THE ROLE OF ANCIENT LIBERTY IN ROUSSEAU’S DEMOCRATIC VISION

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
Department of Political Science
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Abstract

This dissertation investigates Rousseau’s normative defence of democracy, beginning with his thoughts on the best kind of political practice. Despite recent attempts to highlight parts of his thought that are sympathetic to cherished liberal principles, current readers still struggle to defang what appear to be Rousseau’s populist excesses: his acceptance of majority-rule and his admiration for oppressive societies like ancient Sparta, Rome, or puritan Geneva. Rousseau defended a theory of legitimacy founded on individual consent, while characterizing the kind of politics practiced in these republics as normatively superior to all others. Motivated by this observation, the dissertation begins by investigating Rousseau’s thoughts on the institutions of republican Rome and Geneva. It concludes that his democratic vision has a very particular normative bent, which has hitherto been obscured by both liberal and collectivist readings. Rousseau’s political ideas suggest that a genuinely communal life is only possible where individuals participate actively in defending their interests. These interests are not abstract and uniform for all, but different and concrete. What Rousseau objected to was not individual interest as such, but a corrosive individualism founded on the belief that the concept ‘state’ is pure
fabrication. This belief originates, and is nourished by, the alienation of legislative power to representative bodies. Rousseau’s defence of democratic participation, therefore, as well as his admiration for societies where citizens participated directly in the legislative process, are by no means secondary to his theory of consent. For such consent can only be known to exist where citizens participate continuously and directly in legislative assemblies. In this sense, Rousseau’s thought ought to be understood as inherently opposed to all forms of politics founded on a concept of the people that transcends (and is often alien to) the concrete and heterogenous reality that it is meant to signify.
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**Translations from the original French are mine throughout**

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**Corresponding Editions**

In *The Discourses and Other Early Political Writings*, trans. Victor Gourevitch.  
Cambridge: Cambridge University Press, 1997

-----------------------------. *Emile, or On Education*. trans Allan Bloom, (Basic Books, 1979)


¹ Translations from the original French are mine throughout


INTRODUCTION

One way or another, the modern world’s romance with democracy has shed at least as much opacity and confusion as it has light.²

The Siren Call of Ancient Liberty

The word \textit{democracy} as it is used today is shorthand for a more specific form of government: representative democracy. It is normally defended as the best guarantor of individual freedom, which explains the everyday association of the terms democracy and freedom. This idea was first proposed by Benjamin Constant in his lecture distinguishing ‘ancient’ from ‘modern’ liberty. The size of modern states makes it impossible for most citizens to exercise direct control over their collective destiny, Constant argued, unlike their Athenian counterparts. But what seems like a disadvantage may be a blessing in disguise, as representative institutions have greatly expanded the scope of individual freedom. Those who live in modern democratic states have been freed from the collective forms of control that accompanied the exercise of popular sovereignty in democracies like Athens. At the same time, modern peoples exercise indirect control over the legislative process during routine elections.

² John Dunn, \textit{Breaking Democracy’s Spell} (New Haven: Yale University Press, 2014), 10
While it has become commonplace to equate modern representative government with the protection of individual liberty, or rights, the democratic element of this arrangement has often been questioned at both the theoretical and empirical level. Studies continue to investigate whether current representative democracies are facing a crisis of legitimacy. Declining party memberships and growing voter apathy, indications of citizens’ alienation from the political process, have persuaded many that representative institutions are suffering from a democratic deficit. It is, of course, worth remembering that 18th century framers of modern liberal institutions were skeptical of the people’s ability to govern itself justly and democratically. In the *Spirit of the Laws*, for example, Montesquieu had written that “the people should not enter government except to choose their representatives.” Similarly, James Madison had defended the “total exclusion of the people, in their collective capacity, from any share in government.” Such thinkers championed representative institutions not merely for expanding the territorial reach of republican governments, but also for bridling the irrational, mob-like tendencies of direct democracy. Constant’s distinction between ancient and modern liberty clearly arises from a similar set of beliefs: ancient liberty is defined as the ability to participate in collective-decisions.

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5 Alexander Hamilton, James Madison, and John Jay, *The Federalist with Letters of “Brutus,”* ed. Terence Ball (Cambridge: Cambridge University Press, 2003), 63, 309 (*emphasis in the original*). Dunn notes that “there is now reasonably clear agreement among informed scholars that the movement for American independence and the subsequent construction of the new republic were in neither case...conducted under the banner of democracy.” *Breaking Democracy’s Spell*, 63

6 For a history of the idea that republican government requires a small territory, as well as its abandonment after the American and French Revolutions, see Jacob Levy, “Beyond Publius: Montesquieu, Liberal Republicanism and the Small-Republic Thesis.” *History of Political Thought* 27 (2006): 50-90
while modern liberty is essentially the absence of oppression. Like Montesquieu and Madison, Constant had not defended modern representative institutions for being democratic, but for making possible modern liberty.\footnote{Montesquieu had already suggested that liberty was not the fruit of popular sovereignty - i.e. direct democracy, in his \textit{Spirit of the Laws}, XL4, 155. Berlin would later repeat that “there is no necessary connection between individual liberty and democratic rule.” See “Two Concepts of Liberty.” In \textit{Four Essays on Liberty}. Oxford: Oxford University Press, 1969), 130.} On the historical plane, Edmund Morgan points out that representation did not evolve as a democratic practice, despite the fact that those who favoured it usually invoked the idea of popular sovereignty. In England, he states,

representation began before representative government or the sovereignty of the people were thought of…When Englishmen took the step [of deriving the authority of representatives from the people] in the 1640s, they did not affirm the sovereignty of each county or borough…They were replacing the authority of the king, and the king had been king of all England…Representatives elected by particular towns and counties assumed powers of government over a whole country and claimed that their powers came, not from the town or county that chose them, but from the sovereign people as a whole.\footnote{Edmund S. Morgan, \textit{Inventing the People: The Rise of Popular Sovereignty in England and America} (New York: Norton, 1988), 39}
The ‘people as a whole’ was a fiction used to legitimize a new governing institution, rather than a reflection of English political reality at the time.9

Although Constant’s lecture provides a straightforward way of framing the advantages of modern representative democracy, however, the two forms of liberty that he identified cannot be understood as strictly separate, either in theory or in practice. This is implicit in the idea that representation is democratic only because, and as far as, it permits a form of popular control over collective decision-making, however indirect.10 The idea of popular sovereignty, or in Constant’s words, ancient liberty, remains an important contributor to the legitimacy of governments that make possible modern liberty. Although “contemporary theorists tend to shy away from talk of popular sovereignty,” Margaret Canovan observes, it is precisely this implicit admission which explains the persistent appeal, and periodic flare-ups, of populist movements in modern states.11 Populism exploits the same normative impulse that makes representative institutions desirable and legitimate, namely popular sovereignty.12 Although representation aims to eschew the tyrannical tendencies of unqualified democracy, the appeal of ancient liberty never truly disappears as long as the word ‘democracy’ continues to modify representation. As John Dunn

9 John Gunnell has made a similar argument about the American founding, stating that the authors of the Federalist “literally invented the idea of an organic American people and public...conceived as both the author and the subject of the Constitution, as transcending the individual states and diverse socio-economic interests, and as giving substance to the idea of popular sovereignty.” See “The Rise and Fall of the Democratic Dogma and the Emergence of Empirical Democratic Theory,” in Modern Pluralism: Anglo-American Debates Since 1880, ed. Mark Bevir (New York: Cambridge University Press, 2012), 131.

10 Urbinati, for example, reminds us that “While [electoral competition] teaches the citizens to rid themselves of governments peacefully, it also makes them participants in the game of ridding themselves of governments...the right to vote does more than just prevent ‘civil war.’ [It] engenders a rich political life that promotes competing political agendas and conditions the will of the lawmakers on an ongoing basis, not just on election day.” See Representative Democracy: Principles and Genealogy (Chicago: University of Chicago Press, 2008), 26.


12 See also Morgan, Inventing the People, 53-54: “When the Parliament itself became the government, who was left to protect the actual people from its arbitrary actions?...Was there any way that the people themselves, the whole people, the fictional people, could materialize and act apart from their representatives in order to protect themselves? These questions have troubled the advocates of popular sovereignty from its inception to the present day.”
put it, “today, democracy is the name of what we cannot have - yet cannot cease to want.”

This “redemptive” vision of democracy, contained in the straightforward idea that “we, the people, are to take charge of our lives and decide our own future,” has always been questioned. However, Canovan points out, it may not be entirely possible or desirable to replace it with a more pedestrian understanding of what democracy truly entails. For, “if it becomes clear that those involved [in a general election] see in democracy nothing but horse-trading, they, and eventually the system itself, are liable to lose their legitimacy.” Such circumstances are fertile breeding grounds for dangerous populist movements, premised on replacing what they regard as decayed or corrupt institutions with direct popular control. In a similar vein, Nadia Urbinati admits that “if elections alone qualify representative democracy then it is hard to find good arguments against the critics of contemporary democracy who, from the left and the right, set out from time to time to unmask the role of the people as a ‘mere myth.’”

The idea that democracy is essentially a form of politics that privileges popular sovereignty is nowhere articulated as vividly as in the writings of Rousseau. A self-proclaimed enemy of representative government and defender of ancient liberty, Rousseau was a pariah among his contemporaries, and for similar reasons remains one today. Though current readers are suspicious of interpretations that blame the Jacobin Terror on his writings, they still struggle to

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13 John Dunn, *Western Political Theory In the Face of the Future* (Cambridge University Press, 1993), 28

14 Canovan, “Trust the People!,” 11. Dunn reminds us that three hundred years ago, the word democracy “was very close to a synonym for...bad government.” See *Breaking Democracy’s Spell*, 14; 44. Against the appeal of simple, or direct democracy, David Plotke has argued that “when democratic movements win...politics as a whole tends to become more complex...[because] democratic successes expand the number of voices in conversations.” See “Representation is Democracy,” *Constellations* 4 (1997): 24.

15 Canovan, “Trust the People!” 10-11

16 ibid

17 Urbinati, *Representative Democracy*, 15
defang what appear to be Rousseau’s own populist excesses: his admiration for oppressive societies like Sparta, his contention that the ground of legitimacy is the popular will, and his apparently unfazed acceptance of majority-rule.\textsuperscript{18} Liberal readers in particular have been disturbed by Rousseau’s tendency to glorify ancient politics, and debase modern political thought and practice. Judith Shklar worried, for example, that the refusal to see a clear line separating antiquity from modernity, encouraged by writers like Rousseau, was likely to breed a politically dangerous utopianism.\textsuperscript{19} For, as Constant had warned, “once we abandon ourselves to this regret, it is impossible not to wish to imitate what we regret.”\textsuperscript{20} Calls for a return to the ancient polis are not likely to attract serious followers today, since all modern forms of utopianism have been disastrously discredited. But the appeal of participatory politics remains, and not all have been persuaded by Schumpeter’s argument that representative democracy is, and ought to be, simply rule by elites.\textsuperscript{21}

The present project interrogates the ‘redemptive’ vision of democracy as it has been presented by Rousseau. Although many studies exist that emphasize Rousseau’s democratic

\textsuperscript{18} Steven Holmes notes that “at his most heated and lest cautious” Constant had argued that the Terror followed directly from Rousseau’s ideas. See Benjamin Constant and the Making of Modern Liberalism (New Haven: Yale University Press, 1984), 88. During the Cold War George Sabine would similarly claim that “Rousseau wrote down as literal truth the messianic hopes of the French Revolution a generation before it occurred” in “The Two Democratic Traditions,” The Philosophical Review 61 (1952): 465


vision, fundamental questions regarding his normative defense of democracy remain unsettled. Of primary importance to readers has always been the association between political justice and majority rule, embodied in the idea of the ‘general will.’ The Social Contract’s contention that by contracting with one another citizens alienate all of their rights to the general assembly, which then metes out justice according to the opinion of the greatest number, illustrates for many the most alarming aspect of democratic decision-making. As one commentator put it, what if a legislature were to enact that “the majority shall be entitled to kill whatever persons displease it?” Or, as Jeremy Waldron has more amusingly postulated, say “one member of the assembly wobbles drunkenly into the ‘Yea’ lobby, and we are all now subject to X; the same member stumbles drunkenly in another direction, when the vote is close, and we are governed instead by the opposite.” Usually problems of this kind are answered by assessing Rousseau’s arguments in the abstract, with little reference to his ideas about political practice. If the latter enter the picture at all, it is usually in an ad-hoc manner, to illustrate conclusions that have been drawn

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without them. Commentators have found little in the way of exculpating Rousseau from the charge of totalitarianism, or, at the very least, collectivism in these ideas. If anything, his relentless admiration for a civic life modeled after Sparta has persuaded many to view his vision of democracy as irreconcilable with cherished liberal principles like individual freedom and inalienable rights.

The current project argues that Rousseau was as committed to such principles as any liberal thinker, though his defense of them did not take the form of arguing for the ontological existence of inalienable rights. Rather, he believed that popular sovereignty, as he had defined and defended it, was the best guarantor of such rights. In this sense, his theory of justice is committed to regarding politics as a separate, and self-contained phenomenon, rather than as deriving from natural law. The main purpose of this project, however, resides as much in its theoretical conclusions as in the method with which it arrives at them. Unlike most readings, I begin by emphasizing the importance of Rousseau’s ideas about political practice as the best entry-point into his political theory. The persuasiveness of this approach is best demonstrated rather than established a priori. However, it is helpful to note that his defense of the political practice of the ancients, or of contemporary Genevans, is by no means secondary to his normative ideas. For the kind of politics that Rousseau upheld as normatively superior to all others was classical republicanism. Thus, I do not dispense with Rousseau’s abstract arguments as much as assess them after having given clear and systematic definition to his ideas about the best kind of political practice.

25 Derathé observes that Rousseau’s Social Contract follows a “purely abstract and philosophical” method that was common among the “jurisconsults and the majority of political writers at the time, with the exception of Montesquieu.” Yet, he notes that “One finds on almost every page of the Social Contract these images of antiquity [which] exercised a considerable influence on the author’s thought.” See Jean-Jacques Rousseau et la science politique de son temps (Paris: Presses Universitaires, 1950), 25, 274. All translations from this work are my own.
The project concludes that what Rousseau admired most about politics as it was practiced in societies like republican Rome was the absence of modern representation. Constant was right to characterize the essence of ancient liberty, which Rousseau considered to be the only genuine form of liberty, as direct participation in politics. This idea is, of course, well-established among readers of Rousseau, although time and again there are commentators who question it. But the implications of his argument about representation have seldom been pursued beyond what is immediately accessible, i.e. that Rousseau favoured a richer kind of political engagement than is possible today.

I want to push this argument towards more provocative conclusions. Implicit in Rousseau’s vision of democracy is a deep suspicion of the modern state and its foundation in representative sovereignty. His ideas suggest that modern political practice alienates individuals from the living reality of the law and is therefore inherently despotic. In this conviction also lies an implicit warning against the dangers of demagogic populism, and in its more extreme form, modern totalitarianism, which draw their appeal from the same fiction that grounds representative government: the myth of the sovereign people. The point is that it is the democratic Rousseau who warns against modern popular sovereignty and not, as has too often been claimed, the conservative or elitist Rousseau. In this sense, Rousseau’s vision of democracy explains most clearly why the the appealing promise of collective self-rule cannot be fulfilled under modern political assumptions and conditions. This also means that phenomena like the French Revolution, modern nationalism, or movements that claim to embody the genuine

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26 Most recently, Bertram has suggested that the picture of Rousseau as a radical democrat should be moderated by paying attention to his role as a “cautious and conservative critic of Genevan politics,” and more generally to his support for a strong executive. See “Rousseau’s Legacy,” 416; also McCormick, “Rousseau’s Rome,” passim. I question this interpretation throughout, and especially in chapters 1 and 2.
will of the people, not only are not based on Rousseau’s ideas but constitute their most glaring betrayal.

**Taking Rousseau’s Examples Seriously**

According to Constant, Rousseau’s nostalgia for ancient liberty was simply a consequence of his stance against the absurdities of the ancien regime where governments were “harsh, repressive in their effects, absurd in their principles, wretched in action, with personal decision of the monarch as their final court of appeal; with belittling mankind as their purpose.”

Since Rousseau did not consider the possibility of a new kind of politics, different from both the ancien regime and classical republicanism, if his ideas were to be considered at all they had to be considered independently of his concern with, and praise for ancient political life. This is usually how Rousseau has been interpreted by contemporary scholars, none of whom fail to note that the primary difficulty of his thought lies in the odd mixture of republican polemic with modern social contract theory.

Patrick Riley characterizes this tension as follows: “The problem of political theory, above all in the Contrat social, is that of reconciling the requirements of consent, which obligates, and perfect socialization, which makes men one.”

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27 Constant, “Liberty of the Ancients and Moderns,” 317


29 Patrick Riley, “A Possible Explanation,” 209. Bloom argues that Rousseau was dissatisfied both with the rule of “ancestral ways” and with the modern social contract tradition that sought to unite men through self-interest alone: “The citizen as understood by Rousseau combines the competing charms of rootedness and independence.” See “Rousseau’s Critique of Liberal Constitutionalism”, 158.
praise of ancient political life seriously Rousseau becomes if not the source of modern totalitarianism, at least a stepping-stone in that direction.\textsuperscript{30} For others who are more sympathetic to his concern with individual liberty his preference for societies like Sparta is interpreted as merely polemical and mostly independent of his normative principles.\textsuperscript{31}

Certainly Rousseau was just as aware of the distance between his own world and that of the ancients as those among his contemporaries who emphasized the need for a new kind of politics. “Ancient peoples are no longer a model for modern ones,” he argued, “they are too alien to them in every respect.” (\textit{LM}, 273). But instead of closing off the relevance of ancient political life, this observation led him to question modernity on its behalf. If Rousseau had been merely an admirer of the ancients, Constant’s interpretation would have been persuasive and it would be easy to discard his admiration as a romantic error.\textsuperscript{32} It is precisely because for him ancient examples carried weight only insofar as they were relevant to modern concerns that Rousseau paused to consider them. Current analyses of his work thus lead to the following impasse. If Rousseau’s stance in favour of ancient republics like Sparta and Rome is understood as part of his normative thought, then he becomes, in Arthur Melzer’s words, a ‘statist’ or ‘absolutist.’ If, on the other hand, one wishes to eschew this conclusion it appears necessary to argue along with


\textsuperscript{32} Constant acknowledged that it was natural for men to long for the grandeur of ancient politics, as the modern equivalent paled in comparison. See “Liberty of the Ancients and Moderns,” 317. Hobbes similarly recognized both the appeal and the danger of ancient politics. “There was never anything so dearly bought,” he says, “as these western parts have bought the learning of the Greek and Latin tongues.” \textit{Leviathan: with selected variants from the Latin edition of 1668}, edited by Edwin Curley (Indianapolis: Hackett Publishing, 1994), XXI, 141.
Joshua Cohen that Rousseau’s fundamental political principles are distinct from his ‘social psychology,’ that is, from his preference for a political practice that resembles that of the ancients. Even if it is true, however, that for Rousseau a “community of shared mores is [not] constitutive of the legitimacy of the state,” but only a necessary condition for its actualization, this still raises a normative problem. For the question remains whether the spirit of community does not contradict the theory of free consent that grounds legitimate power in the *Social Contract*. It is precisely because it must, that is, because the attempt to socialize men into a common political community seems to render their consent irrelevant, that forces many to divorce his normative principles from his admiration for the ancient republics.

The difficulty that Rousseau’s thought presents is to understand why he regarded the ancient republics not merely as examples of civic unity and patriotism, but as models of the *theory of legitimacy* defended in the *Social Contract*. If all legitimate power must rest on the consent of individuals, why does Rousseau choose to illustrate this point with examples like Sparta, Rome, or puritan Geneva? Either one must accept that there is a collectivist or even authoritarian, element in Rousseau’s thought that conflicts with his principles of right, or his choice of examples must be set aside. To ignore his examples, however, is to ignore the fact that Rousseau presents these as instantiations of his theory of political right. In fact, by confronting

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33 This impasse parallels a more widely recognized one, namely that between reading Rousseau as an individualist and reading him as a “prophet of state absolutism.” See Alfred Cobban, *Rousseau and the Modern State* (London: Allen & Unwin, 1964), 31. Of course, there are other ways of explaining Rousseau’s concern with the classical republics than these two. For example, Asher Horowitz takes the view that the ancient city is simply a historical stage which Rousseau considers but ultimately rejects as oppressive to the individual. See his *Rousseau, Nature, and History* (Toronto: University of Toronto Press, 1987), 105. Riley suggests that Rousseau’s zeal for Sparta and Rome creates a tension in his thought that cannot be overcome, a view also espoused by Bloom (see above no.28). But all of these possibilities, at least as far as the question of the ancient city is concerned, ultimately boil down to only three: a) explain the tension away; b) place it at the centre of Rousseau’s thought and read him as a statist; or c) acknowledge the presence of an irreconcilable contradiction.

34 Christopher Bertram, *Routledge Philosophy Guidebook*, 145
the question of, for lack of a better term, the ‘ancient city’ one is raising a significant interpretive question with respect to Rousseau’s normative ideas: what is the ground of political obligation? Are citizens bound to the laws of their community because communal demands take precedence over individual ones? Or are they bound to the laws because these conform to the wishes of individuals? Simply put, does Rousseau’s political thought privilege the community over the individual, or vice-versa?

Ideal Cases

Although I have emphasized the need to take Rousseau’s ideas on political practice more seriously, I have deliberately eschewed what appears to be the most natural starting point: Rousseau’s thoughts in the Government of Poland and the Constitutional Project for Corsica. The intention of these works is clearly practical, so why not focus especially on them? Asking this question, however, takes it for granted that the two works present a direct application of Rousseau’s ideas to the real world of politics. I do not wish to say that this assumption is false as much as to point out that it is an assumption. In each case Rousseau’s advice was solicited by individuals who wished to design programs of reform for their respective countries. It is not clear whether Rousseau himself had ever reflected on these cases, and whether such reflection had played any part in the formation of his ideas. For this reason, lessons drawn from them may prove less illuminating, or more prone to create confusion, than cases that Rousseau himself characterized as ideal instantiations of his principles. It may be helpful to remember here his advice to tutors in the Emile: “…whoever imposes on himself a duty that nature has in no way
imposed on him ought to be sure beforehand that he has the means of fulfilling it. *Otherwise he makes himself accountable even for what he will have been unable to accomplish.*” This reasoning underlies the tutor’s decision not to expound his educational program by hypothesizing about an “infirm and valetudinary” student. (E, I, 53). As in the case of *Emile*, so with Rousseau’s political program, its features are best understood when considered in light of ideal cases. For non-ideal ones, like a sickly student, of necessity require alterations, qualifications, and even the abandonment of many elements that are otherwise essential. If Rousseau did not present Poland and Corsica as ideal cases, therefore, one should not assume that they fully reflect the spirit of his political ideas.

What, then, were Rousseau’s ideal cases? His readers already know the answer: Sparta, Rome, and Geneva. There is little vacillation on his part when it comes to these three. While the *Social Contract* analyzes in detail the constitution of republican Rome, and the *Letters from the Mountain* that of Geneva, however, there is no work that does the same for Sparta. Its example, ubiquitous throughout his political works, is primarily associated with the themes of civic virtue and love of one’s country, as in the *Discourse on the Arts and Sciences*. For modern readers Rousseau’s admiration for Sparta has always been a vexed issue primarily because it is thought to indicate the authoritarian, or collectivist, bent of his ideas. It is sometimes claimed that since Rousseau’s model of citizenship was the denatured Spartan, the real aim of his political project must have been to collectivize individuals into believing that their good was equivalent with that of their communities. For this reason, the term ‘Sparta’ has become almost synonymous with

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35 It does seem that Rousseau had more to say on Spartan institutions, but he never completed either of two works dedicated to the subject. These are the “Parallèle entre les deux républiques de Sparte et de Rome” (1752) and the “Histoire de Lacédémone” (1752). They can be found under “Fragments Politiques”, (ch. XII, XIII respectively), in *OC*, 538-548.
‘collectivism’ and ‘utopianism’ when associated with his writings. Although it has proved impossible to divine Rousseau’s thoughts on the constitution of ancient Sparta, however, that which it represents in his thought - dedication to the good of one’s community - has been discussed at length in the last two chapters of this project. It is my hope, therefore, that these chapters will adequately address the concerns that the Spartan example raises in the minds of current readers.

Overview

The dissertation is divided into two main parts, distinguished thematically. The first two chapters, which form Part I, present a detailed discussion of the Roman and Genevan constitutions. The second part, which also contains two chapters, addresses broader aspects of his thought on a more abstract plain, seeking to provide an overview of the normative framework that informs, and is informed by, Rousseau’s vision of the best kind of political practice. Although my analysis has benefitted from, and often relied heavily upon, historical studies of his thought, my argument is not primarily historical. I do not claim that Rousseau’s interpretation of the Spartan, Genevan, or Roman constitutions led him to develop a specific theory of political right. Instead, I wish to show that Rousseau’s interpretation of the Roman and Genevan

36 See for example Judith Shklar, “Rousseau’s Two Models: Sparta and the Age of Gold,” Political Science Quarterly 81 (1966): 25-51. It is important to note, however, that while Rousseau, unlike any among the philosophes, admired the harshness of Spartan laws and practices, Lycurgus' reform ought to be considered in the context of attempting to “institute a people already degraded by slavery and the vices which are its effect.” (GP, II, 181; my emphasis). As chapter 3 will argue, according to Rousseau this is the most difficult of all political scenarios.

37 Studies that have made this question into their primary subject include Derathé, Rousseau et la science politique; Fralin, Rousseau and Representation; and Helena Rosenblatt, Rousseau and Geneva: from the first Discourse to the Social Contract, 1749-1762 (New York: Cambridge University Press, 1997)
constitutions fits with his theory of legitimacy and political obligation - i.e. that his normative ideas imply a specific kind of political practice. The question of which came first, Rousseau’s institutional thought or his theory of legitimacy is not my primary concern, nor do I believe it possible to answer it fully. It is more likely the case that these are not so much two distinguishable parts of his thought, as two aspects of a coherent framework of ideas which developed together and in dialogue.38

The first chapter analyzes Rousseau’s comments on the Roman republic as set out primarily in the fourth book of the Social Contract. The example of Rome holds primacy of place in Rousseau’s corpus because it proves that routine popular assemblies in which citizens participate directly in the legislative process are not impossible in large states. I situate his analysis of Rome against a larger historical discussion regarding the true character of Roman institutions and the desirability of reviving these in modern conditions. I focus specifically on Rousseau’s most important interlocutor on the question of Rome, namely Montesquieu. While Rousseau also refers to the ideas of Machiavelli in order to support his own, I maintain that Montesquieu, rather than Machiavelli, is Rousseau’s main target. In the Spirit of the Laws Montesquieu speaks favourably of the relationship between Roman institutions and Roman liberty. However, his ideal, at least as concerns the question of liberty, is Britain. The British example proves that liberty is not necessarily the fruit of virtue, as classical republicanism had

38 Derathé argues that the period from 1750, when Rousseau began serious work on his Institutions Politiques, to 1756, marks the most intensive development of his political ideas. This is the period when Rousseau read the works of jurisconsults like Grotius and Pufendorf, as well as Hobbes and Locke. “It was in their school,” he insists, “that Rousseau became a political thinker.” While it is undeniable that his engagement with these thinkers is essential for the argument of the Social Contract, however, as Derathé notes, Rousseau’s views on their ideas were largely critical. Rousseau et la science politique, 25, 62, 65. The fact that civic virtue has such a fundamental role to play in his political solution shows that the jurisconsults, and the natural law school more generally, were not what inspired his positive project.
suggested, but of masterful constitutional design. It is this conclusion that Rousseau sought to
challenge in his political works, emphasizing instead the foundational role of virtue for the
proper functioning of a free society. Masterful constitutional design, while important, could
never replace the motivating force of virtue in politics. The first chapter thus sets the stage for
the discussion that follows. It highlights the central claim of Rousseau’s political thought - the
foundational role of virtue for liberty.

The discussion moves next to Rousseau’s second model republic, Geneva. I focus
especially on the episode that forced Rousseau to write the *Letters from the Mountain*, a work
which contains sober reflections on political conflict in 18th century Geneva and suggests radical
solutions for reforming its constitution. Unlike the *Discourse on Inequality*’s “Dedicace,” the
*Letters* embrace a far less idealized picture of Genevan politics. For this reason, as well as
because they contain a detailed analysis of the Genevan constitution and its relationship with
underlying socio-economic conditions, the *Letters* provide a more reliable foundation for
discussing Rousseau’s ideas on the best kind of political practice. One does not thereby risk
building a case upon what might be thought a deliberately, or opportunistically, idealized picture
of the Genevan regime. As in the case of Rome, so in the case of Geneva, Rousseau highlights
the importance of popular participation in routine legislative assemblies for the proper
functioning, and legitimation, of the country’s political institutions. This is his most radical
contribution to a debate about the ground of political legitimacy which, while accepting the
sovereignty of the people as the ultimate foundation, had given this idea an anti-democratic bent.

The chapter also highlights an aspect of his institutional thought that has not received
sufficient attention in the scholarship, namely the people’s role as depositories of the
constitution. In his analysis of Rome Rousseau had put forward the eccentric suggestion that the tribunate was not an institution of the plebs but of the entire Roman people. This political innovation, necessary in large republics like Rome, served the purpose of protecting the sovereignty of the people from the continuous and unavoidable encroachments of governmental power. Rousseau characterized it as a form of ‘negative power.’ Since Geneva was smaller than Rome, in its case he argued that the task of protecting the sovereignty of the people fell to the people itself who thereby possessed a right of remonstrances. If enshrined in the constitution, this right would have allowed any Genevan citizen to petition the government in cases where he believed it to have overstepped its rights, and in cases of impasse would require the government to bring the case before the sovereign assembly of all citizens. In other words, Rousseau’s defense of the right of remonstrances in the case of Geneva parallels his interpretation of the Roman tribunate, discussed in the first chapter. It is a consistent aspect of his thoughts on institutions, which highlights his insistence on protecting the people’s ability to participate freely in the legislative process. In the day-to-day affairs of state, while the legislative assembly lay dormant, the people’s main role was to protect the legislateur’s work - the laws of the land, and more importantly, the freedom of the legislative assembly that had approved them.

As a whole, the first part of this project aims to give a concrete and precise picture of what Rousseau considered to be ‘good politics.’ It answers a question that is often raised about the Social Contract: what would it look like in practice? Against this background, the second part returns to certain fundamental interpretive questions about Rousseau’s normative arguments: freedom, the general will, political obligation, and community. The Social Contract begins by stating that all men were born free and all are now enslaved. But it does not go into great detail
regarding what that means, and what are its implications for political life, apart from denying that there might be natural grounds for political subjection. The third chapter takes up the question of how freedom informs Rousseau’s political theory. I discuss the limitations of several common approaches to this question, which are usually based around Rousseau’s distinction between natural, civic, and moral freedom. Though these are important in the context in which they are presented, they do not exhaust his theory of freedom, nor do they explain why it holds such primacy of place in his political thought.

I focus instead on the *Discourse on Inequality*, which traces the progress of man’s enslavement in history. The work implicitly suggests what Rousseau would later make explicit, namely that freedom is a condition in which one is neither subjected to another nor subjects another. Freedom is, therefore, not primarily a norm or ideal. It is the *absence* of a certain kind of human relation, the master-slave relation. For Rousseau mastery and slavery are consequences of a specific kind of social interaction, the principle of which is the desire for power. This desire is corrosive to social life, necessarily making human beings anti-social. In this sense, the chapter argues that for Rousseau freedom and human sociability go hand-in-hand. The problem that his political theory wished to solve was not to curb man’s *naturally* anti-social passions, but to make it possible for human beings to be social. It is in this sense that freedom is an important aspect of his political vision. The chapter thus challenges interpretations that emphasize the relationship between natural freedom and anti-sociality, and which highlight the need to denature human beings if they are to live together in peace. It argues that society as such is not anti-natural since in the *Discourse on Inequality* Rousseau suggests that it must have arisen spontaneously, due to fellow-feeling and a sense of mutual advantage. This understanding of freedom also explains
Rousseau’s insistence on popular sovereignty as that which would change the character of social life from one where slaves are subjected to masters (i.e. ruled to rulers) to one in which there are no masters or slaves.

The final chapter takes up what I regard as the heart of Rousseau’s political theory, namely his defense of popular sovereignty which leads to his stance against representative government. For Rousseau, popular sovereignty revolves around the concept of the ‘general will,’ the ground of justice and legitimacy. Accordingly, the chapter begins by discussing the necessary conflict between the general will and the particular will, usually characterized in terms of the inevitable conflict between the common good (or morality) and the individual’s natural self-regard. I challenge this interpretation by pointing out that what Rousseau meant by the ‘particular will’ was not self-interest tout court, but a specific form of it. The kind of self-interest that opposes the general will does not merely seek the individual’s good, which Rousseau accepts as a natural human tendency, but the individual’s maximal advantage. In this sense, the particular will is not natural in the same way that the desire for one’s advantage is natural. It reflects a corrupt form of self-regard that ought to be distinguished both from the morally neutral self-regard of original man in the *Discourse on Inequality* and the kind of self-regard that conforms to justice, that of the true citizen. The chapter also challenges the idea that the proper expression of the general will requires the suppression of all individual particularities in favor of adopting a disembodied, abstract, identity that is the same for all. The kind of democratic deliberation that Rousseau envisaged requires the opposite. If the general will is to be properly expressed citizens must remain faithful to their own embodied perspectives and individual interests. Only in so doing can they truly answer the implicit question posed by the general will:
does the proposed policy burden or benefit any individual (or group) more than others? The chapter thus suggests that according to Rousseau there is no ‘morality of the common good’ that imposes upon individuals interests different from their own. The common good is simply the equitable distribution of both burdens and benefits in a community.

The second part of this chapter attempts to distinguish Rousseau’s defense of popular sovereignty from ‘collectivist’ or ‘nationalist’ interpretations. Since the general will cannot (and should not) be known before the result of voting, Rousseau locates political legitimacy not in any substantive principles of justice but in the living activity of the legislative assembly. A collective decision is authoritative only if the assembly that passed it was free to do so, and remains free to revoke it at any time. In this sense, Rousseau provides a universal standard of political legitimacy which is almost entirely free of pre-determined content. Each particular community, located as it is in a specific time and place, is completely free to pass laws that it deems useful as long as the process conforms to crucial, but purely formal, requirements.

Insofar as the routine activity of the legislative assembly is the only locus of political legitimacy for Rousseau, I emphasize that his thought ought to be understood as inherently opposed to any form of politics that does not privilege the democratic activity of the actual citizen body. This includes representative government, where legislation is passed by elected representatives rather than the citizens themselves. It also includes all forms of communitarianism, nationalism, and of course totalitarianism, which invoke a concept of the people that transcends (and is often alien to) the particular living reality to which they are addressed. In this sense, I argue that for Rousseau the essence of the word ‘fatherland’ is the living legislative assembly. Although each community will have traditions distinct to itself, the
preservation of which Rousseau encourages, it ought to be noted that both the legitimacy and emotional appeal of these rest on the free activity of the legislative assembly. Only when citizens recognize themselves as free to decide upon their collective destiny will they feel themselves truly bound to their communities. I do not, therefore, deny that Rousseau encouraged respect for distinct *moeurs,* as much as emphasize that this argument has a very particular normative bent, and should not be confused with conservative, nationalist, or communitarian equivalents.

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In a nutshell, Rousseau’s democratic vision consists in the conviction that only free individuals partake in genuine community. His thought does not so much reconcile individual interests with communal life, as suggest that a community exists only where individuals participate actively in defending their interest. These interest are not, moreover, abstract and uniform for all, but different and concrete. What Rousseau objects to is not individual interest as such, but a corrosive individualism that arises out of a particular phenomenological experience of the state. Those who privilege their own interest over fairness, he argues, believe that the moral relation implied in the word ‘state’ is pure fabrication. This belief arises, and is nourished by, the death of real political activity which divorces the concepts ‘state’ and ‘legislative power.’ By locating the source of legitimacy in legislative *activity,* therefore, Rousseau’s thought supplies a universal standard of justice that is nonetheless accommodating of difference, particularity, and change.
CHAPTER 1: Rousseau’s Break with Montesquieu over Roman Republicanism

Introduction

The prevalence of Roman examples throughout Rousseau’s body of work hardly needs emphasizing. In the *Confessions* he tells of the decisive role that examples of Roman virtue played in his own formation. His first literary success, the *Discourse on the Arts and Sciences*, zealously defended Roman virtue against modern corruption, while many passages of the *Political Economy* lauded the wisdom of political institutions in ancient Rome. Moreover, no other form of government receives as much attention in his most ambitious political work, the *Social Contract*, than Rome. This obsession was by no means unique to Rousseau given the central place that classical Latin works of poetry, politics, ethics, and history occupied in the education of eighteenth century men. Roman political institutions, moreover, were analyzed thoroughly in works like Machiavelli’s *Discourses on Titus Livy*, and Montesquieu’s *Considerations on the Romans* and *Spirit of the Laws*. At first sight, if there is anything unique to Rousseau’s treatment of the same subject it is simply a matter of intensity. Machiavelli lamented the fact that his contemporaries worshipped Rome like an artifact rather than a living example, and Montesquieu spoke of the Romans as men who appeared to be “of another breed than ourselves.” But Rousseau’s passion for Rome appears to go beyond theirs, even as (or perhaps, because) his more serious reflections on its political organization do not equal those of the other two either in depth or scope.
In fact most commentators agree, whether explicitly or not, that Rousseau was so bewitched by Livian rhetoric that his republican Rome was very nearly a Utopia.\(^{39}\) Vaughan and Derathé even maintained that the four chapters dedicated to certain Roman institutions in the *Social Contract* were entirely irrelevant to the subject of that work, intended merely to cushion the truly important final chapter on civil religion.\(^{40}\) Later commentators, lamenting the want of serious analyses of these chapters, and more charitable in their interpretation of Rousseau’s intentions, have been forced to concede that Rousseau’s Rome is nonetheless idealized.\(^{41}\) There are, however, two exceptions to this general trend. Already in 1968 Roger Masters rejected the line favoured by Vaughan and, and argued that the key to understanding the Roman chapters was the “distinction between the logical principles that explain the nature of law and the prudential maxims necessary for their application.”\(^{42}\) Though Masters did not undertake a thorough analysis, he pointed out that “Rousseau’s praise for the political institutions established in Rome by Servius [specifically the *comitia centuriata*] is sufficient evidence that Rousseau was not a simple egalitarian in the extreme sense often attributed to him.”\(^{43}\) The chapter on Roman

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\(^{39}\)Jean Cousin states this explicitly in “Jean-Jacques Rousseau interprète des institutions Romaines dans le Contrat social,” in *Études sur le Contrat social de Jean Jacques Rousseau* (Paris: Les Belles Lettres, 1964), 27

\(^{40}\) Robert Derathé claims that Rousseau’s intention was to “stuff…this fourth book so as to insert there the chapter on civil religion.” See OC, No.1 to p.444, 1495; while Vaughan only characterizes them as “barely relevant to the subject.” See *Rousseau: The Political Writings*, vol.2 (Oxford: Blackwell, 1962), 109, note 1.

\(^{41}\) Lionel McKenzie, for example, while arguing that for Rousseau ancient Rome was intended to offer proof that his vision was historically attainable, concludes that he achieved this at the price of distorting Machiavelli’s more honest analysis of Roman history. See “Rousseau’s Debate with Machiavelli in the Social Contract,” *Journal of the History of Ideas* 43 (1982), 220-222. Yves Touchefeu, who argues that the systematic organization of the four chapters proves that Rousseau’s reflections on Rome were not arbitrary, nonetheless claims that “classical antiquity was too exulted for Rousseau to be put to the test of historical investigation,” in *L’antiquité et le christianisme dans la pensée de Jean-Jacques Rousseau* (Oxford: Voltaire Foundation, 1999), 309. Patrick Andrivet makes a similar claim in “Jean Jacques Rousseau: quelques aperçus de son discours politique sur l’antiquité romaine,” *Studies on Voltaire and the Eighteenth Century*, CLI, no.1 (Oxford: Voltaire Foundation, 1976), 146

\(^{42}\) Masters, *The Political Philosophy of Rousseau*, 305

\(^{43}\) ibid, 390 (*my emphasis*)
assemblies especially suggested that “as long as the privileges accorded to different economic classes are authorized by law, the poor may even be effectively disfranchised in a legitimate regime.”\textsuperscript{44} This conclusion is difficult to square with the nature of law as Rousseau understood it. No law can be considered such that is not ratified by the entire body of citizens. If the poor had no say in the laws under which they lived then the question of whether their lack of voting rights was sanctioned by law or not becomes moot. The law applies only to those who expressly consent to it in an assembly, and the disfranchised are not members of the body politic at all. But Masters has a point insofar as he looks to the comitia centuriata as proof, for the consequence of the Servian reform which established this assembly was to disfranchise more than half of Rome’s poorer citizens. This line of argument has been pushed furthest more recently by John McCormick, who takes the Roman chapters seriously to the extent of arguing that they provide the best evidence of Rousseau’s anti-democratic intentions. “At crucial, if neglected junctures of his political magnum opus,” he argues, “Rousseau...prescribes institutions that enable rather than constrain the prerogative of elites within republican or popular governments.”\textsuperscript{45}

McCormick’s article is important not only because it takes seriously Rousseau’s own emphasis on the importance of the Roman chapters, but also because it draws out with unmatched clarity what is so disconcerting about them. Masters had already emphasized Rousseau’s preference for elective aristocracy as the best form of government, and the inegalitarian aspects of his thought. Yet this has done little to sully Rousseau’s democratic credentials because of his consistent refusal to acknowledge representative government as

\textsuperscript{44} ibid (\textit{my emphasis})

\textsuperscript{45} McCormick, “Rousseau’s Rome,” 3
legitimate, and to demand that in all states laws must be ratified by the assembly of citizens.46

What does raise decisive problems, however, is Rousseau’s apparent support for the Roman comitia centuriata, and the Servian reform more generally. In the centuriate assembly, while all citizens had a right to vote, only a small minority had any real influence on the outcome. If Rousseau regards the legislative decisions of this body as legitimate, therefore, his objections to parliamentary democracy appear sophistic. True, this minority was not so much representing the citizens as deciding for them, and so, technically, the centuriate assembly was not a representative body. But this way out is nothing more than a rationalization. While citizens in a representative democracy do not participate directly in the legislative process, they nonetheless have a say in the outcome by routinely holding their representatives accountable. In the comitia centuriata, on the other hand, the minority that decided each outcome was accountable to no-one precisely because it was not a representative body. If Rousseau were an apologist for the centuriate assembly, then, his thought would threaten a tyranny far worse than that of representative government.47 Even more disconcerting is the fact that unequal voting power in the centuriate assembly was distributed according to wealth, with richer citizens holding a monopoly over electoral outcomes. In a word, if McCormick is correct, then Rousseau becomes

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46 Masters’ claim that Rousseau’s “preference for elective aristocracy…is merely another name for parliamentary of representative government” is questionable given that Rousseau objected to the idea that an assembly of elected representatives could act as a legislative body. See The Political Philosophy of Rousseau, 402; also Marini, “Popular Sovereignty,” 63.

47 One must remember here that Rousseau’s argument against representation was not directed only against Hobbesian absolutism, but equally against the far less tyrannical British parliamentary system.
not only a defender of aristocratic government, but an apologist for oligarchy.\textsuperscript{48} Although this conclusion is surprising, what is even more surprising is how plausible it seems at first sight. Rousseau does in fact say that \textquotedblleft the whole majesty of the Roman People resided only in the Comitia by Centuries." \textit{(SC, IV.4, 135; my emphasis)}. Also, as several commentators have pointed out, one finds hardly any acknowledgement in these chapters of that crucial democratizing force behind the republican constitution, namely the conflict of the orders. In fact, Rousseau consistently refers to the Roman tribunes as tribunes of the \textit{people} rather than of the plebs.\textsuperscript{49}

But this interpretation does not withstand closer inspection. Although Rousseau’s analysis of Roman institutions is much shorter than that of Machiavelli or Montesquieu, it remains largely faithful to the historical facts that had informed the other two.\textsuperscript{50} In fact, I maintain that Rousseau’s analysis was shorter partly because it was meant to contain only those elements that served to indicate clearly his disagreement with his chief interlocutor, Montesquieu. Furthermore, it is not plausible to consider Rousseau’s supposed omission of the conflict of the orders as an attempt to pretend that it didn’t exist, an effort that would have appeared both

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\textsuperscript{48} \textquotedblleft Rousseau...permits wealth, the attribute most rewarded in electoral contests from time immemorial, to be the preeminent marker of political worthiness." See McCormick, \textquoteleft Rousseau’s Rome," 7, 8. Masters does not notice this disconcerting consequence, drawing attention instead to Rousseau’s injunction to restrain inequalities of wealth by \textquoteleft strict moral standards [so as not to produce]...irreconcilable private interests." \textit{The Political Philosophy of Rousseau}, 390. But if Masters is correct in his assessment that \textquoteleft Rousseau’s praise...of Servius is sufficient proof that he was not an extreme egalitarian," then what follows is in fact McCormick’s more controversial reading.

