



Tracing the People in Rousseau's *Of the Social Contract*:
A Republican Promise Not Fulfilled;
or, on the Nation as a Ticking Timebomb...



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1.1 ROUSSEAU AND THE PEOPLE

Power and freedom to what people?

In contemporary discussions on politics, politicians and citizens alike fall back to or argue with notions of ‘the people’: we should listen to the people, as they are the ones that matter. The People is also a central concept in political philosophy, as many contend guaranteeing the freedom and power of the people is essential for a contemporary answer to the eternal question of how to live together (peacefully, happily and freely). But this concept of the People is elusive; questions as ‘who belongs to the People, what is a people, and why there is a people’ seem to be answered differently by nations, United Nations, politicians and philosophers: people seem to talk about different people(s).

We could trace this discourse on the people back to the 20th Century, with movements that manically focussed on the make-up or greatness of the people, as Nazi-Germany or the USSR. Or back to the 19th century and the Age of Nationalism, when various European and American peoples acquired ‘independence’ and claimed to form a *People’s Republic* in a constitution. Here, People seem to assert their power, in the form of a right to rule themselves and their countries, and their freedom (civil rights) officially. This development was a big step from the absolutist rulings of the 17th and 18th century in some European nations, and the feudal governments in the centuries before this, although some civil rights and popular sovereignty already existed in various countries, especially in those claimed to be republics. Still, a central moment in this development of power and freedom for the people in Europe is the French Revolution and its aftermath – not without reason do historians mark this collection of events as the transition from the ‘early modern’ to the ‘modern’ period. An important inspiration for these French Revolutionaries, was *Jean-Jacques Rousseau*.

Rousseau

Born in 1712 in the Swiss city Geneva, child of a watchmaker, Rousseau was not destined to fulfil a job of major political impact: nor (the size of) his country, nor his heritage contributed to the likelihood of impact on European history. Still, he did. His ideas did. In his political philosophy, we encounter the contours of the rule of law, a Republic ruled by and for the People, and an account of human freedom and equality that we recognise today. In the rest of his work, we distinguish romantic notions of authenticity, revolutionary thoughts on pedagogy and the first modern autobiography, next to novels and plays that captivated his contemporaries.

However, Rousseau is not everywhere and always lauded for the political role I just put him in; for many he has been a controversial figure and his ideas are linked to violent revolutions, totalitarianism, oppression, exclusion and the violation of human rights. What is true of this remains to be seen, as I will analyse his political philosophy, primarily his seminal work *Of the Social Contract; or, Principles of Political Right*. In this book, published in 1762, Rousseau expands his ideas of constructing a free state, a state where individual human freedom and government (state) authority are reconciled; as he says it himself at the opening of the book:

I wish to explore whether in the civil order – taking men as they are and laws as they can be, there may be any legitimate and reliable rule of administration. (Book I, Prologue)

Here, Rousseau provides a twofold goal for the make-up of (civil) society - a public administration that is both legitimate (rightful) and reliable (stable) - as well as clues for resolving this: accounting

for some essential features of man, in or outside society (men as they are), and the existence of proper and improper, right and unjust or even real or 'fake' laws (laws as they can be). Rousseau, of course, offers his idea of the *social contract*, a contract that elevates individuals into 'the People': together Sovereign, they make the laws in their Republic. These laws are proper and even binding self-interested individuals. Consequently, his view of the People is clear; or did this thinker of the Republic already carry other notions in his chest?

1.2 RESEARCH QUESTIONS

For clarity, my thesis could be split in two connected research questions. Firstly, an *interpretive* one.

What is Rousseau's view of the People, and what are the reasons for this view?

In this part I study Rousseau's 'Of the Social Contract', and his other political-philosophical works where necessary, to distil Rousseau's view of the People. This can be split into the following questions:

- Who form or constitute the People?
- Why is the People (supposed to be) constituted? And how?
- Could you leave the People?
- Who could join a People? and how?
- Are there different Peoples?
- How are peoples differentiated now?
- How did different Peoples come to exist?
- How did we come to know about Peoples?
- Are new Peoples constituted?
- Are Peoples continuously (re)generated?
- Does a People stay the same?
- How could and should a People be maintained (by itself)?

