the reconstitution of the *Principles of the Right of War* in the framework of a research seminar at the École Normale Supérieure; they also took into account some of my substantial suggestions, which they were kind enough to note in the introduction to their paper. Finally, I especially thank Christopher Lord, who gave me the benefit of his expert knowledge of political philosophy and in particular of international relations, and whose help allowed me to prepare an article in impeccable English, something I could not have managed alone.

<sup>1</sup> All of the page numbers and citations from Rousseau’s writings refer to (1) the English translations in the references at the end of this article and (2) (other than where indicated) the standard five-volume Gallimard edition of the *Œuvres complètes* (1959, 1961, 1964, 1969, 1995).

<sup>2</sup> Throughout this article I present the contributions to my subject found in the political science literature, but this note mentions the most important such works. Since the discovery in 1896 of what are still considered as “fragments” of texts by Rousseau on war and the state of war, Windenberger (1899) and Lassudrie-Duchêne (1906) tried to describe what Windenberger calls Rousseau’s “foreign policy system.” After a period of relative eclipse—during which the principal work to emerge was Hoffmann (1965a), whose interpretation I often return to—the discoveries resulting from the textual researches of Roosevelt (1987) and then of Bernardi and Silvestrini (2005) have called fresh attention to this aspect of Rousseau’s works.

ideal, several centuries old, of the submission of military force to a law standing above it. For example, Vattel introduced the idea of a war that is “just on either side,” a concept that by the reciprocal neutralization of pretensions to justice concretely implies that the idea of just war must be abandoned (1758, III, xii; vol. II, 165–66). For Schmitt, Vattel is the model par excellence of a jurist representing what he calls the *Jus publicum europæum*: Thanks to him, writes Schmitt, the idea of just war becomes a simple “leerer [empty] topos” (1988, 138). Rousseau is clearly in opposition to this development that the authority of Hegel had helped establish (see Hegel 1821, §§ 330–40). Yet it turned out to be necessary to wait until the end of the twentieth century, and notably the publication of the works of Ramsey (1968) and above all those of Walzer (1977), to see a renewal of interest in thinking about just war. Therefore a study of Rousseau’s theses on war does more than increase our knowledge of the philosopher’s works. It can inform current debates in the domain of international relations on this question: How can we conceive of a *jus belli* that combines rigorous *principles of justice* (rather than force alone) and *effectiveness*? This is the most complex paradox we must confront if we wish to understand Rousseau’s thought on the law of war.

Our understanding of Rousseau’s theses concerning this question has been enhanced by the reconstitution of a work that was previously published only in dispersed fragments; this reconstitution has resulted in a complete and carefully constructed text that probably represents the first book of a work that Rousseau intended to publish under the title *Principes du droit de la guerre*.<sup>3</sup>

Close reading of this text leads to a consideration of several theses that are apparently difficult to reconcile. Few authors have shown with such precision the ineluctable character of war once states have been established and also the necessarily “chimerical” nature of international law—what Rousseau calls the

“droit des gens” (*jus gentium*<sup>4</sup>). It is therefore difficult to understand how he came to undertake a work on the “droit” (the right) of war, in which he sets out how war can be waged legitimately. An explanation for this apparent contradiction lies in the manner in which Rousseau links the stakes and modalities of war to the internal foundations of political law. In an age when the concept of just war was either considered outdated or something that could be reduced to a moral or theological question, Rousseau saw it from a *political* point of view. He thus anticipates certain analyses that have been applied to some recent wars, in particular “humanitarian” wars. He deals with the question of *jus belli* in the light of his theory of the social contract and the general will, showing that a war is only really won when the defeated people have submitted freely to the law of the victor; this formulation suggests a certain moderation and prudence in the manner of waging war, always keeping in mind the fate of civilian populations and the manner of ending the war. These theses of Rousseau therefore have a direct impact on current debates in the field of international relations. Following from Walzer’s work, which addressed questions of just war raised by the Vietnam War, these issues gained even more urgency after September 11, 2001, especially regarding the wars in Afghanistan and Iraq. Although Western leaders mobilized a moral and legal discourse to justify their interventions (principally the defense of democracy), they largely ignored the question of their legitimacy from the point of view of local populations. An analysis informed by Rousseau can explain the difficulty in obtaining true victories and in setting up stable regimes, both of which have to rely on being given political recognition by the populations concerned.

As a precursor to thinking about the link between a “just” war and an “effective” war, Rousseau introduces a rupture with the traditional theories of just war,<sup>5</sup> adopting a point of view we could describe as pragmatic. How should we understand it as being pragmatic? He is placing himself in a line of thought inspired by Hobbes (in spite of the numerous criticisms he also makes of Hobbes). As we learn from such authors as Strauss (1953) and Hirschman (1977), one of the great revolutions of modern political thought consists of seeking a “realist” or “pragmatic” foundation for moral and legal norms. In terms that would have been familiar to Rousseau, Hobbes, and Kant, this project could be described as rehabilitating the “passions” and the art of playing the passions against each other, rather than opposing the passions to an emotionless “pure reason.” In Rousseau, the founding distinction in the theory of the passions instead opposes “amour de soi”

<sup>3</sup> The manuscript very probably dates from 1755 or 1756. One portion, discovered in the nineteenth century, was first published by Dreyfus-Brisac (1896, 304–19). It is conserved in the Public University Library of Neuchâtel as ms. R32, and it is published under the title “Que l’état de guerre naît de l’état social” in the third volume of the *Œuvres complètes* of Rousseau (1964, 601–12). The other portion of the manuscript was discovered in the twentieth century: It was initially published by Gagnebin (1967, 103–9) and is conserved in the Public University Library of Geneva as ms. Fr. 250/1/i. The two portions of the manuscript were taken apart and then recomposed by different editors in different orders, all of which were more or less arbitrary. In 1987, thanks to a proposal by Roosevelt, a first attempt was made to reunite the two texts and to reconstitute them in their original order. She was also the first to argue that they constituted a substantial portion of a work that Rousseau had promised to his editor under the title *Principes du droit de la guerre* (see letter of March 9, 1758, to Marc-Michel Rey, Rousseau, 1965–98, Vol. V, Letter 626); she then translated the texts into English and published them under the title *Principles of the Rights of War*. More recently, Bernardi and Silvestrini published a different reconstitution of the text, which appears more convincing and which now certainly constitutes the definitive version; it appeared in 2005 in the *Annales de la Société J.-J. Rousseau* and was translated by Hoare under the title *Principles of the Right of War* (Rousseau, 2012). My quotations give the page numbers of Hoare’s edition followed by those of Bernardi and Silvestrini’s article.

<sup>4</sup> The Latin expression *jus gentium* is generally translated into English as “right of nations.” The expression “international law” did not exist at the time of Rousseau. It was Bentham (1789, 6) who suggested that it be added to the vocabulary of jurisprudence.

<sup>5</sup> Rousseau never uses this expression literally, but in the *Political Economy* we find the concept of “unjust war” (1997b, 8/246) and in the *Principles of the Right of War* that of “legitimate” war (2012, 167/279).

to “amour-propre;”<sup>6</sup> that is, two different forms of self-interest. Amour de soi is not an ideal of reason, but rather a calm and natural passion that could be compared with the idea of reasonable self-interest. It belongs to the order of *things* (and not to that of pure ideas) and tends to conserve that order. Amour-propre, in contrast, is a corrupted passion, born from wild fantasies and the wish for domination, that produces disorder in a person and in society. Given that human health—whether from an individual or collective point of view—is sought in the correct use of the passions and not in an ideal law that would go against natural human inclinations, we can understand that when Rousseau seeks a foundation for law and for norms more generally, he finds it in what we could call a form of prudence or intelligent self-interest (which I label as “pragmatism”).