\textsuperscript{49} McKenzie considers this omission to be the chief difference between Rousseau and Machiavelli. See \textquoteleft Rousseau’s Debate with Machiavelli," 222. Cousin states that the \textit{Social Contract} does not acknowledge the plebs at all, in \textquoteleft Jean-Jacques Rousseau interprète”, 27; as does Patrick Andrivet, \textquoteleft Quelques aperçus,” 135; 146. Touchefeu points out that this is a decisive difference between Rousseau and Machiavelli, Montesquieu, as well as the conservative historian Bossuet, all writers whom Rousseau had read carefully. See \textit{L'antiquité et le christianisme}, 309-311. The conflict between patricians and plebeians occupies a central place in the histories of Titus Livy and Dionysius of Halicarnassus, which explains why Machiavelli, Montesquieu, and Bossuet all gave it central place in their respective analyses.

\textsuperscript{50} By ‘facts’ one must of course understand the traditional account as expounded especially by Livy and Dionysius.
ridiculous and futile to his readers. It is far more likely that Rousseau simply took it for granted as general knowledge and his own reflections must be read with this conflict in mind. Also, while Rousseau certainly praised Servius’s reform of the tribal organization, he was in fact highly critical of the *comitia centuriata*. In a word, he praised only the more democratic part of the Servian reform. Neither was Rousseau a blind admirer of the Roman republican constitution, or a mere victim of Livy’s propaganda. Throughout his exposition he makes several critical remarks about certain Roman institutions, which are simultaneously meant to suggest improvements. While it may not be possible to settle all disagreements about Rousseau’s reflections on republican Rome, I argue that the most plausible interpretation comes to light if these reflections are juxtaposed with those of Montesquieu. In a nutshell, I argue that Rome was far from the perfect republic for Rousseau, and neither did he intend to suggest it as a blueprint for emulation. Rather, the significance of Rome as a *historical* example is best encapsulated in the following lines:

…”what is incredible is that thanks to its ancient regulations this *immense people*, in the midst of so many abuses, did not cease to elect Magistrates, pass laws, try cases, dispatch private and public business almost as readily as the Senate itself might have done.” *(SC, IV.4, 136; my emphasis).*

The Romans stood out in history because they had been a large people which had consistently rejected the most natural solution for the problems associated with size: monarchy. Though the Romans had done this only imperfectly, what was important about their example was their

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51 Here Rousseau was not speaking specifically of the *comitia centuriata*, as McCormick has suggested in “Rousseau’s Rome,” 16, but of all Roman assemblies including the egalitarian *comitia tributa*. 

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willingness to eschew monarchy in favour of popular participation even as inconveniences and problems multiplied with Rome’s increasing size. It is chiefly for this reason that Rousseau refuses to understand the Roman constitution as shaped by warmongering, as Montesquieu had done, and argues instead that its cause was virtue.

Montesquieu as Rousseau’s Chief Interlocutor

It is certain that Montesquieu’s Considerations and Spirit of the Laws were on Rousseau’s mind when he laid out his own thoughts on the Roman constitution. Although this is not apparent from the ‘Roman chapters’ themselves, it can be established directly from a passage in Book II of the Social Contract. Here Rousseau adopts Montesquieu’s words freely while making a crucial modification. In the Spirit of the Laws Montesquieu had argued as follows:

Although all states have the same purpose in general, which is to maintain themselves, yet each state has a purpose that is peculiar to it. Expansion was the purpose of Rome; war, that of Lacedaemonia; religion, that of the Jewish laws…navigation, that of the laws of the Rhodians…[etc.]52

Similarly, Rousseau writes:

52 Montesquieu, Spirit of the Laws, XI.5, 156 (my emphasis).
...besides the maxims common to all, there is within each People some cause which orders these maxims in a particular manner and makes its legislation suited to itself alone. Thus formerly the Hebrews and recently the Arabs had religion as their principal object, the Athenians letters, Carthage and Tyre commerce, Rhodes seafaring, Sparta war, and Rome virtue.” (SC, II.11, 79; my emphasis).

Rousseau’s version substitutes ‘virtue’ for Montesquieu’s ‘expansion’ as the underlying object of the Roman political organization. The significance of this substitution can be appreciated if one considers first Montesquieu’s own argument in the Considerations, and secondly, the context of the original passage in the Spirit of the Laws.

The idea that Rome’s specific goal was expansion is consistent between the Considerations and the Spirit of the Laws, but it is only in the former work that Montesquieu explains it in detail. As Paul Rahe has put it: “Montesquieu’s Rome is not a benefactor conferring peace and prosperity: it is a predator.” That is, in a nutshell, his thesis in the Considerations. Rome was an excellent and admirable military machine, and its republican constitution contributed to its military success. The shape and development of the Roman constitution comes to light best when seen from this perspective. Originally, Montesquieu argues, the Romans were under a constant necessity to engage in warfare. The ancient law of nations was such that treaties

53 Immediately afterwards Rousseau claims that “the Author of the Spirit of the Laws has shown...the art by which the lawgiver directs the institution toward each one of these objects.” This leaves no doubt that the quote had been borrowed from that work, although it eliminates his crucial disagreement with Montesquieu in the case of Rome.

54 Paul A. Rahe, “The Book that Never was: Montesquieu’s Considerations on the Romans in Historical Context,” History of Political Thought 26 (2005): 74
with a particular king did not hold when his successor came to power and so “wars constantly engendered wars.” Moreover, since Rome was a city without arts and commerce, the only way for its citizens to enrich themselves was through pillage. What set the Romans apart from their neighbours, however, was their singleminded dedication to perfecting the military art. Their political wisdom lay precisely in creating domestic arrangements that increased the power and efficiency of their armies. Montesquieu praises especially the originally equal distribution of land among the Romans. This arrangement, he argues, “produced a powerful people, that is, a well-regulated society.” It was especially useful to warfare because in this way all citizens found themselves under an equal necessity to fight.

In conformity with this reasoning Montesquieu breaks with Livy’s assessment of Rome’s second king, Numa Pompilius. Livy says that Numa “prepared to give the new city that had been founded by force of arms a new foundation in justice, law, and proper observances. But he realized that it was not possible in the midst of wars to accustom men whose minds were brutalized by military service to such changes.” Numa first established the distinction between war and peace by building the temple of two-faced Janus to indicate when the city was at war and when it was not. Having pacified Rome’s relation with its neighbours, he then infused the Romans with fear of the gods so that “the spirit that had been held in check by military discipline and fear of the enemy [might not] become soft from idleness.” During his reign the Romans

56 ibid, III, 39
58 ibid, 30
became so pious that “the state was governed by regard for good faith and oaths.” In other words, Numa transformed Rome from an armed camp into a genuine civic community where relations between citizens were of a different kind, and governed by different norms, than relations with foreigners. Montesquieu’s assessment of Numa, on the other hand, has none of this world-changing momentousness. “Numa’s long and peaceful reign,” he says, “was ideal for keeping Rome in a state of mediocrity” because it is impossible for citizens to be simultaneously “bold in war and timid in peace.” So Numa’s attempt to replace fear of the enemy with fear of the gods was an aberration in Rome’s trajectory towards greatness.

A decisive step in that direction was taken when Rome transformed from a monarchy into a republic, according to Montesquieu. For, while princes usually alternate between warmongering and idleness, the dual consulship that replaced the monarch, and which was annually infused with new blood, ensured that “ambition did not lose even a moment.” Ambitious consuls continuously proposed new wars to the senate, and the senate complied, wishing to diffuse domestic tension by distracting the people abroad with opportunities for profit. The tyranny of the decemvirs, moreover, which interrupted the republican constitution for a few years, showed clearly “the degree to which the extension of Rome’s power depended on its

59 ibid, I.21, 32

60 Montesquieu, Considerations, I, 25; IX, 93

61 According to Plutarch it was Numa who first defined the boundaries of Rome, “for Romulus would but have openly betrayed how much he had encroached on his neighbours’ lands, had he ever set limits to his own.” See Lives, vol.1, Dryden translation, edited by Arthur H. Clough, (New York: Modern Library, 2001), 96. Montesquieu’s assessment of Numa is consistent with his larger argument that Rome’s greatness lay in its expansionism.

62 Montesquieu, Considerations, I, 26-27

63 ibid, 29
In a word, “the Romans were in an endless and constantly violent war...by the very principle of [their] government.”

It is clear that Montesquieu found much to admire in the Roman example, and in an unpublished introduction to his Considerations he had characterized its constitution as a “masterpiece of wisdom and conduct.” Moreover, in the famous book on liberty in the Spirit of the Laws the only two constitutions that Montesquieu examines in detail are those of Britain and Rome. However, in the final analysis his description of Rome hardly suggests grounds for emulation, for the expansionism made possible by its constitution was a self-defeating political project. “It is a matter of common observation that good laws, which have made a small republic grow large,” he argues, “become a burden to it when it is enlarged. For they were such that their natural effect was to create a great people, not to govern it.” What is unsettling about Montesquieu’s analysis, then, is the suggestion that the destiny of republican Rome was tyranny. The Principate was no accident. It was the direct result of that which had made the Roman political organization a masterpiece, namely its singleminded pursuit of expansion. “Rome lost

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64 ibid, I, 27; my emphasis. This claim is repeated several times, as for example in chapter II where Montesquieu writes that the “Romans were destined for war,” or chapter 9 where he says that “Rome was made for expansion.” ibid, 32; 94-95

65 Rahe, “The Book that Never Was,” 71. Rahe notes that Montesquieu originally intended to write only about “the establishment of sole rule by the Romans,” that is, about the Principate, but, in his own words, “the grandeur of the subject captured me.” Yet Montesquieu’s admiration was limited neither to republican Rome nor to the Romans themselves, but appears to have been generally about the “spectacle presented by antiquity.” See Considerations, IV, 49. He objected, for example, to the way in which the Roman oratorical tradition had characterized Tarquin whose “conduct before his misfortune clearly showed that he was not a contemptible man.” Ibid, I, 26; and he characterized Hannibal as an “extraordinary man,” later blaming Livy for “strewing his flowers on these enormous colosses of antiquity [namely Hannibal and Fabius].” Ibid, IV, 49; V, 55

66 Montesquieu, Considerations, IX, 94

67 ibid, 95
its liberty,” he says, “because it completed the work it wrought too soon.” In other words, the Principate was Rome’s destiny from the beginning of the republic.

When Rousseau eliminates ‘expansion’ from Montesquieu’s original passage then, he is challenging this entire line of reasoning, including the anti-republican conclusion that follows. An indication of this is Rousseau’s characterization of Numa as “the true founder of Rome.” (*GP*, II, 181). He regrets that others, including most certainly Montesquieu, “have seen in Numa only a creator of religious rites and ceremonies…frivolous and superstitious in appearance.” (ibid). Rousseau resurrected Livy’s assessment, without, however, conceding that Numa had been a real person. In the *Social Contract* he claims that the stories told of Rome’s founding are most certainly fables, since conveniently enough the name of Romulus meant ‘force’ and the name of Numa ‘law.’ (*SC*, IV.4, 127). But what was crucial about such stories was the ‘moral lesson’ that one was meant to draw from them, not their historical veracity. Numa represented the proper founding of the Roman political community; its recognition that a people could only be united by law, not simply force. As Livy had explained, it was no longer fear of a common enemy that defined the Romans after Numa’s reign. In fact, Rousseau points out, if Rome had remained the city that Romulus founded its people would “have been scattered by a single set-back, [and] his imperfect work would not have been able to withstand the ravages of time.” (*GP*, II, 181). If Montesquieu wanted his Roman grandeur, then, he had to concede that

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68 Note that Rousseau calls primitive Rome “the founder’s army.” His hypothesis about the Greek origins of the words Numa (*nomos*) and Romulus (*rome*) is unlikely. See Cousin, “Rousseau interprète,” 15.

69 This does not mean, however, that such moral lessons are based on pure falsehoods. As Rousseau explains: “The practices one finds established at least attest that these practices had an origin.” (*SC*, IV.4, 127)
Numa, not Romulus, had been Rome’s real founder. To concede this would be to concede that Rome’s political organization had to be analyzed according to different terms than those appropriate for understanding an expansionist army.

But to fully grasp the importance of Rome for Rousseau’s purpose one also needs to look at the context of Montesquieu’s original quote. In Book 11 of the *Spirit of the Laws* Montesquieu turns to an examination of ‘political liberty in its relation with the constitution,’ having completed his schematic discussion of the three types of states: despotisms, monarchies, and republics. This part of the book, which is the most discussed in the scholarship, contains Montesquieu’s theory of the separation of powers. Having presented his examples of the kinds of particular goals that distinguish states Montesquieu then writes: “There is only one nation in the world whose constitution has political liberty *for its direct purpose.*” This nation is Britain and his theory of constitutional checks and balances, which follows, is presented by way of analyzing the British constitution as the model. While political liberty may exist under many forms of government where power is exercised moderately, Britain stands out because only its constitution aims at political liberty *directly.* What Montesquieu means when he calls Britain ‘the model of political liberty’ is that the British constitution provides the clearest example of

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70 Plutarch explains that in order to unite the Romans, who were then divided into Sabines and Albans, he re-organized the population according to “trades into companies or guilds.” He also established religious rites and festivals for members of the same occupation, which suggests that Numa’s reforms were not meant simply to replace fear of the enemy with fear of the gods, as Livy had said, but also to unite the Romans as one people. It was also Numa who inspired in the Romans a taste for agriculture rather than pillage, hoping that country life “would be a sort of charm to captivate the affections of his people to peace.” See *Lives,* 96. In his own discussion Rousseau highlights precisely this aspect, further entrenched by Servius Tullius’s tribal reform, as one of Rome’s most admirable institutions (see below).

71 Montesquieu, *Spirit of the Laws,* XI.5, 156

72 Montesquieu does not regard liberty as the exclusive possession of republican government. “Democracy and aristocracy are not free states by their nature,” he argues, “Political liberty is found only in moderate governments.” Ibid, XI.4, 155
how to distinguish correctly between the three powers found in every state. These are the legislative, the executive and the judicial. It also provides the clearest example of how to balance these properly so as to moderate the exercise of power. The English were able to do this precisely because the aim of their constitution had been political liberty, or the moderation of power. What they wanted out of government, in other words, was liberty. In other states liberty may exist but only as the unintentional by-product of institutional arrangements that have other aims, such as in republican Rome or in the monarchies of Europe.

In the *Social Contract* Rousseau criticizes Montesquieu for having failed to note that all forms of government, not just republican ones, have virtue as their principle: “he didn’t see that because the sovereign authority is everywhere the same, the same driving force should be at work in every well-constituted state.” (*SC*, III.4, 92). When Rousseau says that the particular goal of the Roman constitution was *virtue*, then, he is in fact setting Rome apart from all other examples in a way that is very similar to Montesquieu’s singling out of Britain. Just as Britain, unlike all other constitutions, aimed directly at moderating power, a characteristic of all well-constituted states according to Montesquieu, so Rome aimed directly at virtue, a characteristic of all well-constituted states according to Rousseau. To put it simply, Rousseau’s Rome appears to be the rival of Montesquieu’s Britain. But to what end? Montesquieu’s larger argument in the *Spirit of the Laws* implied that there was no necessary relationship between liberty and virtue. Liberty existed wherever power was exercised moderately, whether under monarchies or republics. Virtue, on the other hand, existed only in republics, being entirely unnecessary, and difficult to cultivate, in monarchies. Montesquieu had also made clear that British liberty was not the fruit of virtue, which did not exist there, but of the separation of
powers. Rousseau’s Rome, then, seems to have been designed as a challenge to Montesquieu’s suggestion that political liberty could be established and maintained *without virtue*. To put it another way, Rousseau’s Rome was meant as a challenge to the idea that political liberty could exist under monarchies like Britain, or that the problems raised by the absence of liberty could be adequately addressed through the separation of powers. Montesquieu’s was a *formal* solution that did not require men of a particular kind in order to work. This is what Rousseau wished to challenge. But in what way would his understanding of Rome accomplish this task? In order to see this one must first address two problems that stand in the way: Rousseau’s thoughts on the comitia centuriata and his unwillingness to place the conflict of the orders at the centre of his presentation.

**Roman Assemblies**

McCormick’s interpretation of Rousseau as a defender of oligarchy rests decisively on the role that the *comitia centuriata* plays in the chapter on the Roman *comitia*. Upon closer examination, however, it becomes apparent that Rousseau’s assessment of this assembly is far from favourable. According to McCormick “Rousseau is instructing his ‘judicious reader’ how to arrange for the appointment of the ‘best’ magistrates and the passage of laws reflecting the general will: allow the wealthiest citizens to do so themselves by *less than transparent means.*” But a simple objection to this point can be raised by pointing out that Rousseau is quite forthcoming about the oligarchic character of these *comitia*. “In the Comitia by Centuries,” he

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73 McCormick, “Rousseau’s Rome,” 12 (*my emphasis*).
writes, “affairs can be said to have been settled more often by majorities of cash than of votes.” (SC, IV.4,133). If Rousseau’s position were truly to recommend that wealthy elites should fool the rest of the citizenry in this way one would expect him to disguise rather than expose the oligarchic character of the comitia centuriata. In fact, Rousseau breaks with the Roman historical tradition precisely by emphasizing that these assemblies were purely oligarchic. A brief comparison with the account provided by Dionysius of Halicarnassus makes this clear. Dionysius describes the Servian reform as “the wisest of all measures...the source of the greatest advantages to the Romans.” To placate the rich citizens of Rome for having placed the entire burden of war taxes on them, Servius “contrived by another method to relieve their uneasiness and mitigate their resentment by granting to them an advantage which would make them complete masters of the commonwealth, while he excluded the poor from any part in the government; and he effected this without the plebeians noticing it.” This advantage was their unequal influence in the outcome of voting in the comitia centuriata. But why did Dionysius think this arrangement wise? The first thing to note is that he presented the electoral deception as the necessary consequence of a very salutary policy: that of placing the entire burden of war taxes on the rich. Servius believed that “all men look upon their possessions as the prize at stake

74 McCormick argues that this statement is the “the [prescriptive] core of Rousseau's republicanism” (ibid). Touchefeu, on the other hand, regards this as evidence that Rousseau was highly critical of this assembly. See L'antiquité et le christianisme, 316.

75 I have relied on his account rather than that of Livy, first because Livy’s account is less detailed, and second because (most probably for this reason) this was Montesquieu’s chief source in the Spirit of the Laws. It is not clear whether Rousseau relied on it directly, as Cousin suggests in “Rousseau interprète,” or whether indirectly through the writings of Montesquieu and others among his contemporaries.


77 ibid, 331; my emphasis
in war and that it is for the sake of retaining these that they all endure its hardships.”

Those with little or no property, then, could not reasonably be expected to pay for a war in which they had nothing at stake. But if they contributed nothing to the war tax, then they could not be allowed to fight “like mercenary troops,...maintained in the field at the expense of others.” The burden of war taxes fell on the rich because only they had a stake in war and only those who stand to gain or lose should be soldiers. Their exclusive control of the comitia was simply a necessary consequence of this new organization of Roman military policy. Until this point, Dionysius says, the people had held control over “the three most important and vital matters: they elected the magistrates, both civil and military; they sanctioned and repealed laws; and they declared war and made peace.” But, since in the comitia by curiae, which had been the only assembly before the Servian reform, every member had a single vote, the poor, being greater in number, always prevailed over the rich. Servius created the comitia centuriata, then, to transfer this voting supremacy from the poor to the rich since they now were exclusively burdened by the wars of Rome. The poor did not notice, Dionysius explains: “they all thought that they had an equal share in the government because every man was asked his opinion, each in his own century.” In other words, because Servius preserved the form of the old comitia in which every member voted in his curia, it was not immediately clear to the majority of Romans that they had

78 ibid, 329
79 ibid, 331
80 ibid, 333

81 Note that Rousseau denies this. He says that Romulus had established the curiate assembly in order to balance “the authority of power and wealth” by the “full authority of numbers.” However, the balance was tilted in favour of the patricians because of the clientelist system that allowed patricians to “influence the majority of votes” through their clients. (SC, IV.4,133)

82 Dionysius, Roman Antiquities, IV, 335
no influence in the new assembly. They simply assumed that the principle of one man - one vote held in the new assembly as in the old. When they noticed the difference “the poor...finding themselves exempt both from taxes and from military service, prudently...submitted.”83 At the same time, “the commonwealth itself had the advantage of seeing the same persons who were to deliberate concerning its interests allotted the greatest share of the dangers and ready to do whatever required to be done.”84 To sum up, Dionysius presented this arrangement as both fair and salutary. Servius did not, because he could not, erase the line between rich and poor. But he institutionalized the division in such a way that each side gained what it wanted most while benefitting, rather than harming, the overall health of the state.85

While Dionysius had presented the oligarchic character of the comitia as the necessary consequence of a salutary military policy, Rousseau does exactly the opposite. He claims that the military organization of the comitia served merely to disguise its oligarchic character: “In order that the people might less readily discern the consequences of this...Servius pretended to give it a military cast [Servius affecta de lui donner un air militaire].” (SC, IV.4, 130; my emphasis). So the strategy of deception lay not in preserving the form of the old curiate assembly, but in pretending that the new assembly reflected the military arrangement of the state (and by

83 ibid, 336-337
84 ibid, 337
85 Montesquieu claims that the genius of legislators manifests itself in how they make the division of classes in society. Dionysius’s discussion explains perfectly why Servius stands out in this regard for Montesquieu. See Spirit of the Laws, II.2, 12
implication, that this arrangement was therefore fair, as Dionysius had argued). Far from disguising the oligarchic character of the *comitia centuriata*, then, Rousseau broke with the historical tradition precisely by exposing it. For while that tradition had explicitly stated that the Servian reform disenfranchised the majority of Rome’s citizens, it had never presented this arrangement simply as a disguise for oligarchy. McCormick’s suggestion that in the Roman chapters Rousseau was implicitly calling for wealthy elites to have a disproportionate amount of influence on voting is questionable, therefore. If considered against this background Rousseau’s description of the Servian reform appears much more like an unmasking. In arguing that the military character of the *comitia* was a facade he rejected wholesale the logic of fairness that had characterized Dionysius’s compelling description of the same.

Equally significant is the fact that while Rousseau praised Servius’s tribal reform (on which more below), he refused to judge the division by centuries as either “good or bad.” (*SC*, IV.4, 131). Instead, he used it as proof that originally the Romans were politically virtuous and disinterested, the quintessentially republican people, for only under such circumstances could this kind of reform ever “be made to work.” (*ibid*). In other words, having indicated that the Servian deception consisted in masking the disproportionate influence of wealth over legislative and executive power, Rousseau claims that only a people which wasn’t hungry for gain would

[^86]: Note for example how Rousseau distorts some well-known facts about the Servian reform. He does not mention that the *entire* division followed a military logic, with each class being defined precisely by the amount of armour and type of soldier that it could supply in war. Instead, Rousseau claims that in his attempt to pretend that the division was a military one, Servius “added two centuries of armor makers to the second class, and two of weapons makers to the fourth,” as if these were the *only* military centuries, while the others were distinguished only by “goods.” Moreover, he suggests that the distinction between young and old within each century, which was justified again as a military one, was in fact undertaken so as to “frequently…take a new census” of goods. Lastly, he also suggests that the *comitia* met in the Campus Martius so as to keep up the pretence that it was a military assembly. (*SC*, IV.4, 130-131). In the traditional account the emphasis had been placed primarily on the military necessities driving this change in domestic policy. The class-conflict had been due to the financial burdens that Rome’s frequent wars had placed on the poor, many of whom ended up effectively enslaved to their creditors. Rousseau’s account, on the other hand, places the emphasis upon wealth and abolishes entirely the military background of the reform.
allow it to persist “without overthrowing the whole State.” (ibid). Dionysius had explained that the reform worked because each side was essentially self-interested, and Servius had managed to satisfy the most pressing desires of both. Rousseau does not so much assume self-interest away as suggest that this does not fully explain the success of his strategy over the long run. Had the Romans been as greedy and corrupt as modern peoples they would have destroyed the whole state within twenty years despite their initial consent to the arrangement. Moreover, “in Rome, morals and the censorship, stronger than this institution, corrected for its vice,” he argues. (ibid). Thus, while Rousseau did not condemn the assembly by centuries entirely, it can be safely established that he was equally far from recommending that wealthy elites must rule because they are the best representatives of the general will, as McCormick maintains. If anything can be established with certainty from his discussion it is that he regarded the assembly's oligarchic character as a vice.

However, there is one element of the Servian reform that Rousseau considers “excellent,” and that is the re-organization of the Roman tribes. (ibid, 129). Until the time of Servius the Roman people had been divided into three tribes, which were ethnically based, the Albans, Sabines and foreigners, he argues. But, since the latter soon outgrew the first two in size Servius abolished the old tribal division altogether and instituted a new one based on place of residence.
From three original tribes he made nineteen, four urban and fifteen rural ones. It is the distinction between urban and rural, and the supremacy of the rural over the urban tribes that Rousseau emphasizes. The natural course of things should have resulted in the urban tribes “arrogating to themselves the power and honours.” *(SC, IV.4, 128).* As Rousseau had previously mentioned “the walls of cities are only built with the wreckage of farmhouses. For each Palace I see rise in the capital, I seem to see an entire countryside reduced to hovels.” *(ibid, III.13, 112).* It was the tendency of large states, in other words, to exploit the countryside in favour of the capital and thus to weaken themselves over time. Yet this did not happen in Rome because of the wise decision to enroll the most honourable citizens in the rural tribes, and the least honourable in the urban ones. In fact, this division was also used to curb the worst excesses of oligarchy, with richer citizens who “made an excessive display of their riches” being downgraded to the poorer tribes. *(ibid, IV.4, 131).* While it could be argued that Rousseau was characteristically romanticizing country life once more, one could also argue that he saw in this arrangement the source of Rome’s unique ability to combine republican government with a large territory. In later years, however, its purpose was corrupted when censors began to distribute tribal membership arbitrarily. The powerful all had themselves enrolled in rural tribes while the poorer citizens and freedmen remained in the urban ones. Membership in rural tribes no longer indicated that one

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87 Although the assembly by tribes did not yet exist, the old tribal division had been the foundation of the original assembly, the *comitia curiata*, with each tribe being divided into ten *curiae*. It is surprising, then, that McCormick characterizes this reform as aiming to protect “the social prominence of the patricians [by reforming] the racial cum residential tribes of Rome in response to an influx of foreigners that threatened to overwhelm the tribes populated by the leading families.” See “Rousseau’s Rome,” 11. True, after this reform only four of the nineteen new tribes remained part of the *comitia curiata* since the original correspondence of tribes and *curiae* was abolished. But these were the four urban tribes, which contained the urban “canaille,” or poor, rather than the patriciate. *(SC, IV.4,130).* It is not clear, then, in what way the tribal reform would have contributed to protecting the privileged status of the old patrician families. In fact, M. Cary & H.H. Scullard suggest that the new tribal division aimed to incorporate foreigners into the citizen body by enrolling them into new tribes, since using the old *curiae* which were “closely-knit family groups would have given offence.” See *A History of Rome Down to the Reign of Constantine*, (London: Palgrave, 1975), 53. It seems that Rousseau was arguing along similar lines, although he does not mention the military reasons for this reform.
resided and worked in the countryside. Rather, it became simply a badge of individual power and
prestige. What had begun as a way of preserving the supremacy of agriculture and the freedom
from personal dependence that this afforded Roman citizens, ended up as a mere instrument of
power. The division between urban and rural (or vice and virtue) was transformed into a division
between weak and powerful. But the Servian division by tribes was also crucial for a later
development, which, according to Rousseau, democratized the Roman constitution: the
establishment of the tribunate and the *comitia tributa*. To fully appreciate this part of his
argument it is necessary to raise the question of the conflict of the orders. Did Rousseau entirely
eliminate it from his analysis because, as one commentators has claimed, he “wished to forget
the presence of dissension within the patriotic community?”

**What Happened to the Conflict of the Orders?**

It is undeniable that Rousseau did not place the conflict of the orders at the centre of his
account in the way that Montesquieu or Machiavelli had done. It is equally true that he regarded
deep socio-political cleavages as harmful because they inhibited the general will from
manifesting itself. In conformity with this stance he described the division between patricians
and plebeians as a defect of the Roman civic community, claiming that because of this division at

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88 Touchefeu, *L'antiquité et le christianisme*, 310-311. McCormick also implies that the problem with Rousseau is
his desire for homogeneity, which leads him to sacrifice an entire class (the plebeians) in order to achieve it. See
Rome “there were then…two states in one.” (SC, IV.2, 123).\textsuperscript{89} However, this does not imply that Rousseau eschewed the conflict of the orders because he failed to consider the possibility that discord between classes can be useful to the preservation of liberty.\textsuperscript{90} Rather, it is because he disagreed with this argument in the case of Montesquieu, and most likely believed that this could not have been Machiavelli’s \textit{real} position. For Rousseau the ‘conflict of the orders’ was a legacy of monarchy and did nothing to further the republican cause in Rome. That conflict ended with the establishment of the tribunate, which democratized the Roman constitution and caused the patriciate to “abolish itself as if on its own.” (SC, III.10, 106-107, note*). Certainly Roman politics continued to be tumultuous, but later struggles were not of the same kind as the conflict between patricians and plebeians in the early days of the republic. They had more to do with the growth of a new aristocracy of office and its attempt to concentrate power in its own hands, something that reflected the natural tendency of government in general. In order to fully grasp Rousseau’s views on this topic it is useful to turn once again to the \textit{Spirit of the Laws}.

It was Montesquieu who first suggested that the patriciate had been a legacy of Rome’s monarchical past. The historically tradition of course recognized this, since Romulus had founded the patriciate by creating the Senate made up of \textit{patres}. But Montesquieu regarded this historical fact not as something accidental to the Roman monarchy, but as an essential aspect of monarchical government more generally. Such societies by their nature, he argued, were divided between a class that merely obeyed - the subjects - and a class that obeyed by service to the

\textsuperscript{89} These lines echo a passage in Livy who recounts that just before the Mons Sacer incident, upon hearing that the Volscian army was headed for Rome “the reactions of senators and plebeians to this report were very different - to such an extent had the discord \textit{created two civic communities instead of one}. The plebs were exultant in their joy, saying that the gods were avenging the senators’ arrogance…but the senators take up arms [they said] so that the same people who got the rewards of war should also experience its dangers.” See \textit{The History of Rome}, II.24, 112.

\textsuperscript{90} As suggested explicitly by McKenzie, “Rousseau’s Debate with Machiavelli,” 221
monarch. In monarchies the ruler, although not bound by law himself nonetheless ruled in conformity with fixed laws. Because sovereign power was exercised in this way monarchies always contained ‘intermediary bodies’ that aided the sovereign in administering the laws of the state, and in so doing, moderated his power. The status of these bodies was guaranteed by prerogatives, or rights distinct to each rank and fixed by the state’s laws. These ranks were not merely formal. They were sustained by the very principle of monarchical government, that is, by that specific human passion that animated its parts: honour. Noblemen in monarchies were in some sense ruled, not by the monarch, but by honour, or the desire to stand out. In other words, by their nature monarchies always contained an institutionalized distinction between commoners and noblemen, which, in the case of Rome corresponded to the division between plebeians and patricians. True, Montesquieu argues that the genuine form of monarchical government was discovered by the Germans, being completely unknown to even the brightest lights of the ancients (i.e. Aristotle). But the Roman monarchy had come closest, and for this reason Montesquieu says that it was “in itself and in its particular nature very good.” The abolition of the monarchy, however, rendered the patriciate, which had been a crucial order in the state until that point, entirely superfluous. Yet, it retained its privileged status. Patricians held all “sacred, political, civil and military employments” while the people had “almost no influence left in the

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91 This would explain, Montesquieu argues, why the Greeks regarded popular government as superior to one-man rule. Their monarchies had been horrific because “it had not yet been discovered” that the monarch, who had a monopoly on force, should not therefore also have full judicial authority. See Spirit of the Laws, XI.11,169

92 ibid, XI.12,170. The Roman monarch, unlike the kings of the Greeks, had shared judicial power with the Senate. He had also had some say over legislative power, which in the Greek monarchies had been entirely in the hands of the people, rendering the monarch simultaneously powerful and powerless. In other words, the Roman monarchy had been much better at both moderating and co-ordinating powers in the state.

93 The patriciate had been crucial also because of its role during interregna. Since the Roman monarchy was elective, when the king died it was up to the Senate to steer the ship until a new king had been nominated (by this same body) and elected (by the people in the comitia curiata).
voting” and “were subjected to outrages.”

At its origin, then, the Roman republic was an aristocracy, but the situation required that it be a democracy since “the people already had legislative power; their unanimous vote had driven out the kings.” Moreover, because the patriciate no longer played an essential role in the new constitution as it had in the old, its superior socio-political status was rendered more hateful by appearing as mere privilege. It was the conflict of the orders, which Montesquieu characterizes as “a noble rivalry,” that finally democratized the Roman constitution. It opened magistracies to plebeian candidates, instituted tribunes of the plebs to check patrician abuses, and augmented the people’s legislative power through the frequent use of the *comitia tributa* (where patricians were not admitted) over the aristocratic *comitia centuriata*.

Rousseau’s take on Rome’s republican beginnings is very similar, despite appearances to the contrary. He argues that the first real form of government during the republican period was democratic, and that before the establishment of the tribunate Roman politics had been in a state of flux. In other words he denies that at first republican Rome had been aristocratic. But this is because he agrees with Montesquieu’s more basic point that once the monarchy was abolished patriciate prerogative had become superfluous. After the expulsion of Tarquin, he argues, the government “did not assume a stable form…because the failure to abolish the patriciate left the work only half done.” (SC, III.10, 106-107, note*; *my emphasis*). So like Montesquieu Rousseau

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94 Montesquieu, XI.14, 172.

95 *ibid*, XI.13, 172; see also *Considerations*, VIII, 83: “After the expulsion of the kings, the government had become aristocratic.”

96 *Spirit of the Laws*, XI.13, 173; Montesquieu (and Rousseau following him) confuses the *comitia tributa* with the *concilium plebis*. The patricians were not excluded from the former, but only from the latter which was the body that passed *plebiscites*. Carey & Scullard point out, however, that this mistake was due to the ancient writers themselves who had a tendency to conflate the two. A *History of Rome*, 81.
argues that the patriciate should have ceased to exist along with the monarchy. The conflict of the orders was not, for him, a conflict between two social forces present in every political community, like Machiavelli’s people and great. Rather, it was a conflict between backers of two forms of government: hereditary aristocracy, “the worst of legitimate administrations,” and democracy. (ibid). The establishment of the tribunate marked the victory of democracy and the beginnings of a settled form of government in republican Rome. Immediately afterwards “the people was not only Sovereign, but also magistrate and judge, the Senate was no more than a subordinate tribunal to temper or concentrate the Government, and even the Consuls…were in Rome no more than presidents of the people.” (ibid). It was because the tribunate was accompanied by a new and much more democratic assembly, the comitia tributa, that Rousseau regards it as a turning point in the historical development of Rome’s republican constitution.

This assembly was convened by the tribunes, excluded patricians from participating, and passed plebiscites. Both Montesquieu and Rousseau characterized it as the most democratic of Roman assemblies because the votes of all participants counted equally, unlike in the comitia centuriata. Both also condemned the fact that patricians were excluded entirely from participating in it. Montesquieu calls the decision to give plebiscites the force of law “a frenzy of liberty,” and Rousseau argues similarly that “the Senators, forced to obey laws on which they could not vote, were in this respect less free than the last of Citizens.” (SC, IV.4, 134).97 McCormick has used this as evidence that Rousseau was, once again, defending the prerogative of elites, unwilling to grant that the exclusion of patricians was necessary for the people to have

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97 ibid, XI.16, 176
some say over Roman politics. But in an unrelated part of the *Social Contract* Rousseau recognizes clearly that senatorial meddling often prevented the *comitia tributa* from properly expressing the general will of its members. “Even in the stormiest times,” he says, “the people’s plebiscites were always carried quietly and by a large majority, when the *Senate did not interfere.*” (*SC*, IV.2, 123; *my emphasis*). The exclusion of patricians, in other words, did nothing to prevent them from attempting to obstruct the activity of these assemblies. In fact, the more probable reason for why Rousseau raised this objection is precisely because, by forcing patricians to obey laws to the ratification in which they did not participate, such exclusion encouraged extra-legal, or illegitimate, attempts at influencing the outcome. This measure was entirely unnecessary, he argues, since in these assemblies patricians would have had a single vote just like everyone else “and would therefore have had scarcely any impact on a form of voting which consists in counting heads and in which the least proletarian counts for as much as does the Prince of the Senate.” (*SC*, IV.4, 134). It is quite likely that Rousseau regarded the *comitia tributa* as the best candidate for a sovereign assembly of the *entire* Roman people and believed that the exclusion of patricians was counter-productive for Roman democracy because it allowed the original defect to persist. Thereafter patricians would be perfectly justified in regarding the assembly by tribes as an instrument of their social inferiors rather than as the sovereign assembly of the state. Having failed to recognize the potential of the *comitia tributa* for overcoming the division between patricians and plebeians, the Romans were left with the more oligarchic *comitia centuriata* “which alone were complete.” (*ibid*, 135). Even in these assemblies, however, patrician interests did not always prevail, he argues, since “the Tribunes ordinarily and a large

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98 “Rousseau’s Rome,” 13
number of the Plebeians always, were in the class of the rich and thus balanced the influence of the Patricians in this first class,” that is, that class that usually determined the outcome of voting. (ibid, 133). Clearly for Rousseau the division between patricians and plebeians needed to be overcome, and the comitia tributa could have done this in a way that was compatible with democratic government.

While Rousseau may have agreed with Montesquieu’s argument about the role of the patriciate in republican Rome, however, he drew the opposite conclusion regarding its role in moderating monarchical power. Montesquieu had argued that the presence of ‘intermediary bodies,’ which were motivated by honour to resist any attempts against their prerogatives, served to moderate the monarch’s power. Such bodies would resist even the monarch were he to demand something that went against their self-understanding, or honour. Unlike despotic power, monarchical power was always exercised by being divided among several orders in the state. This division moderated it, thereby protecting a larger space of freedom for those upon whom it was exercised. In Rome the monarch’s power had also been divided between the Senate and the comitia curiata, or the assembly of the people. It was for this reason that Montesquieu praised it as superior to Greek monarchies.

Montesquieu had explained that the patriciate had become obsolete once the state changed from a monarchy into a republic. “The people were able to bring down the patricians without destroying themselves, and to change the constitution without corrupting it.”99 Rousseau took this argument to its logical conclusion by suggesting that the patriciate should have been

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abolished entirely after the expulsion of the Tarquins. This suggests that he regarded the conflict of the orders as something that, in principle, could have been avoided since the division between patricians and plebeians was nothing more than an accidental legacy. But Rousseau’s purpose here was entirely contrary to that of Montesquieu. “Romulus’s purpose in instituting the [comitia by] Curiae was to restrain the Senate by the people and the People by the Senate,” he argues, “while himself dominating both equally.” (SC, IV.4, 132; my emphasis). This statement points to the heart of Rousseau’s disagreement with Montesquieu. According to Rousseau the point of pitting the patriciate against the plebs was not to moderate the prince’s power, as Montesquieu had argued, but to concentrate it. The kind of separation of powers that was characteristic of monarchies, in other words, was not useful to liberty. On the contrary, it gave the advantage entirely to the king and this was its ultimate purpose.¹⁰⁰ This may have been something that Rousseau found in Machiavelli’s Prince. In chapter nine of that work Machiavelli presents in embryonic form his theory of class conflict. “In every city these two diverse humours are found, which arise from this: that the people desire neither to be commanded nor oppressed by the great and the great desire to command and oppress the people.”¹⁰¹ One commentator has remarked that

¹⁰⁰ In this context Rousseau calls Rome’s clientelist system, instituted by Romulus to give the patricians an advantage over the plebeians, a “masterpiece of politics and humanity.” (133). All readers of the Roman chapters have puzzled over these “astonishing lines,” as Toucheufé calls them, concluding either that Rousseau was waxing nostalgic about a paternalist aristocratic system like that described in La Nouvelle Heloise (Cousin, “Rousseau interprète,” 18; Toucheufé, “L’antiquité et le christianisme,” 314); or that they are fully in line with Rousseau’s elitist commitments (McCormick, “Rousseau’s Rome,” 14). But Rousseau could not consistently hold that the patriciate should have been abolished and that the clientelist system which had prevented its abolition had been admirable. It is more reasonable not to take these lines literally as such commentators have done. Their context in fact suggests that they are ironic, for Rousseau continues by saying that without the clientelist system the patriciate would not have survived, being “so contrary to the spirit of the Republic.” These lines reinforce the point that the conflict of the orders had been a legacy of monarchy; in instituting it Romulus had followed “the spirit of Monarchy.” They suggest an explanation for why the patriciate had not been abolished at the beginning of the republican period, while echoing (through the frequent use of the word ‘spirit’) Montesquieu’s argument that “the patricians, who were necessary parts of the constitution at the time of the kings, became a superfluous part of it at the time of the consuls.” Spirit of the Laws, XI.13, 172.

Rousseau missed this crucial insight, and consequently failed to appreciate the advantages that agonistic politics can have for liberty. But in this same chapter Machiavelli proceeds to advise absolute rulers how to use this division to concentrate power in their own hands, much like Rousseau’s Romulus. Rousseau took Machiavelli’s theory about class-conflict to have been ironic, a reflection of how princes see society and benefit by encouraging divisions, instead of an elaboration of Machiavelli’s own views. In a nutshell then, it can be established that Rousseau regarded the conflict of the orders as a harmful legacy from Rome’s monarchical past, one that should have been eliminated by Rome’s republican institutions. It is for this reason that, breaking with everyone who had written on this topic, Rousseau purposefully referred to the tribunes of the plebs as tribunes of the people.

The Tribunate

As one commentator has pointed out there are not really four ‘Roman chapters’ in Rousseau’s Social Contract because the chapter dedicated to the tribunate is not limited to the Roman historical example. Rather it is about an institutional innovation presented by way of analyzing the flaws of the Roman version. The tribunate is, according to Rousseau, “the preserver of the

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102 McKenzie, “Rousseau’s Debate with Machiavelli,” 221-222. In republics, Machiavelli states, “all the laws favourable to liberty result from [the discord between the people and the great].” See Discourses on Livy, trans. Harvey C. Mansfield & Nathan Tarcov, (Chicago: University of Chicago Press, 1996) LIV, 16. McKenzie argues that Rousseau suppressed Machiavelli’s observation that the conflict of the orders continued until the time of the Gracchi, while accepting his argument about the evolution of the Roman constitution up to the tribunate. This is not entirely accurate, however, since Rousseau regarded the conflict between patricians and plebeians as distinct from the tumults that characterized the time of the Gracchi. The former was a legacy of monarchy, while the latter was partly due to a problem with the Roman tribunate (see below), and partly to the more general tendency that governing elites have to concentrate power in a few hands.

103 Andrivet, “Rousseau: quelques aperçus,” 131
laws and of the legislative power.” (SC, IV.5, 136). It is not necessary in all states, but only in cases where “indestructible forces constantly upset the relations between…the constitutive parts of the State [i.e. the Sovereign, Government, and Subjects].” (ibid). In Rome, Rousseau specifies, the purpose of the tribunate was to protect “the Sovereign against the Government.” (ibid). In other words, the tribunate was not established merely to protect plebeians against patrician outrages, as Montesquieu had argued. This was simply a consequence of its more essential purpose of ensuring that the government would not attempt to silence the sovereign. It was not the instrument of a particular class in Rome, but a necessary safeguard of the state as a whole. The role of such an institution, according to Rousseau, is essentially negative as reflected in the Roman tribune’s *intercedo* which granted him the right to hold up any business of state. This preventive role also implies that the tribunate cannot be considered as part of either the government or the sovereign, since it should neither execute nor make laws. The Roman tribunate fits this requirement also because it was never considered to be a “magistracy in the strict sense.”104 In line with this argument Rousseau points out that the tribunes contributed to the fall of the Roman republic when they overstepped their bounds by usurping executive power. This prescriptive aspect of Rousseau’s discussion illuminates further his disagreement with those who had understood the tribunate as an instrument of the plebs.

If the tribunate were to have executive power it would immediately transform itself either into a part of the government, thereby forfeiting its ability to act as a check on it, or into a rival power in the state. In other words, according to Rousseau the tribunate’s role must be negative because it should not contest the government’s actions from a rival position in power. This

104 Carey & Scullard, *A History of Rome*, 82
would simply create two seats of executive power each with its own partisan supporters, while the sovereign would once again lack any means of checking either one. The conflict between the *populares* and *optimates* in the later years of the Roman republic is just such an example. While the old patriciate had ceased to exist a new patricio-plebeian aristocracy arose, split between two rival factions. “The Aristocracy,” Rousseau explains, “no longer resided in the body of Patricians…but in the body of the Senate which was composed of both Patricians and Plebeians, and even in the body of the Tribunes once they began to usurp active power: *for words do not change things, and when the people has chiefs who govern on its behalf then, regardless of the name these chiefs bear, it is still an Aristocracy.*” (SC, III.10, 106-107, note*; my emphasis). The new aristocracy was elective, unlike the old. But it was nonetheless true that the tribunes were no longer ‘of the people,’ or defenders of the sovereign will, but simply ambitious politicians seeking power like their counterparts in the Senate. The tribunate’s development in Rome, then, was another missed opportunity just like the case of the *comitia tributa*. What had been a promising institutional innovation - negative power in the service of the whole state - had ended up as another rival power serving factional ambition, because the Romans had not “stipulated intervals during which it would be suspended.” (SC, IV.5, 137).\(^{105}\) This would have limited its power to its intended purpose because ambitious tribunes would have lacked the time to enact new policies or build networks of supporters.

