

DEMOCRACY AND PARTICIPATION

TOPICS ON DEVOLUTION IN KENYA

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General will: Jean Jacque Rousseau – French Social and Legal Philosopher “Social Contract and Political Principles”- man was born free but everywhere he is in chains.

Honourable, distinguished guests, professionals, County Executives, Members of the judiciary, Lawyers, the academic fraternity gathered here, students and researchers here present, join me in thanking the organizers and convenors of this noble forum especially in this city of Kisumu. It is high time that we deal with critical issues from academic point of view and shed light on what seems to be vague, ambiguous, strange and new to us.

The new constitution (2010) has brought about numerous changes and transformation in this society and now it is our duty to spare time to understand certain values and deep insights upheld by the highest law of the land. Some of us have thought of putting the blame on civil society members or some technocrats that designed the document before its endorsement by Kenyans in the Referendum of 4th August 2010. As much as they are right in their allegations, I still stand to believe that it is now our turn to chew down the document, post-mortem it and discuss it in such a similar public debate. Ignorance about it is likewise wrong.

Allow me to address some of the pertinent issues concerning democracy and public participation already contained in the spirit and letter of the constitution. First and foremost we can start our discussion with Art. 1(1) of the constitution- “the sovereignty is with the people of Kenya”. For our understanding, this is a concept derived from Jean Jacque

Rousseau's social theory in Europe in the 18th Century. It is in the 21st Century that the same concept is getting into our Society even after 50 years of independence. Better late than never! Let's questions ourselves what Rousseau had in mind with his Social Contract theory.

Social contract is the answer to the natural freedom which Rousseau had in mind. However, he believed that nature provides neither standard nor guidelines of who is to rule. The ruler must come from the free will of the people and that is his understanding of democracy by then. People express their will in freedom to elect who is to lead them and in this case the ruler shall be considered legitimate or a representation of the majority will. The authority from such a ruler is to be legitimate and unlike his predecessors John Locke and Hobbes, the general will carries the day.

Legitimate authority, all general authority of right originate from the general will. Centre of gravity of Rousseau's philosophy is in the free will (general will). Liberterian conception of nature – book I of social contract, Chapter VI. Rousseau was battling with feudalism and monarchic states during his time. Individual wills should be powerful when look at collectively- or in a collective bargain format. It is in this line democracy should be understood as a rule by the people. But how do people participate in the political power of the society?

There is fundamental problem for which only "social contract" is the solution to individual wills or interests. When one remains for himself – the aim of the contract is to protect and defend the freedom of each member... protect each member's security and liberty is the objective of the contract. The contract is not only on mutual protection but uniting of one another. When one obeys only himself – he remains only himself as before. How can we remain as free as before? This is the paradox or fundamental problem. This can be reduced to total alienation in the entire community is central. All persons must give themselves entirely

to the community. The social contract is the same for everyone. This is to be given to the entire community...an individual should be subjected to the general will- the will of the community...not kings, president but the general will...the doctrine, the sovereignty of the people. This is not created by the contract- the people acting in their collective capacity. From a highly individualistic premise to highly regimented or collective premise- But in what way do we remain free and obey ourselves...this is a problem. Rousseau – only through this paradoxical alienation that we can remain free- the general will. The general will is rational or general interest/ the rational will. If we obey the general will we shall not go wrong according to Rousseau. This brings with itself radical transformation- it is not the freedom to do what we want. It is a moral freedom- a freedom to do what the law commands.

People bargain better when they are in association. The entire freedom/ how can we form a state without sacrificing our freedom. People are united by the common goals. The will of all- in relation to common good.

This is the explanation of justice- what man loses is his individual liberty but gains his civil liberty and moral liberty. This makes the man be responsible- obedience to the law for which one subscribes is the freedom. Rousseau departs from his predecessors, Hobbes and Locke...