In addition, for Rousseau, politico-judicial and ethical norms are not irreconcilable, but complementary. Like Machiavelli, he does not oppose an ethics containing a beautiful but unrealistic ideal to a politics that is purely the expression of relationships based on force. For Rousseau, politics is (or can be) the most effective means of creating a human world where emancipation, justice, and the reconciliation of humanity with itself all become possible. Given that Rousseau overcomes the traditional opposition between the perfection of ethical ideas and the imperfection of empirical reality, we should not be surprised that, when he deals with interstate relations, he places himself outside or beyond a simplistic absolute division between idealism and realism.

### THE QUESTION OF INTERSTATE RELATIONS IN THE WORKS OF ROUSSEAU AND ITS CENTRAL PROBLEM: THE ENIGMA OF THE ORIGIN OF WAR

Rousseau declares that he has given up the idea of addressing the questions of international relations, to which he had originally planned to devote half of the work that was, as he writes in the *Confessions* IX, to appear under the title *Political Institutions* (1995, 339/404). In Book V of *Émile*, he summarizes what he had planned to cover under this title. This description provides details about the internal law of the state (so that it is a kind of summary of the *Social Contract*), but is reduced to allusive remarks when it comes to the “relations” between political societies (2010, 659/848–9).

In the *Social Contract*, IV:ix, Rousseau recognizes the merit of having made a contribution to what he calls

“droit politique” or internal law, but he leaves to others the task of founding external law. In reality, the problem is more complex. If we consider the breadth of the other philosophical and literary projects that Rousseau brought to a successful conclusion, it is difficult to accept the explanation that he left the *Political Institutions* incomplete because of the “too vast” character of this “object” and his “short sight” (1997d, 152/470). This failure is probably better explained as resulting from a profound meditation on the contradictions that arise when dealing with the issue of interstate relations, fed in particular by the knowledge of the authors who had thought about “the Law of War and Peace” before him—to take up the title of the masterwork of Grotius, which Rousseau had read very closely.

An attentive reading of Rousseau’s works confirms the existence of such deep reflection. A part from the end of the summary of the *Political Institutions* inserted into *Émile*; a few short passages in the *Social Contract*, principally I:iv; the texts on the *Project to Perpetual Peace* of the Abbé de Saint-Pierre (the *Abstract* and the *Judgment*),<sup>7</sup> and several passages from texts on Corsica and Poland shows that Rousseau had in fact carried out a deep and above all coherent analysis of these questions. Yet the *Discourse on Inequality* and the *Principles of the Right of War* contain the most decisive elements for understanding the originality and importance of Rousseau’s thought concerning external relations. In these texts, we find an idea whose originality must be judged relative to the ideas current in Rousseau’s time.

Rousseau opposes the Hobbesian and Lockean conceptions of the “state of Nature;” that is, their conceptions of societies and human relations in the absence of political power and positive law. For Hobbes in particular—Locke is more ambiguous about this point—as soon as a human being encounters another human being, conflict becomes inevitable, and social relations are transformed into a “war of all against all” (Hobbes 1996, I:xiii, § 8). War thus has an origin that one might describe as “natural,” and it is the artifice of the state, working in the opposite direction, that produces peace. In contrast, according to Rousseau, the appearance of political power and legal order is the *cause* of the appearance of war: He writes in the *Principles of the Right of War* that “war was born from peace, or at least from the precautions Men took to ensure a lasting peace” (2012, 155/266). The advent of what he calls “genuine war” is incomprehensible within the framework of the stateless society.

Rousseau proceeds in a methodical fashion in the *Principles of the Right of War* to demonstrate his thesis. He begins by defining the “genuine war.” It is possible to have an absence of peace without that implying a genuine war, in the same way that the absence of war does not imply the existence of a genuine peace. There is war as soon as “the one has to die so that the other can live” (2012, 160/271). The radical nature of Rousseau’s

<sup>6</sup> “Amour de soi” is generally translated as “self-love.” Gourevitch translates “amour-propre” as “vanity” (see Rousseau 1997a, 218), whereas Kelly and Bloom offer “love of oneself” (see Rousseau 2010, 363). But “amour-propre” is sometimes also translated as “self-love,” and there are two other complications associated with this term. One is that in French it is used with slightly different meaning by other authors (Pascal, La Rochefoucauld); the other is that the expression has passed into English, where it has acquired a different shade of meaning. In view of these difficulties of translation, I chose to leave these expressions in French, but with specific explanations of what Rousseau means by them.

<sup>7</sup> I quote from the English translation of the *Abstract* published by Vaughan in 1917 (London: Constable and Co.); page numbers are from the reprint of this text in 2009 (Gloucester: Dodo Press).



account of the struggle to the death that is war allows genuine war to be distinguished from all states of temporary violence resulting from impulsiveness, from conflicts that are occasional and not resolvable, and from duels or vendettas.

Rousseau poses the following question: How do genuine wars become possible? He writes, “[W]hen a genuine war is involved, just imagine what a strange position this same man must be in if he can preserve his life only at the expense of another” (2012, 160/271). It is far from simple to resolve this question, though Rousseau has given himself the means to do so. He shows that Hobbes’s theses is false, but not only for moral or anthropological reasons. When commentators address Rousseau’s views on war, their focus is nearly always on its cultural, moral, and psychological aspects (mainly its criticism of cosmopolitanism and praise of patriotism). Now, if Hobbes’s theses are false, it is because he does not take into account sociological and economic modifications that transform what is explicitly designated in the *Social Contract*, I:iv, as “property relations” (“relations réelles”) (Rousseau 1997d, 46/357).<sup>8</sup> Sociological and economic relationships—relationships between people that are mediated by the appropriation of things—at the same time render possible and necessary the advent of “genuine war.”

Rousseau explains the “strange position” that implies that people must kill in order not to die in the *Discourse on Inequality*—more precisely at the beginning of the second part and in the developments that follow—and in several passages of the *Principles of the Right of War*. This “position” is the one that results from the appropriation of land:

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 or filling in the ditch, had cried to his kind: “Beware of listening to this impostor. . . .” (Rousseau 1997a, 161/164; my italics)

Rousseau presents this first appropriation as a private appropriation, the act of one or many individuals. Later in the text and in other works, he describes this primal appropriation as a form of a conquest of territories, and thus as a collective appropriation. Nevertheless, the two forms of appropriation have the same structure and are often indistinguishable, as Rousseau very clearly illustrates in the *Social Contract*, I:vii: If the state ought to exercise sovereign power over a territory, it is primarily because of the need to protect the private property found there.

We can thus identify two essential elements here. First, the appropriation of land is impossible if it is not supported by the institution of the state, meaning a power exercising a sovereign influence on a territory. Second, this state-supported appropriation of land plays a determinant role in the emergence of war.

<sup>8</sup> Rousseau uses the word “réel” (real) in its legal sense, which is close to its etymological origin (Latin *res*: thing).