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\(^{105}\) Though Rousseau presents this suggestion as something that had not occurred to anyone before him, he is clearly following a general rule set down by Montesquieu in his discussion of the Roman dictatorship: “In every magistracy, the greatness of the power must be offset by the brevity of its duration.” *Spirit of the Laws*, II.3, 16. It is true, however, that Montesquieu did not recommend this in the case of the tribunate, since he believed that the dictatorship ultimately caused the fall of the republic. See his note on the same page.
To sum up, Rousseau did not think that the conflict of the orders was beneficial for republican Rome. Neither did he condemn it, however. His position was that the early struggle between patricians and plebeians was largely due to Rome’s monarchical past, an accidental or historical legacy that could not be generalized to other cases. The cause of the plebeians was simply more consistent with the newly founded republican order than that of hereditary aristocracy demanded by patricians. Hereditary right was incompatible with republican government as Montesquieu had made abundantly clear in the *Spirit of the Laws*. But while the tribunate had marked a watershed in the attempt to create a sovereign people with a single will, or to overcome the original cleavage, the potential of this institution and its corresponding *comitia* had not been fully exploited in Rome. The patriciate should have been abolished, Rousseau appears to suggest, by being incorporated into an egalitarian assembly. The tribunate, on the other hand, should have been a temporary office, not a permanent one. It was partly because its republican institutions had failed to create a united people that Roman politics remained agonistic even after the establishment of the tribunate. But the participants in later conflicts were not the same as those in the early days of the republic. Later conflicts had specific causes that depended partly on the institutional choices made during Rome’s early republican period and partly on the corruption of these institutions, such as the transformation of the urban-rural division into a weak-and-powerful division. What can be safely established, however, is that Rousseau did not regard society as universally constituted by two irreconcilable social forces, like ‘the great and the people’ in the case of Machiavelli, whose suggestion in the *Prince* he appears to have interpreted as ironic. For him social divisions originated in causes largely external to society. They were not inherent parts of political life but resulted from the way in
which power was organized and exercised. This was certainly something that Rousseau learned from Montesquieu whose *Spirit of the Laws* had underlined the necessary relationship between the exercise of sovereign power in a community and the social organization, or stratification, of that community.

**Conclusion**

My purpose in this chapter has been to suggest that the significance of Rousseau’s Rome in the *Social Contract* in particular comes to light only if considered against Montesquieu’s reflections on the same. For Rousseau Rome was not a utopia meant merely to bring out the shortcomings of present men, or to inspire nostalgia for the past. It is significant that while many of his other works had appeared to defend the writings of Livy or Plutarch as literal truths, in the *Social Contract* Rousseau begins his treatment of Rome by pointing out that the stories written by such authors are certainly fables. The case of Rome was of historical interest for him because Rome had been a large state that had attempted, without fully succeeding, to establish republican government. In other words, the greatness of the Romans for Rousseau lay not in their conquests but in their stubborn refusal to adopt the most natural solution for the problems associated with a
large territory: monarchy, or, as in the case of Britain, representative government.\footnote{The significance of Rome’s size comes up frequently throughout the Social Contract. For example, Rousseau prefaces his chapter on the Roman comitia as follows: “it is not unworthy of a judicious reader to consider in some detail how public and particular business was conducted in a Council of two hundred thousand men.” (SC, IV.3, 127). See also III.12, 110: “The people assembled, it will be said! What a chimera!...the Roman Republic was...a large State, and the city of Rome a large city...What difficulty might one not imagine about frequently assembling the immense people of this capital and its environs? Yet few weeks went by when the Roman people was not assembled, and even several times;” and again in III.15, 114, Rousseau tells of the “the time of the Gracchi, when a portion of the Citizens cast its vote from the rooftops.” The episode is recounted in Plutarch’s “Caius Gracchus.” When Gracchus canvassed for the tribuneship too many people came to vote “from all parts of Italy,” and because they could not all be accommodated in the assembly “many climbed upon the roofs and the tilings of the houses to use their voices in his favour.” See Lives, vol.2, Dryden translation, ed. Arthur H. Clough, (New York: Modern Library, 2001), 373.} According to Rousseau the cause of this refusal had not been structural, as Montesquieu had suggested. The early Romans had not praised liberty because they had been fond of expansion and gain. The cause of their constitution had been virtue, not war. In other words, their commitment to republicanism had been moral, not structural. Roman republicanism had to be understood as a genuine political choice. Montesquieu’s argument had been that republican Rome, from the very beginning, was heading towards tyranny. This was not because the Romans had designed a flawed constitution, but because they had designed a good one. The problem was that this constitution had been animated by a politically destructive passion: expansion, or the desire to command others. In other words, Montesquieu described the Romans’ preoccupation with liberty as inherently related to a desire for power.\footnote{See e.g. the following passage: “Rome, whose passion was to command, whose ambition was to subject everything...continually pursued public business; its enemies plotted against it, or it plotted against them...The people quarrelled with the senate over all the branches of legislative power, because they were jealous of their liberty; they did not quarrel with it over the branches of executive power, because they were jealous of their glory.” Spirit of the Laws, XI.17, 178.} Roman virtue had been grand, but the price of that virtue simply too high, especially for those who valued liberty. Rousseau, on the other hand, turned to Rome because he was committed to the idea that virtue and liberty went hand-in-hand. One could not have one without the other. Thus, Rousseau broke with the tendency to regard the Romans as power-hungry predators. He focused exclusively on early Rome’s domestic
arrangements, and emphasized the institutional remedies that might have delayed its fall, such as including the patricians in the *comitia tributa*, limiting the operating time of the tribunate, and preserving the original intention behind the urban-rural division. Certainly he never suggests that these reforms would have prevented the fall of the republic, but that is ultimately the point. For the purpose of these chapters is to highlight the foundational role of virtue, and the impossibility of substituting purely formal institutional proposals, like the separation of powers, for its absence. Rome appears to be for Rousseau the best historical example of the spirit of republicanism, rather than the perfectly designed constitution that Britain was for Montesquieu. This spirit manifested itself in one simple phenomenon: the people’s constant willingness to assemble and participate not merely in legislation, but in government. This is not to suggest that Rousseau dreamed of a Rome that was similar to Athens where the people was constantly assembled. Far from it, for he certainly preferred aristocratic government to popular rule. But government always had to be accompanied by regular popular assemblies during which its jurisdiction would be suspended. These were moments of constitutional re-founding, not, as Machiavelli had suggested, by brutality and terror, but democratically, or legitimately by the people itself. “Most of the commotions that arose in the comitia in Rome,” Rousseau points out, “came from ignorance or neglect of this rule.” (*SC*, III.14, 112). In other words, the Romans either did not understand, or did not care to understand, that when the people is assembled the jurisdiction of all magistrates necessarily ceases. The reasons for this were specific to the defect with the Roman body politic, namely the difficulty of reconciling patriciate pride with popular sovereignty. But what seems to matter most to Rousseau was the persistent willingness of Roman citizens to participate in public business, whether in legislation or in some functions of
government. In a word, the Roman example showed that popular assemblies in large states were not structurally impossible, an argument meant not so much to encourage naive optimism, as to push back against arguments that regarded one-man rule as the only answer to the problems associated with a large territory.
CHAPTER 2: Rousseau and the Genevan Constitutional Crisis of 1762-64

When will men feel that there is no disorder as fatal as the arbitrary power with which they think of remedying it? ¹⁰⁸

Introduction

The present chapter returns once again to the following question: how democratic is Rousseau’s political theory? For those who have looked beyond Books I and II of the *Social Contract* his reputation as a democratic thinker has often appeared contentious, as the previous chapter indicated. For one thing Rousseau objected to democratic rule as it had been practiced in ancient Athens. ¹⁰⁹ He also claimed that elective aristocracy was the best form of government. In Rousseau’s ideal republic, then, how much do the people actually do? Many commentators have been persuaded by Shklar’s thesis that in fact “the [Rousseau] sovereign does very little.” ¹¹⁰ Surprisingly given his political principles the government’s role in the ideal republic is quite extensive they point out. Fralin, for example, claims that Rousseau’s criticisms of the English government are disingenuous in light of his institutional proposals for Geneva in the *Letters written from the Mountain*: “[It] does not seem to occur to him that in a state based on popular assemblies the people are ‘free’...only during the brief period that the assembly is in session and,

¹⁰⁸ *LM*, 249.


¹¹⁰ Shklar, *Men and Citizens*, 170; also Urbinati, *Representative Democracy*, 77. Urbinati goes so far as to say that, according to Rousseau, “citizens do not need to be particularly intelligent or well informed.” (*ibid*, 78). Cf. *SC*, II.3, 60 and *LM*, 267.
like the English, are ‘slaves’ the rest of the time”. According to this interpretive camp those who regard Rousseau as a proponent of ‘strong democracy’ are mistaken because they fail to take into account the much more conservative nature of Rousseau’s institutional thought.

This larger debate was reproduced in miniature in an exchange between Ethan Putterman and John T. Scott. Putterman argued that Rousseau’s thought actually attempted to reconcile elite management with popular participation. Rousseau was neither a proponent of direct democracy nor a defender of elite prerogative. Rather, in Rousseau’s ‘ideal state’ legislative power would be shared by the government and the people. The government would set the legislative agenda while the people would act as a final check on it. Far from “reinforcing the Schumpeterian view that democracy is rule by elites” he states, Rousseau “stops short of authorizing [the government] to serve as a final check [on sovereignty]”. Putterman also maintains that the people’s legislative role is not limited to constitutional lawmaking but extends over criminal and civil laws. But neither was Rousseau a populist, he argues, for this reading “fails to explain why Rousseau does not permit the people both to initiate and to ratify the laws.” Those who interpret Rousseau as a direct democrat “underestimate the legislative role that representatives play in Rousseau’s just state”; they fail to notice “his most antidemocratic stipulation that lawmaking be divided.” The merit of Putterman’s reading is that it addresses a real problem in Rousseau’s thought and attempts to clarify it by showing that his solution fell somewhere between freedom and control.

111 Fralin Rousseau and Representation, 102
113 ibid, 465
114 ibid, 460
115 ibid, 467
But it suffers from two chief problems one of which was pointed out by Scott in his reply. Scott argued that Puttermann’s position was not consistent with Rousseau’s argument that legislative power cannot be divided. In fact what Rousseau sought was precisely the opposite. He warned that governments would always attempt to usurp legislative power by claiming that they had the only right to set the legislative agenda - i.e. by dividing the legislative power.\textsuperscript{116} In response to Scott’s critique Puttermann adopted a ‘weaker’ version of his previous thesis. While it was true that Rousseau did not divide the legislative power he did think it possible that elites could initiate law as long as the people held the final check on legislation.\textsuperscript{117}

But even the second version of his thesis falls much closer to the Schumpeterian camp than Puttermann suggests. He explains that Rousseau expected governing elites to “save the sovereign from inadvertently undermining the body of laws erected by the legislateur.”\textsuperscript{118} He further describes them as the depositories of the “legislative machine [i.e. the constitution] that guides and upholds the sovereign will.”\textsuperscript{119} While in the second article Puttermann claims that the people’s primary role in the state would be to act as ‘gatekeepers’ - i.e. as the final check on legislation - he neither raises nor answers the question of how effective this check would be in practice. But his characterization of the government’s role as the depository of the constitution makes this question necessary. For if Rousseau had such faith in elected elites then what explains the need for the people as a legislative check? Puttermann argues that for Rousseau elected elites

\textsuperscript{116} John T. Scott, “Rousseau’s Anti-Agenda-Setting Agenda and Contemporary Democratic Theory,” \textit{American Political Science Review} 99 (2005): 137; 140

\textsuperscript{117} Ethan Puttermann “Rousseau on the People as Legislative Gatekeepers, not Framers.” American Political Science Review 99 (2005): 145

\textsuperscript{118} Puttermann, “Rousseau on Agenda-Setting,” 467

\textsuperscript{119} ibid
were supposed to differ from the people only quantitatively. They would simply have more of the qualities shared by all because Rousseau eliminated “differences resulting from wealth, privilege, title, status, or any other social basis” as relevant qualifications for holding power. If this were sufficient to guarantee that governing elites would not initiate laws that did not contradict the general will then why would Rousseau insist on the people’s role as gatekeepers? Why would their consent be required at all? Certainly one could say that political participation is intrinsically valuable or serves an educative purpose. But this still doesn’t explain the need for the people to act as a legislative check on the government - i.e. their institutional role in the state. Even the second version of Putterman’s position, then, remains open to Scott’s critique that he does not sufficiently acknowledge Rousseau’s distrust of the executive.

In this chapter I have chosen to focus on this debate for several reasons. First because it is representative of a larger debate between those who see Rousseau as a proponent of political participation and those who do not. Second because it calls attention to an often neglected aspect of Rousseau’s thought: his political maxims and institutional proposals. In other words it calls attention to Rousseau’s reflections on the practice of politics. Lastly, because its resolution hinges on the status of one particular text that has not received sufficient attention with respect to this debate, namely the Letters Written from the Mountain.

In relation to this last point one ought to note that Putterman’s thesis is open to critique especially on the question of evidence. He acknowledges that there is very scant evidence to support his thesis in the Social Contract itself. In fact, the only evidence to be found for his

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120 ibid, 468
121 ibid, 461-62
position is in Rousseau’s “Epistle Dedicatory” letter to the Second Discourse and in the Letters written from the Mountain. Only in these two works does Rousseau restrict legislative initiative to governing elites. Since this restriction forms the basis for Putterman’s interpretation one is surprised to find that he dismisses both the “Epistle Dedicatory” and the Letters as ‘soft ground’ upon which to build his case. In the second version of his argument he resurrects the two sources but provides no clear justification for having changed his mind. The question of evidence is at the heart of Scott’s critique, for he agrees with Putterman that neither the “Epistle Dedicatory” nor the Letters should be taken seriously. Scott dismisses the first as an ironic piece of flattery for the Genevan regime. Because Rousseau’s support for the government’s exclusive right to propose new laws comes in the context of a purposefully idealized picture of the Genevan regime it could be taken as ironic. Yet, in the Letters Rousseau’s picture of the Genevan regime is far from idealized. He attacks all those elements of the Genevan regime that his other works on Geneva had omitted: the oligarchs and their usurpations, the excessive moderation of the Genevan citizenry in the face of public abuses, the atomization of Genevan society, etc. But he still supports the government’s exclusive right to propose new laws. According to Scott were the government to have this right it would not so much have a share in legislative power as it would have the lion’s share of legislative power. This clearly contradicts Rousseau’s distrust of the executive in the Social Contract and must therefore signify a dilution of his principles in the context of adverse political circumstances. Scott acknowledges that the strongest evidence for the contrary position comes from a passage in the ‘Ninth Letter’ where Rousseau calls the

122 Scott, “Rousseau’s Anti-Agenda-Setting Agenda,” 141
123 ibid
124 ibid
government’s exclusive right over legislative initiative “very reasonable” and states that “it would be generally impossible for [the democracy] to maintain itself if the Legislative Power could always be set in motion by each of those who compose it.” In this same place he further states that such a right is “essential” for democracies. (LM, 285). Scott states that “Rousseau is once again emphasizing that the initiation of legislation cannot ‘always be set into motion,’ but can legitimately occur only under certain circumstances and only in a certain fashion.”

But Rousseau clearly means much more than this. He objects even to the formal procedure by which individual citizens can set in motion the legislative power in Geneva. What he means is that the government should have an exclusive right over legislative innovation, something that Scott suggests is illegitimate according to the principles set forth in the Social Contract. Apart from pointing out this contradiction, however, Scott offers no independent grounds for suggesting that in the Letters Rousseau compromised his political principles for contextual reasons.

In this chapter I attempt to show that this is not the case. Rousseau’s interpretation of the Genevan constitution in the Letters was consistent with the principles of political right set forth in the Social Contract. More importantly, I argue that his proposals for reform were an attempt to build a robust democracy where the people’s legislative power would be more than a mere formality. Rousseau restricted the right of legislative innovation to the government because, paradoxically, he sought to reinvigorate the legislative power in the state. Against Putterman’s characterization of the government as the depository of the legislateur’s work I argue that

125 ibid

126 Contrary to Melzer’s claim that the example of Geneva “can hardly be cited in support of the view that Rousseau desired the executive to be utterly subordinated to the unchecked power of the sovereign people.” Natural Goodness of Man, note 19, 211. I argue that his recommendations in the Letters from the Mountain aimed to do exactly that (although the ‘unchecked power of the sovereign people’ should not be confused with mob-rule. See chapter 4 for further elaboration).
Rousseau assigned this role to the people. While Putterman is right to describe the people’s role as that of gatekeeping he fails to notice that this role would be effective only if the people were able to check the administration of the law outside of the general assembly. The people’s role as gatekeepers, in other words, is identical with their role as depositories of the constitution and not with their role as voters in the general assembly. Precisely because in democracies the people holds the final say on legislation Rousseau knew that the government would not attempt to usurp legislative power by proposing new laws in the assembly. It would do so by breaking the existing laws of the state. Democratic corruption, in other words, was the result of bad administration and not of legislative innovation. Certainly Rousseau preferred to restrict the right over legislative innovation to the government in Geneva. But this was not an attempt to moderate democracy as much as to invigorate and preserve it.

The Immediate Background of the Letters written from the Mountain

On June 19th, 1762, Emile and The Social Contract were condemned to be burned in Geneva under the orders of Jean-Robert Tronchin, the state prosecutor. They were judged as “scandalous [and] impious, tending towards the destruction of the Christian religion and of all

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The Genevan government also decreed that Rousseau would be arrested were he to ever set foot in Geneva. The condemnation of his person and his works came as a surprise to Rousseau and some of his closest friends but did not cause more than a murmur among Genevans. Only ten days before its condemnation in Geneva the *Emile* had been condemned to be “lacerated and burned” by the *Parlement of Paris*. The Savoyard Vicar’s ‘Profession of Faith’ and several of Rousseau’s comments on religion, especially those having to do with miracles, had caused a scandal. In response Rousseau published the *Letter to Christophe de Beaumont*, a public defence addressed to the archbishop of Paris. Although Moultou, Rousseau’s close correspondent in Geneva, said that the letter had succeeded in convincing “wise Genevans” that Rousseau was a true Christian the Genevan government prohibited its reprint in the spring of 1763. These events led to Rousseau’s renunciation of his Genevan citizenship in May, 1763. At the same time Rousseau addressed several letters to key members of the Genevan citizenry accusing them of being complicit in his condemnation because of their refusal to contest the government’s actions. In June, therefore, several Genevan citizens addressed a *representation* (a formal petition) to the First Syndic expressing their dissatisfaction with the way in which the government had handled the matter. Two other *representations* followed a month later, supported by 100 and 500 citizens respectively. When the government refused to change its decision they demanded that the matter be put before the General Council, the assembly of citizens, which they characterized as the “only interpreter of the laws.”

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128 Candaux, “Introduction,” CLXII
129 Rosenblatt, *Rousseau and Geneva*, 271
130 Candaux, “Introduction,” CLXIV
131 ibid, CLXVI
the specific sentence against Rousseau but the rights of the government more generally and it provoked a lengthy reply by Tronchin. He argued that the decision should not be put before the General Council because the government had the final word on all representations, a right that came to be known as the droit negatif (roughly: the right to say ‘no’). Citizens submitted a new representation in September where they denied that the government possessed such a right. At this time Tronchin published his anonymous Letters written from the Country where, under the guise of an impartial citizen who had retreated from the fray, he defended the government’s pretensions including its stance in favour of the droit negatif. Faced with Tronchin’s skillful defence and the government’s refusal to give way several citizens asked Rousseau to formulate a response. This conflict over the droit negatif and the government’s relation to the General Council more generally formed the background of Rousseau’s Letters from the Mountain.132

While the Letters have an undeniably apologetic character they should not be discarded on these grounds alone. Rousseau’s defence necessarily took the form of a full-fledged interpretation of the constitution and struck at the heart of the most important question in Genevan political life at the time: what should be the relationship between the citizens and their government and what institutions should support this relationship?

**Political Conflict in Eighteenth Century Geneva**

132 The Letters were published in 1765 and were received with even more hostility by the government than the Social Contract and Emile; “Professor Jacob Vernet of the Genevan Academy called the Letters a farewell to the city worthy of Medea. The physician Theodore Tronchin said they were written ‘for Milton’s demons by the most demonic demon of all’. The Council of Twenty-Five castigated Rousseau publicly on 12 February 1765 for the ideas of liberty and virtue contained in the Letters.” See Richard Whatmore, “Rousseau and the Representants: The Politics of the Lettres écrites de la montagne,” Modern Intellectual History 3 (2006): 388-389

133 In this section I have relied on ch.1 of Rosenblatt’s Rousseau and Geneva; Candaux’s “Introduction,”; and Linda Kirk “Genevan Republicanism,” in Republicanism, Liberty, and Commercial Society, 1649-1776, edited by David Wootton (Stanford: Stanford University Press, 1994).
Rousseau’s Geneva had been founded in 1536 and from then on it had been the home of French protestantism in Europe. Its government consisted of several councils of decreasing size. At the top were the four Syndics who were elected each year by the General Council. The latter consisted of “some 1500 adult male heads of households over 25…[who] met to enact new legislation, to elect certain public officers, and to vote on taxation when it was necessary.” The precise status of the General Council was a matter of controversy but nominally at least it was said to be sovereign. Between the Syndics and the General Council were several other councils the most important of which was the Small Council, often identified simply as the government. Sometimes called the Council of Twenty-Five it consisted of twenty-five members who held their appointments for life. These councillors were not elected by the people but chosen from the Council of Two-Hundred. The Small and General Council were the two protagonists in the Genevan political drama and the most contested question in Genevan politics in the 18th century was whether the former held too much power in relation to the latter. By the end of the 17th century the Small Council had become the effective property of several wealthy Genevan families known collectively as the patriciate. They lived in a separate part of the town, the *Haute-Ville* (upper town), and by this time had become exempt from Geneva’s sumptuary

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134 Kirk, “Genevan Republicanism,” 274

135 Rosenblatt notes that “in 1570 there were 176 different family names represented on the Council of 200. In 1734 this number had dropped to only 94 with ten names representing one-third of the Council members.” See *Rousseau and Geneva*, 18.
laws. They also dominated the Council of Two-Hundred and the Consistory. The accumulation of wealth in the hands of the patriciate disgruntled the Genevan artisanal class, the bourgeoisie, whose most radical and outspoken members lived in the Saint Gervais quarter. As the elite gave itself over to luxury and pleasure it became more and more difficult to regard its fortunes as the results of a “humbly industrious life.” But its hold on political and economic power did not go unchallenged. Genevan politics throughout the 18th century was punctuated by struggles between those who contested the Small Council’s rights in the name of the General Council and the Small Council’s efforts to restore control, often through violence that relied on external help. The most prominent examples are those of 1707, 1734-38, and 1762-65.

In 1707 Pierre Fatio, a Genevan lawyer, incited a popular challenge against the government. He criticized its view that the Genevan “people…had delegated their popular council’s powers to the smaller councils…and the common good was best served by leaving them there.” If the Genevan people were truly sovereign, he argued, they had to exercise that

136 Kirk mentions that the sumptuary laws, which were meant to “limit display and conspicuous consumption” actually “honored and sharpened differences [of wealth] rather than flattened them out. These rules spoke of the first, second, and third “condition”, meaning wealth, and gave people entitlements to more lace or wider skirts to correspond to their age and position within what was legally an undifferentiated status group.” See “Genevan Republicanism, 289. Though Kirk claims that Rousseau “glossed over” this fact when he argued that the sumptuary laws promoted equality in the Letter to d’Alembert, Rosenblatt shows that this differentiation was a recent development which coincided with the growing wealth and power of the patriciate or of Genevan capitalism more generally. Rousseau and Geneva, 25. Certainly Kirk is right about Rousseau’s own time but Rosenblatt’s addition raises the possibility that in glossing over this fact Rousseau was implicitly criticizing the oligarchic character of Genevan politics in the name of an earlier and better version. As Kirk shows, Rousseau also “omitted the growth of banking, insurance, and international money-lending.” “Genevan Republicanism,” 289. In other words, his omissions were not arbitrary, accidental, or due to ignorance. They were all of a kind and consistent: he excluded the oligarchic element from Geneva, the element that was responsible for the Small Council silencing the General Council.

137 Rousseau was born in the Haute-Ville but, while in Geneva, spent most of his childhood in Saint Gervais. Rosenblatt claims that “no other block in Geneva housed as many political agitators and demonstrators as did the block to which the Rousseau family moved in 1717.” Rousseau and Geneva, 31

138 Candaux, “Introduction,” CLIX

139 Kirk, “Genevan Republicanism,” 278
sovereignty themselves. The incident, which ended with Fatio’s execution in prison, illustrates the two competing perspectives on Genevan politics common at the time. All parties agreed that Geneva had originally been a democracy governed by its elected officers, the Syndics. The bourgeois camp argued that Geneva had to go back to its original constitution “in order to protect the liberty of the citizens and the independence of the republic.”140 Those who supported the government, on the other hand, argued that beginning from 1543 the General Council had progressively given up many of its rights to the smaller councils that now had a share in sovereignty. In this way “the worst excesses of democracy were curtailed and an efficient government created which could maintain the state commercially and diplomatically by adapting to the interests of rapacious commercial monarchies.”141 It was this latter view that Fatio challenged in 1707.

Another skirmish occurred in 1734-38 over the government’s decision to extend Geneva’s fortifications. Citizens met “as members of the militia companies who drilled together in neighbourhood bands” to discuss the technical issue of fortifications as well as the “legitimacy of the taxes being raised to pay for them.”142 In March of 1734 they presented the government with a list of demands through a formal representation. The document asked that the question of taxes and fortifications should be presented to the General Council and claimed that the smaller councils did not have a right to impose taxes without popular consent. Once more the ruling group responded that though the people were sovereign they had voluntarily allowed “most of the authority of the General Council to pass to a smaller, more responsible group. They could not

140 Whatmore, “Rousseau and the Representants,” 393
141 ibid, 394-95
142 Kirk, “Genevan Republicanism,” 281-82
now unilaterally withdraw that assent.”143 This disagreement erupted in violence in August of 1737 and three foreign powers (France, and the Swiss cantons of Berne and Zurich) intervened to broker a reconciliation. The reconciliation, accepted almost unanimously by the General Council in 1738, was known as the Settlement of the Illustrious Mediation. The Mediation was followed by peace, the flowering of Genevan capitalism, and the growing influence of the court of Versailles on the Genevan patriciate.

Among other things the Mediation specified the rights of all of the councils that made up the Genevan government including the General Council. It was based on a theory of powers in equilibrium associated with the natural law school and especially with the thought of Jean-Jacques Burlamaqui, its chief proponent in Geneva. According to Burlamaqui political power should be judiciously divided among several bodies meant to keep watch over one-another. This theory was incompatible with the kind of direct popular sovereignty favoured by Fatio, his follower Micheli du Crest and other members of the Genevan bourgeoisie often described as radical. After the Mediation the radical camp no longer enjoyed popular support in Geneva. Even during the conflict of 1763 what the bourgeoisie objected to was not the idea of a balance of powers but “a few consequences, in their eyes abusive, that one drew from this system…[or even simply] some irregularities in the execution of the laws.”144 This position was that of the moderate bourgeoisie.145 Nonetheless, the debate over the droit negatif in 1762 brought up once

143 ibid, 283-284
144 Candaux, “Introduction,” CXCIII-CXCIV
145 This leads Gabriella Silvestrini to argue that Rousseau’s Social Contract, which opposed the theory of divided sovereignty in principle, cannot be reduced to the political position of the Genevan bourgeoisie. See “Genève comme modèle dans la pensée politique de Rousseau,” in La religion, la liberté, la justice: un commentaire des Lettres écrites de la montagne de Jean-Jacques Rousseau, edited by Bernardi Bruno et al. (Paris:Vrin, 2005): 229.
again the question of the General Council’s status in relation to the Small Council, and many of the familiar arguments that had characterized the previous instances of conflict.

The Content of the *Letters written from the Mountain*

Never had the People rebelled against the Laws when the Leaders did not begin by breaking them in some respect.\(^{146}\)

In the *Letters* Rousseau sought first and foremost to defend the people’s right to make *remonstrances* as implying something more substantial than “the simple liberty to complain.” (*LM*, 262). Tronchin had argued that the government did not need to consult the General Council on the demands that the bourgeoisie had presented through their *remonstrances*, whereas the bourgeois insisted that it had to do so. In support of the bourgeois position Rousseau argued that the right of *remonstrances*, guaranteed by Article VII of the *Mediation*\(^{147}\), necessarily implied that the government could not decide unilaterally to reject them. It had to consult the General Council before doing so. Otherwise, if Tronchin were right and the government possessed the *droit negatif* that it claimed for itself, the right of remonstrances would be nothing more than “a right that nature grants to everyone, and that the Law of no country deprives anyone of.” (*ibid*). His chief argument in the *Letters* is that the right of remonstrance is the

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\(^{146}\) *LM*, 262

\(^{147}\) Article VII stated: “The Citizens and Bourgeois conforming to the Edict of 26 May 1707 will have the right to make all such Representations as they judge conducive to the wellbeing of the State to the Syndics or the General Prosecutor.” See note no.2 to p.845, *OC*, vol.3, 1695-96 (my translation).
legislator’s way of ensuring that the laws are being properly administered by the government. The problem that Geneva faced, according to Rousseau, was the same as the problem that all peoples face who institute legitimate governments in the *Social Contract*: how to make sure that the government *represents* only the executive power and not the legislative power? In other words, how to make sure that the government does not become despotic but follows the will of the legislator?

The division of legislative from executive power is not sufficient for this unless the legislative has a way of checking the executive. That is the purpose of the right of remonstrances. By submitting a remonstrance, he argues, the citizens are simply “expressing their opinion about matters that ought to be brought” to the General Council (*ibid*, 264). They are not voting on these matters or making a decision about them. While their opinion remains simply that of *particulars*, i.e. it cannot be taken to represent that of the sovereign itself, their opinions nonetheless matter insofar as all individual citizens are members of the sovereign. Once a remonstrance has been presented to the Small Council, he continues, it ought to be reviewed by this body but it cannot be rejected by it.

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148 The sovereign power consists of the legislative and the executive powers, both of which belong to the people. But the people’s executive power is always *represented* by the government. See *SC*, III.15, 114-115.

149 Rousseau puts it as follows: “…since these private individuals are members of the Sovereign *and can represent it sometimes by their multitude*, reason wants one to pay respect to their opinion then, not as a decision, but as a proposition that demands a decision…” (*LM*, 264; *my emphasis*). This might be taken to suggest that Rousseau in fact believed it possible for individual citizens to *represent* the sovereign outside of the general assembly. But, since this contradicts his assertion that the sovereign speaks only when assembled it is clear that this reading cannot hold. It seems more likely (and in keeping with the context of the passage) that what Rousseau meant is that in the general assembly the majority represents the sovereign (i.e. the general will). Since citizens in the assembly are often in the majority, their opinions (outside of the general assembly) ought to be taken seriously. In other words, Rousseau is defending not the capacity of ordinary citizens to represent the sovereign outside of the assembly, but their capacity to have important and relevant things to say about the running of the state. This explains why he is careful to highlight that remonstrances are *not* acts of the sovereign (i.e. they are simply opinions of particulars).
This, however, applies only to those cases in which the remonstrance suggests that the magistrates have transgressed the law. The same does not hold if the remonstrance is proposing that the law be changed. In this second case Rousseau states that the magistrates do indeed possess the *droit negatif*: “it incontestably belongs to them.” (*ibid*, 265). But the magistrates cannot have veto power over remonstrances that, in effect, accuse them of having transgressed the law for then they would “become supreme judges in their own case.” (*ibid*, 266). This is the specific form of the *droit negatif* that Rousseau rejects. He does so on the conviction that were the magistrates to be at fault “they would not stick any less to their claimed negative right against the evidence.” (*ibid*). Far from assuming that governments would act in good faith towards the law Rousseau assumes the contrary and states it explicitly here.

He also argues that two consequences follow from the Small Council’s erroneous interpretation of Article VII. If the magistrates were to possess the right to veto accusations against them then the Small Council would be the most powerful body in the state to which all other bodies would be subordinated. It would thereby have usurped the sovereign authority and “all the solemnity of the Laws would be vain and ridiculous,…the State would not really have any other Law at all than the will of the Small Council.” (*ibid*, 265). Here Rousseau not only shows that the magistrates’ interpretation of the *Mediation* would violate the *Social Contract*’s position that the executive power ought to be subordinate to the legislative. He also refutes the position favoured by Burlamaqui that the Genevan Constitution is actually premised on a balance of powers between the different bodies of the state by showing that no such balance exists. A balance of powers could only exist if the right of remonstrance is interpreted as Rousseau interprets it: “for what better Government is there than the one whose parties are all balanced in a
perfect equilibrium, in which private individuals cannot transgress the Laws because they are subject to Judges, and in which the Judges cannot transgress them either because they are watched over by the People?” (ibid, 262).

The second consequence of this interpretation would be to render the Genevan regime inherently unstable. This is the more pragmatic aspect of Rousseau’s argument in the *Letters*, though it follows directly from the theoretical dissection of the constitution that he has provided so far. According to Rousseau the Mediators had not given any thought to clarifying Article VII but had merely reproduced it as it had been written in 1707. Yet “the changes they were forced to make to other Articles obliged them to be consistent, to clarify this one, and to add to it new explanations…” (ibid, 268). These changes, though not specified, presumably included two articles that Rousseau had characterized earlier as placing unjustified limitations on the rights of the General Council. It was Article VI in particular that lent credence to the Small Council’s pretension to possess veto power over remonstrances for it stated that the only matters to be considered by any of the larger councils, including the General Council, required the prior approval of the Small Council. If the interest of the state were “found to be in conflict with theirs,” Rousseau points out, “the latter always has the preference, because the Legislator is not permitted to take cognizance of anything except what they approve.” (ibid, 249). While the *Mediation* recognized the General Council’s right to legislate it did not provide this body with a way of ensuring that the laws it ratified would be followed and not transgressed. For this

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150 “But in the end what is this right? How far does it extend? How can it be exercised? Why isn’t any of that specified in Article VII?” Rousseau asks (*LM*, 263)

151 See note 4 to p.827, in *OC*, vol.3, 1683

152 One of the six rights granted under Article III, which Rousseau considers null for having limited the power of the sovereign.
reason every private grievance risked becoming a public one and Geneva would remain plagued by continuous cycles of constitutional crisis. As Rousseau puts it: “The effect of the neglect of Remonstrances of private individuals is that these Remonstrances finally become the voice of the public and thus provide against the denial of justice.” (ibid, 268). Far from having resolved the constitutional crisis of 1738, then, Rousseau implicitly accused the Mediation of having simply reproduced the tension between the patriciate and the bourgeoisie. It had left Geneva as prone to continuous skirmishes between the two parties as before. The only way to provide a remedy, Rousseau states, is to follow his interpretation of the spirit of Article VII as a mechanism by which the legislative can hold the executive accountable.

Having failed to say explicitly that the right of remonstrances was incompatible with veto power on the part of the Small Council the Mediators had left unanswered the question of who was to act as the supreme judge in the state. Rousseau’s answer is that the supreme judge can only be the general will, or “the informed public” to be found in the General Council (ibid, 267). Otherwise this role would fall to the magistrates themselves something that amounted to nothing short of despotism. One commentator has pointed out that in making the General Council into the supreme judge Rousseau was silent about the fact that the magistrates formed a numerical minority in it and presumably were bound to lose the case.153 But Rousseau did not assume that the people would always side against the government. For him the opposite was far more likely. In a letter of January 17th, 1765, for example, he expresses doubts about whether the demands of the Genevan representatives would pass in the General Council. Moreover, he advises them not to

demand that his own condemnation be revoked for fear that the General Council would vote it down “and this would be to expose myself to a new, even more solemn, affront,” he claims.154 Throughout the second part of the *Lettres*, moreover, Rousseau continuously characterizes the Genevan bourgeoisie as law-abiding and obedient, often suggesting that they are far too indulgent of the magistrates’ transgressions. Thus, the magistrates’ numerical inferiority in the General Council did not necessarily translate into an inferiority of influence there. The opposite possibility was far more likely and so far more dangerous for Rousseau.

At the level of institutional proposals Rousseau makes three, two of which he says will certainly not be acceptable to the Small Council. All of his solutions are premised upon the idea that the General Council is the sovereign and final interpreter of the law in Geneva. Only the General Council, therefore, has the right to pronounce judgement in cases where the magistrates stand accused by citizens and do not respond in a satisfactory manner. The first solution is to reinstate the bourgeois companies which had been abolished by the *Mediation*. If the government wishes to judge the importance of *remonstrances* by the number of people that support them Rousseau says then it must permit citizens to assemble in an orderly manner. Otherwise “the Magistrate would be in a quandary if he had to read the Memoranda one after another or to listen to the speeches of a thousand men.” (*ibid*, 270). Although Rousseau presents this suggestion as an attempt to resolve a merely logistical problem, this is hardly the whole story. Article XXV of the *Mediation* which prohibited the assembly of bourgeois companies did not in fact prohibit purely civil assemblies.155 The reason why it prohibited the former was because these had a

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154 See Rousseau’s letter to d’Ivernois of 17 January 1765 in *Correspondance Complete* (pp.111-112)

155 Note no.2 to p.852, in *OC*, vol.3, 1699
military character. The bourgeois militia had been responsible for the escalation of events that led to the Mediation and had always been the “bête noire” of the Genevan patriciate. Rousseau could not have been unaware of Article XXV’s exemption of civil assemblies. In suggesting that the bourgeois militia be reinstated, therefore, he was favouring its specifically military character, that element which had enabled the bourgeoisie to intimidate the government in 1737. Also, in the Letters Rousseau often expresses concern about the growing passivity of the Genevan public primarily due to the commercial character of the bourgeoisie. He prescribed the militia in order to institutionally establish the necessity, rather than the mere possibility, of a public life at Geneva for historically these associations had also “formed a natural embryo for political assemblies.”

His second suggestion was to reinstate periodic General Councils with a share in executive power. Acting in these specific cases as ‘Supreme Magistrate’ their authority would be limited to reviewing and deciding upon citizen remonstrances “without it being permitted to bring any other question there.” (ibid, 217). But Rousseau soon reveals that he has no hopes of seeing either of these two proposals realized in Geneva for their effect would be to “force the Magistrates and all the orders to restrain themselves within the limits of their duties.” (ibid, 274). In the end he settles on the simple right of remonstrances as previously discussed. The weight of remonstrances should not depend on the number of citizens that back them but the government must be compelled to address all that are submitted to it. If the government’s response is found unsatisfactory, as proven by the accuser's persistence in his demands, then the government must

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156 Fralin suggests that this solution was a more moderate one than Rousseau’s call for the return of popular assemblies. Rousseau and Representation, 164. But, given the militia’s role in Genevan history, it seems that both suggestion were equally radical and Rousseau certainly recognized them as such.

157 Note no.3 to p.852, in OC, vol.3, 1699
be compelled to bring these to the General Council. It is not necessary, Rousseau says, that new meetings of this Council be established for this purpose. There are already two annual meetings for elections and these could also address all remonstrances that have been submitted in the interval. “The session will not even be prolonged for an hour.” (ibid, 275). Though Rousseau suggests that this final proposal is less radical than the previous two it is clear that in all of its essential qualities it shares the same spirit. The General Council is meant to act as the supreme judge in the state and the final interpreter of the law, the effect of which should be to keep the government ‘within the limits of its duties’.

On a more abstract plane one should raise the question of whether the general will can act as the supreme judge without violating the principles that Rousseau sets forth in the Social Contract. When characterizing the general will as the necessary normative foundation of all laws Rousseau denies that this will could apply to particular cases or make judgements about them. It is generality that makes the law equitable. Without this characteristic it is nothing more than force or the will of a particular body exercised on another body. Generality cannot be preserved, however, if the object of the will is not the unity of the people or “their actions in the abstract.” (SC, II.6, 67). As Rousseau puts it several times in this section “…the Sovereign knows only the body of the nation and does not single out any one of those who make it up.” (ibid, II.4, 63). It is for this reason that the legislative power is theoretically distinct from the executive power. The former acts only by general pronouncements, or laws, while the latter acts by particular pronouncements, or decrees. Having described the general will in this way Rousseau says the following:
Indeed, whenever what is at issue is a particular fact or right regarding a point not regulated by a general and prior convention, the affair grows contentious. In such a suit, where interested private individuals are one of the parties, and the public the other, I do not see what law should be followed or what judge should pronounce judgement. *It would be ridiculous, under these circumstances, to try and invoke an express decision of the general will, which can only be the decision of one of the parties, and is, therefore, as far as the other party is concerned, nothing but a foreign, particular will which on this occasion is inclined to injustice and subject to error.* …For example, when the people of Athens appointed or cashiered its chiefs, bestowed honours on one, imposed penalties on another….the people no longer had a general will properly so called. (*ibid*, 62; *my emphasis*).

This appears to present a problem for his contention in the *Letters* that in cases of conflict between the magistrates and the people the general will ought to act as the supreme judge in the state. How can the general will decide particular cases without ceasing to be general and just? Most commentators agree that the *Social Contract* and the *Letters* are consistent, with one exception: in the *Letters* Rousseau denies the right of legislative initiative to the people. But Rousseau’s contention that in Geneva the general will ought to act as supreme judge also demands explanation for it appears inconsistent with his characterization of the general will in
the *Social Contract*. While Rousseau neither raises nor answers this question in the *Letters* in what follows I attempt to show that his solution is compatible with the *Social Contract*.

The sovereign cannot exercise executive authority as sovereign but the people can do so as a direct democracy. In fact, this transformation is the necessary foundation of all legitimate governments whatever their form. The act of establishing government is composed of two acts, Rousseau explains. First, the sovereign decides on what form of government will be instituted in the state. But since this is a general act, i.e. law, it requires that it be executed by a body other than the sovereign. The necessary second step, then, is the transformation of the sovereign into a direct democracy that executes the law. It creates the government and entrusts it to particular persons. In principle, then, while legislative and executive powers are distinct they can coincide in the same body as they do in democracy. As Rousseau puts it: “The Sovereign can...entrust the charge of Government to the whole people or to the majority of the people...This form of government is given the name Democracy.” (*ibid*, III.3, 89). The people’s right to act as supreme judge in the state, or to have a share in executive power, does not contradict Rousseau’s principles as long as the people’s decisions are understood as acts of magistracy and not of sovereignty. In the problematic passage mentioned above Rousseau attempts to distinguish legislative power from executive power by clarifying that the former can only have a general object of deliberation. He is not arguing that the coincidence of both powers in the same body is illegitimate. In Athens the people’s role as judges was not illegitimate. What was illegitimate was the people’s belief that such acts were acts of sovereignty, i.e. legislative acts.

But the story doesn’t end here for it was precisely the practice of direct democracy that encouraged the collapsing of legislative and executive functions at Athens. While democracy is
not illegitimate, it is problematic “for things which ought to be kept distinct are not kept distinct.” (ibid, III.4, 90). The practice of direct democracy, where the people are simultaneously legislators and executors, encourages the mistaken idea that sovereign power is executive power, i.e. simply force. As Rousseau puts it: “If it were possible for the Sovereign...to have the executive power, right and fact would be so utterly confounded that one could no longer tell what is law and what is not.” (ibid, III.16, 116). In cases where the sovereign claims to possess executive power it would be impossible to establish whether a particular command was authoritative because it was right (i.e. general and so equitable) or because it was done (i.e. simply decided by the stronger party). Democracy, then, is not illegitimate but it does present a great practical problem: the people may come to believe that they hold sovereign power because they are stronger, not because their perspective is general and so equitable. Having defined democracy as rule of the majority Rousseau then says:

It is not good that he who makes the laws execute them, nor that the body of the people turn its attention away from general considerations, to devote it to particular objects. Nothing is more dangerous than the influence of private interests on public affairs, and abuse of the laws by the Government is a lesser evil than the corruption of the Lawgiver, which is the inevitable consequence of particular considerations. (ibid, III.4, 91; my emphasis).

This word of caution falls under Rousseau’s political maxims. It is part of his institutional thought, not his theory of political right.
Although Rousseau here suggests that governmental corruption is preferable to legislative corruption he is far from dismissing the problem of governmental corruption entirely. As Scott points out Rousseau is in fact extremely skeptical of the government’s ‘good faith’ with respect to the sovereign. He proposes periodic assemblies of the people as the best defence against the government’s tendency to usurp legislative power. As described in the *Social Contract* the actions of such assemblies are exactly the same as those in the double process by which governments are legitimately instituted. The people, as sovereign, is asked whether it wishes to keep the current form of government and as executor it is asked to decide whether to “leave its administration to those who are currently charged with it.” (ibid, III.18, 120). In other words, such assemblies would not only make the sovereign visible. They would also routinely transform the people into a direct democracy by periodically returning a share of executive power to the people.\(^\text{158}\) While Rousseau objects to direct democracy as practiced in Athens his institutional proposals in the *Social Contract* adopt a version of this practice as a necessary check on the executive. “These assemblies of the people which are the shield of the body politic and the curb of Government have at all times been the dread of chiefs.” (ibid, III.14, 112). Their significance and effectiveness in doing so is not fully apparent if one ignores the fact that in them the people transforms itself into a provisional government (i.e. a democracy) which then institutes the actual government. Consequently, in these assemblies “the prince recognizes or has to recognize an actual superior.” (ibid). Not only are all legitimate states republican, then, but all healthy states must have an element of direct democracy. Rousseau’s contention in the *Letters* that the General Council is the only body that can judge cases involving the magistrates and the public, then, is

\(^{158}\) Fralin characterizes these moments as “extraordinary”, occurring only at the institution of a new government in *Rousseau and Representation*, 109. But Rousseau clearly expected them to be a routine part of politics in all states.
consistent with his principles in the *Social Contract*. In such assemblies the people would exercise a portion of the executive authority as they do in direct democracy.