After also determining what theoretical reasons Rousseau offers for his view, I continue with a *theoretical* research question:

What are the consequences of Rousseau's view of the People? And could they be avoided?

I will investigate whether his view of the People is linked to philosophical problems he describes himself, or to controversial aspects that I and others diagnose. Furthermore, I examine whether he could have avoided these with another view of the People.

1.3 STRUCTURE PER CHAPTER

Chapter 1 introduces Rousseau and the historical debate on who belongs to the People. It explains the goal of the thesis and the structure of the text, and addresses the relevance of this research by connecting it to contemporary societal and academic debates. Lastly, it offers a list of abbreviations.

Chapter 2 is aimed at generously explaining Rousseau's political philosophy. It provides the context of Rousseau's main political work 'Of the Social Contract', an extensive summary of this work, and a discussion of its interpretation, application in his later political works, and influence. Furthermore, it discusses his writing style and forms of argumentation, and offers various perspectives to distinguish various goals in this text.

Chapter 3 deals with dissecting Rousseau's notion of the People. I argue Rousseau uses the term 'People' ambiguously: he refers to four different conceptions. One of these is what philosophers call

a 'nation', and I reconstruct Rousseau's view on these 'nations'. Next, I place Rousseau's mix-up of 'nation' and 'People' and his use and view of nations in perspective. Lastly, I collect the practical reasons Rousseau could provide to rely on his view of the nation.

Chapter 4 aims to show that the use of 'the nation' is problematic and often avoidable in Rousseau's political philosophy. Quoting many of his political works, I show Rousseau's reliance on the nation jeopardises his goal of republican freedom as it causes his pessimistic outlook on the preservation of the state and obstructs him to envision fortifying external relations. This reliance simultaneously leaves room for exclusion and oppression, while his trust in national myths and Legislators conceals a promising means that could help to procure liberty.

Chapter 5 offers a very short recap of conclusions in the text and suggests what features of Rousseau's view of the People are present in other political-philosophical views. It offers some examples of this in contemporary politics and suggests policies that my criticism could inspire.

1.4 RELEVANCE TO ACADEMIC AND SOCIETAL DEBATES

The relevance of this thesis in the first place pertains to the interpretation and the assessment of Rousseau's political philosophy, emphasising the centrality of the question of the People and its relation to problems and controversies in Rousseau's work. It also adds to the discussion of Rousseau as a republican thinker, and consequently to the literature on republican theory.

However, the relevance is broader, as arguments and analyses from the discussion of Rousseau's view of the People and its consequences can be transferred to many contemporary political and political-philosophical debates. What a People is, and who the people are, is fundamental to the constitution of (nation-)states. How one joins a People is essential for discussions on immigration and integration. How to maintain the People is central in debates on cohesion; and as some 'People-identity' may be required and stimulated, we enter discussions of nationalism vs. patriotism. Furthermore, whether there are different peoples, separated by borders, we recognise in (historical) claims for sovereignty, but also in secession and (re)unification movements or discussion on EU-integration: do Europeans form a People? How people(s) interact with each other, relates to debates on xenophobia, prejudice and racism. Lastly, how we should listen to the people, or whether someone can speak for the people, relate to discussions on populism.

1.5 ABBREVIATIONS

SC	= On the Social Contract; or, on the Principles of Political Right
(IV.6 p.119)	= SC, Book IV, Chapter 6, p.119 (in Bertram-edition ¹)
(Livre I Ch.VI p.205)	= SC, <i>Livre 1, Chapitre VI</i> , p.205 (in original French edition ²)
GP	= Considerations on the Government of Poland
([IV] p.253)	= GP, Chapter [IV], p.253 (in Bertram-edition ³)

¹ Rousseau, Jean-Jacques. 'Of the Social Contract; or, on the Principles of Political Right', in *Jean-Jacques Rousseau: The Social Contract and Other Political Writings*, ed. by Bertram and trans. by Quentin Hoare, (London: Penguin Books), 2011.