Why this connection, which Rousseau formulates so often? The principal reason is as follows. The earth is a sphere, a finite surface. Of necessity, therefore, the appropriation of land at some point leads to a situation in which appropriation is saturated and the system is full, without any remainder or exterior left over. The appropriation of the earth sets in motion a chain reaction. Once it has started, it must necessarily come to completion. For the people already present in a territory, an appropriation by strangers is always an expropriation. A first appropriation can have but two consequences: Either it extends itself indefinitely and completely absorbs territories and populations under a single domination, or it encounters resistance. Yet this resistance is possible only if the menaced population constitutes itself as a political society that in its turn defends its own sovereign influence over a territory:

The first society formed necessarily leads to formation of all the rest. People have to belong to it, or unite to resist it. People have to imitate it, or let themselves be swallowed up by it. Thus the entire face of the earth is changed. . . . Natural independence and liberty have given way to laws and slavery, there no long exists any free Being. (Rousseau 2012, 161/273; cf. 1997a, 173–4/178)

In the seventeenth and eighteenth centuries, the discovery of new lands to be conquered, and thus the process of colonization, was frequently conceived as implying a sort of unending opening up of the world, providing access to inexhaustible lands (see, for example, Locke 1993, ch. V, §§ 33, 43 and 45). On the contrary, Rousseau interprets this period of discovery and distant conquests as a process whose necessary result is that humankind will end up feeling that it is running out of space on earth. This feeling of confinement will result from the fact that human societies will for the first time find themselves literally crushed against each other, all bumping elbows in order to find the space necessary to eke out a meager existence on a finite earth.

This appropriation of the world—the institution of spheres of influence over the inhabitable world—thus *artificially* creates a situation of penury and a struggle for existence (this situation is not therefore “natural” as Hobbes claims). On this point, it is in the *Principles of the Right of War* that Rousseau’s analysis is the most developed. He illustrates his claim initially by contrasting this moment of saturation with the situation of pre-political societies. The necessary struggle for life that characterizes genuine war is inconceivable in the pre-political condition when, as Rousseau writes, “among individuals everything is in a continual flux which ceaselessly changes relations and interests. So that a subject of dispute arises and ceases instantaneously, . . . and there may be fights and murders but never or very rarely protracted enmities and wars” (2012, 160/271). The pre-political state is characterized by “continual flux,” a situation of fluidity in the relations both of humans among themselves, and of humans and the earth; this fluidity disappears when states have conquered all inhabitable territory.

The analysis developed in the *Principles of the Right of War* underlines the contrast between the situation of pre-political societies and that which results from the institution of political societies. States maintain “mutual relations” that are “far more intimate than those of individuals” (2012, 162/273). Hobbes overlooks this distinction, but Rousseau underlines it: For him, only states are in such an indiscriminate relation and have their interests so closely bound together that the ambitions of some necessarily threaten the mere existence of others—their existence, not simply their well-being or their honor. According to Rousseau, between states there emerges “a general relationship tending towards their mutual destruction” (2012, 164/275–6).

### THE CONTENT OF THE LAW OF WAR AND THE QUESTION OF ITS EFFECTIVENESS

Rousseau demonstrated how the institutions of law and the state were the real causes not only of the possibility but also of the necessity and perpetuity of the “state of war”<sup>9</sup> between powers. But he nevertheless had the ambition to write a book dedicated to the “right of war” and the legitimate war. As reconstructed, this work sets out the principles of law concerning the two main aspects of the *jus belli*: the right to make war (*jus ad bellum*) and rights within war (*jus in bello*).

Following from Rousseau’s analysis of the nature of war, the only proper military operations are those that have a direct relation to the authentic aim of war: the struggle for or against a sovereign power. Therefore the members of the body politic can only be envisaged as targets of military violence insofar as they are instruments of the collective will and, more precisely, as instruments of a power that poses a menace to another body politic. The *jus in bello* thus excludes all targeting of persons and goods considered in light of their private existence: The disarmed soldier is not a vital menace, and it is therefore illegitimate to kill or enslave him (Rousseau 1997d, 46–7). More broadly speaking, the law excludes military tactics that are disguised forms of predation: “[As soon as] land, money, men—all the spoils you can appropriate— . . . become the principal objects of mutual hostilities . . . , war finally degenerates into brigandage, while little by little enemies and warriors turn into Tyrants and thieves.” This is why Rousseau condemns as illegitimate not just the sacrifice of prisoners and the reduction of individuals or entire peoples to slavery, but also annual tribute in men, the suppression of “commercial liberty,” “pecuniary contributions, in merchandise or in foodstuffs,” “territory stolen,” or “inhabitants transplanted” (2012, 165–66/277–78).

<sup>9</sup> In the *Principles of the Right of War*, Rousseau distinguishes “war” from the “state of war” in the following terms: “When parties keep one another in mutual tension by constant hostilities, that is what is properly known as waging war. On the other hand, when two declared enemies remain calm and carry out no defensive action against one another, their relationship is not thereby changed, but so long as it has no current effect it is called merely a state of war” (2012, 156/268).

We may observe that transgressions of the *jus in bello* as it is conceived by Rousseau are inseparable from transgressions of the *jus ad bellum*—it is for this reason that Rousseau conserves the concept of the “just war,” in the sense of a war that is just in its ends and not merely in its means. In so doing, Rousseau places himself in radical opposition to the conceptions of the law of war in force at his time, which were nourished by the influence of Hobbes, Grotius, and Pufendorf. For these authors, an act of war (for example, the taking of booty) may be legitimate and establish a right to property or, on the contrary, may be mere brigandage, depending on whether its author is a constituted and recognized state or an informal collective body not constituted into a state—a band of insurgents, for example (see Grotius 1814, III:iii, §§ 1–3). Rousseau entirely inverts the distinguishing criteria: It is the nature of the act that determines its legitimate or illegitimate character. From this point of view, far from prolonging, as Schmitt contends, the dominant point of view of *Jus publicum europeum*, Rousseau is formulating a radical critique of it. The state that carries out hostilities not to satisfy the demands of self-preservation but to increase its well-being or glory is in reality indistinguishable from a band of brigands. For Rousseau, there is a right to make war only insofar as the vital interests of the state are at risk.

It is true that Rousseau does not give a detailed definition of the criteria for *jus ad bellum*, as had been the usual practice in traditional theories of just war since the Middle Ages; these criteria included legitimate authority, just cause, proportionality, reasonable chances of success, last resort, and right intention (see Brunstetter and Holeindre 2012, 14). But this does not mean that he does not care about normative requirements—quite the contrary, because respecting the rights of civilians and of disarmed enemies and avoiding useless destruction and plunder are the best criteria for knowing whether a war is just from the point of view of *jus ad bellum*. He therefore has a completely unambiguous position on the possibility and the need to verify, while observing the *modalities* of the conduct of war, whether the *ends* of war are just or not. As soon as war becomes a predatory enterprise, it is evident that the ends of military actions no longer correlate with those authorizing war; in other words, the necessity of killing or at least weakening the enemy to preserve one’s own life. This point is the only one that is crucial: Are there, strictly from the point of view of the rational self-interest of the state, reasons to make war, and if so, what military means are indispensable to ensure the *salus populi*?

However, a very difficult question now arises: How does Rousseau conceive of the efficacy of the *jus belli*? At the beginning of the *Principles of the Right of War*, he writes that the *jus gentium* is a completely theoretical ideal and that it is in reality completely inefficacious. Rousseau does not entertain illusions about the possibility either of pacification by good will or of instituting international laws and arbitration. But, as we see later, these criticisms do not prevent him from considering that the *jus belli* as he

conceives it is not merely a pious wish, but has a kind of efficacy.