But one aspect of his solution still remains to be examined. Rousseau claims that judgement in such cases is up to the general will, or the sovereign authority: “If the complaints are clearly founded...one ought to presume the [Small] Council to be equitable enough to defer to them. If it isn’t, or the grievances do not have that degree of evidence that puts them beyond doubt, the case would change, and it would then be up to the general will to decide; for in your State that will is the supreme Judge and the unique Sovereign.” *(LM, 267)*. Yet in the *Social Contract* he seemed to suggest that the general will cannot be invoked in particular cases since particulars always fall under the jurisdiction of the executive. How then can he maintain in the *Letters* that the general will is the supreme judge in Geneva? The first thing to note is that in the *Social Contract*, while Rousseau denies that there can be a judge in cases of conflict between the public and a private individual he has in mind cases where there is no “general and prior convention” *(SC, II.4, 62)*. In such cases the general will *cannot* act as judge because it doesn’t exist. What exists is the will of one individual against the will of a group. Since there is no common ground between the two there is no general will that can pronounce on the case and so no principle of equity. As Rousseau puts it: “What generalizes the will is not so much the number of voices, as it is the common interest which unites them: for in this institution, everyone necessarily submits to the conditions which he imposes on others.” *(ibid)*. If a disagreement arises in the absence of a prior convention one cannot “try and invoke an express decision of the general will” because, as there is no such will, the will of the stronger party would end up
masquerading as the general will (*ibid*). The same is not true in the case of Geneva. What the general will is called upon to decide is *not* a case about which no prior convention exists. Rather, the general will is asked to determined the correct interpretation of an existing law the meaning of which has become contentious. Since the object of such deliberation is a law the decision of the General Council would not violate the requirement of generality. Interpretation of the law falls squarely within the jurisdiction of the legislative power or the sovereign. In the *Social Contract* Rousseau states that “He who makes the law knows better than anyone else how it should be executed and interpreted.” (*ibid*, III.4, 90). When the General Council is convoked to address *remonstrances*, then, it is being asked to decide the meaning of the law that the magistrates have been accused of transgressing. It is not asked, in its capacity as sovereign, to decide whether a particular magistrate is guilty or innocent. This decision would be an act of government and would depend upon settling the meaning of the law.

**Rousseau’s Conservatism and the Question of Legislative Initiative**

Several commentators have pointed to the curious discrepancy between the *Social Contract*’s theory of popular sovereignty and the *Letters*’ support for restricting legislative initiative to the government. According to some this restriction contradicts the spirit of the *Social Contract* which argues that legislative power belongs to the people and can belong only to it.\(^{159}\) As

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\(^{159}\) See e.g. *SC*, II.6; III.1. Vaughan, *The Political Writings*, 187; Derathé and more recently Scott, “Rousseau’s Anti-Agenda-Setting Agenda,” are the most representative examples of this camp. While Derathé disagrees with Vaughan about whether this constitutes an aberration in Rousseau’s corpus, he agrees that such a restriction is both antidemocratic and incompatible with a theory of popular sovereignty. See *Rousseau et la science politique*, 297. Mély also argues that Rousseau did not go so far as to identify the General Council with the sovereign of the *Social Contract* in the *Letters*, *Intellectuel en rupture*, 192-193.
Derathé puts it “one cannot take away from the legislative power the initiative of [proposing new] laws, without limiting and even singularly paralyzing the activity of the legislative power.”

Those who see this restriction as a violation of popular sovereignty are further subdivided between those who believe it to be a singular example in Rousseau’s corpus and those who do not. The first regard the Letters as not particularly helpful in expounding Rousseau’s political theory because there he was compelled to compromise his political principles in light of the situation in Geneva. In contrast, the second camp argues that the Letters represent Rousseau’s real intentions and make explicit what was already implicit in his earlier works. According to this camp Rousseau’s thought was far less democratic than his theory of popular sovereignty would lead one to believe. Derathé explains this in terms of Rousseau’s abhorrence of novelty: “[his] eyes are turned towards the legislators of antiquity who established once and for all the laws destined to serve the constitution of the city. He does not suppose that modern states submit to a rhythm of rapid transformation, and the idea that the law has to be in perpetual evolution is absolutely foreign to him.”

On the other hand there are those who, noting Rousseau’s restriction of popular legislative initiative in the Letters, see no contradiction between this and the principles of the Social Contract. Puterman, for example, argues that the

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160 Derathé, Rousseau et la science politique, 297

161 Puterman, “Rousseau on Agenda-Setting,” Fralin, Rousseau and Representation, and Derathé, Rousseau et la science politique, fall in this camp.

162 Rousseau et la science politique, 297. Derathé is right about the idea of ‘perpetual evolution’. Certainly Rousseau never believed in any form of teleological progress on the part of political structures but only in accidents of history. The only necessary transformation we find in his works is the progression from democratic society into tyranny in the Second Discourse. He also claimed, in both the Social Contract and the Letters that once instituted laws ought to be respected and meddled with as little as possible.

163 Puterman, “The People as Gatekeepers,” Silvestrini, “Genève comme modèle,” and Michel Launay, Jean-Jacques Rousseau, écrivain politique (1712-1762) (Genève : Éditions Slatkine, 1989) fall in this camp. Launay’s comments on this question are very brief, however, as are Silvestrini’s. Launay simply points to Rousseau’s declaration that Article III, which sets limits on the sovereign, is null but does not raise the question of whether restricting legislative initiative might compromise the people’s sovereignty. See Écrivain politique, 446-448.
government can have an exclusive right to propose new laws as long as the people have the final say by voting in the general assembly.\textsuperscript{164} Silvestrini agrees and goes further by adding that the right to propose new laws \textit{must} belong to the government because legislative innovation is a particular act and hence an act of government.\textsuperscript{165}

In what follows I attempt to bring some clarity to this debate, which, perhaps because it has been pursued largely in the form of footnotes, has not received the kind of systematic attention it deserves. In the first place I argue against the position that Rousseau’s restriction of legislative initiative to the government is a matter of principle, or even an absolutely necessary part of his institutional thought.\textsuperscript{166} In the second place, however, I argue that this restriction need not contradict the principles of popular sovereignty elaborated in the \textit{Social Contract}. But this is not simply because Rousseau believed that popular sovereignty requires only the people’s right to vote on legislation. If the matter remains at this level of abstraction it is always possible to wonder along with Derathé and Vaughan whether restricting popular legislative initiative does not threaten to paralyze the activity of the legislative power entirely, even if strictly speaking it does not contradict the principles of the \textit{Social Contract}. Turning to the case of Geneva in particular I note that this conclusion does not follow \textit{only because} Rousseau believed that the greatest threat to the people’s sovereignty was not its lack of control over legislative initiative but its lack of control over the administration of the law. In other words, he conceded that the

\textsuperscript{164} In response to Scott’s argument that this right is incompatible with popular sovereignty Putterman modifies his ‘strong’ thesis that the government \textit{must} have an exclusive right to legislative initiative to the ‘weaker’ thesis that it \textit{can} have such a right.

\textsuperscript{165} Silvestrini, “Genève comme modèle,” 219

\textsuperscript{166} Fralin, \textit{Rousseau and Representation} and Silvestrini, “Genève comme modèle,” make this claim. Putterman, “Rousseau on Agenda-Setting,” and Derathé, \textit{Rousseau et la science politique}, could also be listed with the caveat that they do not regard this as a matter of Rousseau’s \textit{principles}. Rather they attribute it to Rousseau’s political maxims, or his institutional thought.
government should have an exclusive right of legislative initiative only because he did not think that the absence of this right was the crucial threat to the people’s sovereignty in Geneva. From this perspective the *Letters* are not only fully in line with Rousseau’s principles in the *Social Contract*, but they also provide a rich, complex, and far more explicit picture of Rousseau’s thoughts on democracy than the former work.

Nothing in Rousseau’s principles requires that legislative initiative be the exclusive right of governments. Fralin states that Rousseau wished to restrict legislative initiative to the government as a matter of principle but he cites no evidence for this claim and there is none to be found in the *Social Contract*. Silvestrini’s point that legislative initiative must be considered an act of government because it is a particular act is also difficult to substantiate. Rousseau certainly speaks of particular acts as acts of government and not of sovereignty. But what he means is that the object of such acts is particular and this is certainly not the case with legislative initiative. Though the object of such acts is a particular law, the object of law is a general one. There is no reason to believe, therefore, that legislative initiative is in principle an act of government any more than one ought to believe that casting a vote is an act of government simply because it is a particular act. Neither is legislative initiative an act of sovereignty, however. Actions like proposing, debating, or voicing opinions on laws are by their nature not legislative acts. Rousseau points out that “all of the Sovereign’s acts can only be laws.” (SC, III.1, 82). Hence, only one type of action can be considered a sovereign action: the general assembly’s ratification of law. In principle then legislative initiative is neither an act of government nor of sovereignty. But because it is not an act of sovereignty it *could* be restricted to the government.
What has led several commentators to regard this restriction as a matter of principle, however, is Rousseau’s consistent support for it in several places in his works. The first and most obvious example is the *Letters* where Rousseau agrees with Tronchin that democracies wouldn’t survive if all of the citizens were free to propose new laws. He makes a similar point in the “Epistle Dedicatory” letter to the *Second Discourse* when, outlining the features of his preferred regime, he says:

…in order to forestall the self-seeking and ill-conceived projects and the dangerous innovations which finally ruined the Athenians, I should have wished that not everyone have the power to propose new Laws according to his fancy; that this right belong to the Magistrates alone. (*DOI*, 116-117).

Perhaps for this reason he characterizes Geneva as a “democratic government wisely tempered.” (*ibid*, 115). These two features of his picture of Geneva, namely that it is a democracy and that the magistrates should have an exclusive right to legislative innovation, are thus consistent between the two works. The *Social Contract*, on the other hand, is much more vague on this point. The only passage where Rousseau appears explicit about limiting the right of legislative initiative is the following: “I could offer quite a few reflections here …on the right of voicing opinions, proposing, dividing, discussing [motions], *which the Government always takes great care to allow only to its own members.*” (*SC*, IV.1, 122; *my emphasis*). Derathé takes this to mean that Rousseau here as elsewhere supported the magistrates’ exclusive right to legislative initiative, whereas Scott reads it as a critique meant to warn against the government’s tendency to
usurp sovereign power. Scott’s reading is far more persuasive given the context of the passage and especially Rousseau’s phrasing. At this point in the Social Contract it should have become clear to his readers that whatever rights the government may enjoy it cannot give these to itself or ‘allow [them] only to its own members’. This restriction was neither dictated by Rousseau’s principles nor a necessary part of his institutional thought.

In all three works mentioned here, however, Rousseau was consistent about one thing: once instituted the state’s constitution should be changed as little as possible. In the ‘Epistle Dedicatory’, for example, he defends the magistrates’ exclusive right to propose new legislation precisely as a means of preventing innovation. While his principles of political right were radically democratic his institutional thought appears curiously conservative. In the same work where he defends the people’s right to obey only those laws that they have made themselves Rousseau also states that “one should never touch an established Government unless it becomes incompatible with the public good.” (ibid, III.18, 119). This sentiment is also echoed in the “Epistle Dedicatory” where Rousseau claims that “it is above all the great antiquity of the Laws that renders them sacred and venerable” (DOI, 117). Lastly, in the Letters he tells the Genevans that their task is no longer to legislate the constitution but to preserve it. One might conclude that Rousseau’s institutional conservatism sought to temper democracy. But at least in his reflections on Geneva this is not the case. By emphasizing the people’s role as defenders of the constitution what Rousseau sought was not to moderate their legislative power but to make it more vigorous.

Even in the Social Contract Rousseau’s institutional conservatism was the direct result of his democratic political principles not a measure meant to moderate them. It rested on his

167 Derathé, Rousseau et la science politique, 279; Scott, “Rousseau’s Anti-Agenda-Setting Agenda,” 141
conviction that laws lose their authority when the people no longer recognizes its will in them. In other words, laws become weak not when they lose their force but their legitimacy. They lose their legitimacy when the legislative power no longer exists because the government has usurped it. This means that whenever they are respected ancient laws are respected not because citizens feel bound to the will of their ancestors but because they believe that “if the Sovereign had not consistently recognized them as salutary it would have revoked them a thousand times over.” (SC, III.11, 109). Citizens are most conservative when they recognize the continued existence and vigour of the legislative power: “That is why the laws, far from growing weaker, constantly acquire new force in every well-constituted state...whereas wherever the laws grow weaker as they grow older it is proof that there is no longer any legislative power, and that the State is no longer alive.” (ibid). Consequently Rousseau likens the legislative power to the heartbeat of the State and states: “It is not by new laws that the State subsists, it is by the legislative power.” (ibid). At the same time, since the authority of the laws presupposes the existence of the legislative power this power cannot be bound by the established constitution, no matter how ancient. So, “while the people that has found [the best constitution] ought to abide by it...[it] is in any case always master to change its laws, even the best of them; for if it pleases it to harm itself, who has the right to prevent it from doing so?” (ibid, II.12, 80). Rousseau’s conservatism, then, was the result of his conviction that continuous legal innovation beyond the moment of founding was the sign of the legislative’s weakness and the growth of despotic power. His conservatism, or the question of how to preserve the authority of the laws leads us back to the question of how to preserve the legislative power. The two are part of the same vision, not two opposites meant to balance each-other.
In the rest of this discussion I attempt to show that Rousseau supported the government’s exclusive right to propose new laws because he thought that in this way the people stood a better chance of preventing the government from weakening the legislative power. It was neither because he diluted his political principles to fit the circumstances of Geneva nor because he sought to temper the Genevan democracy that he did so. Rather it was because he believed that if the people did not attempt to innovate they made a better safeguard against harmful or dangerous innovations on the part of the government. Because Geneva was a democracy where the people had the final check on power by voting in the assembly the government would not attempt to extend its power through legal innovation. Rather, it would attempt to do so through administration alone. The danger that democracy faced, in other words, was not that the people did not have a right over legislative innovation. They did have such a right insofar as they could always vote down proposals that did not conform to the general will. The trouble with Geneva was that the people had no control over the administration of the law. And Putterman are correct when they claim that for Rousseau the people’s main role was to act as a final check on legislation. But ’s conclusion that Rousseau was therefore less democratic than his principles allowed does not follow. And Putterman does not notice that in order for the legislative check to be effective the people had to have an effective institutional check on administration, not simply on legislation. The people’s role as ‘gatekeepers’ is not identical with their role as a final check on legislation but on administration. Rousseau wanted the people to be conservative precisely because not in spite of the fact that Geneva was a democracy.
The principal characteristic of the Genevan government as Rousseau describes it in the *Letters* can be summarized in two words: bad faith. This was especially the case in the 18th century. The Small Council had persistently and skillfully attempted to weaken the General Council through administration alone. When discussing the events that lead to the *Mediation*, for example, Rousseau suggests clearly that the government had been responsible both for the disturbance and for calling in the foreign powers of Berne, France, and Zurich once it lost control of the situation.\(^{168}\) He claims that the Small Council had used the pretext of new fortifications as a first step towards imposing a “yoke” upon the citizens because such fortifications would have required a large new garrison inside the city (*LM*, 243). It was only their greed, which led them to attack the purse of the people by calling for new taxes, that foiled their plans. He also accuses them of abolishing the regular meetings of the General Council, which had been constitutionally sanctioned, by fraudulent maneuvers: “The revocation [1712] passes…without prior proclamation that instructed the members of the assembly about the proposition they wished to make to them, without giving them the leisure to deliberate among themselves, even to think about it, and at a time in which the Bourgeoisie, poorly instructed about the history of its Government, let itself be easily imposed upon by the body of Magistrates.” (*ibid*, 273). Moreover the vote had been manipulated by phrasing the question ambiguously on the voting ballots. At Geneva, the magistrates had innovated not by straightforward legal means but by corrupt administration. As Rousseau emphasizes throughout the executive power does not have to

\(^{168}\) In this context Mély notes that the *Mediation* had been militarily imposed. While technically this is not true insofar as the *Mediation* was accepted in the General Council, it was the case that the Genevan government had called the three foreign powers in when it had lost control of the bourgeois militias. According to Mély the Genevans had accepted the *Mediation* because they couldn’t resist the might of France and they wished to end a prolonged struggle that had often resulted in blood. *Intellectuel en rupture*, 186-187.
innovate by “solemn acts” but only by the continuous exercise of power to imperceptibly alter things to its will (ibid, 285).

The fact that Geneva was a small commercial town which could never be self-sufficient favoured democracy but also made it difficult to preserve. As Rousseau describes them Genevans were moderate and orderly; “men truly worthy of liberty” he states, for even when the state was in their hands in 1738 they did not exact vengeance on certain conspirators that had attempted to crush the bourgeois militias by force. This was not merely rhetorical flourish on Rousseau’s part. The Mediation, which passed almost unanimously in the General Council, stipulated that the six men who had been responsible for the conspiracy were to be given back all of their rights with the exception of a few having to do with political office. Rousseau praised their moderation not least because he wished to counter the Small Council’s arguments that Athenian-style democracy was tumultuous and dangerous. The Genevans, he states, are “naturally serious and cold” unlike the Athenians “about which they speak to us.” (ibid, 251). But without changing his characterization of the Genevans Rousseau soon changed the tone of his description from praise to blame. The Genevans were moderate because they were commercial. They were dependent on the government for their livelihoods because of its ability to manage commercial relations with other states. Moreover, because they were fully taken up with business the cost of political involvement was always very high for them. It is only “when their own [interest] is being attacked” Rousseau claims, that they become involved in public affairs (ibid, 293). No sooner had Rousseau praised the moderation of the bourgeoisie in 1738 than he reminds his readers that “in any other country the People would have begun by massacring these conspirators and

169 Note no.2 to p.853, in OC, vol3, 1700
pillaging their houses.” (ibid, 294). The bourgeoisie may be moderate, therefore, but this moderation is due as much to its virtue as to those sociological circumstances that make it easy for the government to weaken the legislative power. In contrast to the average Genevan citizen the magistrates had greater leisure because the business of the town was not very great. At the same time, since the government always acts it is the only body in the state that manages to preserve its esprit-de-corps. By itself this fact is sufficient to give it an advantage over the sovereign which it then uses to splinter the public further. For example, in 1725 the bourgeoisie had had an opportunity to re-assert its right over taxation when the term of the old fortification taxes had expired. “But with the plague at Marseille and with the Royal Bank having disturbed commerce, each, occupied with the dangers to his fortune, forgets those to his liberty. The [Small] Council, which does not forget its intentions, renews the taxes in the Two-Hundred, without its being a question of the general Council.” (ibid; my emphasis). The greatest threat to Genevan democracy according to Rousseau was the growing weakness of the legislative power due to the fact that the Genevan citizenry was commercial. He worried not that Genevan democracy needed to be moderated but that it needed to be revived.

It is misleading to suggest, then, that Rousseau adopted a far too conservative stance in the Letters than was compatible with his principles in the Social Contract. It is also misleading to suggest that by restricting the people’s right to legislative innovation he was limiting the sovereign power in a way that was incompatible with those principles. He at least didn’t see it that way. In the ‘Seventh Letter’ Rousseau explicitly claims that all restrictions on the sovereign are absurd and illegitimate. Though the Mediation had granted the General Council many rights which had been previously usurped by the Small Council its very act of defining the General
Council’s rights had been misguided. It suggested that the constitution was more authoritative than the General Council. But since the constitution was authoritative only because it had been approved by the General Council one had to conclude that the latter was “not an order in the State, [but]…the State itself.” (ibid, 246). If his purpose in the Letters had been to “wrest as much power as possible from the Petit Conseil” by meeting its doctrines halfway one would expect that his comments on the question of sovereignty should have been far more conciliatory. But they are uncompromising. By characterizing the General Council as “the living and fundamental Law that gives life to all the rest” Rousseau was effectively saying that this body was free to change the constitution if it so wished. Anyone remotely familiar with the Social Contract could not fail to draw this conclusion. To make things even more explicit Rousseau also states in the Letters that the government’s rights are derived from the constitution but the same cannot be said of the sovereign. Even though the government possessed an exclusive right to legislative innovation, therefore, this right was legitimate only if the sovereign remained free to revoke it. Certainly here as in the Social Contract Rousseau counsels the bourgeoisie not to change the constitution. But it is clear that he could not have denied the General Council’s right to do so.

So why did Rousseau wish to create a constitutionally conservative bourgeoisie? It seems that the more compelling, albeit paradoxical, reason is as follows. Precisely because he did not trust the government’s faith with respect to the legislator he regarded the people as the ultimate depository of the constitution - that body of laws which specified the government’s rights. If the people’s role in the state was primarily that of preserving the constitution, rather than innovating,

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170 Scott, “Rousseau’s Anti-Agenda-Setting Agenda,” 141
it stood a better chance of preserving the legislative power and its ability to check the executive.

At Geneva, harmful legal innovation had always been preceded by improper execution of the existing laws of the state - i.e. by corrupt *administration*. It *had* to be so preceded because the General Council held the final check on new legislation. As things stood this check was ineffective because the bourgeoisie lacked the equally essential capacity to check the administration of the existing laws. Paradoxically, by keeping the bourgeoisie from innovating Rousseau attempted to ensure that the General Council would remain free to change the constitution. His chief concern was that the General Council would be reduced to a mere rubber-stamp of the government’s proposals. Far from wishing to prevent innovation, therefore, what Rousseau wanted was to guarantee that such innovation would benefit rather than harm the public.

**Conclusion**

In this sense, both Scott and Putterman have grasped something essential about Rousseau’s thought. Scott has emphasized Rousseau’s distrust of governments and Putterman the people’s role as gatekeepers. But their disagreement stems from their failure to put both aspects together into a single vision. Because Putterman does not give enough attention to Rousseau’s distrust of governments he believes that the people’s role as ‘gatekeepers’ is identical with their role as a final check on legislation in the general assembly. I have attempted to show instead that the people’s role as ‘gatekeepers’ is not this but rather their capacity to check the *administration* of the law. On the other hand, Scott’s failure to recognize this latter aspect of Rousseau’s thought
as equally essential leads him to suggest that the *Letters* are incompatible with Rousseau’s principles in the *Social Contract*. I have attempted to show that Rousseau’s support for the government’s exclusive right to legal innovation in the *Letters* is not only fully compatible with the *Social Contract* but also part of the same vision that Scott insists on: his distrust of the executive power.
**Introduction**

It is indisputable that Rousseau’s political theory belongs in the camp of modern contractarianism. He subscribes to its most crucial conclusion, namely that political authority is not natural or divine, but conventional. In line with this tradition he engages in a detailed description of a pre-political state of nature, which commentators usually understand to serve the same purpose as similar descriptions found in the works of Locke, Hobbes, Pufendorf and others. As Levine explains, the purpose of the state of nature is to provide an account of individual human existence “abstracted from social or political arrangements” in order to clarify the individual’s rights and duties in society. “The normative principles that ought to govern the state are those that these individuals in a state of nature would choose.”\(^{172}\) The problem in the case of Rousseau is that the state of nature does not refer to a uniform condition or form of human existence. As all have noted Rousseau was the first to historicize man’s sociability, or to describe in a series of stages how social existence emerged accidentally in history. His abstract individual, on the other hand, the original man of the *Discourse on Inequality*, cannot serve as the ground of the normative principles that ought to bind the exercise of political power, for he is not social. Such an individual would never choose any normative principles of politics at all. Though Rousseau’s state of nature is unique in this way commentators often assume that its implications

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\(^{172}\) Levine, *The Politics of Autonomy*, 6; *my emphasis*. Levine recognizes, however, that this particular method does not apply in the case of Rousseau, for his starting point “is not really the abstract individual, but society.” Ibid.7. Cohen also emphasizes that “Rousseau's defense of a sovereign general will assumes social interdependence. It is not addressed to individuals who are outside of a society, and does not aim to persuade such individuals that they ought to join.” *A Free Community of Equals*, 94.
for Rousseau’s understanding of freedom and its role in society are just as straightforward as for
other modern contractarians. Natural freedom is understood as unbounded, resembling what
Locke calls ‘license,’ Montesquieu ‘independence,’ and Hobbes defined as the absence of
physical limits to doing what one has a will to do. In line with this view, it is usually argued that
the role of natural independence in Rousseau’s political theory is largely negative. Political
authority is meant to set it proper limits, thereby making possible orderly social existence.

My main contention in this chapter is that Rousseau’s turn to history fundamentally
affects this formal resemblance with other theories that invoke the state of nature. It does not
affect merely the question of human sociability, while leaving that of natural freedom intact.
Rather, Rousseau’s history of the origins of society suggests a different understanding not just of
sociability and freedom, but of the relationship between them. In this sense natural freedom does
have crucial implications for his political theory but these do not become apparent, or are likely
to be misunderstood, unless one first clarifies its relationship to human sociability. In taking this
approach, the chapter attempts to bring out the most comprehensive idea of freedom in
Rousseau’s works, and its implications for his social theory. This idea can be summarized as
follows. Natural independence is not the benchmark for man’s rights or freedom in society, at
least not in the straightforward way that it is for other theorists of the social contract. It serves
rather as the starting point for clarifying the essential nature of freedom in society. To be truly
free an individual must neither command nor obey another man or group. Both conditions are
necessary aspects of freedom in society. This kind of freedom, moreover, is the flip-side of
human sociability. Without it human beings would forever be locked in a Hobbesian war of all
against all, or in a condition of structural enmity. To put it simply, for Rousseau freedom and the
desire for power over others are mutually exclusive. The existence of one implies the simultaneous disappearance of the other. This understanding of freedom, however, is by no means identical with the independence of original man; it is not implied by Rousseau’s description of asocial man in the first part of the *Discourse on Inequality*. For original man is asocial and cannot properly illustrate what it means to be free and social. Rather, it is brought out by Rousseau’s description of the developmental process through which original man becomes transformed into social man, and then into the anti-social man of the Hobbesian state of nature. It is in this sense that Rousseau’s conjectural history contributes to the theory of political freedom and legitimacy developed fully in the *Social Contract*.

**What is at stake?**

To understand why the question of freedom in Rousseau’s political theory is so vexed one need only remember the phrase *forced to be free*. This single statement casts the sharpest light on the lines of scholarly disagreement among readers of his work. In the course of presenting the uncontroversial idea that those who disobey the law will have to be punished, Rousseau adds: “which means nothing more than that he shall be forced to be free.” (*SC*, I.7, 53). It is not surprising that this would arouse the ire of his readers, for how might one be persuaded to regard a man behind bars as more free than he was before?

The idea would have enjoyed some intuitive plausibility had Rousseau been content to say merely “forced to be just,” in the sense of

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173 Lest it be objected that I am oversimplifying the problem, here are Rousseau’s own words: “At Genoa, the word *Liberty* may be read over the front of the prisons and on the chains of the galley-slaves. This application of the device is good and just.” (*SC*, IV.2, note 35, 124).
‘forced to do what one has promised.’ But it is precisely the coupling of force with freedom that has appeared perversive to many, evoking the assaults on human reason perpetuated by all political experimenters of the 20th century. Part of my larger argument is to suggest that one cannot get away from this contradiction entirely, and neither should one want to do so. It may prove illuminating to consider the possibility that Rousseau intended the paradox to evoke precisely this kind of violent reaction, for as he states elsewhere, widespread punishment is usually a mark of bad government. The more one forgets the paradox, the more one forgets the problem, and the stronger grows the ability of force to supplant right. But the persuasiveness of my argument will require a much longer detour into the question of freedom, as well as that of the general will. As a first step it is useful to begin with a brief summary of what is at stake when the question of freedom is raised in the case of Rousseau, and how it is usually answered.

Few concepts are as crucial to his political theory as freedom. The Social Contract begins with the well known statement: “Man is born free and everywhere he is in chains.” The aim of the work, moreover, is to reconcile freedom and political power. This reconciliation is accomplished by means of the general will, a concept just as controversial as freedom, and for similar reasons. When the question of freedom is raised, therefore, it is usually for the purpose of clarifying and evaluating Rousseau’s political solution. How are freedom and power reconciled, and is this attempt persuasive? On the one hand there are those who take the most straightforward approach: Rousseau manages this only by perverting the meaning of freedom.

174 Cullen, Freedom in Rousseau, 13

175 Patrick Riley has emphasized that much care must be taken in interpreting Rousseau’s “deliberately paradoxical phrase, forced to be free.” See “Rousseau’s General Will: Freedom of a Particular Kind,” in Rousseau and Liberty, edited by Robert Wokler, (Manchester University Press, 1995), 5. John Plamenatz has also argued that “Rousseau is here resorting to deliberate paradox...His purpose is to jolt the reader or listener into recognizing something which he might otherwise overlook.” See “Ce qui ne signifie autre chose sinon qu'on le forcerà d'être libre,” in Rousseau et la philosophie politique, edited by Pierre Arnaud et al. (Paris : Presses universitaires de France, 1965), 139
William Bluhm, for example, states that “Rousseau...used the language of freedom in a purely mythical sense, for popular consumption, and the values that he found in the patriotic society of the *Social Contract* have nothing to do with freedom.”\(^{176}\) Several others have pursued similar paths.\(^{177}\) This camp relies on a crucial interpretive point in order to argue that Rousseau’s solution is essentially authoritarian. It identifies freedom with the independence of original man in the *Discourse on Inequality*. Since by nature human beings are egoistic insofar as they recognize no rights or duties owed to others, their independence is unbounded and presents a problem for political life. If every man has a right to everything then it would be impossible for men to live together in society. Therefore, the task of politics is to socialize human beings through education, and when this fails, to compel them through force to regard the common good as superior to their own individual (natural) inclinations. Freedom is simply a myth that masks this ongoing project, which begins with the *legislateur* and continues with the institutions of public education that he creates. The goal of the Rousseauean society is to produce identical citizens with identical commitments to the common good. Many in this camp will argue that in practice Rousseau recognizes this to be impossible, but they all agree that this is his goal. The voluntarism of Rousseau’s *Social Contract* is equally illusory. For if everyone has been socialized into believing that they must suppress their private inclinations in favour of the common good, then their political participation resembles ritualistic behaviour: substantively


empty but politically salutary. This line of interpretation, while fully coherent, leads to the conclusion that Rousseau’s notion of freedom, and its implications for political life, are so divorced from common intuitions about freedom as to be undeserving of serious thought.

In an attempt to eschew this conclusion others have attempted to distinguish between two forms of freedom in Rousseau’s political theory: natural and moral. Though natural freedom is certainly as the first camp describes it, namely doing one’s will unhindered, moral freedom is not. It involves consenting to a higher law that one regards as normatively binding, and for this reason it has been described as a pre-cursor of Kantian autonomy. This camp usually relies on a crucial passage in the Social Contract, where Rousseau affirms that freedom is the essence of humanity and morality:

To renounce one’s freedom is to renounce one’s quality as a man, the rights of humanity, and even its duties...Such a renunciation is incompatible with the nature of man, and to deprive one's will of freedom is to deprive one's actions of all morality. (SC, I.4, 45; my emphasis).

Melzer’s notion of freedom fits uneasily in this camp, for he does not consider Rousseau’s language of freedom to have been purely illusory. But neither does he regard civic virtue as identical with autonomy, however, and for this reason his interpretation does not fit in the second camp. His argument is that the freedom made available by the state ought to be understood as freedom from personal dependence, which is the root of human evil for it is the cause of spiritual contradiction. Less persuasive is Melzer’s argument that the social engineering, “reprogramming of minds,” or “democratic absolutism” that would be required to free men from personal dependence would not create “an even greater dependence on the state.” See Natural Goodness of Man, 94;98. This conclusion appears unavoidable especially given his argument that the “moral consciousness [which re-creates man’s unity of soul] is an artificial creation of the state” that relies on salutary (though disputable) beliefs and “semitotalitarian institutions.” Ibid, 106; 108; my emphasis. For this reason I consider Melzer’s interpretation as more in tune with those who read Rousseau as authoritarian.

Proponents of this interpretation will argue that Rousseau’s political solution does reconcile freedom with authority. In regarding the common good as normatively superior to one’s own inclinations one is acting in accordance with one’s moral freedom, that is to say, one’s higher nature or essence. Genuine freedom consists in freely obeying the moral law and not in being able to do whatever one wants. This camp regards natural freedom as inferior to autonomy much in the same way that Locke regards license as inferior to liberty. Unsurprisingly, many such interpreters tend to be liberal and to read Rousseau as a proto-liberal. Yet, this view suffers from the following difficulty. In Rousseau’s works, freedom of the will, which is essential to autonomy, lacks both secure metaphysical foundations as well as sufficient persuasive power against the philosophical materialism of his contemporaries. He characterizes the action of the soul on the body as the “abyss of philosophy.” Of course, Rousseau regarded freedom of the will as essential to morality. In the *Discourse on Inequality* he argued that “it is mainly in the consciousness of this freedom that the spirituality of [man’s] soul exhibits itself.” (*DOI*, I, 141). This statement is essentially the same as the Vicar’s confession that his conviction in the existence of free will is a *sentiment* born of reflection on the experience of his own will, “beyond which [he] understands nothing more.” (*E*, IV, 280). But just as the Vicar refused to found the doctrine of free will in metaphysical speculation, so in the *Discourse on Inequality* Rousseau

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181 *Du Contrat Social* (1st version) I.4, *OC*, 296. Note that even the Savoyard Vicar’s profession of faith, the chief source for the doctrine of free will in Rousseau’s corpus, is prefaced by the following confession: “…we know neither our nature nor our active principle. We hardly know if man is a simple or compound being.” (*E*, IV, 268).

acknowledges that there are “difficulties surrounding all these questions” that leave plenty of room for disagreement. Consequently, he quickly switches his argument to the notion of perfectibility, for who could deny that man is a creature that learns? While the doctrine of free will founded on an inner conviction of its existence might be sufficient for leading a moral life for at least some individuals, therefore, it cannot be relied upon for settling political questions like the ones raised in the *Discourse on Inequality*, and by extension, the *Social Contract*. As this camp generally recognizes, though Rousseau’s solution is similar to the Kantian notion of autonomy, it lacks proper foundations.

The purpose of this discussion has been simply to introduce, rather than fully engage, the two main lines of interpretation usually advanced to explain how Rousseau manages to reconcile freedom with authority. Most relevant at this point is the underlying agreement on both sides regarding the character and role of natural freedom in Rousseau’s political theory. A large part of scholarly disagreement has its roots in this underlying agreement, which consists in the following conviction: natural independence has an obvious, or straightforward, role to play in Rousseau’s

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183 Mark Plattner draws attention to this turn in the argument in *Rousseau’s State of Nature: An Interpretation of the Discourse on Inequality* (Northern Illinois University Press, 1979), 46.

184 Miller argues that “the apparent role played by the sense of being free in our thinking about our own existence, in our conventional moral concepts, and in the prevailing legal codes, must nevertheless count for something, if the thesis against free will is not to become, in turn, an unfalsifiable tautology.” *Dreamer of Democracy*, 187. I find this argument persuasive as concerns the individual’s commitment to the moral life, including the politically virtuous life.

185 Alongside Miller, see e.g. Levine, *A Kantian Reading*, 55; Melzer, “Rousseau and the Problem of Bourgeois Society,” in Jean-Jacques Rousseau: Critical Assessments of Leading Political Philosophers, edited by John T. Scott (New York: Routledge, 2006), note 20, 204-205. Cohen does not raise the question of foundations, but argues only at the level of experience: “our nature as moral beings…[is] revealed in our susceptibility to feelings of guilt and remorse.” *A Free Community*, 35. There is little evidence, however, that Rousseau expected this kind of argument to be widely persuasive, especially to those committed to materialism. Note the Savoyard Vicar’s characterization of consciences as “timid…The world and noise scare it; the prejudices from which they [i.e. materialist philosophes] claim it is born are its cruelest enemies. It flees or keeps quiet before them.” (*E*, IV, 291). See Steven T. Engel, “Rousseau and Imagined Communities,” *Review of Politics* 67 (2005): 528 for further reflection on conscience’s problematic susceptibility to moeurs and public opinion.
political theory and this role is negative. Unbounded freedom must give way either to the cultivation of autonomy, as the second camp asserts, or to outright social engineering, as the first camp argues. A crucial assumption behind this characterization of natural freedom has to do with human motivation, or what is understood to be the natural orientation of man’s will. Natural independence presents a problem because the human will tends only to the satisfaction of the individual’s interest. It is assumed that this is the logical implication of Rousseau’s starting-point, namely the originally asocial individual who recognizes no social duties that might restrain his individualistic orientation.

This is a foundational assumption of what I will henceforth call the ‘half-socialization’ thesis (to be discussed in detail in the next chapter). According to this view, human history up to the dawn of political authority must have insufficiently socialized human beings. Although in the course of their historical development men formed constant and irreversible relations to each-other, they were yet to realize the need for transcending their selfishness in order to live in peace with others. This thesis brings Rousseau’s account of the state of nature very close to that of Hobbes, which equally stresses human independence and its inevitable consequence outside of the state - universal hostility. It suggests that Rousseau’s justification of political society is similar to that of Hobbes insofar as both ground their arguments in an understanding of the natural state as inherently conflictual. The half-socialization thesis tends to ignore the most important implication of Rousseau’s hypothetical history, namely that human conflict implies a breakdown of sociability, rather than its incomplete development. In other words, the fact that human beings are originally asocial does not imply that when in society they are inevitably anti-social. Nor does it imply that social existence is un-natural for them. The point of Rousseau’s
Second Discourse is not to show that human beings at the dawn of political organization were insufficiently socialized, but that they had become corrupt, and this corruption must affect the character of political life as much as that of pre-political life.

One illustration of the ‘half-socialization’ thesis is Arthur Melzer’s argument that given Rousseau’s account of the natural state, the purpose of his politics must be to “completely eliminate man’s natural selfishness and individuality, or, failing that, eliminate all of its effects.” This solution, he says, is not simply unnatural but “anti-natural, requiring the wholesale remaking of human beings through social engineering.” Human socialization would be accomplished first and foremost by Spartan-inspired institutions of public education, and failing that, through sheer force. In Melzer’s own words “the essence of politics (and morality), in Rousseau’s view, is force.” These arguments follow from his most basic assumption that by nature human beings are self-interested (i.e. selfish) and the demands of social life, such as respecting the rights of others or coming to their aid, must always be burdensome. This is the sense in which Melzer defines the problem of human dependence, which, according to his argument, contradicts man’s naturally independent existence. Similarly, Hilail Gildin has argued that “society…is against nature even if, from a certain period on, it becomes indispensable and remains so.” These statements, however, distort Rousseau’s argument, which only means to

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186 Natural Goodness of Man, 94 (my emphasis).
187 ibid (emphasis in the original).
188 ibid, 96 (my emphasis). See also Crocker, Rousseau’s Social Contract, 10; 14-15
189 Engel also argues that “humans appear to have a naturally selfish point-of-view in the natural state” in “Imagined Communities,” 524. Shklar also argues that “dependence and the desire to dominate are born simultaneously.” Men and Citizens, 38
suggest that social existence does not follow automatically from man’s original constitution. In his *Letter to Philopolis*, for example, he explains that “society is as natural to mankind as decrepitude is to the individual, and...Peoples need arts, Laws, and Governments, as old men need crutches.” The first thing to note is that the emphasis in this passage is specifically on political existence and the kind of social dynamic that would make political authority necessary (to be explained fully below). Moreover, here Rousseau’s point is not that social existence is contrary to nature, for this would imply that nature intends for human beings to remain independent and asocial, a teleological argument. His position is weaker, namely that there is no inevitability for society to arise, one which he weakens further by saying that even if it were inevitable, this kind of social existence might still “have occurred sooner or later.” What Rousseau was primarily questioning, in both of his Discourses, was the advantage of civilization and life under government, which his contemporaries were inclined to regard as “the perfection of the species.” Although not all proponents of the half-socialization thesis will argue that society is anti-natural, the identification of man’s natural motivation with the unrestrained pursuit of self-interest suggests a similar conclusion. For, if the reason why human relations in the state of nature are conflictual is because men have not yet given up their natural independence, it follows that society cannot really exist without government. In other words, the demands of social existence contradict the natural orientation of man’s will. In general, the ‘half-socialization’ thesis tends to set up a static dichotomy between nature, understood as self-interest,


192 ibid, 225

193 ibid. Derathé notes that all philosophers of the natural law school, whether they regarded the natural state as peaceful or not, had acknowledged that the “formation of civil societies was a vital necessity for man...the inconveniences of the state of nature rendered it almost inevitable.” *Rousseau et las science politique*, 174.
and artifice, understood as a process by which human beings are actively transformed into communal beings, that does not correspond well enough with Rousseau’s characterization of the natural state.

Asher Horowitz suggests that scholars have identified Rousseau’s concept of the state of nature with the static original condition because they have found it otherwise difficult to reconcile his thought with contractarianism. Rousseau, after all, uses concepts that are foundational to that tradition, such as the state of nature and the social contract, and he agrees with its most fundamental point: political authority is artificial, in the sense that it originates in human decision.194 However, Horowitz observes, Rousseau’s state of nature is unlike that of anyone else in that tradition; it is dynamic. “Although the second Discourse purports to separate nature from artifice and condemn the latter in terms of the former,” he argues, “it actually accomplishes the collapse of the two concepts within a sophisticated concept of history.”195 Certainly all serious readers of this work recognize that Rousseau’s state of nature stands apart from all other such accounts precisely because of the developmental process at its heart, encapsulated in the notion of perfectibility. Yet, when it comes to explaining his political theory they always fall back on the static opposition between nature and artifice that characterizes all modern theories of natural right; in the final analysis, they resort to the contrast between egoistic original man, or the free individual, and collectivized social man, or the citizen. It follows from this, however, that bourgeois man, the creature of selfish selflessness, is more natural than the

194 Levine draws attention to this, though he emphasizes that Rousseau is really putting new wine into old bottles. A Kantian Reading, 28. Steven Ellenburg has also emphasized that “Rousseau’s assumption that isolation and independence are natural in no way...indicates a liberal individualist view; rather it serves as the basis of his nonindividualist thought, which stresses the importance of social dependence and historical periodicity.” See Rousseau’s Political Philosophy: An Interpretation from Within (Ithaca: Cornell University Press, 1976), 57.

citizen for he is obviously more individualistic.\textsuperscript{196} This conclusion would be unacceptable to all who have written on Rousseau, yet it appears unavoidable if one remains committed to the static opposition between nature and artifice. As Horowitz points out: “Rousseau’s original man is an abstraction not from an essentially static social condition that can be opposed to an equally static nature but from a dynamic process of development.”\textsuperscript{197}

By ignoring the middle stages of this process commentators fail to distinguish between two layers of critique in Rousseau’s thought. The first involves the contrast between the original state of nature and the social state, which also includes the political state. This contrast usually provokes nostalgia for a state of inner peace, harmony, and moral innocence, which has earned Rousseau a reputation for being a lyricist of the noble savage.\textsuperscript{198} The second, however, involves the contrast between two kinds of society, one based on equal consideration and the other on an all-defining desire for dominion. The second is the state of the \textit{bourgeois}, or civilized man, in the extended sense in which Rousseau uses the term, while the former is that of the legitimate political society and also the pre-political tribe. This second contrast is much more important for understanding Rousseau’s political theory than the first, and should not be confused with it.

While Horowitz’s analysis illuminates a crucial problem in the scholarship, however, his own analysis does not do justice to Rousseau’s state of nature primarily because he wishes to see

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\textsuperscript{196} This obscures Rousseau’s critique of bourgeois man, which as Plattner has observed, involves two apparently irreconcilable charges: bourgeois man is simultaneously conformist and individualistic. See \textit{Rousseau’s State of Nature}, 4.

\textsuperscript{197} Horowitz, \textit{Rousseau, Nature, and History}, 67. Despite his arguments against an individualistic reading of the \textit{Second Discourse} Ellenburg also identifies the state of nature with the original state of isolation. \textit{Rousseau’s Political Philosophy}, 60.

\textsuperscript{198} For example Shklar notes that Rousseau’s “indictment of civilization [was] so extensive that it touched every aspect of individual and collective experience.” \textit{Men and Citizens}, 33. Plattner also points out that at the end of the \textit{Second Discourse} Rousseau indicts both the bourgeois and the citizen. \textit{Rousseau’s State of Nature}, 11
in it the roots of Marxism. He thus fails to note that Rousseau’s account of man’s development in history is not teleological. True, Horowitz recognizes that original man’s “bio-cultural evolution…is essentially fortuitous, ungoverned by providence or by the logic inherent in any world-spirit.” Yet, because he imputes to Rousseau the Marxist understanding of history as a dialectical process driven by the logic of labour, his argument remains essentially teleological. Horowitz does not notice, for example, that while Rousseau recognizes different stages in man’s history, he does not imply that any of these contain inherent contradictions which of necessity push them forward to the next stage. Rousseau in fact explicitly states that all pre-political forms of human existence, whether solitary or social, were stable and would have remained so had certain external accidents not occurred. Only the state that immediately precedes the foundation of hierarchical societies, i.e. of political authority, was not so. In other words, only the state that resembles closely the Hobbesian war of all against all is animated by a destructive internal necessity, or inner contradiction. But this necessity does not propel it forward toward a new stage of development where the contradiction resolves itself, or is replaced by another. Rather, it forms the foundation upon which political authority, legitimate or otherwise, is built.