² Rousseau, Jean-Jacques, '*Du contrat social, ou principes du droit politique*', in *Collection complète des oeuvres*, Genève, 1780-1789, vol. 1, in-4°, édition en ligne www.rousseauonline.ch, version du 7 octobre 2012.

³ Rousseau, 'Considerations on the Government of Poland' (1782, posthumously) - in Bertram (2011), see note 1.

CC	= Constitutional proposal for Corsica ⁴
1 st Discourse	= Discourse on the Arts and Sciences
2 nd Discourse	= Discourse on the Origin and Basis of Inequality Among Men
PE	= Discourse on Political Economy ⁵
TE	= Thought experiment

For many claims, an in-text reference to the Bertram edition is provided in the form of (II.7 p.42), and the name of the chapter is sometimes added for elucidation (II.7 'Of the Legislator' p.42). For more important (or controversial) claims, in addition to the reference, an English quote from the Bertram-edition is provided (in a footnote). On top of this, for crucial quotes which meaning could be dependent on the original French words, part of the French quote is provided in a footnote too.

Crucial terms in quotes are sometimes underlined. This is *never* original (by Rousseau or other writers), but always by the author of this thesis (RE); this is not mentioned after every quote.

⁴ Rousseau, 'Constitutional Proposal for Corsica' (posthumously reconstructed), - in Bertram (2011), *see* note 1.

⁵ Rousseau, Jean-Jacques, 'Discourse on Political Economy' (1755), in *Discourse on Political Economy and The Social Contract*, Transl., intro and notes by Christopher Betts, Oxford University Press (World Classics), 1994.

2 UNDERSTANDING ROUSSEAU'S POLITICAL PHILOSOPHY IN 'THE SOCIAL CONTRACT'

2.1 BEFORE THE SC: CONTEXT AND BUILD-UP

To understand Rousseau's political philosophy, it is conducive to comprehend the historical-political context he reacts to. In Rousseau's time (1712-1778), civil freedoms and rights, especially the *right of participating in making laws* were not for everyone. Some countries (e.g. Poland) still had a feudal system, with peasants leasing land from their feudal lords (nobility) that often held significant 'lawful' power over 'their subjects'. Furthermore, slavery was still prevalent,⁶ especially in regions of the world that were claimed colonies of European powers. As these territories and slaves made countries and (noble)men rich, they not only ruled but also fought over them, while claiming to 'civilise' the dominated population. Moreover, many European states (e.g. France) were ruled by absolute monarchs as Louis XIV – sometimes assisted by nobility, and sometimes restricted by some requirements of a constitution or bill of rights. These kings and their dynasties often tried to expand their (right to) rule over territory, sometimes by marriage, sometimes by war.

Perhaps surprisingly, at least from a modern perspective, these (heavy) restrictions of popular sovereignty, freedoms and rights were often accepted by many people. So, these Kings did not only rule because of coercive power but were often thought to be *legitimate* rulers by nature or by divine right (as Filmer proclaimed),⁷ or through some 'contract' with a People.⁸ This 'contract of submission' or '*Herrschaftsvertrag*'⁹ amounted to the French King rightfully ruling over the French People, making and embodying French law. This 'absolute' Sovereign we can also recognise in the philosophy of a main adversary of Rousseau, Hobbes, although his monarch obtains legitimacy by a social contract instead of divine right.¹⁰

Still, in or before Rousseau's time there were also states or *republics* where a greater part of the population had a say in legislation and government, e.g. Geneva, Venice, and the Netherlands. This last country beautifully illustrates the former right of Kings. Unhappy with (the deeds of) their ruler - King Philip II of Spain – (representatives of) the Dutch people signed an 'Act of Abjuration' (1581), dismissing Philip from his role as their King. Instead of taking up the rule themselves, this people first sought another king, asking various European monarchs to take up this role. Only after this failed (for a couple of years), they decided to take matters in their own hand and form the 'Republic of the Seven United Netherlands'.

Next to this historical context, Rousseau's earlier work forms a highly important background: strangely, Rousseau omitted a synopsis or explanations of earlier works that are essential to understand his views in the SC – although we have an unpublished chapter of the SC, the Geneva manuscript, that fills this hole.¹¹ In the work that made Rousseau famous, the First Discourse, he argues (against the tide) that the arts and sciences are 'corrosive of both civic virtue and individual

⁶ Abolished only in 1863 in the Netherlands.