### REFUTATION OF THE IDEA OF A *JUS GENTIUM* BASED ON BENEVOLENCE OR ON CIVILIZED CUSTOMS

The first hypothesis that Rousseau refutes is that of a tendency to natural benevolence and the spontaneous recognition of principles of justice among peoples. This interpretation of interstate relations, which is moral or customary rather than strictly juridical, is actually one of the senses of the expression *jus gentium*, which in antiquity and the Middle Ages designated a set of customs that “civilized” nations were supposed to respect on the basis of a cultural and/or rational, or indeed religious, consensus (the term still partly retained this broad and equivocal signification in the modern period, notably in the works of Grotius 1814, I*i*, § 14).

In the *Geneva Manuscript*, an early version of the *Social Contract*, Rousseau refutes the hypothesis of a natural sociability that would unite the human race morally, independently of any political or juridical institutions. However, he does not deny the existence of universal moral principles. According to him, good certainly exists in the spirit of “wise men” and in “the systems of the Philosophers,” but he does not think that it is the motivation that really drives people (see Rousseau 1997c, 155–56/284–85).

Rousseau places this thesis in the mouth of an “enlightened and independent man” who argues against the exhortation to act with benevolence toward those who resemble him. He takes particular care to note that in this text he is explicitly comparing the reasoning of the “enlightened and independent man” with the reasoning that determines the foreign policy of states: “This is how every sovereign society accountable for its conduct solely to itself reasons” (1997c, 156/285). His argumentation takes up an essential thesis of Hobbes, namely the need to connect the respect for another’s laws with a guarantee of reciprocity (see Hobbes 1996, II:xvii, §§ 3 and 13). Without guarantees “against every unjust undertaking,” the “independent man” will be “exposed to all the evils which the stronger might choose to visit upon [him]” (Rousseau 1997c, 156/285). The same idea is found in the *Social Contract*, II:iv. The requirement of reciprocity implies that transgressions against the rules of justice will be “sanctioned,” something that is not done “naturally.”

Because Rousseau places the reasoning of the “enlightened and independent man” on the same level as that motivating the external relations of nations, it is not surprising to find this argument reappearing in the *Principles of the Right of War* in almost identical terms; namely, the affirmation of the insufficiency of law founded only on the good will of the parties to establish relations of effective justice among states:

As for what is commonly called the right of nations [droit des gens], it is certain that for want of sanctions [note that this formula is exactly the same as that used in the *Social Contract*: see 1997d, 66/378] its laws are purely chimeric

... Since the law of nations has no guarantee apart from its usefulness to the person who submits to it, its decisions are respected only insofar as interest confirms them (Rousseau 2012, 154/265–66).

The consequence of this set of analyses is clear: A necessary condition to conceive an effective *jus gentium* will be the institution of legal rules that actually apply, and in an identical manner, to all states without exception. This necessity explains the interest shown by Rousseau in the project of the Abbé de Saint-Pierre, which sought to institutionalize the rights of nations.

### REFUTATION OF THE IDEA OF A *JUS GENTIUM* BASED ON A CONTRACT AMONG NATIONS

Rousseau worked for a long time on the projects of the Abbé de Saint-Pierre, the purpose being to give a more readable and condensed presentation than that given in the Abbé’s original texts.<sup>10</sup> An old tradition tends to attribute to Rousseau an adherence to the project of Saint-Pierre and to ignore the trenchant criticism he expressed.<sup>11</sup> Windenberger (1899, 237) considers that there is a necessary continuity in Rousseau between his theory of the social contract among individuals and the idea of a contract among nations. Lassudrie-Duchêne (1906, 133) is more attentive to the skepticism formulated by Rousseau, but instead of going into his reasoning in depth, considers that there is some incoherence in this part of his thought: “If one considers, like Rousseau, that every society rests on a convention, it is logical to conclude that international society also finds its basis in a contract lately concluded among states” (my translation). Now, Rousseau clearly distanced himself from this activity with the *Project to Perpetual Peace*, discretely in the *Abstract*<sup>12</sup> and more explicitly in the *Judgment* that he prepared in parallel.

What are his main arguments against this project? One might be tempted to pick out his denunciation of Saint-Pierre’s naïveté in supposing that rationality should play a determining role in the political choices of monarchs. We know that this criticism is seen again in Kant, who prolongs and completes the ideas of Saint-Pierre, but tries to make them less chimerical. According to Kant, there are reasons to hope that the spread of republican regimes would result in a progressive movement toward a desire for peace, the product of fatigue with the sufferings caused to populations by repeated wars (see Kant 1991, VIIth proposition). Carter (1987, 157) considers that the question of the nature of power (absolute or moderated) constitutes the point of the greatest divergence between Rousseau and Saint-Pierre. Asbach (2002, 103–22) also insists on this

<sup>10</sup> See the letter of January 30, 1759, to Madame Dupin (Rousseau 1965–98, Vol. VI, Letter 770).

<sup>11</sup> On Voltaire’s opinion, see Havens (1933) and Cottoni (2003, especially 59–67).

<sup>12</sup> Rousseau writes that the *Abstract* is not a mechanical transposition of the Abbé’s theses: “I could give such a form to my work that very important truths would pass ... under the Abbé de Saint-Pierre’s cloak” (1995, 342/408).



aspect of the question as resolving the contradiction between the skepticism of Rousseau concerning Saint-Pierre’s project and his belief in the possibility of progressively escaping from a state of war between states. According to Asbach’s conception, a historical process of *internal* domestication (“Zähmung”) of states, turning them into states with democratic laws, should lead to a progressive domestication of the relations among states.

Certainly, Rousseau does not deny that the question is formed differently according to whether the hypothesis involves a monarchy or a republic (2012, 160/272). But he refuses to reduce the problem to a change of political regimes. Universalizing the republican model is not, for Rousseau, a guarantee of true pacification in relations between states. In fact, he writes in the *Discourse on Political Economy* that “it is not impossible that a well-governed republic might wage an unjust war” (1997b, 8/246). And he argues in the *Abstract of the “Project of Perpetual Peace”* that “in the absence of any sure clue to guide her, reason is bound, in every case of doubt, to obey the promptings of self-interest which, in itself, would make war inevitable *even if all parties desired to be just*” (2009, 20/569; my italics). This last formulation, whose consequences are significant, must be related to the analyses of the *Principles of the Right of War*: “The body politic . . . is forever obliged to compare itself in order to know itself. Depending upon all that surrounds it, it must take an interest in all that occurs there” (2012, 162–3/274). We thus understand why “in every case of doubt, . . . war [would be] inevitable *even if all parties desired to be just.*” Each state, even should its ambition be to “remain within itself without gain or loss,” will necessarily be led to “take an interest” in the behavior and intentions of other powers (2012, 163/274).

The intentions of states in relation to their neighbors are unpredictable. This is why the life of each state, understood as a simple desire to guarantee the security and liberty of its members, is constantly and *really* threatened. At any moment, a state must expect to see its tranquility put in peril by the ambitions of other states that seek, by means of their own forces or by making a coalition for that purpose, to destroy or weaken it (see Rousseau 2012, 163/274). It is therefore both necessary and normal that each state should prepare for war. Each state, even if it only reasons according to the logic of “amour de soi” and not that of “amour proper,” may legitimately carry out preventive wars of aggression, but only insofar as doing so is indispensable for its own preservation and does not aim at an unlimited increase of its power or glory. We must note that Rousseau does not formulate any critical judgment on this point, because this reasoning remains true regardless of any pro-war logic, whether it be nationalistic or imperialistic; see Rousseau (1997a, 116/113; 1997b, 28/268; 1986a, 237/1013) and Bachofen (2012, 277 and 292–8).