Since Horowitz sees in Rousseau’s developmental history a teleological process, he is compelled

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199 Horowitz, Rousseau, Nature, History, 74

200 “Rousseau in fact recognizes at least three such [socio-economic] forms as successive, internally contradictory, and therefore unstable and incomplete realizations of human freedom and happiness,” Horowitz argues, “These can be termed primitive society, traditional or pre-capitalist society, and bourgeois or civil society properly so called.” Ibid, 90; my emphasis.

201 This kind of proto-Hegelian interpretation has also been offered by Levine. “Alienation is the ‘motor’,” he says, “that works itself out through the development of internal oppositions…[which] give rise to their own suppression in the social contract.” A Kantian Reading, 27; my emphasis. Here Levine is referring to the state of universal enmity that precedes the social contract. As my own interpretation will argue, however, Rousseau was not as optimistic. His task in the Discourse on Inequality was precisely to show that the problem of universal opposition had not worked itself out in history. Even the best attempts (e.g. Lycurgus’ Sparta) had been imperfect. The opposition that occasions the foundation of political authority remains a fundamental part of all political societies for Rousseau. It is the perpetual danger that all societies must guard against and is never fully overcome. For its overcoming would signal the elimination of all political authority.
to conclude that the ancient city is not Rousseau’s ideal society for “the moment of absolute freedom and independence that the bourgeois world asserted for its members, standing outside of society and judging its usefulness to them, had not yet dawned.”202 Like other commentators Horowitz recognizes that Rousseau found much to admire in ancient societies like Rome and Sparta. But he nonetheless argues that such “traditional” societies which functioned by “establishing an identity between the individual and his customary role” are not Rousseau’s ideal.203 Rousseau speaks of them in terms of “the rule of law,” Horowitz argues, “but not in the modern sense of the positive decrees of a legitimate sovereign, rather as the complete identification of social life with the customary, traditional law of the community.”204

In a nutshell, the arguments introduced so far suggest that natural independence is incompatible with human sociability. The rest of this discussion will question this argument by turning to the *Discourse on Inequality*. This work contains an outline of Rousseau’s social theory, or his ideas about the way in which certain forms of human motivation structure, and are in turn structured by, different kinds of social relations. The discussion will attempt to shift the interpretive emphasis from Rousseau’s account of the original condition to his account of the genesis and breakdown of sociability. It is the process through which individuals are transformed from social into anti-social beings that brings out the most comprehensive meaning of the word ‘freedom’ in Rousseau’s thought. According to this reading, a genuinely cooperative social

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203 *ibid*, 103

204 *ibid*. The next chapter will argue that this view is incorrect, and that Rousseau understood the rule of law in these societies to involve precisely “the positive decrees of a legitimate sovereign,” to borrow Horowitz’s words.
relation can only exist when men are neither subjected to each-other, nor do they seek to be. The absence of such relations is the essence of what Rousseau means by ‘freedom.’ This is not to deny, of course, that the word is not always used in this sense. In fact, in the *Social Contract* Rousseau resorts to the juridical distinction between natural, civil, and moral freedom. The first is defined as “a natural right to everything that tempts [man] and that he can reach,” the second is “limited by the general will,” and the third means “obedience to a law one has prescribed for oneself.” (*SC*, I.8, 54). But these familiar distinction, perhaps because they are not of Rousseau’s own making, do not fully illuminate the meaning of the word freedom when it is used in a more general sense, or implied by Rousseau’s rhetorical invocations of slavery. Neither do they explain why freedom has such a significant role to play in his discourse, and in his political ideas specifically.

The alternative definition of freedom that I wish to bring out is found in Rousseau’s *Letters from the Mountain*. “Liberty,” he explains there, “consists less in doing one’s will than in not being subject to someone else’s; it also consists in not subjecting someone else’s will to ours. Whoever is master cannot be free, and to rule is to obey.” (*LM*, 260). The first aspect of liberty as defined here is familiar, and in fact Rousseau begins the passage with the equally familiar criticism of liberty as license: “When each does what he pleases, he often does what displeases others, and that is not called a free state.” (*ibid*). Montesquieu and Locke had raised similar objections to liberty defined in this way. Both, moreover, had argued that real freedom consists in not being subjected to an arbitrary will, rather than in doing whatever one wants.205 But it is the

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205 Montesquieu argues as follows: “One must put oneself in mind of what independence is and what liberty is. Liberty is the right to do everything the laws permit.” *Spirit of the Laws*, XI.3, 155. See also Locke’s objection to Filmer’s definition of freedom as “a liberty for everyone to do what he lists, to live as he pleases, and not to be tied by any laws.” “Second Treatise,” IV, 284.
second aspect of Rousseau’s definition that brings out what is unique about his notion of freedom.\textsuperscript{206} Neither Montesquieu, nor Locke, and certainly not Hobbes, had argued that liberty is incompatible with mastery, or commanding others. Although it is never stated as exactly as in the \textit{Letters}, this aspect of freedom is in fact ubiquitous throughout Rousseau’s works. As the rest of this chapter will argue, it is already implied by his account of social breakdown in the \textit{Discourse on Inequality}, and informs the spirit of his political ideas.

Understood in this way, freedom is incompatible with a desire for power over others and especially with social relations structured by this desire. It is valuable because it makes possible genuine social life, and so only free human beings can be truly sociable. Rousseau’s argument suggests that wherever freedom is absent, cooperative relations are mere facades that mask an underlying and self-perpetuating hostility among human beings. In this respect, my interpretation places more emphasis, at least when it comes to explaining the political importance of freedom, on its role in protecting human beings from physical and psychological harm.\textsuperscript{207} This need not mean that freedom is an instrumental good, which could in principle be exchanged for another good of greater importance. It is more accurate to characterize it as a constitutive part of social life. To say that men are free, in other words, is to say something about the character of their social relations, namely that these are not structured by the logic of domination and subjection. It is also to say something about the character of those human beings themselves, namely that they are not likely to be dominated by a desire for power over others. In this sense, freedom is neither

\textsuperscript{206} Most readers do no refer to this definition, and those do normally ignore the second part. See for example Bertram who cites the passage, but concludes that “Freedom is most basically a matter of not being subjected to the command or domination of particular other people.” \textit{Routledge Philosophy Guidebook}, 84; also Gildin, \textit{The Design of the Argument}, 34.

\textsuperscript{207} In this sense, my reading is compatible with the view that Rousseau regarded moral freedom as man’s essence. I simply do not think that the political appeal of freedom in his works is ultimately based on this idea, or justified as a precondition for its achievement. See e.g. Levine, \textit{A Kantian Reading}, 26, and Cohen, \textit{A Free Community}, 94-95.
an interest nor a value. It is best understood to denote the absence of a certain social dynamic, which makes possible orderly and just social relations.

Although Rousseau’s description of original man’s absolute independence certainly contributes to this comprehensive theory of freedom, however, it does not fully imply it. For original man is asocial and cannot be used as a standard, either negative or positive, for a theory of social and political existence, as commentators often assume. What is crucial for Rousseau’s theory of freedom is not original man as such, but his transformation into social, and then anti-social, man. It is the psychology of this process that illustrates fully the relationship between freedom and sociability, and consequently, the socio-political value of freedom.

**The Discourse on Inequality in Context**

Before proceeding, it may be helpful to be reminded of Rousseau’s originality in putting forward a theory of the state of nature that was dynamic rather than static. Part of his purpose, of course, was to argue that outside of society human beings cannot possibly be thought to be power-hungry. In other words, while natural independence may be absolute, or unbounded, it cannot be used to justify the existence of political authority as the contractarian tradition had maintained. Natural liberty does not make of man a criminal, though the modern natural law tradition had often made this claim. “All of them, continually speaking of need, greed, oppression, desires, and pride,” Rousseau observes, “transferred to the state of Nature ideas they had taken from society…They spoke of Savage Man and depicted Civil man.” (*DOI*, “Exordium,” 132). In his chapter entitled “Of the Law of Nature in General,” for example,
Pufendorf attributes to man’s nature such qualities as pride, arrogance, envy, and lust. These, he explains, along with the great “diversity of dispositions” and opinions among human beings, which are not found in animals, give human relations their peculiarly toxic character:

In the first place, a stronger Proclivity to injure another is observ’d to be generally in Man, than in any of the Brutes; for they seldom grow outrageous [sic.], but through Hunger or Lust, both which Appetites are satisfi’d without much Pains; and that done, they are not apt to grow furious, or to hurt their Fellow-Creatures, without some Provocation.208

These considerations, along with the argument that human beings require others due to their extreme weakness in infancy, lead Pufendorf to conclude that the law of nature demands first and foremost the preservation of society. As he explains:

in order to his Preservation, ’tis absolutely necessary, that he be sociable, that is, that he join with those of his Kind, and that he so behave himself towards them, that they may have no justifiable Cause to do him Harm, but rather to promote and secure to him all his Interests.209

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208 *The Whole Duty of Man, According to the Law of Nature*, I.3, 54 (*emphasis in the original*). Note that the first part of the Discourse on Inequality aims to show that original man fits exactly with Pufendorf’s description of the brutes. The resemblance of original man to the animals has been noted by many, and most fruitfully employed by Plattner, *Rousseau’s State of Nature*. The primary purpose of this argument in the case of Rousseau is to deny that by nature (i.e. innately) man desires absolute dominion.

209 *Ibid*, I.3, 55-56 (*emphasis in the original*)
Similarly Hobbes attributes to natural man not simply a desire for animal self-preservation, but also for glory and conquest. “There are some,” he says, “that take pleasure in contemplating their own power in the acts of conquest, which they pursue *farther than their security requires.*” In fact, vainglory is the game changer in the Hobbesian state of nature for it transforms a condition of possible conflict into one of *necessary* conflict. If the only threat to man’s preservation were natural scarcity then human conflict driven by competition over scarce resources would be no different from animal conflict. It is precisely because *at least some* individuals in the state of nature are vainglorious that others are forced to suspect all members of their kind. Hobbes’s final word on human relations is thus extremely pessimistic. “Men have no pleasure,” he says, “but on the contrary a great deal of grief, in keeping company where there is no power able to over-awe them all.”

This leads him to agree with Pufendorf that the first law of nature, or precept of (instrumental) reason, demands that men strive for peace whenever they believe it to be possible.

It was not Rousseau, however, who first disputed the reasonableness of attributing such anti-social qualities to human nature, but Montesquieu. In fact, one can even say that Montesquieu’s chapter “On the laws of nature” already contains the germ of the historical turn that developed fully in Rousseau’s *Discourse on Inequality*. In agreement with the natural law school he defined the laws of nature as those laws that “derive uniquely from the constitution of our being” and which can be discovered by considering “a man before the establishment of

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210 *Leviathan*, XIII, 75; (my emphasis)

211 Montesquieu’s short but concise rejection of Hobbes focuses exclusively on the issue of men’s “desire to subjugate one-another,” that is, “the idea of empire and domination.” *Spirit of the Laws*, I.2, 6.

212 *Leviathan*, XIII, 75
societies.‘ Such men would have no speculative ideas, Montesquieu argues, including any ideas about divine law insofar as these presuppose abstract notions of a creator. They would not have knowledge but only the ability to know. Living in this way without knowledge or companionship natural man would at first “feel only his weakness,” and far from desiring to subjugate others he would always flee from them. It follows from this that the original state of mankind would be one of peace, not war. From this original state of universal timidity human beings would proceed cautiously to “approach one another,” persuaded “by the marks of mutual fear,” as well as the pleasure of kindred fellowship and sexual appeal. Finally, useful knowledge acquired in society would establish “a second bond” to that of natural feeling, one “which other animals do not have.” With society thus established men “lose their feeling of weakness…and the state of war begins.” Though Montesquieu’s discussion is considerably shorter and less complex than that of Rousseau, the latter bears a significant formal resemblance to it. Like Rousseau, Montesquieu begins from a condition in which men live independently of others and have no desire to fight them. Social relations arise slowly, not due to violence or rational self-interest but to fellow-feeling, just as the first social relations in Rousseau’s Discourse on Inequality are occasioned by conjugal love. Lastly, as in the latter work so for Montesquieu war arises only after the establishment of social relations. It does not precede them as it does, for

213 Spirit of the Laws, I.2, 6
214 ibid. Rousseau attributes the thesis of man’s natural timidity to “an illustrious Philosopher,” very likely Montesquieu, alongside Cumberland and Pufendorf. (DOI, I.135). Derathé explains that one of the chief disagreements among modern theorists of natural law involved the question of whether the state of nature was peaceful. Locke, Pufendorf and most jurisconsults held this view against Hobbes. The idea of man’s natural timidity, or feeling of inferiority, was used to counter Hobbes’s contention that man’s most natural sentiment is superiority. See Rousseau et la science politique, 132
216 ibid, I.3, 7
example, in the case of Hobbes. Rousseau appears to have taken the principal movements of this brief story and expanded them, beginning with the original condition of complete isolation.

**A New Beginning - Freedom without Society**

Despite this formal resemblance with Montesquieu’s account of the same, however, it is safe to say that Rousseau’s state of nature is unlike that of any other natural law theorist. This implies that his account of natural freedom is also unlike that of any such theorist. Commentators who regard his concept of freedom as equivalent with Berlin’s ‘negative freedom,’ or with the conventional notion of unbounded natural independence are therefore misguided.\footnote{Cullen, *Freedom in Rousseau*, 8; Ellenburg, *Rousseau's Political Philosophy*, 45. Both draw this conclusion based on the assumption that the original state of innocence, where man is not dependent on anyone else, is to be understood as the paradigm of freedom.}

For Berlin’s concept of freedom, like all politically relevant ones, implies that relations exist among human beings.\footnote{Derathé, following Pufendorf and Locke, defines natural independence as a condition in which men live without *government* but not without other men. The same thing can be said about the Hobbesian picture of natural independence. For, while there is no society, in the sense of human cooperation, in the state of nature, there are nonetheless *constant* relations, albeit of animosity, among human beings. Were such relations not constant Hobbes would be unable to maintain that the state of nature is identical with a state of war, as Rousseau would later point out. *Rousseau et la science politique*, ch.3, 125-171} In other words, it takes social existence for granted. This is not obvious from Berlin’s own presentation, and neither is it obvious in all other definitions of the concept, whether ancient or modern. Yet, all discussions of freedom take place in a political context, even those that postulate a state of nature which precedes it. All such discussions, in other words, are (or aim to be) politically relevant. For this reason, they must all take the existence of society, or at least of some form of *constant* human relations, as a given. This fact becomes most obvious when one removes man’s sociability from the picture as Rousseau does in the first part of the *Discourse on*
Inequality. He strips away all such features of the human condition as presuppose the existence of society. These include conceptual reason, language, morality, religion, love and of course natural authority. The most unique aspect of original man’s freedom is that it is not defined in relation to other men at all. It is as if all other human beings do not exist, at least as far as original man’s activity is concerned. Simply-put, Rousseau’s original man is not free because he is not under the authority of a government, as in the case of Locke and Pufendorf; or because he can do whatever he wants, as in the case of Montesquieu and Hobbes; or because he is not enslaved to a master, as in the Greek and Roman traditions. Of course all of these are true of his condition but none of them exhaust the scope of his freedom.

The most fundamental aspect of natural man’s freedom is independence, which for Rousseau means more than self-sufficiency, or not needing others. More fundamentally it means that one lacks all awareness that others could be useful, or that one could have any relation to them in the first place. It means that one is not at all aware that others might matter or have any relevance for one’s existence and activity. Original man’s independence, in other words, should not be understood primarily as an objective condition. Rousseau often says that “his modest needs are…ready to hand,” and this is usually understood to mean that there exists an idyllic equilibrium between original man’s wants and the environment’s ability to satisfy them. (DOI, I, 143). Passages like this, in other words, are often understood to be making a factual claim about the harmony between every individual and his natural environment. To a certain extent this appears true, for Rousseau does argue that by nature we have very few needs

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219 I disagree, therefore, with Melzer’s contention that need compromises human freedom, because this assumes that original independence is the same as not needing others. Natural Goodness of Man, 79. True, Rousseau does say that “ties of servitude are formed solely by men’s mutual dependence and the reciprocal needs that unite them.” (DOI,I,159). But this argument does not imply that all mutual needs result in servitude, but only that mutual needs are the necessary condition for servitude.
and under most circumstances can satisfying them on our own. But surely one could imagine plenty of circumstances in which men might find themselves unable to satisfy even these limited needs: droughts, floods, earthquakes, inhospitable environments, or simply individual accidents. The equilibrium between needs and abilities is certainly a myth if taken in an absolutely objective sense, especially if we consider that innately individuals’ physical constitutions also differ. Rousseau’s last word is not this objective claim, however, but rather the idea that even under circumstances of want original men would lack the capacity to imagine that others could be useful to them. The primitive condition of independence and isolation is better understood primarily as a subjective condition. It says more about how human beings see the world and those of their own kind, than about what is truly the case from a factual standpoint.220

One might say that in describing original man’s freedom in this way Rousseau is performing a reductio ad absurdum on the conventional meaning of natural independence. While other natural right theorists had stripped the state of nature of all political authority, Rousseau strips his of all social awareness. It is in this sense that natural man is isolated, or independent. He is alone not merely because he rarely encounters those of his own kind, but more fundamentally because even when he does he neither recognizes nor develops any constant relations with them. The absence of natural authority thus becomes merely a consequence of this radical move, as do all the other features of natural man’s freedom, such as his self-sufficiency, his ignorance of moral rights and duties (i.e. social chains), etc. Since for Rousseau natural independence means, first and foremost, an inability to imagine the advantages of society and its

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220 Note, for example, the following passage from Emile: “The child raised according to his age is alone. He knows no attachments other than those of habit. He loves his sister as he loves his watch, and his friend as his dog.” (E, IV, 219; my emphasis). The child is not alone objectively speaking. His isolation, just as that of original man, refers to the character of his relations to others, not to the factual presence or absence of others around him.
chains, it cannot be applied directly to the political condition in order to enlighten us about individual rights, as the natural law tradition had assumed. Natural independence cannot be understood to mean simply ‘the desire to do whatever one wants,’ critiques of which always presuppose the existence of social relations. When, in Rousseau’s history of humanity, social man finally loses his freedom he is not in the same condition as this originally independent and asocial man. His freedom cannot be understood to mean the same thing as original man’s natural independence, and natural independence as described here cannot serve as the benchmark for freedom in society. Rousseau’s originality, then, was to postulate that the most basic sense of natural independence would be independence from any awareness of possible relations with other men. Natural man’s freedom is not defined by reference to what it is not, such as subjection, repression, or exploitation, for all of these presuppose human relations as the background. In erasing this background, he also erased the straightforward relevance that this notion of independence could have for political life, including for any theory of political freedom. Original man experiences even his interactions with other men as physical rather than moral. It is in this sense that his freedom is absolute. Not only are slavery or any relations of command and obedience impossible in this condition, but original man cannot even imagine (or understand) such concepts. For this to be possible, he must first become aware that other human beings matter to him. The most fundamental layer of social existence for Rousseau as for Montesquieu is affection for one’s kind.

The Genesis of Society
The gradual awakening of moral notions corresponds to the gradual development of social relations in Rousseau’s history of mankind. These relations are not imposed upon men by an alien power but arise freely due to changes in the external circumstances of their lives. The bonds of the first society, for example, were “mutual attachment and freedom,” he says. (DOI, II, 164). What kept men, women, and children together in families was affection, not external force. Yet they were no longer naturally independent, for common existence enabled human beings to acquire certain conveniences that soon enough “degenerated into true needs.” (ibid, p. 165). Members of families could no longer live as original men had lived and these needs became “the first yoke which, without thinking it, they imposed on themselves.” (ibid, 164). This description also suggests that before men can grasp the concept of duties and rights they must recognize the existence of others as somehow relevant to themselves, not conceptually but experientially. This is first made possible by an individual’s care for the well-being of others around him. In other words, the experience of primitive affection must precede any rational notion of duty in human development.

This is a first step in Rousseau’s critique of theories that attempt to found society on rational self-interest alone. Self-interest divorced from the notion that others are of consequence to oneself (whether for good or ill) implies men who are essentially asocial, and so amoral, he suggests. Such men may certainly band together to pursue a stag-hunt “but if a hare happened to pass within reach of one of them, he will, without a doubt, have chased after it without a scruple.” (ibid, 163). It is not by chance that the often-cited example of the stag-hunt

\[221\text{ In this respect Rousseau sides with Montesquieu against all those who would argue that society is founded on rational self-interest or human decision. Rational self-interest can, at most, be only a secondary or derivative bond among men. It cannot be the original, most fundamental one. “Knowledge [in the sense of useful accumulated experience] is a second bond that brings men closer together,” Montesquieu explains. Spirit of the Laws, I.2, 7. But the first is affection, both sexual and otherwise.}\]
takes place at this point in Rousseau’s history, i.e. before human beings have become social in any genuine sense of the term. Commentators tend to regard this as a classic articulation of the free-rider problem - i.e. the problem with human selfishness. But they fail to note that the men in question are not social, or moral. The example in fact does not tell the full story about the actions of social men, actions that cannot be understood to originate in the kind of pure instrumental rationality exhibited by the hunters. Such rationality can only be embodied in men who are unaware of the possibility that they might care for (or about) others. For this reason, the example cannot be taken as proof that by nature man is essentially selfish. The hunters are not selfish as much as morally innocent. Theirs is not a moral world, which the charge of selfishness necessarily invokes. It is a world made up only of physical interactions where they can never form long-lasting bonds beyond the moment of immediate interest. Thus, self-interest cannot explain the foundation of social existence according to Rousseau. Rational self-interest, on the other hand, the kind of self-interest that, guided by foresight, goes beyond immediate need already presupposes society, and thus bonds that have other foundations than self-interest. For outside of society men must be presumed to have little foresight. The first social bond is not self-interest but spontaneous affection.

This primitive affection, however, does not fully explain the character of social human beings living in civil society. The next development, the origin of personhood, is equally crucial and forms the real ground of all moral notions. This occurs during the ‘tribal’ stage of man’s history, after several families settle next to each-another, enabling individuals to pay attention to differences and “imperceptibly acquire ideas of merit and of beauty which produce sentiments of preference.” (ibid, 165).
The Genesis of Personhood

Personhood, or the conviction that one has a *right* to consideration on the part of other human beings, is the source of all moral passions. It brings *amour-propre* into play, and distinguishes human conflict decisively from mere animal skirmishes, including those among men in the original state of innocence. The genesis of personhood, or *amour-propre*, is best illustrated not by Rousseau himself, however, but by Bernard Mandeville’s lesser-known *Enquiry into the Origins of Honour*. In this work the character Cleomenes argues that the desire for honour has its roots in a natural passion “for which there is no Word coin’d yet,” and which he calls “self-liking.” This passion, he argues, must be distinguished both from the desire for self-preservation and from the desire for *merited* praise. Self-liking essentially refers to the good opinion that each individual naturally has of himself, an opinion that precedes all notions of desert. It is “that great Value, which all Individuals set upon their own Person; that high Esteem, which I take all Men to be born with for themselves.”

Small children will be quite upset when scolded, Cleomenes observes, even when they know that they have committed the act for which they are being scolded. Likewise, they will be very happy when praised even when they know that the praise resulted from a false impression. Self-liking is experienced “before we have Time or Capacity to reflect and think of Anybody else,” a comment clearly echoed in the *Emile*. “In itself,” Rousseau argues similarly, “*amour-propre…has no necessary relation to others*, [and] is in this

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223 *ibid*, 4
respect naturally neutral.” (E, II, 92). Like Mandeville’s Cleomenes, then, Rousseau holds that the desire for praise, and the sense of shame, originate in a passion that is distinct from the desire for self-preservation and, in its most primitive form, is neutral with respect to others. It ought not to be confused with vanity, for the latter implies that one believes oneself superior to others. This point is at the heart of Rousseau’s disagreement with Hobbes who had also emphasized men’s natural desire for superiority. Rousseau did not deny that men fight over their opinions of themselves. In fact, he placed such fights at the heart of human, as distinct from animal, conflicts. Moreover, he also agreed with Hobbes that innately human beings seek not so much to deserve a good opinion of themselves as to have a good opinion of themselves. While Hobbes would have taken this as a clear indication of innate vanity, however, Rousseau follows Mandeville in arguing that self-liking in fact implies nothing about one’s relation to others. It is morally neutral. Mandeville’s point is that people naturally favour themselves irrespective of merit. The very ability of others to hurt us by challenging our good opinion of ourselves, that is, by insulting us, derives from this innate passion of self-liking. Their opinions matter to us because our own good opinion matters to us first. If we were neutral with respect to ourselves

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224 Maurizio Viroli places considerable emphasis on Rousseau’s proximity to Hobbes and the moralists on this question, though he does not consider Mandeville. See Jean-Jacques Rousseau and the “Well-Ordered Society” (Cambridge University Press, 1988), 76-80; 90-94.

225 In the Emile, for example, Rousseau argues that by nature children always side with the victor in fables. The natural tendency of amour-propre is to win, and this is “a very natural choice.” (E, II, 115). However, he also emphasizes throughout that this tendency implies little with respect to other human beings in its original state. Children want to win in the same way that the lone hunter will abandon his fellows in pursuit of a hare. They are not, for this reason, to be judged vain or selfish, but only innocent as they have little sense of moral relations, of harm done to others or duties owed to them.

226 Cohen has also emphasized this point in A Free Community, 102.

227 “When we see Others commit such Actions, as are vile and odious in our Opinion, we say, that such Actions are a Shame to them...By this we shew, that we differ from them in their Sentiments concerning the Value which we know, that they...have for their own Persons; and we are endeavouring to make them have an ill Opinion of themselves, and raise in them that sincere Sorrow, which always attends Man’s reflecting on his own Unworthiness.” Mandeville, Enquiry into the Origins of Honour, 10.
then others’ opinions would mean little to our happiness. It is precisely because we do not acquire our own good opinion after having considered our standing with respect to others, but before, that their opinions matter to us at all. This means that our good opinion is not based on any sense of merit or desert. It cannot be justly characterized as a desire for superiority, which of necessity implies notions of one’s standing in relation to others, i.e. of one’s merit.

Mandeville’s argument that self-liking is innate clarifies the dynamics that characterize the tribal stage in Rousseau’s history. When human beings settle and assemble together they spontaneously begin to make comparisons “which produce sentiments of preference.” (*DOI*, II, 165). These sentiments awaken the activity of *amour-propre* for it is here that man’s good opinion of himself is first challenged:

> It became customary to gather in front of the Huts or around a large Tree: song and dance, true children of love and leisure, became the amusement or rather the occupation of idle men and women gathered together. Everyone began to look at everyone else and to wish to be looked at himself, and public esteem acquired a price. The one who sang or danced best; the handsomest, the strongest, the most skilful, or the most eloquent came to be the most highly regarded, and this was the first step at once toward inequality and vice: from these same first preferences *arose vanity and contempt on the one hand, shame and envy on the other.* (ibid, II, 166).

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228 Viroli argues that “the continued use that men make of each other is the basis of comparison and esteem...Use, or more accurately *utility*, is the basis of the comparison between objects and especially of the price that is put on them.” *Rousseau and the Well-Ordered Society*, 75. While this may be true of objects, it is not true of men’s esteem. Rousseau’s presentation suggests that the notions of merit and preference, of inferiority and superiority, have no relation with utility, for their ground is not self-interest.
It is at this point in history that human beings experience vanity and shame, for the good opinion that certain men have of themselves, no longer absolute, becomes dependent on the bad opinion that others have of themselves, and vice versa. In other words, the idea that such as are most eloquent, strong, or skillful, deserve to think well of themselves of necessity implies that such as are not so do not deserve to think well of themselves. As Rousseau explains in the *Emile* vanity seeks not merely that others should like us, but that they ought to prefer us to themselves. This explains the coupling of vanity with contempt and shame with envy. Were men naturally indifferent to their own good opinions there would be no envy at the sight of natural superiority, and no contempt on the part of those who find themselves superior. But as all equally desire their own esteem the disadvantaged cannot endure this implication of natural inequality. They cannot, in other words, endure the contempt they of necessity must have for themselves if they are to acknowledge that the superior deserve their admiration. The genesis of merit and desert transforms self-liking from a neutral passion into a relative one, dependent on the standing of

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229See also *Emile*: “…all could not want preference without there being many malcontents. With love and friendship are born dissensions, enmity, and hate.” (*E*, IV, 215). Cohen is incorrect to suggest that Rousseau did not regard feeling oneself inferior as “a genuine psychological possibility.” *A Free Community*, 104. Without this possibility, implied in the idea of ‘merit,’ it would be impossible to explain why some human beings experience shame, humiliation and envy.
As Viroli explains, Rousseau in this context makes an analogy between the way in which we attribute a price to things and the way in which we attribute esteem to men: “Just as the price of things is fixed by the buyer and not by the one who possesses the merchandise, so the esteem enjoyed by each is attributed to him by the others.” Yet, Viroli places little significance on the fact that Rousseau’s story does not end here. True, at this point men found themselves in the most toxic of social situations where harm done aroused an unbearable sense of contempt for one’s person and the desire to avenge oneself. Such passions stifled the natural voice of pity and men became “bloodthirsty and cruel.” But tribal society did not degenerate into a Hobbesian war of all against all as one would be led to expect. What prevented this fate was the first social convention, which re-established equilibrium and prevented men from becoming antisocial, namely civility. It is crucial to take note of this fact, for it clearly places the burden of proof on commentators who argue that amour-propre as such destroys human sociability.

To put it in more familiar language, one could say that at this point amour-de-soi is transformed into amour-propre. The relation between these two concepts is a contested one, for Rousseau does not always make it clear whether they are two different passions, with different origins, or modifications of the same passion. In the *Emile* he speaks of amour de soi as “amour propre taken in an extended sense,” while in Note XV of the *Discourse on Inequality* he says that they are “two very different passions in their nature and their effects.” (*E*, II, 92; DOI, “Rousseau’s Notes,” 218). I am inclined to the idea that amour-de-soi is more than the instinct of self-preservation, and that it also contains an implicit ‘opinion of oneself’ (self-liking in Mandeville’s sense). For even in Note XV, where Rousseau appears to argue that the two are distinct, he says that amour-de-soi “guided in man by reason and modified by pity, produces humanity and virtue.” This would make little sense if amour-de-soi were simply the instinct of self-preservation. Moreover, when he writes in this same context that amour-propre does not exist in “our primitive state,” the reason is that “every individual human being views himself as the only Spectator to observe him.” So, amour-propre does not exist because one’s opinion of oneself has not yet been transformed by the idea of relative worth, not because there is no such thing as a primitive opinion of oneself.


This is quite common. Note, e.g., Charles Taylor’s claim that the emergence of natural inequalities marks “the fateful moment when society takes a turn towards corruption and injustice,” in “The Politics of Recognition”, *Multiculturalism*, edited by Amy Gutmann, (Princeton: Princeton University Press, 1994) 26; also Shklar: “...inequality is not just man’s curse. *It is his fate.*” *Men and Citizens*, 45; my emphasis; and Viroli, *Rousseau and the Well-Ordered Society*, 73

E.g. Shklar, *Men and Citizens*, 38; Cullen, *Freedom in Rousseau*, 19
Tribal society did not require government to contain men, nor a *legislateur* to re-make human nature. Fear of suffering vengeance at the hands of those who had been slighted, or otherwise injured, took “the place of the Laws’ restraint.” (*DOI*, II, 167). Once established, mutual duties of civility prevented the worst social outcome, the birth in the heart of every man of “a black inclination to harm his fellows.” (*ibid*, II, 171). As Montesquieu explains, civility, as distinct from politeness which “flatters the vices of others,” “keeps us from displaying our own; *it is a barrier that men put between themselves in order to keep from being corrupted.*”\(^{234}\) Tribal men, despite having now become fully prone to the most pernicious form of violence, nonetheless remained in a state of peace with one-another. The Hobbesian war of all against all did not occur because the vain, restrained by fear, were compelled to act civilly to those they deemed inferior to themselves by hiding their contempt. The envious, for their part equally restrained by fear of violence and even more by the absence of overt contempt against their persons, were quieted. Any desire they experienced to harm those of whom they were envious must have been thereby diluted, and in the best cases, altogether eliminated. A kind of primitive commitment to civility prevented men from being mutually corrupted by the vices of vanity and envy, which would have led them to destroy one-another. Tribal society was consequently not inherently unstable, or self-destructive, but fully functional. It was, in Rousseau’s own words, “the least subject to revolutions.” This point is decisive against Horowitz’s reading of the *Discourse on Inequality* teleologically, or Shklar’s contention that “the desire for inequality and competition…suffice to make the Golden Age unstable.” Clearly they do not suffice for the competitive drives that are born with *amour-propre* are quieted by the egalitarian distribution of

\(^{234}\) *Spirit of the Laws*, XIX.16, 317 (*my emphasis*)
power among individuals. To argue along with Shklar that “it was inevitable that the spirit of inequality would destroy the Golden Age” is to ignore an important part of Rousseau argument: the change from the original state of nature to that of political society was accidental. It was not driven by natural or historical necessity, for if it had been then Rousseau’s argument that inequality is unnatural and political power artificial would be untenable. It is not surprising that he judges this stage to have been “the best for man.” (ibid, II, 167). Human beings were social yet protected from the kind of conflict that would later serve as the foundation of political authority. They lived “free, healthy, good, and happy as far as they could by their Nature be.” (ibid).

Taking note of this judgement invites certain reflections on Rousseau’s concept of society. First, it is clear that human society arises on its own and is not due either to self-interest or human decision. Men are not socialized by some human or divine authority but become social due to certain accidental occurrences that awaken latent social passions and abilities. Secondly, the concept of society is broader than that of civil (or political) society for Rousseau. One cannot read his political theory in the same way that one would read that of Hobbes, for according to the latter there can be no society without government. In Rousseau’s case, not only can society exist without government but the best society is such precisely because it excludes the need for government. This despite the fact that those who live in tribal society are fully human, i.e. just as prone to vanity, envy, and other destructive moral passions as men who live in political

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235 Shklar, *Men and Citizens*, 48

236 Kateb’s claim, “Rousseau begins where Hobbes begins,” suggests that everything preceding Rousseau’s account of the war that founds political society is irrelevant for his political theory. “Aspects of Rousseau’s Thought.” 5
society. It is surprising that many commentators fail to take this into account when they argue that the *legislateur*’s role is to socialize human beings in the sense of transforming naturally independent and self-interested men with no concept of duty into civic men whose life is devoted to duty. Political men are not only fully social but in fact caught in a destructive cycle of anti-sociality, which cannot be understood to mean the same thing as asociality. When the *legislateur* ‘socializes’ them he is clearly not attempting to transform naturally independent man into social man, something that has already been accomplished by history and must therefore be taken as a given, but rather to restore man’s corrupted sociability.

### The Breakdown of Society

In contrast to tribal society, civil society is the most subject to revolutions because driven by an inherently self-destructive necessity. Of all the stages in man’s history, whether the original state of independence or the tribal state, civil society is the least stable. It is occasioned by the genesis

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237 Shklar is incorrect to argue, therefore, that “the spirit of competition arises before morality, [and so] man’s moral development is thwarted from its very beginning.” *Men and Citizens*, 48. The spirit of competition arises simultaneously with morality. Since it is the idea of merit that occasions man’s first moral idea, the idea of *ownership*, or *right* (founded in the idea of personhood). The kind of competition that ends in universal enmity already presupposes the moral notion of *injury*, as distinct from harm. Otherwise, it would not exist, just as it is clear that in the original state of amorality there is no universal enmity. Cohen emphasizes, in contrast, that the men assumed by the *Social Contract* already possess some notions of justice. *A Free Community*, 25

238 For this reason I agree with Ellenburg that the *Discourse on Inequality* “is not...an individualist work.” *Rousseau’s Political Philosophy*, 56. To view it as such would be to ignore the second part entirely. Kateb helpfully notes that the tendency to read it as an individualist work is due to Rousseau’s indictment of the social state in favour of the original state of innocence. “Aspects of Rousseau’s Thought,” 5. While this is undeniable, one ought to emphasize two things in response. First, original man can hardly be called an individual in any genuine sense. The individual is usually invoked in contrast with society, in matters of duties and rights in society, or in contrast to the conformism favored by certain types of society. None of these contexts apply to original man. Secondly, in the *Discourse on Inequality* Rousseau indicts the condition of political man, i.e. man living under government (whether bourgeois or citizen), not social man as such.

239 Lest it be objected that there is no mention of the *legislateur* in the *Discourse on Inequality*, one ought to consider Lycurgus, who is presented as a model legislator both in this work and in the *Social Contract*. 
of “a new kind of right,” that is, the right to landed property. The second part of the Discourse on Inequality in fact begins with the claim that “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.” (DOI, II, 161). This is the essence of the fraudulent social contract. One will note that even in his defense of the Discourse on the Arts and Sciences, so little concerned with the issue of society’s origin, Rousseau writes similarly:

Before those dreadful words thine and mine were invented; before there was the cruel and brutal species of men called masters, and that other knavish and lying species of men called slaves;...before mutual dependence had forced all of them to become deceitful, jealous, and treacherous; I should like to have it explained to me wherein those vices, those crimes with which they are so insistently being blamed, could have consisted.240

His argument that these three phenomena, namely mutual dependence, mastery and slavery, and claims to property, go together thus appears to have originated much earlier than his quest to locate the origins of society. It is only in the Discourse on Inequality, however, that Rousseau fully explores the relationship between these three phenomena, and their pernicious effect on sociability and freedom.

Landed property is based, Rousseau explains, not merely on a new right but on a new kind of right. It was of a new kind because it was based on express agreement or consent, not on

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fact. Until this point in man’s history there had not existed a distinction between possessions and property, and so no real right of property. A man’s possessions were his only until another attempted to take them. In such a scenario the possessor could either fight or flee, but he had no concept of a right to his own possessions, and neither did his opponent. Under such circumstances one could not speak of property for the latter suggests that the possessor has a right to his possession even if he cannot defend it. To put it differently, a right cannot derive from one’s victory in a struggle. For, if victory conferred a right upon the victor, it would confer an equally legitimate right on whomever vanquished the victor, whether this be another individual or the one who previously lost the fight. A right, therefore, by definition excludes the relevance of such struggles, the results of which are merely facts with no normative significance.

In the original state of nature, where men’s relations were structured by pure instrumental rationality, there could be no sense of right but only of fact. A man possessed an object until he no longer did. The real right of property, then, must have originated in land, for only in this scenario would men seek to retain possessions that they could not defend on their own.

Continuous possession of land originated with cultivation. Exchange, made possible by the division between agriculturalists and metalworkers, encouraged surplus agricultural production and thus expansion of landed possessions. Since surplus production requires the help of others, a man with claims to land finds himself under a growing necessity to bind others to his

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241 This is, essentially, Rousseau’s argument against the reasonableness of a ‘right of the stronger’ in the Social Contract: “The stronger is never strong enough to be forever master, unless he transforms his force into right, and obedience into duty.” (SC, I.3, 43). If the stronger were undisputedly so, there would be no need for the notion of right for fact itself would suffice: “this word ‘right’ adds nothing to force.” (ibid, 44). If the stronger were not undisputedly so, then his victory in a fight surely could not confer on him a right without conferring it equally on whomever might defeat him. A right of the stronger in this scenario would mean nothing more than saying ‘this individual won in this particular fight,’ i.e. a statement of fact. Once again, therefore, brute fact cannot confer right, and right cannot be reduced to mere fact.
projects, or to “interest them in his fate and to make them really or apparently find their own profit in working for his.” (DOI, II, 170). Natural inequalities of talent, moreover, made it possible for men who worked equally hard to reap vastly different rewards from their work. Rousseau is not as interested in the details of this process as he is in its effects on men’s relations. The most crucial consequence is that inequalities of fortune, having become so noticeable, exacerbated the pernicious effects of vanity and envy which until then had been kept in check by duties of civility. The more unequal men were the more so they became, driven by an all-consuming ambition “to raise [their] relative fortunes less out of genuine need than in order to place [themselves] above others.” (ibid, 171). What drove the process forward, in other words, was not really the fact that men had suddenly become dependent on one-another for the satisfaction of mutual needs, or for their common survival. There is nothing pernicious about such dependence as long as it is orderly. As Rousseau explains when discussing the original division of labour, “things…could have remained equal if talents had been equal and if, for example, the consumption of iron and the consumption of foods had been exactly balanced; but this proportion, which nothing maintained, was soon upset.” (ibid, 160-170). Of course this was inevitable, but the crucial catalyst of the expanding gulf in men’s fortunes was not natural talent as such but ambition driven by a desire for power. For it is this kind of ambition, after all, that

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242 Discourse on Inequality, p.170. Surplus production and consequently excessive accumulation of landed possessions are at the heart of the fraudulent social contract for Rousseau. While he accepts Locke’s point that a man’s labour alone gives him a right to the land, he insists against Locke that such a right is only temporary. The man has no rights to the land itself, in fact, if this right is understood to mean ‘the unconditional exclusion of all other human beings from its use or occupancy.’ He has a right only to its produce, the only thing for which his labour is responsible. His right to the land is merely a consequence of his right to its produce, and thus extends only “until the harvest.” (ibid, 169). Moreover, this right extends no further than his own individual subsistence requires, and to accumulate more he needs “the express and unanimous consent of Humankind.” (ibid, 172).
drives talent out of its original indolence.243 “The rich, had scarcely become acquainted with the pleasure of dominating,” Rousseau explains further, “than they disdained all other pleasures, and using their old Slaves to subject new ones, they thought only of subjugating and enslaving their neighbours.” (ibid, 171). Those left behind, “grown poor without having lost anything,” faced only two choices, servitude or plunder, and in this way the “breakdown of equality was followed by the most frightful disorder.” (ibid). At this point those who, “lacking valid reasons to justify, and sufficient strength to defend,” their possessions, proposed a contract. The contract, though justified in similar terms as any legitimate one, was in fact fraudulent for under the language of “mutual duties” it preserved the original inequality of possessions. (ibid, 173). In this way arose the real right of property. Though possessors could not defend their fortunes on their own their fellows agreed not to touch them. Possessions became property, in other words, when they were founded not on fact, which was always disputable by struggle, but on consent.244 Agreement was the foundation of right, and only in this way could political society come into being.

243 Viroli notes Rousseau’s essentially moralist point that “material self-interest and the pursuit of wealth are not the dominant passions [of man] - there is something yet stronger which uses material goods and wealth as a means to an end…‘the love of honour,’” or the desire for superiority. Rousseau and the Well-Ordered Society, 90

244 Shklar’s description of this part is enlightening and generally accurate. However, her argument that due to the fraudulent social contract “the weak are enfeebled, [and] the strong gain new powers” misses Rousseau’s most important insight. Men and Citizens, 51. It is only the social contract that transforms the rich into the strong and the poor into the weak. Before the social contract, the rich may have more possessions but these are not secure from the raids of the poor. The pernicious effects of the social contract are such as to transform the shifting outcomes of struggles, where the rich may grow poor and the poor grow rich, into consolidated inequalities of power. The right of property is founded not on the strength of the rich but on the consent of the poor. Consequently, the categories of strong and weak are the effects of political power; they do not precede its foundation. Viroli also misses the point that the distinction between strong and weak is an effect of political power, and thus argues against interpretations of the Discourse on Inequality which stress that “inequality amongst men is a product of the institution of private property.” Rousseau and the Well-Ordered Society, 73; see also 111, 112. But this reading, which I believe to be correct, need not deny Viroli’s objection that natural inequalities are already present in the tribal stage. The point is that the institutionalization of private property accomplished by the social contract creates permanent inequalities of power because it creates a division between rulers and ruled. This did not exist in the tribal stage, and it is inequalities of power, not natural inequalities as such, that are of primary interest for Rousseau’s political theory.
It is commonplace to observe that Rousseau’s objection to contemporaries who regarded political society as inevitable was to argue that sociability is not natural to man. In other words, the inconveniences of the state of nature, which made the transition to political society almost inevitable, do not exist when human beings are isolated from one-another. For, these inconveniences arise only with the development of sociability. But if this had been all that Rousseau had to say against the natural law school, Hobbes, and Locke, it would be missing the point. All these thinkers took social man as their starting point, and derived political authority from there. This is the problem, in other words, with assuming that in the case of Rousseau the state of nature is the same as the original condition. In so doing, one merely adds an irrelevant prehistory to the same story told by the natural law school. For if the genesis of sociability inevitably leads to the kind of social conflict that threatens human life, then Rousseau’s premises point in the same direction - towards the incontestable advantages of political authority. This is, in a nutshell, the problem with the ‘half-socialization’ thesis, which assumes that submission to law perfects what history had failed to accomplish - proper social existence. What Rousseau did, however, was more than this. He argued that social existence needn’t degenerate into a war of all against all. Against Hobbes’ argument that the desire for reputation must have resulted in a state of universal war, he suggested that if power were distributed more or less equally, this wouldn’t

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245 See e.g. Derathé: “For Rousseau, the isolation in which man finds himself in the state of nature prevents him from entering in conflict with his fellows. In order for the state of war to appear, and for civil societies to be created so as to proscribe it, men must “approach” one-another. They do not become enemies until after having become sociable.” Rousseau et la science politique, 176; also Cullen: “the natural condition antedates society altogether,” and “the natural state is nonhuman.” Freedom in Rousseau, 33, 36. Cullen’s claim that the tribal stage is a philosophically illicit and merely rhetorical aspect of Rousseau’s argument is unpersuasive, for without it the Discourse on Inequality would lose its relevance for political life. It would have ended with Part I.
happen. If, as Hobbes insists, by nature all men have an equal capacity to harm each-other then vainglory cannot wreak so much havoc as to place them in a situation of universal war. The worst excesses of *amour-propre* could be held in check by a kind of primitive civility, which would moderate the mistrust that Hobbes attributes to the state of nature, and prevent it from deteriorating into a state of war. On the other hand, against Locke’s argument that the problem with the state of nature is human irrationality, or the refusal of the indolent to follow the implications of natural law, Rousseau sides with Hobbes’ emphasis on the destructive effects of the desire for “reputation.”