Hobbes- when the law is silent individual is free to do what he wants. For Rousseau it is the moral freedom. Freedom is acting in conformity with law. Different conceptions of liberty- republicans and liberals or democrats. Freedom is privacy where law is not intrude. It is sacred to freedom. The State should not intrude in the freedom. Rousseau – separation between public and private...the individual is part of the collective body. Rousseau is one's obedience to the laws of the community.

Citizens- the last people who knew what citizens means were the Romans. Most people mistake Bourgeois for a citizen and this is wrong. Only in Rome one could find patriotic

devotion for the state. Citizens that can sacrifice themselves for the State and this is the ancient citizenship- true citizen is one who can stand to defend his community and this is higher form of nobility. Rousseau wanted to dignify politics and limit despotism of obedience. Anyone who refuses to obey general will can be forced to be free.

Liberal tradition view: Hobbes- Cap 21 of Leviathan – Freedom of the authorities to resist and invade other people. Freedom consists in immunity from service- Constantinople. Hobbes gives power to

For Rousseau freedom consists of immunity in service. We are free when we are serving. For Hobbes and Locke the direct involvement of citizens in law making was a great advance for federalists... elected representatives make our legislations. This is distrust of collective decision of people. Call people together to discern public concern. Rousseau makes heroic assumptions about human nature...why do we want to engage in public issues. The debate may go on for a long time. Human nature – assumption of men as they are. Men engaged in legislation, is to entrust your individual will to the elected representatives whose aim is to represent the general will.

Rousseau in his general will deals with the question of abstract ideas. Rousseau is specific- conditions in which the general will can apply. The modern nation states are large and diffused to determine general will. A small state works better. There can be no general will in a large and complex society and there is temptation of luxury, diversity, and this is difficult. Book III – some flexibility- there are different typology of governments. Some governments are not suited to men. Democracy when people are involved in legislation- democracy is possible in unique circumstances- even some monarchy is desirable. Rousseau appreciates democracy but denies its standardization...he makes flexible claims rather than dogmatic claims. Legislative authority in whatever kind of government is always held by the people in

their collective capacity...Rousseau rejects sovereignty...sovereignty can never be delegated but can be expressed. If you do that, is the first step to tyranny- you give someone else power to make laws over you. Rousseau's account of legislator is in line with general will – direct democracy.

Book IV Cap 8- Civil religion must be tailored to bring obedience. The book was an attack to Christianity and it was burnt in Geneva.

Legacies of Rousseau:

Description of legislator- creating a people with general will and this is the sovereign- every citizen. The government is the executive and cannot be sovereign. He was opposed to monarchy. He recognised 3 types of government – democracy, aristocracy and monarch. Elected Aristocracy is good. Democracy meaning that all citizens can work together then it is suited to have elected aristocracy. Hereditary aristocracy is worse/ elected aristocracy is the best/monarchy puts the power of the government in the hands of an individual. This is dangerous. Hereditary is not good because rulers tend to hand over power to the hands of their children and there is no freedom of individuals to choose according to their will.

Revolution to create a new people- a new sovereign in France. 1791- Divine man: you taught me to know myself and appreciate the social order. Thanks to you I have brought my stone to it. I wish to follow your teaching. The writing of Rousseau had influence on French Revolution – idea of creating a new people and a new nation...Rousseau had influence in the politics of his time- the writing of constitution in France in Corsica and the rest of Europe- to bring civilization in Europe. Bonaparte was the opposite- dictatorship to form states on the point of a gun. Direct democracy- the politics governed by general will. This opinion was palatable in later thinkers.

Rousseau – influenced also politics and also the dignity and rights of man. Kant read Rousseau (critique of practical reason)- Kant calls it general will and categorical imperative what Rousseau referred to as the general will. Advocate of sense and sensibility. He protested the corruption of society- The feeling of society, sweetness of society. The solitary worker is foreshadowed by Rousseau...He claimed a privileged position in society since he is the conscience of the society...he had moral sensitivity- radical individualism and detachment from individual interests.

Public Participation is reflected in terms of people's participation not as individuals but as a unity.