Now, the anticipation by each state of a possible war, and its wish to prepare for it or to prevent its occurrence in advance, will be highly likely to excite a legitimate, reciprocal fear in its neighbors, which will lead them

to reason in the same way, thus confirming the original fear. The fear of war engenders the state of war or, indeed, actual warfare. But Rousseau goes further. If we have followed his reasoning so far, there is nothing to prevent us from seeing in interstate relations a kind of reasoning comparable to that which Hobbes (and Rousseau himself) sees in *individuals* living in the state of nature and that leads them to establish a social contract. This is why the decisive point is to insist on the different nature of individuals and states. Theories of the social contract rest on the idea of “natural rights” attached to each individual, which originally make them all equal and which serve as a basis for the definition of the subjective rights that must necessarily be ascribed to them once the state is instituted. The same cannot be said for states, because neither their existence nor their fundamental rights are comparable to those of individuals. From that point of view, there is a strict logical continuity with the analyses of the *Discourse on Inequality* and the *Principles of the Right of War* concerning the connection between the advent of the state and the beginning of war. The factual origin of states (the conquest, usurpation, and unequal appropriation of the entire world) implies that it is impossible to make an objective definition of the “rights” of each individual state. For a given state, the “rights” of the other states are always open to question. Rousseau, evoking the right to appropriate a territory, writes in the *Social Contract*, I:ix, that “[p]ossession [does not] change[s] in nature . . . and becomes property in the hands of the Sovereign: But . . . public possession in fact has greater force and is more irrevocable, *without being any more legitimate, at least for foreigners*” (1997d, 54; my italics). He goes so far as to write in the *Abstract* that “if we could get back to the solid ground of primitive right, few would be the sovereigns in Europe who would not have to surrender all that they possess” (2009, 20/569).

This is a first difference between the relations among individuals and those among states. But there is another one that is no less important: Rousseau is well aware of Hobbes’s argument that the state of war is an untenable situation *for individuals* because, in such a state, they would immediately see a breakdown in their experience of individuality. However powerful he or she might be, in the long term no individual can hope to resist the hostile endeavors of others without the protection of a sovereign political and juridical order (see Hobbes 1996, I:xiii, § 1). But Rousseau shows that the question does not arise in the same terms for states: “Man has a measure of strength and size fixed by nature . . . . The State, by contrast, being an artificial body, has no determinate measure, the size pertaining to it is undefined” (2012, 162/273–74). This difference automatically produces a certain number of effects that in the end definitively demolish the idea of a social contract among states—however plausible it might seem at first sight. On this point see Riley (1973, 16).

The difference in kind between individuals and states is nearly always ignored in the conceptions of social contract theorists regarding international law. This was already the case for the Abbé de Saint-Pierre, it

remains so for Kant, and the misunderstanding persists for Rawls, whose work *The Law of Peoples* is strongly inspired by Kant.<sup>13</sup> In this work, Rawls applies the principle of the “veil of ignorance” not to individuals, but to the representatives of “decent” societies, asking them in particular to make an abstraction concerning the size of the various different states.<sup>14</sup>

Rousseau, on the contrary, is quite lucid in anticipating the crippling problem arising from an analogy between states and individuals. Hoffmann underlines this difference between the theses of Rousseau and those of Saint-Pierre (Hoffmann and Fidler 1991, xiii–xiv) and, in a commentary published in the same volume as the French translation of *The Law of Peoples* (Rawls, 1996, 144–5), criticizes what he sees as the problematic character of Rawls’s reasoning. Although one may imagine that the “representatives of peoples” decide, for moral reasons, artificially to “ignore” the specific sizes and the relative power of the states to which they belong, they cannot fail to know about the *fact* of the disproportion among the various state powers. There thus arise effects that are independent of the good or bad intentions of peoples or their representatives, because the theory of the social contract does not rest on positions of moral principle, but rather fundamentally on a pragmatic calculation.

We already find this reasoning in Rousseau, who insists on the fact that, in international relations, there always exist a certain number of political bodies that judge that it is possible for them to enjoy, solely as a result of the disproportion between their own power and that of their neighbors, a durable security. A certain number of states see no need to renounce their independence by submitting to the laws of any outside sovereign body. At the most, and according to circumstances, they might make some formal adjustments to their relations with other states, something belonging more to diplomacy than to law but that in fact merely places a sheen of legal appearance on relations based on power. Rousseau formulates this idea very clearly in a letter to Mallesherbes:

I should remark . . . that in relation to the *droit des gens* there exist many uncontested maxims, which are however and will always be vain and without effect in practice because they rest on a supposed equality among states as among men, a principle that is true for the former neither in their size nor in their power . . . . The natural right is the same for all men, who have all received from nature a common measure, and limits which they may not pass; but the *droit des gens*, based on measures created by human institutions and thus without absolute value, vary and must vary from nation to nation. Large states impose these

<sup>13</sup> Rawls’s text was first published in 1993 as a short paper (*Critical Inquiry*, Vol. 20), which was expanded in 1997 for its publication in the *University of Chicago Law Review* (Vol. 64 [3]) before becoming a book in 1999. The 1993 version was translated into French in 1996 under the title *Le droit des gens*, accompanied by a commentary by Hoffmann.

<sup>14</sup> See Rawls (1999, 33 and 41) and Boucher (2006, 31). A clarificatory analysis of this aspect of Rawls’s thought is offered by Pogge (1994, 195–224).

measures on smaller states and make them respect them (1965–98, Vol. VII, Letter 1152 [my translation])

Rousseau considers that the submission of states to international laws or treaties is always a disguised and hypocritical form of the “state of war” and for this reason can even be the cause of new conflicts. That is because these treaties necessarily provide motives for dissatisfaction for those on whom they are imposed and are therefore sources of counterclaims, a thirst for revenge, and new wars. In the *Constitutional Proposal for Corsica*, he writes about “alliances” and “treatises” that “such things may bind the weak to the strong, but never the strong to the weak” (1986b, 280/903; cf. *Considerations on the Government of Poland*, 1986a, 268/1037).

Fundamentally, Rousseau criticizes the principles of the project of Saint-Pierre because he considers that it only reproduces, under nother seemingly more egalitarian form (in particular the institution of a permanent assembly), the repeated attempts of the time to ensure peace by bilateral or multilateral treaties. In Rousseau’s eyes these are only leonine treaties that formalize relations based on unequal forces. The “European Union” that Saint-Pierre imagined would for Rousseau fall under the logic of the “balance of powers” theory that, since the Peace of Westphalia, had enjoyed such a vogue in the ruling circles of the seventeenth and eighteenth centuries. According to Rousseau, the “balance of powers” (which is supposed to create a pacifying and stabilizing equilibrium) is in reality a case of perpetual motion. That is why he has no illusions as to the reality or the stability of the peace produced by such means.