⁷ See Robert Filmer in his *Patriarcha or the Natural Power of Kings*, (London: 1680).

⁸ Betts, Christopher, *Jean-Jacques Rousseau: Discourse on Political Economy and The Social Contract*, Transl., intro and notes by Betts, Oxford University Press (World Classics), 1994: Introduction, p.xii.

⁹ Otto von Gierke, *The Development of Political Theory* (New York: Norton, 1939): pt. 2, ch.2.

¹⁰ Hobbes pictured humans as self-interested but equal beings that are from nature in a state of war with each other, and in order to enable society, defer their right of nature and power to an absolute Sovereign, Leviathan, that rules over them.

¹¹ Bertram, Prefatory Note Geneva MS, p.137.

moral character'.¹² *Man is good from nature*, says Rousseau, society (or 'civilisation') as it is now has corrupted him.

In the follow-up, the Second Discourse 'On the Inequality among Men', Rousseau offers the following conjectural history that also expounds his theory of (the development of) human psychology.¹³ As the first humans wandered in the wild solely, they were happy, good and free – the original natural state. Sometimes meeting and sometimes mating, they lived their own lives aimed at self-preservation, which Rousseau calls *amour de soi* (love for oneself). Next to this (or springing from this) passion, man has the passion *pitié* (empathy), which drives him to help another being in distress as long as it does not endanger himself. As human populations grow, small but unstable co-operations or societies come to exist. The more frequent encounters between humans consequently enable the development of reflection, which develops some morality and reason but soon turns destructive.

In the first simple societies, humans (can) now compete for sexual mates, and as humans start to reflect on the place of others and themselves in the sexual hierarchy, a new passion develops: *amour-propre* (self-love). This principle is *comparative* and creates a struggle for recognition: it makes individuals never content, as they demand respect and recognition from others (that they are good, better or best), while others demand back the same.¹⁴ Like this, *amour-propre* leads to vanity and conceit, which develops further in growing societies.¹⁵ With the establishment of private property and development of agriculture, material inequality emerges, dividing individuals in those that have land and those that have not. Material inequality and the strife for recognition then creates *interdependence* and *unfreedom* all around in this State of Nature: as the poor are dependent on the rich for self-preservation and the rich on the poor for recognition, everyone is incited to misrepresent their ends and means in pursuit of gain (goods, recognition). In these last 'pre-political' states, existing inequalities can even become enshrined in the law, as poor people can do nothing else than to recognise the lawful status of the rich in the hope of getting some crumbs.

With these contexts in mind, it is time to explain the content of the SC itself.

2.2 SUMMARY 'OF THE SOCIAL CONTRACT'

Book I

Rousseau opens Book I with the goal of this book: envisioning a state with a "legitimate and reliable rule of administration" where authority and human freedom are reconciled, as opposed to the pervasive interdependence now: "man is born free, and everywhere he is in chains" (Ch.1).

He continues by claiming social order does not spring from nature but from convention: in the order of the family (Ch.2), children are within the care of their father as long as they cannot survive on their own. Only in this case, for subsistence, people give up their liberty; after this, a family lives together by convention. Rousseau then shows 'the right of the strongest' (Ch.3) is not a right, but a mere principle: it ends as soon as a force overtrumps yours. People listen to force but are *not obligated* to

¹² Bertram, Christopher, "Jean Jacques Rousseau", in *The Stanford Encyclopedia of Philosophy* (Winter 2020 Edition), Edward N. Zalta (ed.). Ch.1 Life.

¹³ (ibid.), 2. Conjectural history and moral psychology

¹⁴ Rousseau, Jean-Jacques, *Emile or On Education*, trans. Allan Bloom (New York: Basic Books, 1979): Book IV, pp. 213–14.

¹⁵ Canivez, Patrice, "Jean-Jacques Rousseau's Concept of People." *Philosophy & Social Criticism* 30, no. 4 (June 2004): 393–412. doi:10.1177/0191453704044025.: footnote 18, p.411-2.

obey. Also, there is no 'natural right' to enslaving people (Ch.4): slaves come to be by force, and one can use the same logic (of force) to regain liberty. So, social order by this kind of 'natural rights' is order by an *unreasonable* convention.