Locke had argued that industriousness was stimulated by the invention of money. Human beings came to want more than they needed because the possibility of exchange made it profitable for them to trade their surplus with others. “As differences in how hard men worked were apt to make differences in how much they owned, so this invention of money gave them the opportunity to continue and enlarge their possessions.” Rousseau, on the other hand, emphasizes that what may have originated as human industriousness must soon have stimulated the worst excesses of *amour-propre*. The process that Locke characterizes as driven by the socially advantageous desire for mutual advantage must in fact have been driven by a corrupting desire for reputation and dominion, he suggests.

Insofar as Rousseau regards all *authority* to originate in human agreement and not nature, therefore, he belongs to the tradition of social contract theory. But if so, what is the relevance of all this for his theory of freedom? Might one not begin, as many commentators have, from the

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246 *Leviathan*, XIII, 76

247 Locke, “Second Treatise,” V, 294, 301
usual distinction between the state of nature and the commonwealth, so as to reach similar conclusions?

**Freedom and Sociability**

Rousseau’s account of the breakdown of society is vital for understanding both his theory of freedom and its relevance to his political theory as laid out in the *Social Contract*. Here I will focus specifically on the relationship between freedom and sociability, postponing the second question to the next chapter.

The toxic combination produced by mutual dependence and claims to property results in the degeneration of human relations into master-slave relations. One of the most consistent aspects of Rousseau’s social thought is the observation that such relations are structured by the intercourse of two moral passions: vanity and envy (with contempt and humiliation as their photographic negatives). At the heart of master-slave relations, in other words, is being waged a continuous struggle between identical men. Driven by envy and humiliation slaves who hate their masters wish only to be masters - or rather, they hate their masters *only because* they wish to be masters. For their part, vain and contemptuous masters are no more than slaves to their relative standing with respect to those below them, as well as anyone above them - i.e. to the envy of others. Outside of such relations of domination and subjection they are nothing to themselves or others. When men are trapped in master-slave relations, whether their lives be
violent or peaceful, they are essentially enemies to their kind.\textsuperscript{248} The Hobbesian state of war is indeed the foundation upon which authority rests. The crucial difference is, however, that for Rousseau this is not man’s natural state.\textsuperscript{249} Rather, it represents the complete breakdown of human sociability, a condition that had arisen freely and spontaneously (i.e. not anti-naturally, or against nature). Cooperating with one-another, bound by mutual interests and similar ambitions, men’s hearts are nonetheless filled with a “black inclination to harm their fellows,…a secret jealousy…[and] desire to profit at another’s expense.” (\textit{DOI}, II, 171). Conflicts of this kind, driven by jealousy or wounded pride, had of course always been possible in the tribal stage. But the essential difference between it and the civil stage is that in the latter men’s relations are necessarily conflictual. In other words, there is a structural self-destructive tendency in nascent civil society that one does not find in the tribal stage. This tendency cannot be attributed to any singular factor, whether mutual dependence, the division of labour, natural inequalities of talent, or even \textit{amour-propre}, though many commentators have sought to do just that. It is their combination that traps mankind in cooperative relations driven by a secret enmity. In other words, the significance of any of these factors becomes apparent only if considered in relation to the rest. \textit{None} of them is harmful on its own account, and their combination in this specific form is most certainly, according to Rousseau, an \textit{accident}. There was no natural necessity for human

\textsuperscript{248} As Ellenburg puts it: “Contemporary life in common \textit{is legalized warfare}. The few who are wealthy and powerful and the many who are poor and weak are fellow prisoners.” \textit{Rousseau’s Political Philosophy}, 81; \textit{my emphasis}. Viroli’s point that “a society without political authority cannot be anything other than a multiplicity of relationships without form or pattern,” is not an accurate description of this phase. \textit{Rousseau and the Well-Ordered Society}, 111. For it is clear from Rousseau’s presentation that dysfunctional society has a very specific pattern and a very specific telos: it is characterized by master-slave relationships, and its end-point is despotism. As Viroli notes, “the \textit{Discourse on Inequality}…concludes by referring to the master-slave relationship,” by which he means despotic rule. \textit{Ibid}, 72. But this moment is not so much the \textit{origin} of the master-slave relationship as its institutionalization. In other words, from the very beginning of social breakdown relations among men took this form, and for this reason civil society was driven by an inherent \textit{necessity} towards despotism.

\textsuperscript{249} See Ellenburg, \textit{Rousseau’s Political Philosophy}, 79 for a similar view.
sociability to develop as it did. This is the same thing as saying, against Horowitz and others who read the Second Discourse teleologically, that there was never any necessity for each of the stages in man’s history to turn into the next.

The loss of freedom is the flip-side of this breakdown. No longer sociable, men are also no longer free. “Man, who had previously been free and independent,” Rousseau argues, “is now so to speak subjugated…to those of his kind, whose slave he in a sense becomes even by becoming their master.” (DOI, II, 170). Driven by the desire for power over their fellows, whether masters or slaves, human beings cease to be free. Rousseau’s concept of freedom, then, and the one that has most relevance for his political thought is inherently opposed to the desire for overpowering others. In this sense one can say that natural independence is genuine freedom for original man has no desire to dominate other men. But it cannot be reduced to such a concept of freedom insofar as natural independence is an all-encompassing condition that excludes the very notion of relations to other men. This version of freedom, on the other hand, is inherently related to man’s sociability. Men are sociable as they are free, and enemies of their kind when they are not. Freedom, in other words, requires that one not be subjected to a master, but equally that one not be (or seek to be) a master. It is equivalent to the absence of human relations driven by a desire for power. Once such a desire steals in the hearts of men freedom is annihilated.

Conclusion

This necessary relationship between sociability and freedom explains why the latter holds such a crucial place in Rousseau’s political theory. The problem of social breakdown cannot be resolved by attempting to restrain the external expression of such secret desires by
force. For this solution, usually the first to occur to all concerned by the rampant violence of the civil state, is merely another expression of the self-destructive necessity inherent in master-slave relations. Each attempt to suppress, whether by deception or force, will only drive the process forward by breeding envy and hatred. For “Laws, in general less strong than the passions, contain men without changing them,” Rousseau emphasizes. (ibid, 182). The only way to restore man’s sociability is by eliminating entirely this logic of mastery and slavery, and the secret struggle continuously being waged among men ruled by the desire for power. The aim of politics, or, one should say, of the only politics Rousseau considers worthy of the name, is to rebuild social existence. Political authority cannot be eliminated from human life, things having progressed as far as they have, but it can be animated by the only kind of purpose that makes it useful and legitimate - that of restoring sociability and freedom to human beings.
CHAPTER 4: Living Communities and the Democratic Spirit of Rousseau’s Political Theory

Introduction

The ‘half-socialization thesis’ described so far leads to the conclusion that for Rousseau the task of politics is to socialize human beings. This need arises from the fact that mankind’s development in history has not fully succeeded in eradicating man’s solipsism, that legacy of the original state. Outside of the state, individuals are prone to act like the renegade hunter in Rousseau’s example of the stag-hunt: if a hare happens to pass by, they abandon their fellows in its pursuit. In political society, on the other hand, they are ruled by the general will, which looks to their common good and requires that individuals overcome their self-interest. It has often been remarked that Rousseau criticized political theorists who attempted to found society on self-interest for this very reason, arguing that

among the motives which lead men to unite with one another by voluntary ties there is nothing which relates to the point of union; that far from seeking a goal of common felicity from which each one might derive his own, one man’s happiness makes for another’s misery;...instead of all tending towards the general good, they all come together only because they are all moving away from it. (GM, I.2, 154; my emphasis).
Self-interest cannot be relied upon to create a just society, and so Rousseau emphasized instead the role of patriotism and doing one’s duty. Consequently, his models were ancient societies like Rome and Sparta where citizens were socialized to love the laws and to put the common good ahead of their own. Rousseau’s preference for these republics is, therefore, inherently related to a more general issue: the relation between self-interest and the common good, or freedom and duty. Though there may be a moral potential in man even when he is independent of others, this potential lies dormant and is realized only under laws and government. Opinions vary regarding the ‘transformation’ that takes place when human beings move from the state of nature into civil society. Some emphasize that it is advantageous, for men exchange natural freedom for a higher form, moral freedom or autonomy. Others claim that it is a form of violence against nature, for it requires that the individual should forget himself as an individual and become absorbed in the collective life of the state.

Those who emphasize autonomy as the goal have an especially difficult time reconciling their interpretations with Rousseau’s preference for ancient societies like Sparta. In the words of Patrick Riley, “[Rousseau’s] perfect, unified ancient models...being founded on a morality of the common good, had no private wills to reconcile to the common interest...no need of consent, no need of contract.” If one takes Rousseau’s contractarianism seriously - the idea that all legitimate authority is founded on consent, - it becomes difficult to understand why he should have taken collectivist Sparta as his model. To overcome this problem, such interpreters argue...

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250 E.g., Stanley Hoffman claims that “there is...a break, a complete discontinuity, between the state of nature and the ideal society...Man, as we understand him, the moral being distinct from the human animal of the Discourse on Inequality, appears at the same time as this ideal state.” See “The Mirage of the General Will,” 116-117. As the last chapter noted, this ignores most of the hypothetical history recounted in the Discourse on Inequality, and is characteristic of the tendency to fall back upon a static contrast between the state of nature and the political state.

251 Riley, “A Possible Explanation,” 210
either that this part of his thought is not crucial, or that it represents a “perhaps unconscious, and certainly unsystematic attempt to fuse two modes of political thought.”252 The other camp, which regards the transformation of asocial man into civic man as a form of violence against nature, has less trouble incorporating Rousseau’s preference for the ancient models into its interpretation. It views these republics’ emphasis on civic virtue as a form of social engineering. Thereby follows an almost unanimous agreement among readers of Rousseau regarding the character of the ancient republics. However one reads his politics, one takes it for granted that Sparta and Rome were oppressive societies where individuality and natural self-regard were sacrificed on the altar of civic duty. As indicated, this agreement is founded on the more basic assumption that the state’s primary role is to complete the imperfect work of nature and history.

As the last chapter argued, however, according to the Discourse on Inequality the problem is not really man’s incomplete socialization, but his corruption. It is not the case that those who enter civil society do not recognize, or only dimly recognize, the legitimacy of demands advanced by others. They are not exactly Rousseau’s renegade hunters. As he explains, those who must have proposed the social contract, “realized well enough that [their usurpations] were only based on a precarious and abusive right.” (DOI, II, 172; my emphasis). The strife one finds at the dawn of civil society is caused by “mutual jealousies,” “the common hope of plunder,” “too much greed and ambition,” and other social vices. (ibid, 172-173). Such men are not morally innocent or asocial. The Discourse on Inequality is a story of social disintegration, not of incomplete progress towards moral enlightenment. As the peace of tribal society gives way to universal strife, to relations driven exclusively by the intercourse of vanity and envy,

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252 Ibid. Also Vaughan, Political Writings, 3; Cohen, A Free Community of Equals, 22; and Christopher Bertram, Routledge Philosophy Guidebook, 145-146.
genuine social life is lost along with freedom. Among the series of transformations that mankind undergoes in the *Discourse on Inequality*, only one is driven by *necessity*: the move from the establishment of laws to the establishment of despotism.

Recognizing that man’s original independence *as such* is not the culprit is related to another observation of even greater importance for understanding Rousseau’s political thought. Self-interest *as such* is also not the culprit. Most interpreters do not make a distinction between self-interest and selfishness because they subscribe to the ‘half-socialization’ thesis outlined above. If, because he is originally free, man is naturally prone to pursue his interest under all circumstances, in society his original innocence becomes indistinguishable from selfishness. Consequently, it is reasonable to think that the perfect state should require of its citizens to transcend their self-interest (or selfishness) in the service of duty - i.e. to eliminate natural independence and individuality in the service of justice. Once it is recognized, however, that the real problem is human corruption, the character of Rousseau’s political thought begins to change, and especially the role played by the ancient republics.

This chapter will argue that Rousseau’s preference for these republics is not a dispensable eccentricity, but points to the heart of his political theory - its stance against representative sovereignty and will-formation defended most clearly by Hobbes. Rousseau’s ideal republic is not authoritarian, and its purpose is not to transform individuals into automata with identical commitments to the common good. Civic virtue implies a genuine ethical choice on the part of each individual in the community, not the wholesale elimination of self-interest, individuality, or particularity. While there must be programs of education that inspire love of duty and country in the citizens, such as existed in Sparta, their purpose is not to *engineer* identical individuals.
Rather, it is to make available to all members the experience of the ethical life and to inspire in them a genuine admiration for it. Virtue is the goal of civic education. But each man’s commitment to it remains a choice that only he, as a particular man with a distinct identity, can make. Education, in other words, does not seek to eliminate self-interest and particularity. On the contrary, it seeks to make entirely particular individuals capable of choosing justice over vice. Far from requiring of individuals that they transcend their self-interest and particular points of view, the general will requires exactly the opposite. Individuals must consult only their own interests and opinions if the majority’s vote will truly express the general will. The purpose of civic virtue is not to guard against self-interest but against social vice, or, in a word, against despotism.

In the end, what sustains civic virtue and obedience to law is not the kind of education undertaken by nationalist or totalitarian governments, but genuine civic participation in the highest political activity: legislation. The essence of Rousseau’s ideal republic is the legislative assembly in which each citizen must take part directly, i.e. in his own name. Once citizens believe that they are no longer responsible for the laws under which they live, political activity changes into administrative activity, and the highest question becomes: how does one govern? It is then that citizens are merely subjects, law nothing but force, society is torn by anti-social passions, and men are trapped in relations of domination and subjection. It is also then that individuals become conformist, going along with opinions that no longer matter, while simultaneously seeking to maximize their private advantage whenever possible.

Conformism goes hand-in-hand with the kind of instrumental relation to the rest of society of which Rousseau accuses the modern bourgeois. Both are signs that the state, which is
nothing other than a relation among individuals equally committed to justice, has died. To put it differently, both are signs that the legislative assembly has been silenced and there is no longer political right. The community becomes merely an aggregate of corrupt individuals, sometimes described as individualistic for the profit-maximizing mindset that defines them, fated to fall into either despotism or anarchy.\textsuperscript{253} Such societies are the ones most prone to populist passions and tyrannical men. Their corruption can only be contained by punishment, but their members can never be educated by state sponsored propaganda into obeying a law that is no longer their own. Because their relation to the law remains purely instrumental, as soon as subjects believe it possible to disobey, they do so. Rousseau’s thought suggests that institutional corruption and frequent punishments are not signs of ineffective government, but of a deeper problem: social disintegration and political death. In a nutshell, his stance against representation, his admiration for civic virtue, and his love of ancient liberty are all aspects of a single idea: the state is the living legislative assembly. It is nothing more or less than this. According to him, administrative theories and elaborate institutional proposals begin where this truth ends.

Identifying the state with the living, acting, legislative assembly, leads to another conclusion of some significance especially for modern readers. It is generally agreed that if Rousseau was not the father of modern nationalism, his thought was at least a stepping-stone in that direction. Yet, the essence of Rousseau’s concept of legitimacy is consent. “Yesterday’s law

\textsuperscript{253} There is nothing surprising, therefore, in Rousseau’s characterization of the bourgeois as simultaneously conformist and individualistic. See Marc F. Plattner, \textit{Rousseau’s State of Nature}. 4. Steven Affeldt notes that Rousseau objected not to self-interest but to conformity, which makes social life indistinguishable from “the life of a herd…Rousseau is not concerned to suppress or eliminate private interest, but exactly to recover [it],” he argues in “The Force of Freedom: Rousseau on Forcing to be Free,” \textit{Political Theory} 27 (1999): 310. However, Affeldt does not sufficiently acknowledge Rousseau’s forceful objections to self-interested, or individualistic, behaviour, which have led most commentators to read Rousseau as a critic of self-interest. As will be explained below, both sides are right, for one ought to distinguish between two kinds of self-interest.
does not obligate today,” he argues. (SC, III.11, 109). A common history is certainly, as it must be, a background condition of any political community. But it can never act as a normative foundation for that state and its government. A community bound together by history, ethnicity, language, or religion is not, on these grounds alone, a genuine community. A people or state is essentially a moral relationship among individuals. It can only manifest itself as such in the form of a legislative assembly where today’s citizens, not their ancestors, take active part. Not only is Rousseau’s thought not moving in the direction of modern nationalism, therefore, it is actually moving in the opposite direction. It suggests that nationalism, as well as modern totalitarianism and liberal democracy, all have a common root in the Hobbesian idea of representative sovereignty, the essence of the modern state. In this sense Rousseau occupies a distinctive place in the history of western political thought. He was not simply a republican critic of authoritarian governments. His vision went further, for he believed that the entire enterprise of the modern state, whether liberal, democratic, totalitarian, or nationalist, was harmful to political right.

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254 Robin Douglass notes that Rousseau objected to modern representation as a matter of principle. But because he argues that, according to Rousseau, representation violates only the collective freedom of the people, Douglass concludes that “modern states…may not necessarily violate the liberty of individual subjects or citizens,” in “Rousseau’s Critique of Representative Sovereignty: Principled or Pragmatic?” American Journal of Political Science 57 (2013): 745. I agree with Douglass against those who argue that Rousseau’s stance against representation was merely pragmatic, but push his position further. For Rousseau, there is no distinction between the people’s collective freedom and that of individual citizens. His primary concern was the latter, and the former only by extension.
Before proceeding to these conclusions it is useful to consider in some detail the interpretive impasse to which one is led by the half-socialization thesis. Moving beyond this impasse is crucial for clarifying the nature of the general will, of political obligation, and the character of Rousseau’s contractarianism. The clearest articulation of this impasse has been put forward by Patrick Riley.

‘Voluntarism’ or ‘Common Good Morality’?

In Riley’s words, Rousseau “wanted voluntarism to legitimize what he conceived to be the unity and cohesiveness, the generality, of the ancient polity, particularly of Sparta and republican Rome.” The normative foundation of the commonwealth according to Rousseau is the general will. It is the source of all laws, and the real ground of political obligation. Obeying the general will is not a form of subjection. The law conforms to the wishes of citizens because it is based on their consent. This is the ‘voluntarist’ strain in Rousseau’s thought. At the same time, the general will is not the same thing as an aggregate of individual preferences. Its supremacy is not identical with that of simple majority-rule. If this were the case, it would be difficult to view the general will as a source of legitimacy. For why should the wishes of some be thought more just than those of others simply because of numbers? The general will is supreme because it is the only will in the community which seeks the common good. Since its dictates are in the interest of all citizens, they are legitimately binding. According to Riley, Rousseau’s general will is a philosophically confused attempt to reconcile ‘voluntarism’ with a ‘common good morality.’ His

255 Riley, “A Possible Explanation,” 202
political thought contains an irreconcilable tension between two standards of legitimacy: the individual and the community, inclination and duty. For it is not clear whether the general will is normatively binding because it is the actual will of individuals, or because it looks to the common good.

What is clear, however, is that the general will may not correspond to the actual will of individuals. Choosing the common good over one’s own interest when voting, essential for the proper expression of the general will, doesn’t simply happen. Human beings must be taught to view the common good as normatively superior to their own individual interests. This is why Rousseau looked to Sparta and Rome. Ancient citizens lived in “highly unified and collective” societies that were “dependent on a morality of the common good quite foreign to any insistence on individual will,” Riley argues. The kind of “perfect socialization” accomplished by ancient societies that taught their citizens to prefer duty over inclination is Rousseau’s vision of “political perfection.” This is the heart of the paradox. The general will, the act of collectively willing the common interest, is treated as, simultaneously, the cause and the effect of political perfection. It is the cause insofar as its makes possible a just society, where the common good takes precedence. It is the effect insofar as it is only possible in a just society where all individuals choose the common good over their own interests. But if this choice requires “a complete transformation of...private interests” so that “the individual will wants only what the common good requires,” what purpose does consent serve? Does it really legitimize anything when the content of the will has already been fully determined by the elimination of individual interest?

256 ibid, 208.
257 ibid, 208-209.
258 ibid, 212; 210-11
The problem raised by Riley follows naturally from the ‘half-socialization’ thesis, to which he subscribes. If improperly socialized human beings, whose natural tendency is selfishness, must be socialized to have no other source of motivation than the common interest, then how voluntarist is Rousseau’s political theory? Is the ‘common good morality’ not the only standard of legitimacy? Yet, as Riley emphasizes, “if either an ideal of social perfection, such as Sparta, or a notion of conventional society created by will and artifice were enough for Rousseau, he would never have insisted on a combination of will and perfect socialization.”  

In other words, if all Rousseau wished to argue was that the common good is the only normative basis of just laws, why would he insist on the supremacy of the general will, and the legitimizing role of consent? Why didn’t he simply adopt Plato’s view that those who know the good should rule the rest? It is his attempt to synthesize modern ‘voluntarism’ with ancient ‘common good morality’ that makes Rousseau “the most utopian of all great political theorists,” according to Riley.

Joshua Cohen has provided the most detailed direct response to this argument. Rousseau’s ideal republic, he argues, does not require the kind of civic unity that one finds in Plato’s Republic. Contrary to Plato who believed that the best society is one where all men laugh and cry at the same things, Rousseau maintains that political societies are made up of “private persons...whose life and freedom are naturally independent of [them].” (SC, II.4, 61). He does not demand that this fact be overcome by socialization, or that citizens should be educated to believe they have no interests, desires, or existence apart from the public. “Patriotism must be

259 ibid, 211-212

260 ibid

261 Quoted by Cohen in A Free Community of Equals, 35.
their dominant passion,” Cohen insists, “not their sole passion.” He rejects Riley’s assumption that a ‘common good morality’ requires of citizens that they should have no private interests, feelings, or opinions. While Plato sought “civic unity through integration,” or “through a lack of differentiation of reasons of different kinds,” Rousseau advocated “civic unity through ordering,” or through “an ordering of reasons of different kinds,” with those conforming to the common good considered as most important in public life. The source of legitimacy, Cohen implies, is the social contract, and Rousseau is ultimately a voluntarist. The fact that certain choices conform to the requirements of the common good provides sufficient grounds for considering them choice-worthy. For men agree to join society precisely because they expect that their interests in life, liberty, and property will be protected by the common power. This common power can only exist if individual wills conform to the common interest. It follows that in public deliberation reasons of the common good must take precedence.

While this argument explains why the common good is normatively superior to individual interests, it does not preclude the possibility that individuals will choose the common good instrumentally, i.e. only when it serves their own private interests. Cohen recognizes this when he concedes that if human beings were motivated purely by self-love they would not always give primacy to the common good when voting. But, he argues, those who would make the social contract are not motivated only by self-interest. They are also free, and “Rousseau supposes that a person who is self-consciously free desires to act in ways that express that freedom.” Such a person does not choose the common interest instrumentally, motivated

262 ibid, 38
263 ibid, 56
264 ibid, 94
purely by self-interested calculations. He also wishes to express his freedom by affirming that
this choice conforms to his own notion of what is right. The general will, or choosing the
common interest, is “what autonomy consists in.”²⁶⁵ Riley may thus have overstated the
importance of patriotism for motivating conformity with the common good.

But this argument is unsatisfactory for several reasons. First, it is not clear that those who
make the social contract are self-consciously free in this sense. They are certainly not so in the
*Discourse on Inequality*, for example. Secondly, even granting the possibility that human beings
may have a desire to express their freedom, it is not clear that this desire would automatically
neutralize the demands of self-love. In fact, Rousseau appears to suggest the opposite by
constantly admonishing human beings for their unwillingness to bear the demands of the free
life, and for their blindness regarding its value. Cohen’s self-consciously free contractors appear
to be ideal types, not real men. This brings the conversation back to Riley’s argument. Riley had
asked how the general will might exist without socializing human beings to believe in the
supremacy of the common good. Cohen’s answer is that the normative supremacy of the
common good would be apparent to those who are self-consciously free. But since this cannot be
taken for granted, one has to fall back on Rousseau’s argument for civic education and
patriotism. Moreover, even if one were to take the existence of self-conscious freedom for
granted, it is not clear why self-interest would give way to its demands. Cohen has not so much
resolved the paradox of the general will highlighted by Riley as merely postponed it.

The central issue in this discussion is the relationship between the particular and general
will. The general will looks to the common good while the particular will looks to the good of

²⁶⁵ ibid, 95
the individual person. Riley’s difficulty arises because he holds the universal assumption that the particular will is another name for man’s natural self-love, individuality, and particularity. This is a difficulty inherent in the ‘half-socialization’ thesis. The particular will, to put it simply, is understood as man’s natural desire to benefit himself under all circumstances. Cohen also shares this interpretation, and it is for this reason that he must postulate a distinct source of motivation, self-conscious freedom, as a counter-weight. But this raises a serious difficulty for understanding Rousseau. According to the Social Contract the ground of legitimacy is individual self-interest. The contract would be agreed to precisely because it is in each man’s interest. Rousseau explains, moreover, that the general will is equitable because when each man votes he consults his own interest. At the same time, the general will requires that men should vote as citizens, not as individuals. They should not follow the particular will but look only to the common good. If the particular will is identical with self-interest, then Rousseau’s theory of legitimacy is self-contradictory. Self-interest either is or is not the ground of legitimacy. The Social Contract relies on self-interest as a normative foundation, while Rousseau’s admiration for the ancient republics suggests its elimination.

This paradox arises because of a misunderstanding. The particular will is not the same thing as man’s natural self-regard. It is not a legacy of his incomplete socialization, but of his corruption. The man whose will is particular is not an insufficiently socialized man but an anti-social man. By granting this one begins to see that the more interesting question is not the one that interpreters usually raise and answer, namely ‘Can one reconcile the collectivist polis to Rousseau’s contractarianism?’ It is rather: ‘How does the polis embody and illuminate

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266 The following formulation by Hoffman is representative. Particular wills, he says, “are oriented toward natural independence, toward passions.” See his “Mirage of the General Will,” 119; my emphasis.
Rousseau’s contractarianism?’ Rousseau’s orientation towards the ancient republics is the substance of his political thought. Without a proper understanding of it, his normative principles are bound to appear incoherent or incomplete attempts to say the things that “Hobbes or Locke or Hume or Kant said better.”

What is the Particular Will?

Commentators tend to use the phrases ‘particular will’ and ‘inclination,’ ‘self-interest,’ or ‘selfishness’ interchangeably. They assume that when Rousseau speaks of the particular will in the Social Contract he has in mind the natural inclinations of man as inhabitant of an unchanging state of nature, inclinations that persist unaltered through all the transformations described in the Discourse on Inequality. It ought to be acknowledged that the source of this confusion is, to a large extent, Rousseau himself. In the Social Contract he writes as follows:

Each individual may, as a man, have a particular will that is contrary or dissimilar to the general will he has as a citizen; his individual interest may speak to him differently from the common interest; his naturally absolute and independent existence may make him regard that which he owes to the common cause as a gratuitous contribution, the loss of which will be less harmful to others than it is burdensome to him. (SC, I.7, 52-53).

Kateb, “Aspects of Rousseau’s Political Thought,” 18
Judging from this passage, it appears obvious that the particular will is the individual’s self-interest, and reasonable to assume that when Rousseau says “as a man” he is referring to natural man. In order to see that this is not so, it is useful to compare the scenario described here with the example of the stag-hunt in the *Discourse on Inequality*. In the latter case several independent men in the state of nature pursue a stag together. If one of them finds an advantageous opportunity to catch a hare, he abandons the others without hesitation. But the same is not true in the case of the citizen who contemplates the advantages of free-riding. Unlike the hunter, the citizen hesitates and wonders whether the harm done by his act will not be *outweighed* by the benefits he expects to acquire. The hunter did not engage in this calculation because he was independent of others, or pre-social. His fundamental orientation in the world was to fulfill his own needs by himself. The stag-hunt was not a situation of interdependent men, but only a momentary coincidence of several self-contained and independent aims. This is not the case with the citizen.

Further in the *Social Contract* Rousseau explains that “[the free-rider’s] share in harming the public seems nothing to him compared to the exclusive good he expects to appropriate. This particular good aside, [however] he wants the general good for his own interest as ardently as anyone else.”\(^{268}\) As Gildin has argued, “the fact that a particular will is concerned with its private interest does not mean that it is concerned with it to the exclusion of the public interest.”\(^{269}\) In fact, Gildin emphasizes, the general will can be relied upon to be equitable precisely because,

\(^{268}\) Ibid, 4.1. I depart from Gourevitch’s translation of *le bien général* as ‘public good’ here in order to reinforce my point that the public good is not a kind of independent interest, or category. Rousseau’s contrast between general and particular will is not the equivalent of the current contrast between public and private good, understood as two self-contained spheres of interest. See below “Two Aspects of the General Will.” *OC*, 438.

\(^{269}\) Gildin, *The Design of the Argument*, 54
when voting, each citizen is expected to follow his interest and veto such proposals as would burden him more than others: “The situation Rousseau assumes to obtain in the sovereign assembly is one where the rectitude of the general will is safeguarded from unjust partiality to the self-interest of any one citizen by the self-interest of all the others.” The common interest, the aim of the general will, and individual self-interest cannot be so easily separated as to form a polarity. For this reason it is unhelpful to speak of self-interest as a coherent and distinct source of motivation that can be understood in isolation from, and sometimes in contrast to, the common interest. This observation suffices to show why the particular will cannot be equated with self-interest. The particular will is defined precisely as the negation of the general will.

While the general will and self-interest are not mutually exclusive, the general will and the particular will are mutually exclusive. Rousseau makes this clear when he says that the particular will tends towards preferences while the general will tends towards equality. (SC, II.1, 57). The specific aim of the particular will is to eliminate equality, while that of the general will is to preserve equality. Rousseau is not always careful to distinguish these two terms in the way that I propose, and sometimes speaks of the particular will merely as the actual will of the individual. When used in this sense, the particular will may coincide with the general will or it may not. Its primary purpose is to distinguish the will of a particular person from that of the community as a whole - i.e. to clarify that the two may not coincide, for they are distinct. But when discussing

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270 ibid, 59. For a similar view see also John Plamenatz, “On le forcera d’être libre,”148. Gildin, however, still identifies the particular will with self-interest tout court, while Plamenatz identifies it with ‘appetite’ (ibid, 151), as does Affeldt in the “The Force of Freedom,” 310-311.

271 In the Emile, Rousseau notes: “In my Principles of Political Right it is demonstrated that no particular will can be ordered in the social system.” (E, II, 85). Since self-interest can indeed conform to order, as it does in the context of equitable exchange for example, it is clear that the particular will and self-interest are not the same thing.

272 This is the sense in which Rousseau employs it in SC, 1.7 (above) for example.
the danger that the particular will presents for the public interest, Rousseau consistently characterizes it as tending towards preferences. Especially in such cases, then, the particular will cannot be understood as identical with self-interest, or natural inclinations. For the general will, too, is grounded in self-interest.273

Self-interest is a broad category that includes the particular will, but is not reducible to it. The particular will is best understood as a certain kind of self-interest, an immoderate interest that seeks not simply one’s advantage but one’s maximal advantage in every circumstance. All citizens are self-interested, for this is why they participate in society. But not all are self-interested in the same way. The immoderate self-interest that animates the particular will is essentially exploitative, or tyrannical in the strict sense of the word. It seeks all the benefits of interdependence without wishing to bear its burdens. Its relation to society, in other words, is unjust rather than reciprocal, or contractual.275 This explains why the self-interest of the renegade hunter in the Discourse on Inequality should not be understood as a particular will in this sense.

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273 E.g. in 4.1 Rousseau speaks of particular interests as those that correspond with “small societies” not with the individual’s naturally self-interested point of view (SC, 121). See also III.1, where Rousseau says that if the Government will function properly it must have “a particular self, a sensibility common to its members...a will of its own.” (ibid, 86); and III.10: “Just as the particular will incessantly acts against the general will, so the Government makes a constant effort against Sovereignty.” (ibid, 106). In other words, the particular will is not particular because it is the will of a particular man, for it could also be the common (or general) will of an association of men. What makes it particular is its orientation with respect to the general will. It is only in relation to the latter that we can recognize it as particular. See also the following passage from the Political Economy: “Every political society is made up of other, smaller societies of different kinds, each one of which has its interests and maxims; but these societies, which everyone perceives because they have an external and authorized form, are not the only ones that really exist in the state; all private individuals who are united by a common interest make up as many other, permanent or transient [societies] whose force is no less real for being less apparent...The will of these particular societies always has two relations; for the members of the association, it is a general will; for the larger society, it is a particular will, which very often proves to be upright in the first respect, and vicious in the second.” (PE, 7). Once again, therefore, we note that what makes the particular will vicious, is its relation to the general will, its orientation with respect to the larger society.

274 Levine argues that “to act in one’s advantage as a citizen is not at all to act in one’s private interest. It is to aim at an entirely different sort of interest, a moral interest.” His discussion, however, confuses private interest (or the particular will) with “the state of nature,” where men are “unique bundles of wants and desires.” See The Politics of Autonomy, p.41; my emphasis.

275 “The commitments which bind us to the social body are obligatory,” Rousseau says, “only because they are mutual.” (SC, II.4, 61).
As soon as the hunter abandons his fellows, he no longer shares, and no longer expects to share, in the benefits of their short-lived cooperation. The hunters begin and end their venture while remaining independent. The free-riding citizen, on the other hand, is not in the same scenario, and not animated by the same kind of interest as the hunters.276

It is misleading to regard the contrast between the general will and the particular will as identical to a contrast between the common good and self-interest, or between duty and inclination. Rather, both wills are animated by self-interest. But the general will serves a moderate form of self-interest that is compatible with reciprocity, and so with orderly social relations, while the particular will serves an immoderate self-interest that corrupts social relations. The particular will in this sense exists only where there is also a common interest, and so a general will, i.e. when men are interdependent. In the Discourse on Inequality Rousseau suggests that there can be no exploitation in a situation of universal independence. For this reason the self-interest of man in the pre-social state of nature cannot be understood either as a general or as a particular will. One can call it particular in the sense of the individual’s actual will. But in the absence of society as the background it makes as little sense to add the adjective ‘particular’ as to speak of an interest that is private when the public is absent. In the rest of this

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276 Melzer argues that “the common interest constitutes at least one part of each man’s selfish interest. To be sure it may not be the largest part, and thus a selfish man may calculate that it is to his net advantage, in certain instances, to sacrifice the common good - including his own share of it - to pursue some exclusive good of his own.” See Natural Goodness of Man, 164; my emphasis; also Douglass, “Rousseau’s Critique of Representative Sovereignty,” 740; and Richard Dagger, “Understanding the General Will,” The Western Political Quarterly 34 (1981): passim. This mischaracterizes the free-rider’s calculation. The reason why this calculation is possible is not because the free-rider is willing to forego the common good in favor of a bigger, private, one, but because he isn’t. The free-rider’s maximal advantage, or exclusive good, depends on (and so includes) the willingness of other men to be law-abiding and not to act as he is acting - i.e. the continued existence of the common interest. Rousseau’s point, then, is precisely that the free rider is not willing to sacrifice ‘his own share of the common good,’ for his exclusive good would not be possible without it. The exclusive good is not one distinct part of man’s selfish interest, where the rest is the common good, or vice versa. The exclusive good is simply the common good without its burdens, while the common good is self-interest that conforms to reciprocity.
discussion I will use the term particular will to denote more specifically this perpetual temptation that is born with interdependence, namely the temptation to exploit it for one’s advantage.

The particular will is unjust essentially because the individual who benefits from it is not independent. The very benefits that he obtains by following his particular will would be impossible in the absence of society. The individual who pursues his particular will, therefore, does not sincerely regard himself as independent of others, and so justified in attempting to maximize his own interest when voting. For it is clear to him as to everyone else that the very possibility of this maximal advantage exists because of interdependence. “Each person, in detaching his interest from the common interest,” Rousseau argues, “sees clearly enough that he cannot separate them entirely.” (SC, IV.1, 122). Were the citizen truly independent, the most that he could hope for would be the likely satisfaction of such basic needs as characterized original man. This is not, of course, to deny that the plague of political life is the continuous call of the particular will. It is simply to deny that the particular will is the most natural and fundamental layer of the human soul; the clearest manifestation of the individual as individual. The argument also does not deny that man is driven by self-interest. Rousseau does not expect men to transcend self-interest in favor of a common good that is understood as its negation, where acting for the common good would imply acting against one’s own interest as an individual. What he does expect is for them to recognize that not all forms of self-interest are

277This statement makes it clear that the common interest and the private interest cannot be understood as two separate parts of self-interest, as two segments of a line, such that a free rider is simply a man who chooses to forego the common interest (one segment) and follow his private interest (the other segment). They “cannot be separated entirely” in this way. The question, in other words, is not: how great or small is the common interest, and how great or small is the private interest, as if each could be understood and quantified independently of the other. Rather, the question is: how does a particular man view the proper relationship between his maximal advantage and the common interest? Does he believe that the common interest should serve him? Or does he believe that the common interest, which is simply his own interest conforming to the norm of reciprocity, should take precedence?
compatible with orderly social relations. Not all forms of self-interest are just, and not all expressions of self-interest are instantiations of human freedom. Lastly, this argument clearly implies that self-interest is not the same thing as selfishness.\textsuperscript{278}

Each form of self-interest corresponds to one of two incompatible orientations of the will. These orientations are \textit{normative} in the sense that neither is determined by natural necessity. It is not the case that the particular will originates in man’s natural, primordial, inclinations whereas the general will originates in his moral, or rational, commitments. Otherwise, it would indeed be the case that Rousseau’s political theory rests on a distinction between \textit{actual} human nature and an \textit{ideal} human nature, where the realization of the latter would inevitably require the suppression of the former, the kind of “self-renunciation” that characterized Spartan virtue according to Montesquieu.\textsuperscript{279} What Rousseau wants to point out is that both the particular and the general will imply normative commitments. Action motivated by the particular will implies that it is \textit{right} to seek one’s maximal advantage in society.\textsuperscript{280} Action motivated by the general will, on the other hand, implies that it is right to pursue one’s own interest in conformity with the norm of reciprocity. Both choices involve genuine agency. How one acts, or in Rousseau’s language, which of the two wills is the source of one’s action, is never simply \textit{given} either by

\textsuperscript{278} Riley’s case that Rousseau’s voluntarism is irreconcilable with his preference for the ancient polity rests on conflating the two: “Rousseau consistently held that modern calamities caused by self-interest must be avoided and that the political systems created by ancient legislators were better than any modern ones. It did not always occur to Rousseau that both the merely self-interested will which he hated, and the will necessary for consent to conventional society, were part of the same individualistic idiom of modern political thought and perhaps inseparable.” See “A Possible Explanation,” 209. The most fundamental distinction for Rousseau, however, is \textit{not} between the self-interested will and the will as moral causality, i.e. the non-self-interested will. Rather, the distinction that he makes is between two \textit{kinds} of self-interest (and two incompatible orientations of the will): tyrannical and equitable.

\textsuperscript{279} \textit{Spirit of the Laws}, IV.5, 35

\textsuperscript{280} This need not mean that those who exploit interdependence always assume that it is right to do so. They most likely have no moral theory, but one is nonetheless implied by their choices. Their orientation can be questioned on normative grounds, in other words.
nature or by public education. While the goal of civic education is indeed to cultivate virtue, it would be strange and unreasonable to expect that this would produce identical human beings whose commitment to virtue could be pre-determined. This widespread interpretation is based on the erroneous assumption that Rousseau’s political theory requires the elimination of self-interest. Clearly if human beings had no interests of their own then their commitment to the common interest could be pre-determined for this would be their only source of motivation.

The final implication of this argument is that while a man’s actions may be driven at one time by the general will, and at another by the particular, no man ever has two wills at the same time. A common reading of the passage where Rousseau distinguishes the particular will from the general is that men always have two wills. Robin Douglass points out why such an argument is crucial for Rousseau’s contractarianism. “The reason why the general will is not an alienated form of man’s will,” he states, “is that every individual does actually will the general will qua citizen, even if he has a conflicting private or particular will qua man.” Since Rousseau objected to representative government on the grounds that will cannot be represented, or alienated, his theory of legitimacy cannot rest on an argument about alienating one’s will to the sovereign. It must, in other words, be presumed that all social men have a constant general will, one which they never alienate. But this is true only in the sense that even the particular will takes an interest in the common good. In other words, each man, in pursuing his own maximal

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281 Otherwise, it would make little sense for Rousseau to say that in voting in accordance with the particular will one is “changing the state of the question.” (SC, IV.1, 122). For if the particular will were a natural given, the natural orientation of the will that survives the demise of the original state, then there would be no ‘question’ involved at all. There would be no normative commitment implied by this action, no space for judgment and so for agency of the kind that changes the question.

282 Douglass, “Rousseau’s Critique of Representative Sovereignty,” 740; my emphasis

283 Regarding the objection that Rousseau does found society on a theory of alienation see below: ‘Against Representative Sovereignty and ‘Will-Formation.”
advantage, necessarily wills that other men should be just. No man’s maximal advantage would be possible in a situation of universal injustice. It cannot be true, however, that a man may have two wills simultaneously, that of a ‘man’ and that of a ‘citizen.’ That would be incompatible with the idea of will as the source of man’s actions, rather than merely of his motivations. Since each action is distinct, so must be its source, though it remains true that at different times the same individual could be driven by different wills - i.e. at one time by the particular, and at another by the general. The point is that each modifier of the word ‘will’ characterizes a distinct orientation towards justice, and as will be explained below, a distinct phenomenological experience of the common life. It does not refer to something like a concrete and separate faculty inside man.

What is a Civic Perspective? Two Aspects of the General Will

Identifying the particular will with self-interest tout court also distorts the character of the general will. If the general will truly requires the elimination of all forms of self-interest, or particularity, it follows that the general will requires a single perspective. All citizens must see things in the same way, and so all citizens must be the same if they are to act as citizens. For this

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284 The fraudulent contract on which all societies are founded illustrates this perfectly. The rich who proposed it, driven by their own desire to take advantage of others, nonetheless found it necessary to persuade them with a theory of political right identical to the one defended in the Social Contract. “Let us unite,” he told them, “to protect the weak from oppression…Let us institute rules of justice and peace to which all are obliged to conform, which favor no one, and which in a way make up for the vagaries of fortune by subjecting the powerful and the weak alike to mutual duties.” (DOI, II, 173; my emphasis).
reason commentators are usually not careful to distinguish two separate ideas. The first, which Rousseau does hold, is that all citizens must be equally committed to the common interest. The second, which he does not hold, is that all citizens must be the same, or have a uniform perspective on public questions. The first, however, is by no means the same as the second. To be committed to the common interest is simply to be committed to the norm of reciprocity implied in a contractual relationship. The burdens of cooperation, as well as the benefits, must be equally distributed. This presupposes neither that all citizens must be materially equal, nor that society must be homogenous. Neither does it presuppose that men must transcend their particular perspectives and achieve a single, uniform, one. Rather, the opposite is the case. Individuals must remain faithful to their particular perspectives, circumstances, and interests when voting in the assembly. What they must not do is to follow the particular will as explained in the previous section. Their primary orientation must not be to obtain their own maximal advantage, but to see to it that their own interest is upheld in conformity with the norm of reciprocity. Guarding against the particular will is, thus, more accurately described as not giving in to temptation, rather than as transcending or overcoming something already present. In order to see this more clearly it is useful to engage with the following questions about the general will’s relation to justice raised by Richard Dagger.

Dagger has argued that the general will is best understood as a norm that ought to be followed in public deliberations so that legislative decisions will promote the common good. As

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285 This interpretation follows logically from the assumption that ‘particular will’ or ‘partiality’ is the same thing as ‘self-interest.’ It has been explicitly maintained by Hoffman, who first explains that the “identity of preferences” means specifically an equal commitment to the general will, but soon concludes that the members of the ideal society are “psychologically uniform, socially equal...homogenous atoms,” in “The Mirage of the General Will,” p. 125. Also Melzer, The Natural Goodness of Man, 157: “naturally unique individuals are collectivized and everyone is forced to conform to a single will;” and David Lay Williams, “Justice and the General Will: Affirming Rousseau’s Ancient Orientation.” Journal of the History of Ideas 66 (2005): 387; Urbinati, Representative Democracy, 30.
he puts it, “Because it focuses on the common interest we share as citizens, the general will is *impartial*.”\(^{286}\) It implies a “moral perspective” that citizens ought to adopt when making decisions in the general assembly.\(^{287}\) When considering a certain policy, they should not vote according to their private interests or preferences, but only according to the interest of ‘the citizen’ as an abstract person. As Dagger explains, Rousseau’s notion of the general will ultimately rests on a distinction between man and citizen. People may as “actual, identifiable persons” have certain unique interests and preferences. As citizens, on the other hand, they are all the same insofar as they all have a common interest. “Everyone consequently has both a particular interest as a man and a general interest as a citizen.”\(^{288}\) Rousseau did not expect that the common interest of citizens would always trump the private interests of men. For this reason the general will cannot be thought of merely as a counter-weight to the particular interest. Rather, the general will implies a genuine choice to vote as a citizen, *not* as a man. In Dagger’s own words, the general will is like the Rawlsian veil of ignorance. It requires one to ignore all particularities and focus exclusively on what is *the same*, namely the common interest. One will note that Dagger subscribes precisely to the problematic dichotomy between general and particular will discussed in the previous section. He maintains that the general will requires of one to transcend one’s particular perspective in favor of a civic perspective that is the same for all citizens. Like most commentators he makes not distinction between generality as *impartiality* and generality as *uniformity*.