One of Rousseau’s most original and interesting theses on this point is the *relative* nature of the notion of power for a state. Power cannot be reduced to simple quantitative data such as the extent of its territory, the size of its population, or its military power. According to him, the greater or lesser determination of the members of the state to defend it, and thus to involve it in military undertakings, plays an essential role that is far too often neglected in the geostrategic calculations of sovereigns and their ministers:

The feeblest man has more strength for his self-preservation . . . than the sturdiest State has for its own. Hence, for this State to survive, the intensity of its passions [i.e. its civic passions] must replace that of its movements, and its will must quicken even as its power grows slack. . . . It is also the reason why small States have proportionately more vigor than large ones. For public sensitivity does not increase with territory: the more it expands, the more the will cools, the more the movements weaken, and that great body overburdened by its own weight collapses, languishes and withers away. (2012, 163–64/175)

Therefore, peace can neither be established by the spontaneous renunciation of all aggression based on good will, nor by equality and security guaranteed by law and by the contract existing among the powers, nor by a more or less definitive and stable hierarchy established among the powers.



## THE INTERNAL FOUNDATION OF EXTERNAL RIGHTS

Rousseau, as we have seen, puts no faith in *jus gentium*, whether in a moral or customary form or in an institutionalized form. However he takes the idea of a law of war very seriously. Above all he does not consider that it would be devoid of any kind of *effectiveness*.

The resolution of this question is of special interest because it bypasses the issue that most often arises in studies of Rousseau’s theory of international relations: Should he be placed among the “realists” or the “idealists”? Waltz (1959, 159–86), Fetscher (1975, 172–257), and Hassner (1997, 200–19) place him among the realists. Hoffmann (1965a) has probably best grasped the specific nature of Rousseau’s thought, showing that in reality he stands outside this classic division. Although he places him more or less on the side of the realists, he insists on the atypical character of his position (see also Hoffmann and Fidler 1991, xxi–xxii).

Paradoxically, Rousseau thus appears to be a realist and an idealist at the same time. How does he rise above this distinction? To resolve the paradox, we should look at his response to the question: What does it mean to win a war? An unexpected turn of argumentation is to be found in the final third of *The Principles of the Right of War*. After having defined genuine war as a struggle to the death from which it is impossible to extricate oneself, Rousseau shows that the “death” that is referred to can only be *the death of the state*. It is states, and not humans qua humans, that entertain an “intimate relation” such that if the one adversary state abandons the terrain in the struggle, it has given up its own existence. From this there follows another crucial and extremely complex question: What does it mean for a state to live, weaken, and die? From the response to this question follows the normative aspect of Rousseau’s theory, because the rights of war are deduced from an analysis of the conditions necessary for the death or the crippling of the state qua state.

The “life” of the state, he writes, is constituted by the social pact. This is why to “wage war on the sovereign . . . means to attack public convention” (2012, 168/280). And yet the social pact exists in the heart or the will of its members. From this follows a very original conception of what it means to attack and “kill”—or at least weaken—a body politic and thereby to win a war:

The life principle of the body politic and so to speak the heart of the State is the social pact: once wounded there, it instantly dies, falls and is dissolved. But this pact is not a charter in parchment, needing only to be torn up to be destroyed; it is written in the general will, where revoking it is not so easy. (2012, 164–65/276)

War, most rigorously defined, opposes the organs of one collective will against the organs of another collective will. It is thus an extreme form of a political program.<sup>15</sup> The state cannot “live,” except on

the condition that its members desire its existence and share in a common will to see it exist. For Rousseau, a population possesses a political existence as soon as its acts manifest something like a general will. He was intensely interested, as we can see in some *Political Fragments*, *Émile*, and finally the *Considerations on the Government of Poland*, in the situation experienced by two peoples in his time: the Poles and the Jews. These peoples, Rousseau says, are and remain “political bodies,” having resisted in this name spoliation, material domination, the destruction of their institutions, and even (in the case of the Jewish people) dispersion and privation of territory. He writes in the *Government of Poland* that the members of the Jewish people have resisted these things because the “social pact” that makes of them “political bodies” continues to live (1986a, 163/956). He is inspired by this example to give the Poles the advice to

establish the Republic so firmly in the hearts of the Poles that she will maintain her existence there in spite of all the efforts of the oppressors. There . . . is the only sanctuary where force can neither reach nor destroy her. . . . The virtue of the citizens, their patriotic zeal, the particular way in which national institutions may be able to form their souls, this is the only rampart which will always stand ready to defend her, and which no army will ever be able to breach. (1986a, 167–8)

As Clausewitz would very justly remark a few decades later, the aim of war is to impose law on the enemy (1832, I:i, § 4). Hoffmann (1965b, 217) evokes Clausewitz in a transparent manner, although without quoting him explicitly, to underline the convergence between certain of his own theses and those of Rousseau on the nature of interstate relations. Both insist on the essentially political character of warfare and on the need, indissociably pragmatic and normative, to subordinate the military power to the political power, thus making the practice of war subject to the essential needs of the political power—which is to obtain the durable and free obedience of individuals to the law. The proper aim of war is the destruction or the annexation of the sovereignty of the enemy. Translating this into the vocabulary of Rousseau, this means that *war consists, in the final instance, in proposing a new social pact to the members of the attacked people or at least in testing their attachment to the existing social pact*.

A war waged against a state, Rousseau says, can strictly speaking have but two outcomes. In the first case, the will to destroy the social pact of the attacked state will be crowned with success. In concrete terms, the citizens of the attacked state will renounce the defense of their institutions and dissociate themselves from the organs of the state. In the extreme case, according to this hypothesis, “the State [might] be killed, without a single man dying” (2012, 168/280). This means that the members of the state might choose to adopt a new social pact or to integrate themselves into the aggressor state. In the second case, the aggressor state does not arrive at its *political* goals: Whatever might be its military successes (pillaging, devastation,

<sup>15</sup> Here is Lord’s formulation (1999, 122): “The general aim of the political program is the organized transfer of power.”

enslavement), the war cannot be considered as won. An armistice, a treaty of leonine peace, might be accepted by some private individuals pretending to represent the political body, but in reality the political body continues to “live.” The social pact resists and survives where it really exists; that is, in the will of the members of the body. In the reality of wars that take place in history, all variants can be found, from the destruction pure and simple of the institutions of the vanquished state—or its population—to partial annexations, voluntary secessions, occupations imposed by force and provoking resistance that may be more or less visible and vigorous, or finally occupations and annexations carried out exclusively by force but progressively established and accepted through lassitude, indifference, or self-interest. Among these very different cases, the general principle remains the same, even if it is applied to different situations according to the circumstances: War is a struggle between the wills to existence of two “political bodies.”

One thus begins to understand why, in reality, all military enterprises that transgress the *jus belli* run a significant risk of failure. From these analyses can be derived a pragmatic, and not a juridical, auto-limitation of military practice. The testing of the social pact that is war can be effective only on the condition that the military enterprise is submitted to specifically political ends: the attempt to subjugate the enemy’s sovereignty. This supposes that one exclusively attacks public forces, which are the organs of sovereign and executive power (Rousseau 2012, 165–66/276–77).

The Rousseauist conception of the intrinsic limits of war, a conception that might appear abstract or idealistic, in reality testifies to a lucid analysis of war as it is fought and observed when one penetrates beneath the surface of history. The examples of the Polish and Jewish people evoked by Rousseau quite concretely illustrate that human history is in reality a succession of unfinished, poorly won, and eternally restarted wars. If one is surprised that a military victory, even one apparently without appeal, resolved nothing in history or that lost battles are so often replayed decades or even centuries after the initial engagement, then one has understood nothing of the essence of war: One has instead confused conquering by violence with rightful power.