How then (legitimate) social order comes to be? First arises the question of how a people becomes a people (Ch.5): this unanimous first agreement would be the "true foundation of society". The social pact (Ch.6) does this and more: it enables cooperation needed to counter growing obstacles (in the *State of Nature*) while preserving individual freedom by making *people obey a law they have set themselves*. Each associate places his person and all his power in a collective *body (politic)* "under the direction of the *general will*" [term yet unexplained]: the created 'public person' is called a *Republic*, or a *Sovereign* when active, a *State* when passive, a *Power* related to others. Together these (now) *Citizens* form the Sovereign (Ch.7) that makes *laws*, and each is also a member of the State *subject* to these; this condition is *equal for all*, which gives no one an incentive to make it more onerous than necessary. Plus, the Sovereign can do nothing that infringes the social pact, as it thereby annihilates its own (legitimacy of) being, making its actions null.

In the (now) *Civil State* (Ch.8) man loses his *natural freedom* and the limitless 'right' to everything he can possess by his power(s). He gains *civil liberty* (limited by general will) and *moral liberty*: he can obey the laws he has set himself. Furthermore, possessions become rightfully owned and publicly protected. This applies to land rights too (Ch.9), although individual land right is subordinate to the communal right over all territory. Rousseau ends the first book with a remark on the 'social system':

"[...] rather than destroying natural equality, the fundamental pact on the contrary substitutes a corporate and legitimate equality for whatever physical inequality nature may have placed among men; and that, whereas they may be unequal in strength or intelligence, they all become equal through convention and by right.*" (p.27)

Book II

In Book II Rousseau aims to specify what sovereignty entails (practically): what are its limits, conditions and other features? Furthermore, he problematises the transformational step from the natural to the civil state, thereby introducing the need for the Legislator, and offering advice to this Legislator.

In Ch.1 Rousseau explains how Sovereignty, the power to make laws that bind the behaviour of citizens, is inalienable and cannot be transferred to an authority or other people: as soon as the (sovereign) will does not come from all and applies to all – it is no longer general - it stops to exist. In other words: if you confirm to follow the laws of others, you are not obeying yourself. For the same reason, the Sovereign cannot judge individual (non-general, particular) cases, nor is it possible to divide sovereignty, in contrast to claims of other philosophers (Ch.2). Only the power to execute the laws, to apply the laws in particular cases you could hand away to an authority (i.e. administration or government), or various authorities with different tasks (army, taxation, judiciary).

During deliberations, the general will is rightful – it respects your individual freedom by enabling you to listen to the laws you have set yourself - and aimed at the common welfare. But, because of reasons as ignorance or deception, 'the people' does not always see and decide (properly) on the *right* laws that are in their common interest. This can be explained by the several wills that can be distinguished in people, that are more powerful in individuals the more 'concentrated' they are: the particular will (of one person), aimed at personal interest; the corporate will of factions or groups,

aimed at interest of the group; and the *general will*, the corporate will of the whole people. This 'general' will stands in contrast to the sum of all particular wills, the *will of all*. These wills can clash during deliberations, as what is best for all could diverge from the sum of what would be best for every individual alone.

(Ch.4) Sovereign power is unlimited, it can demand all from citizens, but it cannot want useless things as it tends to public utility, nor can it burden one more than another (as laws are general and unspecific). Citizens together (the Sovereign) determine how far they engage and how far the laws go. The Sovereign could even decide on the right of life and death, as it can call citizens up for war to protect the fatherland that guaranteed them safety and independence, making the life of citizens 'no longer merely a bounty of nature but a conditional gift from the State' (Ch.5 p.37).