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\(^{286}\) Dagger, “Understanding the General Will,” 360; *emphasis in the original.*

\(^{287}\) *ibid,* 361

\(^{288}\) *ibid,* 360
Emphasizing that the general will implies a normative commitment is crucial, for it draws attention to Rousseau’s distinction between the general will and the will of all, or the mere aggregation of private preferences. It explains, in other words, why Rousseau believed that the general will was the source of justice. However, Dagger points out, the problem with abstracting from private interests is that it may not always make normative sense in practice. Consider, he says, a situation in which a particular town is dominated by an industry that provides jobs for more than half of the inhabitants, but also pollutes the air: “The general will, presumably would require the elimination of the hazards because that would be in the interest of the citizens, even though it might spell disaster for most of the men in the community.” Given such possibilities, “is it clear that we should always ignore the private interests of men when deciding matters of public policy?”

Dagger’s intention is to create a scenario in which all citizens have a general will that demands a particular course of action, but some also have a particular will that demands the opposite course of action. How would one reconcile these two perspectives? Is there even a single civic perspective that would guarantee a just outcome?

Answering this objection will illuminate two crucial aspects of the general will. The first is that the general will, as a source of legitimacy, has no substantive content. Of course the will of each community, each time it is expressed, will have content. It can never be without content in the same way that the choices of individuals can never be empty of content. But the substance of collective decisions is not pre-determined by the idea of the general will as a normative framework. To say that only such decisions as originate in the general will are just is to say

\[\text{\textsuperscript{289} ibid, 370-371; emphasis in the original}\]

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nothing about what content they should have. The second aspect of the general will is that it requires all individuals to examine policy suggestions from their own individual perspectives. They are not identify and empathize with others in their community, or to conform with common opinions that abstract from particular interests. On the contrary, only if individuals remain faithful to their particular circumstances and interests, in the absence of factional conflict, can the majority have a reasonable chance of arriving at impartial decisions, i.e. of expressing the general will. By taking note of these two aspects one can easily arrive at the solution that Rousseau might have proposed to Dagger’s hypothetical scenario.

First, Dagger conflates the general will with a notion of the common good that functions like a correct answer to a mathematical problem: all citizens have an interest in clean air, and the common good requires the industry’s removal. But it is by no means obvious that this would be what the common good required in all scenarios of this kind. Some communities may well decide that keeping the industry is much more in the common interest than removing it. They may decide to live with the pollution since the alternative could be worse. In other words, one cannot simply assume that the public interest is obvious and all one has to do when voting is to try and guess what it is. The only pre-determined characteristic of the general will is its form. It

290 It is for this reason that Rousseau says “almost nothing very definite about the notion of the common good,” which Cohen regards as a “weakness” in A Free Community of Equals, 41. The interpretation provided here, however, suggests that it is not a weakness but a deliberate attempt to preserve the freedom and integrity of individual, and by extension, communal, interests. The reason why the ‘contentless’ nature of the general will bothers commentators, is because it suggests that no higher norms can bind the unrestrained will of a popular decision. In other words, it appears to condone a dangerous kind of moral relativism, as Williams has emphasized in “Rousseau’s Ancient Orientation,” 385.

291 An even more explicit version of this thesis has been advanced by Bernard Grofman and Scott Feld in “Rousseau’s General Will: A Condorcetian Perspective,” American Political Science Review 82 (1988): 567-576. The process of voting according to Rousseau, they argue, “searches for ‘truth.’” Ibid, 568. This is usually referred to as the ‘epistemic’ interpretation of the general will. See also Jeremy Waldron, “Rights and Majorities: Rousseau Revisited.” Nomos 32 (1990): 50. Christopher Bertram has outlined the main problems with this view in “Rousseau’s Legacy” 410.
only requires that legislative decisions should not burden, or benefit, any citizens more than others. Apart from this formal requirement it has no content, no matter how obvious certain choices may appear to an outside observer.\textsuperscript{292} Public decisions involve real acts of choosing among alternatives according to what each voter believes to be in his best interest as a member of a particular community. Of course it is unreasonable to assume that men will harm themselves without cause. But Rousseau goes so far as to say that if a people chooses “to harm itself, no one has a right to prevent it from doing so. (SC, II.12, 80).

Here it is worth pausing briefly over a related issue, namely the general will’s relation to natural law, or more generally to some form of immutable standards. Noting Rousseau’s insistence that nothing can bind the general will, some commentators have concluded that it is morally arbitrary.\textsuperscript{293} Others have argued that the general will is itself a rational standard that replaces natural law. Stanely Hoffman, for example, writes that the “general will needs only to be discovered, not created, and this is why the laws...find again the declarative, necessary, and deductive character which they had in the natural law conception. The general will...smoothly replaces natural law - it is as rational as natural law - and laws can be derived from it just as

\textsuperscript{292} It is unhelpful, therefore, to reduce the distinction between the general and the particular will to a distinction between reason and passion, or reason and instinct. Hoffman argues that “the general will...is a rational will...it leads the citizen towards the common good indicated by reason,” in “The Mirage of the General Will,” p.119. He holds that “reason becomes active and efficient only in the ideal civil society; in the state of nature it remains only potential. In imperfect societies...human passions prevent reason from governing human beings.” Ibid, p.117. In order for this to be persuasive, however, one would need a much more substantive discussion of reason’s inherent relation with morality and justice, which one does not find in Rousseau. There is no such thing as Reason that would naturally arrive at an entity called ‘The Common Good.’ What one finds in Rousseau are reasoners, and their opinions regarding the common interest. He provides no outside standards, derived from any notion of authoritative Reason, by which one might judge the soundness of such opinions. The only standard to which they must conform, as will be explained below, is impartiality. Lastly, as Douglass points out, “if the general will amounted to nothing more than an abstract precept of reason it would never be of any force.” See his Rousseau and Hobbes: Nature, Free Will, and the Passions (Oxford: Oxford University Press, 2015), 113

\textsuperscript{293} E.g. Melzer: “Rousseau favors the General Will not as the embodiment of justice but as a replacement for it.” See “Rousseau’s Moral Realism: Replacing Natural Law with the General Will,” American Political Science Review 77 (1983): 650
they could from natural law.”294 This line of reasoning treats the general will as a dictate of reason, without addressing the question of what is the ontological status of reason for Rousseau. Yet a third camp has insisted that Rousseau’s general will does conform to a transcendental standard that is “universal and immutable.”295 The issue among these three approaches is sometimes stated as follows: is the general will created or discovered? This is another way of asking whether the general will is merely the aggregate of raw individual preferences, or whether it is more like a permanently existing reality, independent of what citizens really think and want. Formulating the question in this way, however, obscures Rousseau’s real point. The general will is certainly not an arbitrary standard because formally laws must always be impartial. Whether a certain law is or is not impartial can be settled as a matter of fact, independently of what anyone happens to think. But Rousseau never treats impartiality as a transcendental standard, restricting his analysis to the logic of social interaction. Peaceful coexistence is only possible under the terms of the social contract, which logically imply fair and equitable exchange. In this sense, the common interest is simply the impartiality of law - i.e. justice. Of course, the content of each law will also be understood as substantively good by the community that ratifies it, so this is a second

294 Hoffman, “Mirage of the General Will,” 118. See also Bertram, who argues that “for any proposed law...there is a fact of the matter, independent of what anyone happens to think, about whether the law is genuinely in their common interest, or represents fair terms for them to live and work.” “Rousseau’s Legacy,” 411. Bertram calls this the ‘transcendental’ element in Rousseau's thought, which brings him closer to commentators who insist that there is such a thing as natural law for Rousseau. According to the interpretation offered here, however, Bertram does not distinguish clearly enough between the substance of the decision and its formal structure. The only thing that can be ‘a matter of fact’ is whether the law is fair - i.e. whether it is impartial - but not whether it is ‘good’ in a Platonic sense.

295 Williams, “Rousseau’s Ancient Orientation,” 389. My main problem with Williams’s thesis is that it is formulated against a rather extreme, and certainly inaccurate, characterization of the general will as arbitrary. Although I share Williams’s insistence against this view that the general will must be distinguished from the ‘will of all,’ which is simply unrestrained majority-rule, I do not think it follows that there are transcendental standards that bind the general will. Noone has also argued that Rousseau appeared to have believed in natural law, albeit conditionally and sometimes half-heartedly. But his discussion focuses especially on the reality of ‘conscience’ and its contribution to moral obligation, not on the general will’s relation to natural law specifically. See “Rousseau’s Theory of Natural Law.”
way in which we could say that it is in the common interest. But on this question there is no such thing as a matter of fact independent of what anybody thinks. In other words, what is in the common interest substantively is what the citizens happen to believe is in their interest at a particular time and place. There is no objective perspective on the good, substantively understood, that can legitimately superimpose itself on the perspective of the legislative assembly.

Rousseau does not raise the Platonic question of whether citizens really do know what is good for them. The most important element of the ‘common good’ for him is contained in the word *common* rather than *good*, if this is understood Platonically. Impartiality is an interest that all citizens share, and it is in this sense that there is a common interest among them. True, the idea that no person wishes to harm himself is an integral element of Rousseau’s argument that the general will can be trusted to advance the common good. Since the sovereign is “formed entirely of the individuals who make it up,” he says, it “has no need of a guarantor toward the subjects, because it is impossible for the body to want to harm all of its members.” (SC, I.8, 52). But he never pursues the important Platonic distinction between apparent and real interests, which introduces into Plato’s politics the need for wise (and anti-democratic) rule.296 There are, in my opinion, two related reasons that explain why this is the case. For one thing, Rousseau appears to have believed that the most common threat to human well-being is exploitation by others - i.e. the natural tendency of power to make others disregard their own interests in favor of our own. He was, after all, a theorist of *amour-propre*, and placed this passion at the heart of

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296 What I mean by this is not that Rousseau is unaware of the possibility that human beings might be ignorant of what is good for them, or that they might benefit from education by those who are wiser. But he never makes this problem foundational to his political thought in the way that Plato does. For Rousseau, the main political problem was that our awareness of our interest might be obscured by the exploitative agendas of others, *not* that we might be ignorant of what is truly good for us in the first place.
spiritual debasement and social dysfunction. Secondly, Plato’s suggestion that most human beings do not know what is good for them and must be educated by others - i.e. the idea that there are independent truths accessible to the few who have bothered to look for them - clearly opens the way for this common form of abuse. Under the aegis of wisdom, moral enlightenment, or scientific rationality, the rule of experts would inevitably go the way of ordinary domination.

Thus, although the general will is not a morally arbitrary standard, neither is it an independent and immutable reality, at least as concerns any substantive notion of what is good. Neither discovered nor created, the general will is simply declared. Its content is always particular not because it applies to a particular community, for the same is true in the case of natural law, but because it can only be declared by it. Rousseau’s concept of the general will’s sovereignty denies any political legitimacy to outside perspectives, including claims to objectivity, expert-knowledge, or superior reason. This is one aspect of his stance against representation, to be explained more fully below. The job of legislating for a particular community cannot be outsourced to an alien entity like ‘the Party,’ ‘the philosopher-king,’ or even ‘the rational will.’

Returning to Dagger’s scenario, its framing which rests on a sharp distinction between the interest of the citizen and that of man, distorts the real character of the problem he raises. It is by no means clear why the interests of those who would be harmed by the industry’s removal should be thought irrelevant to the decision simply because they are the interests of particular men. True, this is Dagger’s own criticism of Rousseau, but it only arises because of a misunderstanding about the relationship between the general and the particular will on his part. To see this one must reframe the problem as follows. All citizens have a common interest in
clean air. But all also have an interest in financial stability. Since both of these things are common to all citizens, an interest in financial stability cannot be considered irrelevant. The real issue is not that all citizens have a public interest in removing the industry but most also have a private interest in keeping it. Rather, the problem is that while all have an interest in removing the industry, the burdens of this decision would be distributed unequally. Those employed in the industry would face financial hardship while the rest would be making no sacrifices. This is clearly an unfair situation and could not possibly be sanctioned by the general will which demands that benefits and burdens be equally distributed. The industry’s removal would require a kind of compensation scheme for those employed in it on the part of the rest. Alternatively, the community could decide to live with the consequences of pollution. It could also decide to fund research aimed at reducing pollution without getting rid of the industry, etc. The point is that a single perspective from which one may address the problem is possible. But it does not commit one to any single, pre-determined answer apart from the formal requirement of generality.

Dagger’s problem only arises because he believes that a truly civic perspective requires one to abstract from all personal considerations, or to relegate these to the private realm. As his example illustrates, it is not at all clear that doing so would lead to the common interest. In fact, not only does generality not require such abstraction, it requires exactly the opposite. Public policies should be framed in such a way that they take into account all the diverse, and relevant, circumstances of those in the community. Otherwise their effects would not be impartial, for benefits and burdens would be distributed unequally. Consider, for example, Rousseau’s discussion of taxation in the *Political Economy*: “...if taxation by head is strictly proportional to individuals’ means...then it is the most equitable and hence the most conformable to free men,”
he argues. (*PE*, 30). It is most conformable to free men precisely because it is the one most in keeping with the norm of burdens and benefits equitably distributed. In the rest of his discussion Rousseau outlines several considerations that must be taken into account by the tax system, such as the fact that the rich benefit more from social cooperation than the poor, and “the proceeds of taxes sooner or later go only to those who have a share in government or are close to it.” (*ibid*, 32). Also, the value of equal assets is not the same for the poor as for the rich: “losses of the poor are far more difficult to make up for than those of the rich, and...the difficulty of acquiring always grows in proportion to need.” (*ibid*). The point is that imposing an equal, flat, tax on all citizens might appear to conform to the general will but would not do so in fact. It would only be equitable in a situation of perfect economic equality, which is found nowhere. If they are to express the general will truly, therefore, public policy decisions would certainly need to take individual circumstances and interests into account.

**Majority-rule and the Problem with Factions**

These considerations also shed light on Rousseau’s ideas about voting and majority-rule, a part of his thought that has elicited much discussion and accusations in the scholarship. Having defended the normative supremacy of the general will, Rousseau states that, in practice, most collective decisions do not require unanimity. Simple majorities will suffice, though very important decisions require higher majorities. He explains that when citizens vote they are not being asked to express individual preferences as much as to say whether a policy does or does
not conform to the general will.\textsuperscript{297} Some have argued that in practice this would be nothing other than tyranny of the majority. Others have pointed out that, assuming there is always a ‘right answer’ to the question of what is in the common good, majorities are actually in a better epistemic position than minorities.\textsuperscript{298} But as Dagger has emphasized, even granting the latter, it remains the case that majorities could still be mistaken. As long as this possibility exists, can the general will really be normatively supreme? Shouldn’t one also make an argument in favor of freedom of conscience and civil disobedience?\textsuperscript{299} Here it is helpful to remember that the normative supremacy of the general will does not commit one to anything substantively. Assuming that one believes a particular decision to be impartial, it is not clear upon what grounds (apart from extra-political ones) one might object to the decision as a matter of principle.\textsuperscript{300} One may still wonder about the content of the decision, whether it is the best of all possible alternatives for example, but not call it unjust. In the course of ordinary life individuals often wonder about the soundness of their choices, about whether they were as advantageous as

\textsuperscript{297} Douglass points out that majority-rule does not ground the obligation to obey the general will. It is only a means of realizing the general will in practice. In other words, one is not obligated to obey the majority simply by the fact that it is numerically superior. The obligation to obey the general will rests on the normative supremacy of the common interest. “Rousseau’s Critique of Representative Sovereignty,” 741-42. Yet, Douglass says little regarding the heart of the issue: why should one think that the majority knows the common interest better than a minority, or individual? While his distinction is useful analytically, it collapses in practice since the obligation to obey the general will would be identical with the obligation to obey the majority.

\textsuperscript{298} Fralin, \textit{Rousseau and Representation}, 79 for the first; Groffman and Feld, “A Condorcetian Perspective,” 569-572, for the second.

\textsuperscript{299} Dagger, “Understanding the General Will,” 271. Groffman and Feld who subscribe to the strong epistemic interpretation, concede that “the collective judgment can also sometimes be wrong,” in a “Condorcetian Perspective,” 569.

\textsuperscript{300} In the \textit{Geneva Manuscript} Rousseau makes it clear that his theory of legitimacy begins by abandoning all religious dogma. These originate in “the multitude,” he states, “[which] always gets made for it Gods as senseless as itself, to whom it will sacrifice minor conveniences for the sake of indulging a thousand horrible and destructive passions.” (\textit{GM}, I.2, 156). The theory of justice developed in the \textit{Social Contract} is explicitly secular, though Rousseau does not flinch from implying that it is, by this very fact, more moral. It corresponds to “the sublime notions of the God of the wise, the gentle laws of brotherhood…the social virtues of pure souls…[which] will always escape the multitude.” (\textit{ibid}).
they originally believed them to be. But doubts about soundness are not ethical dilemmas, and a similar argument can be made about the content of collective decisions. As long as one believes them to express the general will, one has little scope for objecting to them on normative grounds. The epistemic argument about majorities has nothing to say about the possibility of principled objection and civil disobedience. But one does not need this argument in order to see that the general will’s normative supremacy does not endanger one’s principled commitment to political justice.

Rousseau’s argument about majority-rule aims primarily at ensuring that the formal requirement of generality will be met, and only secondarily (if at all) at ensuring that the content of collective decisions will be sound. Assuming that all citizens are adequately informed about a particular policy proposal, it is, in fact, reasonable to think that the majority will be in a better position to say whether the proposal is just - i.e. whether it satisfies the requirement of generality. The greater the votes on the side of the majority, the more likely it is that the policy contains no biases in favour of, or against, any particular individual or group in the community. The wider the agreement across social divisions (e.g. rich and poor, young and old, employed and unemployed, educated and uneducated, etc.) the less likely it is that the policy contains blind spots inherent in certain perspectives. It makes sense, therefore, that vital policy decision should approach unanimity. This is not because the larger the majority becomes the more likely it is that it will have found the ‘truth’ substantively, or chosen the best of all possible alternatives. Rather,

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301 Of course, if one does not believe them to express the general will, then one may object to them on such grounds - i.e. by showing that a certain policy does in fact burden some citizens more than others. Nothing in Rousseau’s argument prevents this conclusion, though his thought does not do a sufficiently good job of providing specific institutional proposals to address this possibility. The reason is that Rousseau didn’t think it possible to rescue a corrupt legislature. As will be explained below, however, he did have much to say regarding the sources of such corruption.
it is because a greater diversity of perspectives in the community will have examined the proposal and deemed that it does not favor, or burden, anyone more than others.\textsuperscript{302}

Majorities will not act as filters against bias, however, in the presence of wide social cleavages. When the majority does not express the agreement of many diverse perspectives, but a single, widely shared or authoritative, perspective, one has good reason to doubt its impartiality. The simplest example is a situation of vast differences in wealth. If most citizens are equally poor the majority’s decisions will likely be partial towards the poor, and unfavorable towards the rich minority. Such partiality may be intentional: the poor may have voted to maximize their own interests and not answered the proper question. They may have voted as a faction, in other words. But it may also be unintentional. Though the poor may indeed have voted as individuals and answered the proper question, most may still not grasp that their decisions are disproportionately burdensome for those who are rich. Yet, because the poor are in the majority the bias inherent in their perspective would nonetheless win the day.\textsuperscript{303} Seen in this light, it is unsurprising that Rousseau praises legislators who created either a stricter proportion among social divisions, or simple equality.\textsuperscript{304} This also explains why he argues that factions distort the proper expression of the general will. For one thing, men who belong to factions may intentionally vote according to factional interest and not according to their own individual opinions and interests. But factions

\textsuperscript{302} Melzer argues that the superiority of the general will “requires the superior few to be ruled and led by laws made by the inferior multitude.” \textit{Natural Goodness}, 157. But this ignores many distinctions that Rousseau is careful to make, such as that between the will of all and the general will, a multitude (or herd) and a people, a majority that properly expresses the general will and one that doesn’t, etc. Rousseau’s argument about the general will should not be confused with an argument about simple majority-rule.

\textsuperscript{303} The more prevalent interpretation of the problem with vast differences in wealth is that of Bertram, who argues that such differences prevent citizens from adopting “the perspective of everyman.” “Rousseau’s Legacy,” 411.

\textsuperscript{304} Numa, Lycurgus, and Solon.
also reduce the kind of diversity of perspectives that is required for spotting bias even if their members were sincerely committed to impartiality.\textsuperscript{305}

Rousseau’s advice is, ideally, to eliminate all factions. But this is not the same thing as eliminating difference. On the contrary, eliminating factions serves the purpose preventing the opinions, or interests, of certain citizens from dominating collective decision. To eliminate factions is simply to eliminate conformism, or the hijacking of individual points of view by authoritative opinions that serve the ends of specific men. This is not the same thing as eliminating civic associations, or social divisions.\textsuperscript{306} Rousseau’s second proposal is to increase the number of factions if their elimination proves impossible. A greater number of factions automatically implies a greater diversity of perspectives. But it also increases the likelihood that those who belong to factions will vote according to their own individual interests and opinions. In other words, it increases the likelihood that they will vote as individuals and not as members of factions. If the city contains only three factions, for example, it is quite likely that two may agree to vote strategically against a third. This is tyranny of the majority, the opposite of what the general will demands. But if a city contains three hundred factions, strategic voting is impossible. It would require exceptional maneuvering and coordination among them, as well as

\textsuperscript{305} Similarly, Grofman and Feld have argued that factions reduce the amount of independent voices thus reducing the ‘epistemic advantage’ of majorities. “A Condorcetian Perspective,” 571. I disagree only with the last part of this argument.

\textsuperscript{306} Contrary to Hoffman’s claim that Rousseau endorsed the “destruction of intermediary groups,” in his Letters from the Mountain he makes it clear just how important civic associations are for a properly functioning legislative assembly. “The Mirage of the General Will,” 127. See my discussion of Rousseau’s proposals for Geneva in Chapter 2 for further elaboration on this point. Also Kateb, “Aspects of Rousseau,” 6-7. In fact, Rousseau subscribes to Machiavelli’s distinction between divisions that are harmful to republics and those that are beneficial. He states explicitly that the elimination of “partial societies” aims to increase the diversity of perspectives because where there are no factions “every Citizen [will] state only his own opinion.” (\textit{SC}, II.3, 60). This claim would make little sense if Rousseau’s ideal was the prevalence of a uniform perspective on matters of public policy. Finally, see the following passage from the “Fragments Politiques,” where Rousseau is likely speaking about Lycurgus and Numa: “They established...spectacles, assemblies and ceremonies; many associations [Collèges] and \textit{particular societies} [sociétés particulières] to engender and foment among the Citizens those gentle habits, innocent and disinterested dealings, that formed and nourished love of the fatherland.” (\textit{OC}, 542; \textit{my emphasis and translation}).
exceptional trust in cases where the vote is secret. In such a scenario individuals would not be
tempted by the prospect of factional victories, and so, would be more likely to answer the right
question. The point is that in each case Rousseau’s aim is to increase the diversity of
perspectives by reducing disproportional divisions that skew the vote away from impartiality.
Only when the majority vote expresses the agreement of diverse perspectives, rather than a
single uniform perspective, can one really trust in its ability to express the general will.307

To sum up, it is reasonable to think that if the public is adequately informed, factional
interests are impotent, and citizens have “no communication among themselves” during the vote,
the majority will be in the best position to determine whether the policy is impartial. (SC, II.3,
60).308 But for this to be possible citizens should not abstract from their particular identities and
interests. On the contrary, they should consider precisely how they would be affected by the
proposal and whether the sacrifices required of them would be the same as those required of
others. The more faithful individuals remain to their particular circumstances, and to opinions

307 As Gildin points out, “Rousseau believes no less than ‘Publius’ and Tocqueville do that a decision can be unjust
even through it enjoys majority support…[But] the fact that not every majority decision expresses the general will
does not mean that anything other than a majority decision can express it. Rousseau is categorial regarding this
point: once the majority cannot be trusted any longer, there is nothing else that can be trusted.” The Design of the
Argument, 58.

308 This argument about ‘no communication’ only refers to the act of voting. It does not preclude collective
deliberation before the vote. In fact, Rousseau believed such deliberation crucial for properly informing the public.
In his Letters from the Mountain, for example, he accuses the government of passing laws without allowing
sufficient time for public discussion beforehand (see Chapter 2). Voting in ancient Rome was also preceded by
several days of public deliberation, while in the comitia themselves discussion was not allowed. In demanding that
there should be no communication among citizens during the vote, Rousseau aimed only to prevent demagoguery,
not public discussion. For, rhetorical training and demagogical skill would, just like factions, distort the diversity of
individual perspectives required for the proper expression of the general will. Individuals with opinions faithful to
their own particular circumstances might, at the last minute, be swayed or confused by speeches, and end up voting
against their own interests and in the interest of others.
born of such circumstances, the more likely it is that the majority will express the general will.\footnote{309} This picture of Rousseau resembles closely Aristotle’s contention in the \textit{Politics} that when “the many” deliberate, they may sometimes “surpass - collectively and as a body, although not individually - the quality of the few best,” for each brings to such deliberation “his share of goodness and moral prudence.”\footnote{310} However, Rousseau’s position is not exactly that of Aristotle who does not distinguish the people’s deliberation on formal questions of impartiality from their deliberation regarding substantive questions of advantage or goodness. Note, for example, that when Aristotle later expands on this argument, he argues explicitly that “all, when they meet together, are either better than the experts or at any rate not worse.”\footnote{311} Waldron, in his detailed examination of this argument, has also hypothesized that the reason why Aristotle praises the people’s superiority on matters of “ethical judgement” is because “when the many come together to make a decision... they find out from each-other how each person’s well-being may be affected by the matter under consideration.”\footnote{312} This is the sense in which Rousseau defends the majority’s perspective as superior. But it cannot be said with certainty that this is what Aristotle meant, for he does not distinguish such questions from questions of whether certain policies \textit{really are} advantageous or harmful, i.e. substantively. In the case of Rousseau, however, one

\footnote{309} Similarly to Dagger, Patrice Canivez has argued that when voting “the citizen must put himself in the place of any other member of the state...[he] must express the concerns he shares with all the others. So he must be able to identify with any of his fellow citizens,” in “Jean-Jacques Rousseau’s Concept of People,” \textit{Philosophy and Social Criticism} 30 (2004):397. But Rousseau did not place his hopes on compassionate imaginative identification with one’s fellow citizens as a conduit to justice. Compassion may be useful for social life, but its orientation is not justice. The majority will express the general will when individuals take their interests as their guide.


\footnote{311} Aristotle, \textit{Politics}, III.11, 126

ought to distinguish questions of impartiality from substantive questions of the good or truly advantageous.

Civic Life

To bring this argument to its conclusion, it is finally necessary to address the heart of the controversy raised by Rousseau’s admiration for the ancient republics, namely collectivism. Most debates about the general will revolve around the following question: can the community make demands on individuals based solely on the grounds that these individuals belong to it? This is usually what interpreters have in mind when they question Rousseau’s emphasis on amour de la patrie and civic virtue, or when they characterize his politics as communitarian, collectivist, or totalitarian. The conflict between ‘voluntarism’ and ‘common good morality’ highlighted by Riley is one articulation of this issue. How can individuals freely will their own subjection to a communal will that obligates them solely by the fact of being communal, i.e. by demanding either the repression or overcoming of the individual’s will? Is political obligation based on consent, or is it based on socializing human beings to obey a morality of the common good?

The argument so far has suggested that Rousseau is not a collectivist in this sense. The general will’s normative superiority should not be confused with the idea that the communal will is normatively supreme because it is communal. His point is that the general will is supreme because it is just, not because it is the will of the majority. To that end, it is important to recognize that the particular will is not the individual’s natural will, but an unjust normative
orientation. The general will’s supremacy does not imply that individuals ought to overcome their natural self-regard, but only that they should not be tempted by injustice. Lastly, the general will is not identical with the will of the majority where the majority represents a single perspective, such as an authoritative opinion or the interest of a specific group. The majority’s will can be just only when it results from the agreement of all particular perspectives in the community regarding the correct question.\textsuperscript{313} These observations suggest that the common good is not distinct from the interest of all individuals in the community as particulars. In other words, there is no ‘common good morality’ in Rousseau’s thought that may obligate individuals to sacrifice their interest for a common good that is distinct from those interests. Self-sacrifice may be noble, Rousseau states, but it is not something that can be legitimately imposed on a man by anyone else, contrary to his own choice:

If we are told that it is good that a single person perish for all, I will admire this statement from the mouth of a worthy and virtuous patriot, who \textit{voluntarily} and \textit{out of duty} consecrates \textit{himself} to die for his country’s safety: but if what is meant is that the government is permitted to sacrifice one innocent person for the safety of the many, I hold this to be one of the most execrable maxims that tyranny ever invented…and the most \textit{directly contrary to the fundamental laws of society}. (PE, 17; \textit{my emphasis}).

\textsuperscript{313} This is the most crucial aspect of the question, for it ensures that the law will be just, or fair to all parties. This is, in other words, what justifies the \textit{normative} superiority of the majority’s will. There is also the issue of whether the proposed law is sound. Is it the best of all possible alternatives, for example? But this matter has no bearing on the majority’s normative supremacy. As many interpreters have noted, Rousseau tends to restrict legislative initiative to the executive. Governing experts, and, at the origin, the Legislator, will be in charge of drafting sound and effective legislation. The legislative assembly’s role is primarily to ensure that such laws as are proposed by the executive will be \textit{just}. For a detailed discussion of this point see Chapter 2.
Yet, Rousseau’s admiration for the ancient republics and for patriotism still stand in the way of this conclusion. After all, weren’t these republics highly collectivist? And is civic virtue anything other than the passion for one’s community based exclusively on the fact that it is one’s own community? Does the civic attachment defended by Rousseau not threaten to place on citizens demands that his own ideas suggest are illegitimate? This section will examine such questions from the perspective of an issue of concern for contemporary readers, namely Rousseau’s relation with nationalism. His emphasis on public education, patriotism, and love of one’s fatherland are clearly reminiscent of modern nationalist movements. In the eyes of many, the collectivist, communitarian, Rousseau easily becomes a precursor of all such theories as place the communal will ahead of the individual’s interest. Despite recent attempts to defend at least some forms of nationalism, it remains the case that such movements are often violent and authoritarian. One can be forgiven for viewing with suspicion all such features of Rousseau’s thought as might point in the same direction.

Rousseau and Nationalism

The idea that Rousseau’s thought was moving in the direction of nationalism is so well-established today as to appear almost intuitively true. Although no contemporary study of nationalism has relied heavily on Rousseau’s ideas, none has failed to at least mention him alongside Herder, Fichte, Kant, and others. Students of Rousseau, on the other hand, have gone well beyond these studies in asserting Rousseau’s relevance for understanding nationalism. As
Alfred Cobban maintained, “the fact that he is [nationalism's] first theorist is undeniable.” Conversely, the suggestion that Rousseau’s ideas are in fact at odds with the essence of modern nationalism is bound to raise an eyebrow. But this was not always the case. One of the first to make the connection may have been Carlton Hayes, who, in his 1931 study of modern nationalism observed that Rousseau was at the time “seldom thought of as a philosopher of nationalism.” Hayes goes on to argue that Rousseau’s “general political philosophy is implicit with ideas favourable to a well-rounded doctrine of humanitarian nationalism.” These can be summarized as: a defense of popular sovereignty, an admiration for the “common people,” and “a whole programme of nationalist propaganda” to help the Poles become more nationalist. Alfred Cobban later emphasized these same elements, and added Rousseau’s suspicion of 18th century cosmopolitanism, which might be thought to confirm at least one thesis associated with nationalism, namely that “humanity is naturally divided into nations.” Both Hayes and Cobban also insisted that while Rousseau was moving towards modern nationalism, his was not the belligerent kind that it would later become. The most extensive work on the subject, however, has been written by Anne Cohler who argues that for Rousseau nations were the necessary ground upon which to erect political societies that enabled men to have a sense of common

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314 Cobban, *Rousseau and the Modern State*, 100
316 ibid
317 ibid, 25-26
318 Anthony D. Smith, *Theories of Nationalism* (New York: Holmes & Meier, 1983), 21
belonging. For, “nations embody the peculiarly human qualities in a group of men who live alike before politics are established.”

It cannot be denied that Rousseau emphasized the political advantages of patriotism and civic attachment, nurtured by national programs of education, public festivals, etc. These are as much features of his advice in *Government of Poland*, usually considered his most nationalist’ work, as of his *Political Economy*, or *Letter to d’Alembert*. In the former he says that “the virtue of citizens, their patriotic zeal, the distinctive form which its national institutions may give their soul, this is the only rampart that will stand ever ready to defend [Poland].” (*GP*, III, 183). Similarly, in the *Political Economy* he urges governments to recognize that “it is not enough to tell the citizens to be good; they have to be taught so; and example itself...is not the only means that should be used: love of the fatherland is the most effective.” (*PE*, 15). It is also true that Rousseau regarded as morally bankrupt those among his contemporaries who defended duties to mankind over patriotic attachments. But it does not follow from these points alone that his ideas were a stepping-stone in the direction of modern nationalism. In the most important respect they were at odds with it. Before explaining this it is worth returning briefly to the studies already mentioned.

The main problem with the approach of writers like Cobban or Cohler is that they do not adequately define what they mean by ‘nationalism.’ In their analyses the term refers to quite general notions like civic belonging or love of the fatherland, and it is mainly for this reason that the link between Rousseau and nationalism appears so intuitively persuasive. At the end of his

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321 The same is true of F.M. Barnard’s “National Culture and Political Legitimacy: Herder and Rousseau.” *Journal of the History of Ideas* 44 (1983): 231-253, which only shows that some of what Rousseau says resonates with similar themes found in Herder.
discussion Cobban in fact admits that “we do not find this point of view developed at length in his works.” Moreover, he points out that the “classical idea of patriotism” was the “only kind known to the eighteenth century,” supplanted only after the French Revolution by the idea of “loyalty to the nation.” While Rousseau may have defended patriotism, therefore, it is by no means clear that what he meant by it was loyalty to a nation as we now use the term. Cohler’s case is equally illustrative. Early on she explains that “nationalism is the opinion that when the nation and the state are congruent, a good political order will result.” But the lengthy discussion that follows only establishes Rousseau’s conviction that a common way of life is necessary for founding a political community. It does not show that he believed this to be an inherent part of the state’s legitimacy, which is the essence of modern nationalism’s claim to statehood.

Certainly nationalism is a complicated phenomenon, controversies regarding which are well beyond the scope of this discussion. Nonetheless, there is a shared sense, at least in outline, of what we are referring to when we speak of it, and this sense goes well beyond the more general ideal of communal belonging. For one thing, nationalism is a recent phenomenon. Bernard Yack argues that “while intergenerational communities based on imagined cultural

322 Cobban, *Rousseau and the Modern State*, 123
323 ibid, 102
324 Cohler, *Rousseau and Nationalism*, 4
325 See the opening lines of Elie Kedourie’s *Nationalism*, (Cambridge: Blackwell, 1993), 1: “Nationalism is a doctrine invented in Europe at the beginning of the nineteenth century. It pretends to supply a criterion for the determination of the unit of population proper to enjoy a government exclusively its own, for the legitimate exercise of power in the state, and for the right organization of a society of state.”
326 Smith, for example, has noted the “protean character” of nationalism, which makes straightforward definition difficult. *Theories of Nationalism*, 14, 18-24. See also the collection of essays in *Theorizing Nationalism*, edited by Ronald Beiner (New York: SUNY, 1999).
heritage have been with us for a very long time, it is only in the past 250 years or so that the political self-assertion of national communities has become commonplace.\textsuperscript{327} Nationalism distinguishes the nation, usually defined as a community united by language, ethnicity, or a common set of symbols, from the state, a coercive apparatus. It regards the former as the primary source of legitimacy for the latter, and this is essential for its defense of a national right to self-determination.\textsuperscript{328} Those who have studied the phenomenon have also noted that nations are not objective in the way that nationalist movements tend to portray them. They arise partly through myth-making, by privileging certain parts of collective consciousness and memory. In its best-known form this thesis has been advanced by Benedict Anderson who argues that nations should be understood as types of \textit{imagined communities}. This aspect casts the sharpest light on Rousseau’s contentious relation with modern nationalism, and helps to clarify one essential component behind his use of the word ‘fatherland.’

A case for analyzing Rousseau according to Benedict Anderson’s study of nationalism has been advanced by Steven Engel. According to Engel, Rousseau expected citizens to love the laws, not merely to obey them, and to accomplish this “it becomes necessary to direct the imagination of the individual toward the community. Without imagination directed in this way, the individual would likely fail to listen to the general will.”\textsuperscript{329} Since men have a “naturally selfish point-of-view in the natural state,” imagination is what enables them to transcend the particular will and identify exclusively with that of the community. Engel’s interpretation manifests the common tendency to identify the particular will with the individual’s natural

\textsuperscript{327} Bernard Yack, “Popular Sovereignty and Nationalism.” \textit{Political Theory} 29 (2001): 523

\textsuperscript{328} Smith notes that this is what makes nationalism “profoundly subversive.” \textit{Theories of Nationalism}, 10.

\textsuperscript{329} Engel,“Imagined Communities.” 528
normative orientation, and the general will with, in Riley’s terms, the ‘common good morality.’ By relating these interpretive assumptions to nationalism his argument reveals the disconcerting conclusion that follows naturally from them: Rousseau’s political thought provides no grounds for distinguishing patriotic virtue from xenophobic zealotry. This charge has often been aimed at modern nationalist movements, and it would indeed be Rousseau’s position if for him patriotism demanded nothing more than imaginative identification with the communal will. Though Engel never addresses this issue, the imagined community he describes is no different from an imaginary community where men may be manipulated to believe themselves members. It is not clear why imaginative acts of identification should fall under a “constructive amour de la patrie,” as opposed to a pernicious one, given that the psychological mechanism in each case would be the same. Engel recognizes, for example, that in this way “Rousseau’s thought appears to allow for the development of ‘false consciousness’ where an impoverished citizen identifies with the common good and one’s fellow citizens rather than with the working class.” This has also been emphasized by Anderson, who observes that one way in which nations are imagined as communities is that “regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship.”

This is not Rousseau’s position, however. The section of the Social Contract which sets out the problem of the particular will, points explicitly to imaginary communities as the foundation of political vice:

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330 ibid, 535 (*my emphasis*)
331 ibid, 533.
[The individual’s] absolute and naturally independent existence may lead him to look upon what he owes to the common cause as a gratuitous contribution...and, by considering the moral person that constitutes the State as a being of reason because it is not a man, he would enjoy the rights of a citizen without willing to fulfill the duties of a subject. (SC, I.7, 53; my emphasis).  

The point of this passage is not to show that social vice is inevitable because by nature human beings are individuals. It is rather to point out that a certain kind of moral ignorance may take this fact to mean that there are no such things as moral persons who are not natural persons. In other words, it is not the fact that individuals are naturally independent of each-other, in the sense that they recognize themselves as self-moving and distinct, which engenders social vice. It is a particular conclusion drawn from these premises that does so. The passage suggests that a social man dominated by the particular will already has a certain phenomenological relation to the social world. His relation to others, and their relations to him, appear to him as fabricated, and it is this way of experiencing that makes possible the unrestrained activity of selfish passions. The problem, in other words, is not simply about persuading human beings through rational discourse, but about changing how they perceive the reality of the state of which they are a part.  

Rousseau never tires of emphasizing that theoretical abstractions have no direct effect on human action. This is a fundamental premise of his education program in the Emile, for

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333 See also SC, IV.1, 122, where Rousseau says that when the social bond is loosened and “iniquitous decrees...are falsely passed under the name of Laws,” the state “subsists only in an illusory and vain form.” (my emphasis).

334 As Noone observes: “What meaning could a moral imperative have for a man whose affective life was completely dominated by pure self-interest?” “Rousseau’s Theory of Natural Law,” 28.
example, or his criticism of 18th century natural law theories in the *Discourse on Inequality*. Human beings must be educated to understand that moral relations are just as real as physical relations, and a necessary part of such education is to make this reality experientially accessible to them. This is a crucial requirement for the possibility of civic virtue. Importantly, although the flawed reasoner in this passage believes the state to be made up ‘because it is not a man,’ Rousseau’s solution was *not* to persuade him that the state is “an artificial man.” A comparison with the Hobbesian theory of sovereignty is useful here.

**Against Representative Sovereignty and ‘Will-Formation’**

For Hobbes, the most essential characteristic of a political community is its unity of will. Naturally, human beings are self-contained wholes that act independently of others. If they are to live together in peace and order they must give up this natural independence and subordinate their wills to a single one. The body to which each subordinates himself along with all others is sovereign. As he explains in the *Leviathan*, “The only way to erect such a Common Power…is to confer all [individual] power and strength upon one Man, or upon one Assembly of men, *that may reduce all their Wills...unto one Will.*” The Hobbesian social contract is a promise that each individual makes to every other to give up his natural independence and allow the sovereign to dictate his actions. This means, Hobbes explains, that each individual acknowledges the

335 *Leviathan*, “The Introduction,” 3. It is true that Rousseau uses this trope in the *Political Economy*. But this is an early work in which it can be assumed that his ideas had not reached the level of precision of works like the *Social Contract*. For example, while in the former Rousseau compares the sovereign power to a man’s “head” in the latter he compares it instead to his heart. Moreover, Rousseau himself draws our attention to the fact that the idea of a man being like a state is not really his own. He is adopting a “common” trope, which he considers to be “in many respects imprecise.” (*PE*, 6). See Derathé, *Rousseau et la science politique*, 57.

sovereign as his representative, and himself as author of all that the sovereign does, judges, and wills. Hobbes insists that “a multitude of men are made one person when they are by one man, or one person, represented…unity cannot otherwise be understood in a multitude.”

Sovereign power, therefore, has to be representative.

The act of subjection to the commonwealth thereby implies that individuals adopt a new identity. They obligate themselves to act according to no other will than that of the sovereign in all that concerns their common life under law. As Hanna Pitkin observes, “even if the sovereign had obligations to his subjects, he could never commit a breach of them, because the subjects have authorized in advance all that he shall do. They have agreed that his action shall be regarded as their own, as if they had done them.”

Like Rousseau, however, Hobbes recognizes that subjects are still moved by wills of their own, which may or may not conform to that of the sovereign, and insists that fear of punishment will not bring these wills into concord with that of the sovereign. “The grounds of [the sovereign’s] rights…cannot be maintained by any Civil Law, or terror of legal punishment,” he states. If the sovereign’s legitimacy were grounded merely on superior power, subjects would naturally conclude that “punishment…[is] an act of hostility; which when they think they have strength enough, they will endeavour by acts of hostility to avoid.”

Political obligation requires that individuals truly identify with the sovereign power, and act only according to its will. They must believe that they have agreed to obey, and that the sovereign is not their enemy but their representative. As Pitkin notes, Hobbes clearly recognizes the “real need to enlist the capacities of citizens for positive political action, the problem of

337 XVI, 104


339 Leviathan, XXX, 220
participation, the problem of creating motives for obedience and cooperation with a government.” Consequently, the proper operation of the Hobbesian leviathan depends as much on fear as on educative persuasion. Since “the actions of men proceed from their opinions, in the well governing of opinions consisteth the well governing of men’s actions, in order to their peace and concord.” Accordingly, Hobbes advises that

seeing as people cannot be taught this, nor when ’tis taught, remember it, nor after one generation past, so much as know in whom the Sovereign Power is placed, without setting a part from their ordinary labour, some certain times, in which they may attend those that are appointed to instruct them; It is necessary that some such times be determined, wherein they may assemble together and…hear those their Duties told them, and the positive Laws, such as generally concern them all, read and expounded, and be put in mind of the Authority that maketh them Laws.

This kind of education puts subjects in an essentially passive role. They are to hear their duties explained to them, surely according to the logic of Hobbes’s *Leviathan*. But they are not to debate this reasoning, or question the laws. One could, of course, argue that debate might be permitted in more liberal commonwealths without fundamentally altering Hobbes’s arguments. As long as laws are obeyed, individuals may remain free to question their premises, even in

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340 Pitkin, *The Concept of Representation*, 35

341 *Leviathan*, XVIII, 113

342 ibid, 223
public, if such questioning is permitted by the sovereign. But it is nonetheless revealing that what matters most for Hobbesian political education is the governing of men’s opinions, and in this his theory of representation plays a useful role. If taken to its logical conclusion, it implies that individuals, in their capacity as authors of the sovereign’s actions, share a uniform perspective on matters of public policy. Each is interchangeable with every other, for all subjects are equally authors of the same decision. In other words, if the sovereign represents them all, their wills are, in this respect, identical. The aim of Hobbesian education is indeed “the development of community,” but community is ultimately the sovereign power in which individuals may or may not really have a share. Democratic sovereigns are just as legitimate and representative as monarchical sovereigns. It is not surprising that he does not distinguish between the kind of education appropriate for republics, in which citizens truly participate in lawmaking, from that suitable for monarchies.