If Rousseau tells us that war ought to be waged in a manner that is honest if it cannot be waged in a manner that is strictly speaking *legal*, he does so for reasons that do not derive from positive law, honor, or morality. Instead, it is this honesty alone that permits a war to be a decisive event. As Rousseau writes in the *Social Contract*, I.iv, “a just prince may well seize everything in enemy territory that belongs to the public, but he respects the person and the goods of private individuals; he respects *the rights on which his own are founded*” (1997d, 47/357; my italics). To respect disarmed enemies, private property, and individual security is, for a fighting state, to establish the foundations of its legitimacy as a state. The state that discredits itself in its manner of waging war weakens itself while believing that it is reinforcing itself. From this claim there follows a weighty consequence: The principles of military

justice are grounded neither on contractual nor moral obligations, but on a pragmatic concern rooted in the principles of internal public law.

## CONCLUSION

The last words of the manuscript of *The Principles of the Right of War* evoke the power exercised in Sparta by the masters of the land over the Helots, an enslaved people—a power founded on conquest and productive of a perpetual state of war that structurally opposed masters to slaves. Rousseau describes the Helots as eternal enemies situated right in the heart of the city, as is demonstrated by the fact that the Ephors, the appointed magistrates and rulers of the Spartan state, ritually declared war against them when they entered public service. The example of the Helots is the representation, in the purest state, of the reality of the majority of sovereign dominations: These dominations are the result of conquests, spoliations, and usurpations, and they depend on an obedience that is forced, unstable, and thus constantly menaced by revolution and civil war.

This example taken from remote antiquity finds interesting echoes in the debates raised by contemporary wars. Hoffmann (1965a, 54–87) stresses the continuing relevance of Rousseau’s thought, the originality and penetration of which can still help us today in understanding international relations. Many arguments plead in favor of this opinion. I mentioned in this article’s introduction the Vietnam War, as well as the wars in Afghanistan and Iraq, but we could also evoke the Israel-Palestine conflict. Even if the stakes are very different, there are still points in common among these armed conflicts. First, the certainty—it may or may not be well founded, but that does not change anything—of fighting for a just cause does not prevent perpetual transgressions of the rules set by the law of war as defined in international conventions, both from the point of view of *jus ad bellum* and of *jus in bello*. Above all, these are conflicts that are very difficult to conclude, even by those with superior military forces. These two points are connected. Israel, which benefits from the support of the United States and has armed forces on a completely different level from those of its terrorist enemies and that also uses military means forbidden by international conventions, can never complete its fruitless efforts to destroy the threat that hangs over it or bring an end to its conflict with the Palestinians. It is also interesting to note that Barack Obama, who had criticized the interventionist foreign policy of George W. Bush, nevertheless himself used the expression “just war” during his acceptance speech for the Nobel Peace Prize in 2009,<sup>16</sup> after which he engaged the American armed forces in new theaters of operation. He has not yet resolved the problem of illegal prisons; he did not urge ratification of the 1999 convention banning antipersonnel mines, and he has intensified

<sup>16</sup> See O’Driscoll (2011) and Brunstetter (2014). Walzer sees this as a sign of the “triumph of just war theory” (2004, 11).

the use of drones, two types of weapons whose use has involved very significant collateral damage while creating a disproportionate feeling of terror among civilian populations.

Examples of this type have led Orend to pose the following question—“When do wars actually end?” (2007, 573)—thereby complementing the theory of just war with the idea of *jus post bellum*. These questions are very close to those raised by Rousseau when he asks what exactly war is and therefore what it means to win a war: How can one make war in such a way that it does not have to be made or repeated indefinitely? He answers by arguing that those countries that do “best” in war (in the sense of making war most effectively) are also those that do it “best” in the sense of taking care to respect the rules of humanity and just measure. He writes in a note to the 1782 edition of the *Social Contract* that “the Romans . . . understood and respected the right of war better than any nation in the world” (1997d, 46/1441). Although it is clear that he idealizes the Roman Republic, what is interesting is the explanation he gives of this statement in his *Principles of the Right of War*:

The Romans believed that they could give no greater mark of clemency to a subjugated people than to let it keep its own laws. . . . Let us leave to the Tarentines their angry Gods, Fabius used to say, when urged to bring to Rome some of the statues and pictures with which Tarentum was adorned. . . . For it is true that a skillful conqueror sometimes harms the vanquished more by what he leaves them than by what he takes of them. . . . This influence of morals has always been viewed as very important by truly important princes. (2012, 165–66/277–88)

The “morals” he discusses here are not exactly ethics, but rather the customs and the spirit of the nation—the concrete foundations for freely given obedience and the general will. At the risk of anachronism, we could say that the Romans were the first to practice what we call today “nation building.”<sup>17</sup> For Rousseau, if Rome could achieve its immense territorial extension while remaining for centuries a republic, integrating in a stable and durable manner peoples who were originally conquered enemies, it is because these people were not conquered and treated in a humiliating manner, as prey or as vassals; even in the midst of their subjugation, they were treated as people with the right to maintain their own way of life, some of their own institutions, and a certain degree of autonomy, progressively acquiring the title of Roman citizens and becoming full participants in the social pact of the Roman Republic.