It is, of course, undeniable that Rousseau agrees with Hobbes on two crucial issues regarding sovereign power. He argues that such power is absolute and indivisible, and that there is no standard of right above the sovereign by which the latter can be judged. But this agreement is only skin-deep. For while Hobbes maintains that sovereign power has to be representative,

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343 I find Pitkin’s interpretation largely persuasive on this question. See for example Hobbes’s claim that there is “no obligation on any man which ariseth not from some act of his own;...And...such arguments must either be drawn from the express words I authorize all of his actions, or from the intention of him that submitteth.” *Leviathan*, XXI, 141.

344 Pitkin, *The Concept of Representation*, 35

345 See also: “For the prosperity of a people ruled by an aristocratical or democratical assembly cometh not from aristocracy, not from democracy, but from the obedience and concord of the subjects; nor do the people flourish in a monarchy because one man has a right to rule them, but because they obey him.” *Leviathan*, XXX, 222.

346 In contrast, Montesquieu argues that “the laws of education will be different in each kind of government. In monarchies their object will be honor; in republics virtue; in despotisms fear.” *Spirit of the Laws*, IV.1, 31 (emphasis in the original). See the rest of book IV for elaboration on this point.
Rousseau argues that the sovereign cannot be representative. It may seem strange to say this since, like Hobbes, Rousseau writes that the social contract involves “the total alienation of each associate with all of his rights to the whole community.” (SC, I.7, 50). The ‘community’ in this case might be thought to perform the same function as the Hobbesian sovereign, namely to represent all the individuals that partake in it. But apart from the fact that Rousseau’s argument never moves in this direction, one needs to grasp what he means by ‘community.’

The latter is not a third party to which individuals alienate their rights. In the case of Hobbes, the individuals who make the contract have no direct obligations to one-another except through the sovereign, for he is the guarantor of their covenant. Each promises to every other to subject himself to a third party. The opposite is the case for Rousseau. Each individual promises to give himself up to every other individual, as long as every other individual promises the same to him. In other words, the community is simply this relation of mutual exchange between every individual and every other individual. Hobbes argues that “it is the Unity of the Representer, not the Unity of the Represented, that maketh the [commonwealth] One.” In contrast, the source of unity for Rousseau is a direct and perfectly reciprocal exchange of rights between all individuals. “This act of association,” he argues, “produces a moral and collective body made up of as many members as the assembly has voices.” (ibid). The sovereign is an assembly, not a pre-existing unity with a single will as in the case of Hobbes.

Of course, the Hobbesian sovereign can also be an assembly. The difference lies in how each thinker justifies majority-rule, the animating principle of assemblies. “If the Representative consists of many men,” Hobbes explains, “the voice of the greater number must be considered

347 Hobbes, Leviathan, XVI, 104
the voice of them all. For if the lesser number pronounce (for example) in the Affirmative, and the greater in the Negative, there will be Negatives more than enough to destroy the Affirmatives; and thereby the excesses of Negatives, standing uncontradicted, are the only forces the Representative hath.”

Assemblies make acceptable sovereigns essentially because the majoritarian principle defines them, thereby generating a single decision. Since the majority’s opinion will always win out by the power of numbers, its will performs the same function as that of a single man who is sovereign. It represents all members of the assembly, including those who voted against it.

Rousseau, however, eschews this more familiar explanation of how a dissenting minority binds itself to the decision of a majority. As discussed, the role of majorities is primarily to serve as filters against partiality - i.e. to generate political justice. Hobbes’s argument implies that the majority which institutes the sovereign already acts as a representative of those who voted against the sovereign. It is for this reason that dissenting wills are automatically bound by its decision. In the case of Rousseau, however, majorities are never meant to act as representatives in this sense. If for Hobbes majorities create the people - or unify the multitude - for Rousseau majority-rule follows the people’s originally unanimous unification. True, he does say that “except for the primitive contract, the vote of the majority always obligates the rest.” (SC, IV.2, 124). But unlike Hobbes he does not base this claim on the grounds that participation in assemblies as such obligates one to abide by the will of the majority. For this would imply that

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348 ibid (my emphasis)

349 Note Rousseau’s implicit rejection of Hobbes in the following: “…before examining the act by which a people elects a king, it would be well to examine the act by which a people is a people. For this act, being necessarily prior to the other, is the true foundation of society. Indeed, if there were no prior convention, then, unless the election were unanimous, why would the minority be obliged to submit to the choice of the majority?” (SC, I.5, 49; my emphasis).
political obligation would be based on Hobbesian foundations, and would require will-formation, or believing oneself author of a decision to which one might, in fact, have dissented.\textsuperscript{350}

It might seem that Rousseau is sympathetic to this argument when he says that “when the opinion contrary to my own prevails, it proves nothing more than that I made a mistake and that what I took to be the general will was not.” (\textit{ibid}). But he immediately reminds the reader of his previous arguments (discussed above) regarding \textit{when} it can be safely maintained that the majority has expressed the general will. If the majority vote results from the agreement of all perspectives regarding the impartiality of certain decisions, one should assume that one’s judgment is mistaken. For many who share one's own point of view have nonetheless deemed the decision impartial. In fact, Melissa Schwartzberg has pointed to the “moral benefits” of relying on majorities rather than on unanimous consent in the routine activity of legislative assemblies. “Unanimous rule,” she explains, “with its emphasis on the absolute and unerring value of each individual's judgement does not induce voters in even the slimmest of minorities to acknowledge that they might have misidentified the general will...[whereas] majority rule properly acknowledges the likelihood of error, or the distorting effects of particular wills [and \textit{amour-propre}].”\textsuperscript{351} This does not imply that in cases where factual evidence unambiguously shows that

\textsuperscript{350} Douglass argues that “when in the minority, citizens are free because they will that the majority voting should be taken as determining the content of the general will...all citizens will \textit{the procedure} for attempting to realize the general will, even if they do not will the precise outcome of the voting process.” \textit{Rousseau and Hobbes}, 130-131. This is true only if the citizens understand majority-rule as a way of filtering out bias, and not merely as a procedure that must be followed in assemblies, as Hobbes had argued. Otherwise, binding oneself to the will of the majority \textit{before} one knew the outcome of the vote would be simply binding oneself to an arbitrary will. Douglass argues further that “when the opinion that prevails from the vote is contrary to that of any individual citizen, that citizen is then supposed to realize that he was simply mistaken...For Rousseau both the objective content of the general will (the common interest) and the subjective recognition of the general will as one's own will are necessary for the general will to be in accordance with man's free will.” Ibid, p.131; my emphasis. But this would be nothing more than false consciousness, or identifying oneself with an interest (and a will) that is not one's own, i.e. exactly the opposite of what Rousseau defends. Fralin sees this more clearly than Douglass when he notes that if “no one can will for another person” then “no citizen would have an obligation to obey the will of the majority if that will were contrary to his own.” \textit{Rousseau and Representation}, 84.

the majority has adopted a biased law, one is still obligated by its will. In these cases conscientious objection would take the form of arguing that the “characteristics of the general will” are no longer present “in the majority.” (ibid). In other words, one would argue that the law is not a law, and so not binding, for it is not impartial. The law in such cases would be merely an instrument of factional domination, or force without right.

These observations are in line with Rousseau’s insistence that “the more concord reigns in assemblies, the more the general will also predominates,” a statement that would make little sense if his defense of majority-rule were the same as that of Hobbes. (ibid, 123). Clearly, the greater the number of individuals who agree that the proposed law is impartial, the greater will be each man’s security in its justice. This difference regarding the role of majorities in legislative assemblies points to the heart of Rousseau’s disagreement with Hobbes. For the latter, the commonwealth is essentially an imagined community because sovereignty is always representative. Its unity results from each man’s adoption of an identical political identity as every other man, all of them derived from the sovereign will. Rousseau, on the other hand, argues that a community is a direct relationship among individuals bound to each other by a reciprocal exchange of rights. This community neither represents anything beyond itself, nor can it be represented by anything else. In Rousseau’s words: “The Sovereign, by the mere fact that it

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352 As the case of Rousseau’s condemnation in Geneva shows, however, such conscientious objection, even when backed up by factual evidence (as Rousseau provides in the Letters from the Mountain), will likely be ineffective. But all this proves is that the legislative assembly is corrupt, and in such cases the only remedy is to reform the entire commonwealth (as Lycurgus did in Sparta, and as Rousseau urges in the case of Geneva). See chapter 2.

353 Note that Rousseau is careful to distinguish genuine concord from artificial concord, created either by fear or demagoguery (i.e. will-formation): “At the other end of the cycle, unanimity returns. That is when the citizens, fallen into servitude, no longer have freedom or will. Then fear and flattery turn voting into acclamations; they no longer deliberate, they worship or they curse.” (SC, IV.2, 123). This shows, once again, that Rousseau’s ideal cannot be interpreted to be an artificially created homogeneity of perspectives, but a real agreement among diverse perspectives regarding the law’s impartiality.
is, is always everything it ought to be.” (SC, I.8, 52). Also, the sovereign will is not imposed on the contracting parties by a third party that is above them. It originates in a genuine concord of their wills, born of an equal commitment to impartiality. This commitment is the essence of civic virtue and the animating principle of all real (as opposed to imaginary) commonwealths.

**What is a Fatherland? Rousseau’s Standard of Political Legitimacy**

Certainly, Rousseau agrees with Hobbes that the state *is* the sovereign. “The public person thus formed by the union of all the others,” he says, “its members call State when it is passive, Sovereign when active.” (SC, I.6, 51). As discussed, however, he disagrees with Hobbes’s conception of the sovereign, and so of the state. The state to which citizens owe their loyalty is not, nor should it be, imaginary. What makes one a member is not primarily one’s belief or feeling of belonging, inculcated by programs of public education, but one’s direct participation in the highest political activity: lawmaking. Differently put, feelings of belonging are certainly encouraged by public education, by they will not be useful, nor, in the final

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354 Derathé has rightly insisted that the most original and radical contribution Rousseau reached, against the jurisconsults and Hobbes, was to argue that the people can never alienate its sovereignty. True, Hobbes also argued that when a people elects a king it dissolves itself by this very act, as observes. But for Hobbes the “State subsists after the dissolution of the people: it is contained entirely in the person of the king.” See Rousseau et la science politique, 51, 265. This is what Rousseau denied - the separation of state and sovereign people - i.e. the representation of sovereignty.

355 See also Miller: “Rousseau believed that only a democratic sovereign could enable a society to achieve a transparent unity, reconciling the individual to a world shared willingly with others…By suspending all relations of master and slave, a democratic sovereign promised the end of alienation - that is the abolition of involuntary subjugation.” Rousseau: Dreamer of Democracy, 108-109.

356 Marini’s claim that, according to Rousseau “the government is the State,” is therefore erroneous. “Popular Sovereignty,” 57.

357 This does not mean that all citizens are involved in designing or proposing laws. ‘Lawmaking’ refers to the activity of generating legislation, as opposed to mere legislative proposals, i.e. to popular ratification. For a detailed discussion of the distinction between ‘legislative initiative’ and lawmaking see chapter 2.
analysis, truly exist, in the absence of continuous political participation. The Rousseauean
fatherland is essentially a legislative assembly in which each citizen is equal to every other, and
bound to every other.\footnote{As Gildin explains, for Rousseau “it is not a question of limiting the authority of the sovereign, but of seeing to it that a legitimate sovereign exists.” \textit{The Design of the Argument}, 60}

This assembly cannot be represented by any other body, or person. Its purpose is to
express the general will through the concord of all individual wills. Since there can be no
guarantee that the will of another body will always coincide with that of the legislative assembly,
alienating its rights to such a body is unjustifiable. It would be equivalent to slavery understood
as subordination to an arbitrary will. Neither can it contract away its rights to another body, for
there would be no party that could arbitrate legitimately in cases of disagreement. Therefore, the
legislative assembly is both \textit{unrepresentative} and \textit{unrepresentable}.\footnote{Douglass claims that here Rousseau “was concerned only with the freedom of the people understood as a collective body with a collective will, and not with the freedom of the individual citizens who form the sovereign body,” in \textit{Rousseau and Hobbes}, 123. But if one grants the interpretation presented here, Rousseau’s argument against representative sovereignty is concerned primarily with the freedom of \textit{individual citizens}, and only by extension with that of the collective body. For, the latter is nothing more than a union of all actual citizens. Cohen objects to the idea that Rousseau thought representation illegitimate as a matter of principle by pointing out that the relationship between representative and represented in modern states can hardly be compared to that between master and slave. See \textit{A Free Community of Equals}, 149. Whatever the empirical merits of this argument, however, it is undeniable that for Rousseau even a temporary alienation of legislative power was unacceptable as a matter of principle. It would imply the substitution of a foreign will for the \textit{actual} will of each citizen, which is formally identical to slavery. No matter how closely the master’s judgement agrees with that of his slave, the slave remains subjected as long as he has no right to prevent the master from doing his own will instead of the slave’s. The following example illustrates the point: “As Italian prime minister Silvio Berlusconi used to tell his fellow citizens when they demonstrated their opposition during the intraelectoral time and autonomously from their elected representatives (and sometimes against them): “since you have chosen me in a free electoral competition, you must now be quiet, and let me do my job.” See Urbinati, \textit{Representative Democracy}, no.36, 236. Rousseau’s objection to representative government was formulated to address (and prevent) precisely these types of conflict.} Any attempt to represent
the general will, or to make laws in the people’s name, would necessarily involve obligating
citizens through the substitution of imaginary identities in place of their real ones. It would
require manipulating them into believing themselves authors of decisions of which they are not,
in fact, authors. As Rousseau emphasizes, \textit{“tyrant} and \textit{usurper} are two perfectly synonymous
words.” (SC, III.10, 108; emphasis in the original). A tyrant is not simply a man who governs badly or cruelly, but one who speaks in the name of other citizens and demands their obedience thereby. The Greeks were correct, Rousseau says, to attribute the name tyrant “to good and to bad Princes whose authority was not legitimate.” (ibid). Representation of sovereignty amounts to usurpation of sovereignty, or to binding citizens by a will other than their own.

Such acts destroy the commonwealth for “the legislative power is the heart of the State; …as soon as the heart has stopped to function, the animal is dead.” (ibid, III.11, 109). Rousseau’s argument here also implies that the state of the legislative assembly is the ultimate test of political legitimacy. In order to distinguish between good and bad regimes, just and unjust laws, one has to ascertain whether the legislative power is free and able to express the general will. What makes laws legitimately binding is the continuous consent of all individuals speaking and acting in their own names in the sovereign assembly. There is no other basis, Rousseau emphasizes, for political obligation, not even genuine respect for ancient laws. For this would be simply another form of representative sovereignty - i.e. taking the will of one’s ancestors as binding on oneself solely because they are one’s ancestors. There is little ambiguity in his statement that “yesterday’s law does not obligate today.” (ibid). Only if the legislative assembly remains free and able to revoke them can yesterday’s laws bind today’s citizens.

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360 Free in the sense that it is not muffled by another power (e.g. the executive), and able in the sense that the majority does not result from factional voting, or demagogic points of view.

361 Continuous consent is analogous to a continuous heartbeat, as both indicate life. Consent is given each moment a free people does not repeal the laws it has passed. This is the sense in which it is continuous.

362 For an enlightening analysis that regards this point as central to Rousseau’s stance against representation, see Affeldt, “The Force of Freedom,” 306. Melzer makes little of this passage when he claims that “the role of the present-day assembly majority is not nearly so active or authoritative as one may be supposing…If Rousseau’s citizen were asked the true locus of the general will, his first answer would be ‘The Law’; only secondarily would he point to the present-day assembly majority as the ultimate moral ground of the law.” Natural Goodness, 175. According to the interpretation offered here, however, a man who answered in this way would be making an unwarranted distinction between the law and the legislative assembly, thereby proving that he was not a citizen.
Rousseau thereby denies the normative relevance of all arguments about a common history, ethnic identity, act of founding, etc. While some of these conditions will likely be present in all states, they do not make a community real and its demands legitimate. Consequently, a patriot is not a man who identifies with the will of his community, as if this were an unchanging given, but one who is committed to the norm of impartiality and who acts accordingly in the legislative assembly of his state. Genuine *amour de la patrie* is grounded in political participation of this kind. It cannot be artificially inculcated by power, as Rousseau emphasizes in the *Political Economy*, and even more strongly in the *Social Contract*.

Passions that masquerade as love of the fatherland but contradict the norm of impartiality, and compromise the integrity of the legislative assembly, are usually encouraged by factional interests to disguise attempted usurpation. Rousseau suggests that representative government, as well as representative sovereignty, are not simply based on erroneous doctrines. Worse, they are symptoms of political decline, and offer convenient justifications for further corruption. Those who seek power usually attempt to sever the relation between the legislative assembly and the sovereign by suggesting that the latter be represented by themselves. In fact, Rousseau argues, the idea of representation presupposes political corruption and decline. It is usually proposed as a solution to “the cooling of the love of fatherland, the activity of private interest, the immensity of States, conquests, [and] the abuse of Governments.” (*ibid*, III.15, 114). In the

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363 Douglass rightly points out that “Rousseau’s argument against the use of representatives...was only one against representative sovereignty, not against representative government,” in “Rousseau’s Critique of Representative Sovereignty,”737. While this distinction ought to be kept in mind if one will remain faithful to the argument of the *Social Contract*, it is not very significant for contemporary concerns. Representative government, as the phrase is usually employed now, involves a temporary alienation of legislative power. For this reason, it is just as unacceptable as representative sovereignty of the Hobbesian kind. Note, for example, Rousseau’s criticism of British representative government in *SC*, III.15, 114.

364 In practice, this takes the form of objecting, or preventing, periodic popular assemblies. See Rousseau’s comments in *SC*, III.14, 112, and III.18, 119.
Political Economy he urges governments to recognize that just rule is the only effective form of rule, for only when power conforms to law can citizens remain virtuous, and “none but honest people are capable of obeying.” When citizens are corrupt “chiefs are forced to substitute the cry of terror or the lure of some apparent interest by which they deceive their creatures…In the end all of these great politicians’ skill consists in so dazzling those they need that each believes he is working for his own interest while working for theirs.” (PE, 14). Manipulation and fear, therefore, are employed by governments when the bond established by the social contract has been broken, and men no longer obey willingly. Importantly, civic decay begins when citizens believe that the state’s laws are partial, either improperly executed, or improperly formulated. “Under a bad Government,” he argues, “no one takes an interest in what is done [in the legislative assemblies], because it is predictable that the general will will not prevail in them.” (SC, III.15, 113; my emphasis). Once again we are reminded of Rousseau’s argument that majorities should, and will, be trusted only when ‘all the characteristics of the general will’ are still embodied in them. Contrary to what has sometimes been suggested, this statement is not a tautology. It denotes a clear and factually ascertainable justification for democratic decision-making. When citizens believe that the legislative assembly will not express the general will, despite conforming to the principle of majority-rule, they conclude: “What do I care?...[and] the State has to be considered lost.” (ibid). In such cases, obedience becomes purely instrumental and love of the fatherland disappears with the fatherland. Government propaganda cannot

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365 Douglas Verney, for example states that: “if we find the general will by counting votes...and if the majority view expresses the General Will only if ‘all the qualities of the General Will reside in the majority’ - then the argument is nothing more than a tautology.” See “A Supposed Contradiction in Le Contrat Social.” Mind 60 (1951): 250

366 As Miller emphasizes, “Anything less than democratic sovereignty means that a society lacks a proper foundation. In that case reasons for obedience change their character; they become prudential and circumstantial, rather than moral and obligatory.” Dreamer of Democracy, 109.
establish what each citizen knows to be false, namely genuine community. Widespread apathy and exclusive concern for private affairs signal the citizens’ awareness that the commonwealth is no longer theirs, and the laws no longer reflect their interest. Representation, insofar as it involves alienation of legislative power to a body other than the legislative assembly, underlies and encourages this state of affairs. Consequently, Rousseau argues that the only way to prevent political decline is to establish set times when the legislative assembly must be convened, meetings “which nothing can abolish or prorogue.”

**The Spirit of Ancient Political Practice**

To say that the essence of the words *patrie*, state, or sovereign, is the living activity of the legislative assembly, however, is not to deny that Rousseau considered a sense of belonging to a specific community an essential part of good politics. Although I have emphasized that the general will does not require the abandonment of all sorts of self-interest, it is equally true that guarding against the temptation of injustice is a perennial problem that cannot be overcome by a purely rational calculus. For it is not clear why, when casting his ballot, the individual should not pursue his maximal advantage instead of conforming with the norm of impartiality demanded by the general will. Because Rousseau expects so much from the activity of the legislative assembly - nothing less than justice - he considers civic virtue foundational for all legitimate states. Only if they care for the fate of their fellow-citizens, will individuals be motivated to respect their rights and eschew the free-rider’s conclusion that the state is not real. This explains, for example, why Rousseau’s civil religion is so intolerant with respect to which religious dogmas are acceptable in


a republic. “It is impossible,” he says, “to live in peace with people one believes to be damned; to love them would be to hate God who punishes them.” There is no sense in distinguishing “civil from theological intolerance,” he insists. (SC, IV.8, 151). Both forms endanger that which is crucial for proper legislative activity - care for one’s fellow citizens.

Yet, Rousseau’s insistence that love of the fatherland underlies respect for the laws must be read alongside his claim that ancestral laws do not obligate citizens unless these latter are in a position to revise them at will. Here, the spirit of his thought is entirely at odds with nationalism’s insistence that it is the people’s past, its rootedness in the ancestral and traditional, and its awakening to consciousness of this rootedness, that legitimizes the state’s coercive power. Rousseau’s position is the opposite. It is the assembly’s freedom to decide whether it will keep or discard the laws it has inherited that legitimizes these laws. Although he often uses the word Nation, he does not thereby mean to distinguish the nation from the state as much as to distinguish people with similar customs from a body united by laws in a sovereign assembly. Rousseau’s awareness that a shared culture, or set of communal symbols and rituals, is a necessary part of republican life carries none of the normative significance that nationalism would later place on such features. Note, for example, that in the Government of Poland, he begins the crucial chapter on national education with the following reminder: “National education is suitable only for free men; only they enjoy a common existence and are truly bound together by Law.” (GP, IV, 189; my emphasis). The freedom he has in mind is not simply freedom from foreign subjection, but also participation in political activity. Soon enough Rousseau encourages the Poles to adopt “a rather unusual exercise for young Patricians graduating from school,” established in Berne, namely “the moot State.” (ibid, 191). To say that
‘only free men enjoy a common existence’ is, in the case of Rousseau, to say that only a self-governing community can have a genuine collective life, as well as to say that only free men can truly love the fatherland.

Rousseau makes all of this explicit in an unpublished note entitled “Of the Fatherland,” [De la patrie]. He begins by recounting an episode from his own life. Upon reading a passage on poetry, which stated that eighteenth century Romans no longer resembled the ancient Romans, Rousseau found himself wondering with “indignation...what these two types of men might have in common on the same soil.” In the end he comes to the following conclusion: “What we love in our country [pays], that which we properly call the fatherland [la patrie], is not that which relates to our appetites or the habits born there, it is not simply the place [lieu]...the object of this love is much closer to us.” The next fragment speaks explicitly of the laws, liberty, and peace as those things that might “inflame [the citizens’] zeal” and make them consider service to the fatherland as “real happiness.” Only citizens that live in a self-governing community, in other words truly love the fatherland, for only they have a fatherland. As Rousseau says in the Government of Poland, “what do [eighteenth century Europeans] care what master they obey, the laws of what State they follow?” (GP, 3, 184). His point is that contemporary cosmopolitanism is merely a facade which conceals the death of political freedom, and genuine political life.


368 Ibid, 536. See also the note to this page in OC, 1535, where one finds the following passage from a letter of 1764: “Neither walls nor men make the fatherland: it is the laws, the moeurs, the customs, the Government, the constitution, the way of being that results from it. The fatherland exists in the relations of the State to its members; when these relations change, or are annihilated, the fatherland vanishes.” (my emphasis). Though of course Rousseau also includes moeurs and customs here, they are presented in the context of the fatherland defined specifically as the public power (i.e. the relation of the state to its members). Cf. SC, I.7, 51.
The following passage by Bernard Yack sums up what I believe to be the real spirit of Rousseau’s politics:

For the ancient Greeks, political community referred to the sharing of self-government, not to the identity-shaping cultural community modern citizens experience. Indeed, I suspect that the relatively intense participation of Greek citizens in political life made it harder for them to identify with their political communities in the way that modern citizens do. It is far easier to declare “my country right or wrong” when I passively receive national policy from my representatives than when I am actively involved in making and executing it myself. When I am directly involved in the political process, its ups and downs, victories and defeats are bound to affect me much more personally and encourage me to distinguish myself from my political community.\(^{369}\)

Regrettably, Yack places Rousseau in the modern camp on the question of identity-shaping, while I wish to argue that the spirit of Greek politics as described here is precisely what Rousseau admired. This sets him apart from modern apologists of community, and political movements like nationalism. Yack may be correct to state that political participation encouraged Greek citizens to distinguish themselves from their communities, but only if community refers to “the collective identity of the polis,” rather than its legislative activity.\(^{370}\) For such participation


\(^{370}\) ibid
must also have made the *polis*, and its collective life, appear unambiguously real to Greek citizens, something that is often contested in the case of modern citizens. In fact, Rousseau’s ideas encourage us to consider whether participatory politics of this kind might be grounded in, and formative of, an entirely different sensibility about what a community is. His defense of democracy implies that only real political activity can persuade citizens to regard their moral relations to one-another as real - i.e. not fabricated, or imaginary.

**Can Men be Forced to Be Free?**

Rousseau’s principles of right imply a particular social theory, outlined in the *Discourse on Inequality*. The essence of that theory is that freedom and sociability are two aspects of a single phenomenon. When human beings are trapped in relations of domination, they are enemies to one-another, or anti-social. All are driven by the particular will defined as the desire to achieve one’s maximal advantage under conditions of interdependence. The presence of this type of human relation signals the annihilation of freedom. Genuine society, or sociability, and real freedom rise and fall together, in other words. The necessary condition of both is justice defined as impartiality. The necessary condition of justice is the social contract: a reciprocal exchange of rights among all individuals that creates the sovereign assembly. Rousseau’s considerations regarding the character of political corruption presuppose this same theory. When the executive usurps the legislative power, law loses its ability to obligate citizens and becomes merely an
instrument of domination.\footnote{Administering the law badly, or distorting the vote in the legislative assembly, equally count as symptoms of usurpation. The law cannot be administered badly as long as the sovereign remains vigilant over the executive power, i.e. as long as the legislative assembly is alive. See my discussion of the tribunate in chapter 1 and the droit negatif in chapter 2.} In the absence of justice the entire character of social life changes and men are trapped in master-slave relations. Their only source of unity is also that which drives them apart, namely the desire to overpower others.

But if freedom, as Rousseau insists, implies the absence of this desire, can men really be \textit{forced} to be free? Most commentators now argue that there is nothing paradoxical in this idea. Political justice, or the general will, is the condition of freedom. Instead of being subjected to the arbitrary will of man, citizens are subjected to the impartial will of their community. Instead of being dependent on other men, they are dependent on a law that they have made themselves. In other words, they are \textit{autonomous}. This interpretation appears valid, but it does not provide a sufficiently convincing answer to the following question. If men have imposed the law on themselves, why must some still be \textit{forced} to obey it? Berlin has articulated this difficulty most clearly as follows:

\begin{quote}
It is one thing to say that I may be coerced for my own good, which I am too blind to see: this may, on occasion, be for my benefit; indeed it may enlarge the scope of my liberty. It is another to say that if it is my good, \textit{then I am not being coerced, for I have willed it, whether I know this or not}, and am free (or “truly” free) even while my poor earthly body and foolish mind bitterly reject it.\footnote{Berlin, “Two Concepts of Liberty,” 134; \textit{my emphasis}.}
\end{quote}
One way of answering this question in the case of Rousseau is to resort to the man-citizen dichotomy. The civic part of man, the embodiment of the general will, has consented while the natural part of man has not, driven as it is by self-interest.\textsuperscript{373} Being forced to be free means being forced to act according to what you really want, which is the general will. But this is unsatisfactory. First, if the natural part of man always leads him away from the general will and towards his own selfish interest, it is not clear why the demands of the former are more legitimate than those of the latter. Why must they be considered as ‘what you really want’? The idea that political force privileges the general will over the individual’s natural inclination is simply Hobbesian education. Men must be taught to identify with the sovereign will and to believe that in so doing they are free. As discussed, however, it is not the case that the individual’s natural inclination is selfishness, or anti-sociality. Rather, the particular will is a symptom of social corruption, not a natural given. Self-interest, which is distinct from selfishness, is best served by one’s commitment to impartiality as long as the legislative assembly is alive. To sum up, a consistent version of this interpretation would require the kind of argument about the particular will that has been provided in this chapter.

\textsuperscript{373} This is another version of the ‘half-socialization’ thesis. It also presumes that human beings always have two wills, and the purpose of political power is to make the general will effective by silencing the particular will. Since each man already has a general will, silencing the particular will is not a form of oppression, or substituting an alien will for the individual’s own. It is simply a way of releasing the good will from the unjust one’s grasp. Maurice Cranston’s explanation is representative. “The general will is something inside each man,” he argues, “so that the man who is coerced by the community…is being brought back to an awareness of his own true will.” “Jean-Jacques Rousseau and the Fusion of Democratic Sovereignty with Aristocratic Government,” \textit{History of European Ideas} 11, 424. As indicated above, however, this interpretation is incompatible with the idea of will as a single source of motivation. Action motivated by the general will is incompatible with the presence of the particular will.
But this still does not resolve the issue. For, once again, if the individual has truly consented to the law of his state, why must he be forced to obey it? The most probable interpretation of these lines is that they are deliberately paradoxical. Punishing a citizen for disobeying a law to which he has consented makes him free only in an external sense. He is prevented from falling prey to master-slave relations by being physically removed from the circumstances that would have enabled him to do so. The main beneficiary here, however, is not really the individual citizen but the rest of society. Its protection is the aim of the provision that all those who disobey the law will have to be punished. The individual who acted contrary to the law is a corrupt individual. He can be reformed, perhaps. But he cannot be forced to be free in the sense of being truly free whilst being coerced. Rousseau’s paradoxical characterization of punishment as forcing men to be free is best understood as an attempt to keep the central question of the political art in front of his readers: how does one create and sustain a free society? The insurmountable contradiction between force and freedom serves as a constant reminder that widespread punishment is a sign of social corruption and bad government. For a genuine society is grounded on the free, and constant, accord of its members. As Rousseau tells those interested in governing, “[for the Romans] nothing was so sacred as the life of simple

Miller’s explanation is representative, but unsatisfactory. He argues that punishment has “an important pedagogical dimension.” It teaches both the criminal and those watching about the impartiality of the law, which “guarantees the citizen against all personal dependence.” Moreover, “so long as the person identifies with the elements from which his action flows (even if the act is submitting to punishment), he will feel his action to be free.” Dreamer of Democracy, 184; 186; my emphasis. It is, of course, possible that a criminal who submits to punishment may feel remorse. But even so, it is not clear that regretting one’s actions is identical with understanding the character of moral obligation, or feeling oneself bound to the norm of impartiality. Moreover, it is also possible that the criminal feels no remorse, and in such cases submitting to punishment will not be a freely willed act. Rousseau’s characterization of punishment as ‘forcing men to be free’ suggests little about any pedagogical purpose, and makes no distinction between those who submit freely and those who do not.

Such reform would imply not an intervention on behalf of the general will, but a transformation of the will from particular to general. The individual would have to grasp the reality of moral obligation for himself, and not regard the “moral person that constitutes the State as a being of reason because it is not a man,” i.e. as an imaginary source of obligation. (SC, I.8, 53). It is, at best, highly questionable whether external compulsion can ever accomplish such a feat.

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citizens; it required no less than the assembly of the entire people to condemn one of them: neither the senate itself nor the consuls in all their majesty had this right, and among the most powerful people on earth, the crime and the punishment of a citizen was a public calamity.” (PE, 18). Self-governing peoples recognize, as others do not, that the animating principle of a community which provides justice, peace, and freedom, is not force but civic virtue. John Plamenatz’s conclusion is, ultimately, the most persuasive. He warns that “we cannot take Rousseau literally when he says that a man constrained to obey the laws is forced to be free. But we can perhaps agree that Rousseau explains to us...how it is that men can find in the discipline imposed by what they feel to be a just society, a moral support, a force which helps them and saves them from themselves.”

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Conclusion

This chapter has attempted to examine the main features of Rousseau’s political theory by focusing on the potential conflict between his contractarianism and his collectivism. It has pointed out that a crucial interpretive problem in the scholarship has been the ‘half-socialization’ thesis which suggests that the task of politics is to collectivize naturally asocial, and self-interested, individuals. This interpretation makes it impossible to distinguish between self-interest and selfishness, and thereby distorts the character of the particular will. It suggests that the desire to maximize one’s interest, even under conditions of interdependence, is a natural given that stands in the way of peace and order. The only possible solution to such a predicament would be to eliminate man’s natural self-regard and impose upon him a collective and uniform

376 Plamenatz, “On le forcerà d’être libre,” 152
identity. Importantly, this would make Rousseau’s political theory consistent with that of Hobbes, with modern authoritarian forms of collective manipulation, as well as with nationalist arguments about the normative supremacy of communal demands. Although some commentators have attempted to push back against these conclusions, they have done so largely by drawing an arbitrary distinction between Rousseau's principles of right and his social theory, or his admiration for the ancient republics. They have not raised the more basic question of whether the particular will is the same thing as self-interest as such. Recognizing that action motivated by the particular will is not a natural given, but a symptom of human corruption, makes it possible to see that Rousseau’s principles of right presuppose the social theory that he develops in the *Discourse on Inequality*. Moreover, not only do these principles not come into conflict with Rousseau’s preference for ancient republics like Sparta and Rome, they lead naturally to this preference, or arise naturally from it. The essence of the ancient republics was self-rule, or the sovereignty of the legislative assembly. Individual citizens participated in person in such assemblies, and voted in their own names. One finds in Rousseau a defence of distinct and real individuals, with perspectives faithful to their own circumstances. What unites these is not a uniform identity imposed by a third party that is above them, but a real concord of perspectives that arises from each man’s normative commitment to impartiality. This commitment may be nurtured by civic education, but it will remain empty in the absence of a living community. Insofar as Rousseau is anti-Hobbesian, therefore, he is a critic of all theories that distinguish the common good from the interests of individual citizens as particulars. Not only is Rousseau not a pre-cursor of modern nationalism or communitarianism, he must be read as a critic of all such theories as suggest that the communal will can obligate citizens by the fact of being communal.
A fatherland is not a nation, an idea, or a narrative, but a living community, the animating principle of which is civic virtue. Love of the fatherland, or a sense of belonging, cannot be manufactured by power in such a way as to motivate perfect obedience. It can only arise from each citizen’s conviction in the justice of the laws, occasioned by his participation in the legislative assembly. Rousseau never provided a substantive definition of the common good in order to preserve the freedom of all communities to govern themselves according to their own interests. What he did, however, was to provide a clear and universal standard of political legitimacy. That standard was the living, acting, legislative assembly.

CONCLUSION
Throughout this dissertation I have attempted to present Rousseau’s vision of democracy and its relation to ancient liberty, to borrow once again Constant’s idea. Turning away from modern political practice and the assumptions underlying it, Rousseau called attention to the normative superiority of republican life among the Greeks and Romans. If, unlike today’s defenders of civic participation, he did not take Athens as his ideal, this was only because he believed the kind of democracy instituted there to be vulnerable to anti-democratic pressures. True, Rousseau argued in the *Social Contract* that elective aristocracy, rather than direct democracy, is the best form of government. But elective aristocracy must not be understood to mean the same thing as modern representative government in which citizens elect their *legislators*, not merely those who administer the laws. Rousseau unambiguously objected to the alienation of legislative power, whether temporary or permanent, which remains an essential aspect of modern political practice.

Institutionally-speaking, a robust democracy requires that legislative and executive functions should be distinguished. Only in this way would popular sovereignty fulfill the promise of delivering justice and guarding its effectiveness. Direct democracy’s inability to distinguish the legislative from the executive “was one of the Vices that ruined the republic of Athens.” (*DOI*, “Epistle Dedicatory,” 117). Certainly Rousseau argued that the people’s rule was neither possible nor, in the final analysis, desirable for it is impossible for the people to “remain constantly assembled to attend to public affairs.” (*SC*, III.4, 91). Because of this inconvenience democratic rule inevitably moves in the direction of centralized power. The advantages of smaller and more permanent administrative bodies, their efficiency and expertise, would always be more readily apparent to the public than the inevitability of their abuse. As Rousseau’s analysis of Genevan politics showed, for example, the progress of governmental corruption is
usually imperceptible, advancing through what seem like minor and excusable malfeasances. Though in the *Political Economy* he urged governments to recognize that rule in accordance with justice is the only effective kind, he also knew that no government would ever be persuaded of this in practice. The course of ordinary administration presents too many circumstances that enjoin even the most virtuous magistrates to lay aside the strict demands of law and procedure. It was this inescapable fact, coupled with Rousseau’s belief that the corruption of the people resulted from bad administration, which persuaded him that there was only one way of bridling the government: its routine dissolution, and the return of complete sovereign power to the assembly of citizens. Separation and reconstitution of these two aspects of sovereign power - legislative and executive - would characterize the ordinary life of a well-founded republic. The cyclical reappearance and dissolution of direct democracy remains an essential aspect of Rousseau’s ideal.

To say that his thought is essentially democratic, however, is not to say that Rousseau believed popular rule to be inherently more just than that of a monarch, or a smaller assembly. The second, and equally important problem with Athenian democracy was the ever-present possibility of mob-rule. There is little ambiguity in Rousseau’s characterization of popular rule as “a Government without a Government.” (*ibid*, 90). A people that makes laws and executes them itself finds it difficult to distinguish the grounds upon which it imposes obedience. Are we to take its decisions as binding because they have been declared by it, or because they are just? Of course it is always possible to distinguish a people’s administrative decisions from its legislative ones in principle, and for this reason Rousseau does not consider direct democracy illegitimate. But in practice, there is greater risk that these two aspects of sovereign power might be
confounded where the assembly that undertakes both functions is the same. Were this to happen, it would be impossible to bind the administrative will by invoking the law.

In a nutshell, the democratic spirit of Rousseau’s political theory consists of two related ideas. First, the people must be directly involved in the process of lawmaking by, at the very least, ratifying all policies proposed by the government. Second, citizens must have a continuous interest in public affairs even when not participating in the legislative assembly, so as to discourage administrative corruption. In fact, Rousseau defends concrete institutional solutions to facilitate civic vigilance, such as the Roman tribunate or the Genevan droit negatif. Beyond institutional proposals, however, he urges us to recognize that just politics cannot do away with civic virtue. Caring for one’s fellow citizens, and for the fate of one’s community, is the most fundamental requirement of any real commitment to justice.

If justice is, to put it somewhat Platonically, the political good, this is because it makes possible genuine cooperation. What is appealing about Rousseau’s vision of democracy is the idea that real community presupposes freedom - i.e. that the latter is constitutive of collective life. It is neither a final good towards which politics strives, nor an instrumental good that could in principle give way to another. Freedom is indeed priceless in this way, but only because genuine community cannot exist in its absence. Rousseau’s political theory is largely built upon a particular social theory (discussed in chapter 3) which suggests that relations defined by the logic of domination are incompatible with human sociability. Wherever human beings seek to overpower each-other, mutual mistrust, fear, and disguised hostility inevitably define their transactions. This condition of unfreedom makes political rule necessary, but only where such rule is just can human beings truly escape the breakdown of social life. In the civil state,
therefore, justice and freedom are, to some extent, different aspects of the same phenomenon: the *absence* of human relations defined by the logic of domination. In this way, Rousseau’s thought does more than merely reconcile individual freedom with community. It makes the former into the foundation of the latter, and this may be what we continue to find intriguing about his ideas, paradoxical, yet appealing.

In general terms, it could be said that I have tried to defend an interpretation of Rousseau’s thought that is sympathetic to liberal pluralism defined as institutional protection of reasonable disagreement regarding the good life. For example, I have argued that authoritarian and communitarian interpretations of his thought mischaracterize the general will and obscure the essential features of what Rousseau means by community. I have also maintained that his political theory does not acknowledge objective standards of Reason by which good laws can be substantively distinguished from bad ones. In light of this interpretation, Rousseau’s defense of religious toleration is unsurprising. Nonetheless, it ought to be stressed that Rousseau is not a value pluralist in one respect. It matters to his theory of legitimacy, as it does not to at least one version of value pluralism, what is understood to be the origin of political power.377 His notion of legitimacy is universal and requires certain commitments, though these are neither religious nor metaphysical, insofar as they are not built on an objective hierarchical ordering of goods. One must accept, for example, that the only possible foundation of authority is a contract, and that this contract is the essence of the state. This means that citizens must be committed to the idea that the only theory of justice upon which a political system can be built implies a reciprocal

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377 William Galston, for example, argues that for a pluralist there is no “single account of how a given constitution comes to be authoritative.” Acceptable origins of political authority include “the ability of a great leader to express the spirit of the needs of a people...the Napoleonic Code...It is even possible for a conqueror to establish an authoritative constitution for a conquered people.” See *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (New York: Cambridge University Press, 2002), 67.
exchange of rights. In this sense, Rousseau's political theory is not impartial with respect to what must be taken as the chief political good (justice) and in what way this good should be defined (impartiality).

Moreover, while Rousseau appears to reject any naturally authoritative notion of the good, whether individual or communal, he does not do so based on a theory of the good as inherently plural. Neither does he appear committed to the contemporary value-pluralist notion that “objective goods cannot be fully rank-ordered.” His political theory simply suggests that politics should not be built on a comprehensive theory of the good. It leaves open the question of whether it can be built on such a theory, though his comments on religious dogmatism suggest that all such attempts will inevitably serve base and immoral passions. Whether there is or is not an objective hierarchy of human goods, and whether there are or are not many equally defensible ways of life, is not a question that politics should raise or attempt to settle. The realm of politics is limited by the assumption upon which it must be built, namely that no individual should expect another to desire his interest as much as he himself does. Only this assumption, Rousseau appears to suggest, can uphold genuine civic trust and a kind of sociability that is more than skin-deep. A plural conception of the good could be accommodated by this theory of justice, but it is not required or celebrated by it.

Moreover, Rousseau's assumption appears to be that the greatest threat to individuality is the atomizing and spiritually oppressive effect of unbridled power. His is not a theory that celebrates difference or individual eccentricity as intrinsically, or socially, good. But it is nonetheless a theory that seeks to protect the individual’s own perspective, opinions, and

378 ibid, 5
interests from both overt and covert domination. In fact, I have insisted that the individual’s commitment to his own particular perspective is a necessary element of the legislative assembly’s ability to make impartial laws. Simply put, Rousseau did not urge the cultivation of difference as much as the neutralization of all those social, economic, and political factors that encourage unthinking conformism. In this sense, the Rousseauean individual is not so much distinctive, seeking to stand apart, as authentic, seeking real, rather than forced, agreement.\textsuperscript{379}

We should, of course, continue to wonder whether Rousseau’s synthesis of individual freedom and communal life is fully persuasive. I have argued that it is at least reasonable; that it does not imply the absorption of the individual into the state’s collective life, or any kind of root-and-branch transformation of a person’s inner self into something that cannot in good faith be called individual. What it does involve, rather, is a different conception of community, which privileges the political activity of a concrete and embodied people, and is essentially opposed to the modern nation-state and modern representation. But if our political practice cannot be fully informed by Rousseau’s institutional proposals, his ideas are engaging in at least one respect. They compel us to seek out the specifically political reasons behind the common intuition that individual liberty stands uneasy in relation to communal life. Why is it that each time we approach his thought we take it almost for granted that the Spartan or Roman citizen was less an individual than any modern person? My hope is that the present study has opened some reflective space between this question and its answer.

\textsuperscript{379} In this sense Kateb is right to say that Rousseau objected to the pursuit of private satisfactions and the refinement of private talents - i.e. “the advanced development of ‘individuality’ (to use Mill’s word).” See “Aspects of Rousseau,” 18. But this was not because he “believed in community and citizenship too much,” as Kateb argues. Rather, it was because he believed that such pursuits endangered the individual’s liberty and, in the final analysis, the very possibility of individuality.
WORKS CITED


London: Routledge, 2004


Canovan, Margaret, “Trust the People! Populism and the Two Faces of Democracy.” *Political Studies* 47 (1999): 2-16


----------------------. “Rousseau’s Critique of Representative Sovereignty: Principled or Pragmatic?”


----------------------. *Western Political Theory in the Face of the Future.* New York: Cambridge University Press, 1993


Engel, Steven T. “Rousseau and Imagined Communities.” *Review of Politics* 67 (2005): 515-537


227


“Rousseau on the People as Legislative Gatekeepers, not Framers.” American Political Science Review 99 (2005): 145-151

Rahe, Paul A. “The Book that Never was: Montesquieu’s Considerations on the Romans in Historical Context.” History of Political Thought 26 (2005): 43-89


Sabine, George H. “Two Democratic Traditions.” The Philosophical Review 61 (1952): 451-474


Scott, John T. “Rousseau’s Anti-Agenda-Setting Agenda and Contemporary Democratic Theory.”

American Political Science Review 99 (2005): 137-144


----------------- “Rousseau’s Two Models: Sparta and the Age of Gold.” Political Science Quarterly 81 (1966): 25-51


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