## REFERENCES

- Aron, Raymond. 2001. *Paix et guerre entre les nations*. Paris: Calmann-Lévy.
- Asbach, Olaf. 2002. *Die Zähmung der Leviathane. Die Idee einer Rechtsordnung zwischen Staaten bei Abbé de Saint-Pierre und Jean-Jacques Rousseau*. Berlin: Akademie Verlag.
- Bachofen, Blaise. 2012. “La nation, la patrie, le pays. La question de l’appartenance nationale chez Rousseau.” *Annales J.-J. Rousseau* 50. Genève: Droz, 267–98.
- Bentham, Jeremy. 1789. *An Introduction to the Principles of Morals and Legislation*. London: T. Payne and Son.
- Bernardi, Bruno, and Gabriella Silvestrini. 2005. “Les Principes du droit de la guerre de J.-J. Rousseau, nouvel établissement du texte précédé d’une présentation.” *Annales J.-J. Rousseau* 46. Genève: Droz, 201–80.
- Boucher, David. 2006. “Uniting What Right Permits with What Interest Prescribes: Rawls’s Law of Peoples in Context.” In *Rawls’s Law of Peoples: A Realistic Utopia?*, eds. R. David and D. A. Martin. Malden, MA: Malden Publishing, 19–37.
- Brunstetter, Daniel R. 2014. “Trends in Just War Thinking during the US Presidential Debates 2000–12.” *Review of International Studies* 14: 1–23.
- Brunstetter, Daniel R., and Jean-Vincent Holeindre. 2012. “La guerre juste au prisme de la théorie politique.” *Raisons politiques* 45, 5–18.
- Carter, Christine J. 1987. *Rousseau and the Problem of War*. New York: Garland.
- Clark, Ian. 1978. *The Hierarchy of States: Reform and Resistance in the International Order*. Cambridge: Cambridge University Press.
- Clausewitz, Carl von. 1832. *Vom Kriege*. Berlin: Dümmlers Verlag.
- Cottoni, Marie-Hélène. 2003. “Les notes marginales de Voltaire sur l’Extrait du *Projet de paix perpétuelle de Castel de Saint-Pierre*.” *Revue Voltaire* 3, 59–67.
- Deutsch, Karl. 1953. “Nation Building and National Development: Some Issues for Political Research.” In *Nation Building*, eds. K. Deutsch and W. J. Foltz. New York: Atherton Press, 1–12.
- Dreyfus-Brisac, Émile. 1896. *Du Contrat social*. Paris: Alcan.
- Fetscher, Iring. 1975. *Rousseau politische Philosophie*. Frankfurt am Main: Suhrkamp.
- Fournel, Jean-Louis. 2004. “La “brutalisation” de la guerre.” *Asterion* 2. <http://asterion.revues.org/100>
- Gagnebin, Bernard. 1967. *De Ronsard à Breton, Hommages à M. Raymond*. Paris: José Corti.
- Grotius, Hugo. 1814. *On the Law of War and Peace, De Jure Belli ac Pacis*. Translated by A. C. Campbell. London: Walter Dunne.
- Hassner, Pierre. 1997. “Rousseau and the Theory and Practice of International Relations.” In *The Legacy of Rousseau*, eds. N. Tarcov and C. Orwin. Chicago: University of Chicago Press, 200–19.
- Havens, George R. 1933. *Voltaire’s Marginalia on the Pages of Rousseau: A Comparative Study of Ideas*. Columbus: Ohio State University Press.
- Hegel, Georg Friedrich. 1821. *Grundlinien der Philosophie des Rechts*. Berlin: Nicolai.
- Hirschman, Albert. 1977. *The Passions and the Interests*. Princeton, NJ: Princeton University Press.
- Hobbes, Thomas. 1996. *Leviathan*. Oxford: Oxford University Press.
- Hoffmann, Stanley. 1965a. “Rousseau on War and Peace.” In *The State of War*, ed. Stanley Hoffmann. New York: Praeger Publishers, 317–33.
- Hoffmann, Stanley. 1965b. “Rousseau, la guerre et la paix.” *Annales de philosophie politique* 5. Paris: Presses universitaires de France, 195–240.
- Hoffmann, Stanley, and David P. Fidler. 1991. *Rousseau on International Relations*. Oxford: Oxford University Press
- Kant, Immanuel. 1991. *Idea for a Universal History with a Cosmopolitan Purpose*. In *Political Writings*, translated by H. B. Nisbet. Cambridge: Cambridge University Press, 41–53.
- Lassudrie-Duchêne, Georges. 1906. *J.-J. Rousseau et le droit des gens*. Paris: H. Jouve.
- Locke, John. 1993. *Second Treatise*. In *Two Treatises of Government*. London: Everyman Press, 113–240.
- Lord, Christopher. 1999. *Politics*. Prague: Karolinum Press.
- O’Driscoll, Cian. 2011. “Talking about Just War: Obama in Oslo, Bush at War.” *Politics* 31 (2): 82–90.
- Orend, Brian. 2007. “*Jus Post Bellum*: The Perspective of a Just-War Theorist.” *Leiden Journal of International Law* 20 (3): 571–91.
- Pogge, Thomas W. 1994. “An Egalitarian Law of Peoples.” *Philosophy & Public Affairs* 23 (3): 195–224.
- Ramsey, Paul. 1968. *The Just War: Force and Political Responsibility*. New York: Scribner.

<sup>17</sup> One of the first authors to have theorized this notion is Deutsch (1953).



- Rawls, John. 1996. *Le Droit des gens*. Trans. B. Guillaume of the first edition, *The Law of Peoples*. Paris: Esprit.
- Rawls, John. 1999. *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- Riley, Patrick. 1973. "Rousseau as a Theorist of National and International Federalism." *Publius* 3 (1): 5–7.
- Roosevelt, Grace G. 1987. "A Reconstitution of Rousseau's Fragments on the State of War." *History of Political Thought* 8: 225–32.
- Rousseau, Jean-Jacques. 1964–95. *Œuvres complètes in 5 Volumes*, B. Gagnebin and M. Raymond, eds. Paris: Gallimard-Pléiade.
- Rousseau, Jean-Jacques. 1965–98. *Correspondance complète in 52 Volumes*, R. A. Leigh ed. Geneva: Voltaire Foundation.
- Rousseau, Jean-Jacques. 1986a. *Considerations on the Government of Poland*. Trans. F. Watkins. In *Political Writings*. Madison: University of Wisconsin Press, 157–274.
- Rousseau, Jean-Jacques. 1986b. *Constitutional Project for Corsica*. Trans. F. Watkins. In *Political Writings*. Madison: University of Wisconsin Press, 275–330.
- Rousseau, Jean-Jacques. 1995. *The Confessions*. Trans. C. Kelly. In *The Collected Writings of Rousseau*, Vol. 5. Hanover, NH: Dartmouth College Press, 1–550.
- Rousseau, Jean-Jacques. 1997a. *Discourse on Inequality*. Trans. V. Gourevitch. In *The Discourses and Other Early Political Writings*. Cambridge: Cambridge University Press, 111–222.
- Rousseau, Jean-Jacques. 1997b. *Discourse on Political Economy*. Trans. V. Gourevitch. In *The Social Contract and Other Later Political Writings*. Cambridge: Cambridge University Press, 3–38.
- Rousseau, Jean-Jacques. 1997c. *Geneva Manuscript* (early version of the *Social Contract*). Trans. V. Gourevitch. In *The Social Contract and Other Later Political Writings*. Cambridge: Cambridge University Press, 153–61.
- Rousseau, Jean-Jacques. 1997d. *The Social Contract*. Trans. V. Gourevitch. In *The Social Contract and Other Later Political Writings*. Cambridge: Cambridge University Press, 39–152.
- Rousseau, Jean-Jacques. 2001. *Letters Written from the Mountain*. Trans. C. Kelly and J. R. Bush, *The Collected Writings of Rousseau*, Vol. 9. Hanover, NH: Dartmouth College Press, 131–306.
- Rousseau, Jean-Jacques. 2009. *Abstract of Saint Pierre's Project for Perpetual Peace*. Trans. C. Vaughan. In *A Lasting Peace through the Federation of Europe and the State of War*. London: Constable and Co., 1917, Reprinted under the same title, Gloucester: Dodo Press, 15–40.
- Rousseau, Jean-Jacques. 2010. *Émile*. Trans. C. Kelly and A. Bloom. In *The Collected Writings of Rousseau*, Vol. 13. Hanover, NH: Dartmouth College Press, 155–675.
- Rousseau, Jean-Jacques. 2012. *Principles of the Right of War*. Trans. Q. Hoare. In *Of the Social Contract and Other Political Writings*. London: Penguin Books, 153–68.
- Schmitt, Carl. 1988. *Der Nomos der Erde*. Berlin: Duncker & Humblot.
- Strauss, Leo. 1953. *Natural Right and History*. Chicago: University of Chicago Press.
- Vattel, Emerich de. 1758. *Le Droit des gens ou principes de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains*. London
- Waltz, Kenneth. 1959. *Man, the State, and War*. New York: Columbia University Press.
- Walzer, Michael. 1977. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books.
- Walzer, Michael. 2004. *Arguing about War*. New Haven: Yale University Press.
- Windenberger, Joseph-Louis. 1899. *Essai sur le système de politique étrangère de J.-J. Rousseau. La République confédérative des petits États*. Paris: Picard et Fils.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.