The Law (Ch.6) then gives *movement* to the *body politic* (that is formed by the social pact) and is exercised by sovereign *power*, and an expression of the *general will* that is aimed at the *welfare* of the corporate person, the common interest. As long as the law rules and the public interest governs, and the magistracy - be it a monarch, aristocrats or the people collectively - is the *minister* (servant) of the People, it is a Republic or free state. So, "It is the province only of those who associate in a society to regulate its conditions"; 'but' - Rousseau asks - 'how will they do so?' (p.41). As individuals and the public are not yet informed or enlightened enough to masterfully complete such a difficult task of creating an ingenious system of legislation, they are in need of a guide.

The *Legislator* (Ch.7) should be this guide: this half-god should know the people and their habits, and propose the right laws for them; the Sovereign People then has to consent. But to see the rightness of these laws, social or *public spirit* is required; and this social spirit is only the effect of laws that binds citizens together as a public. Therefore, to let the People pass the laws, the Legislator could resort to a higher authority which may 'compel without violence and persuade without convincing' (p.45), i.e. use religion as an instrument of persuasion.

Furthermore, the Legislator should take various features of the people or the country into account when designing the system of legislation, the *constitution* of the state. Firstly, he has to determine the situation *Of the People* (Ch.8): are they ready (ripe) to accept laws? Liberty can only be gained once, so the Legislator should act on the right moment. Then, he has to account for the size of the People and the country (Ch.9). Small countries are constantly in danger, but larger countries suffer threats too: government becomes more irksome, there is less affection for distant rulers and fellow-citizens, and the same laws are not always appropriate for different provinces with different climates and *mores*.

Next, there should be a proper ratio between the population and the *territory*: the needed land for survival (production of food, to nourish the population) is the proper size (Ch.10). More or less land makes countries tend to trade or war, which creates *dependence* and *corruption*, which is opposed to the ideal of *autarky* and the sustainable state. Finally, Rousseau advises to install the state in a time of peace and abundance, and to use a People that is already connected in some way and fit to accept laws.

The aim of every system of legislation is *liberty* and *equality* (Ch.11). The forces of things tend to destroy equality, so the force of legislation should attempt to bring it. Notably also materially: people should not be able to buy others or have to sell themselves as this undermines equality, and liberty cannot exist without it. Legislation should be adapted to the local situation and the *character* of the inhabitants, to a particular cause (resources) or aim that brings order in that People. Because of this, the best system of legislation (institutions) is specific to a certain people.

What then does this system of legislation consist of? (Ch.12) That is 1) political laws, regarding the government system; 2) civil laws; 3) criminal laws; 4) *moers* (mores, morals or customs), the most important of all, engraved in the heart of citizens, preserving in them the spirit of its institutions. That's why the Legislator in secret is concerned with replacing the authority of laws with this force of habit.

Book III

Book III covers the topic of government, the authority that exercises public force. Rousseau explains the meaning of government, various forms of governments and their (dis)advantages, tendencies and operational mechanisms. Lastly, the relation with the Sovereign and its tendency to abuse or subsume (sovereign) power, and ways to counteract this (tips for the Legislator).

Ch.1 explains *government* in general: the physical power executing Sovereign will. Between State and Sovereign, government is commissioned to apply the law. There is a right size of the government proportionate to size of the land and population; so, alter the government to situation of the country to achieve this 'ratio'. (Ch.2) Two principles guide this size: larger states need more repressive force to steer the population; and the force of government weakens the more magistrates there are (as the corporate government will is spread out over more magistrates, making it less prominent and powerful in every government official). (Ch.3) There are three distinctions in government due to relative size: monarchy, aristocracy and democracy. Furthermore, the government can also be subdivided in different parts with different tasks, administered differently.

In a *Democracy* (Ch.4) the People is the Sovereign and the Government; due to this, particular interests could become to reign in public affairs and the legislative authority is corrupted. Therefore, democracy is only viable in small populations with similar mores and degree of wealth, without the presence of corrupting luxury. Still, democracy is liable to internal strife and civil war, and maintenance is only possible by continually wanting freedom.

Aristocracy (Ch.5) has three types: natural (by elders), elective and hereditary. Rousseau prefers the second: elect the best individuals, because the wisest should govern. Additionally, he emphasises: 'it is of great importance to regulate the form of elections of magistrates by laws' (p.69 *).

In a *Monarchy* (Ch.6) all executive power is invested in one natural person, thereby government force is strong. It tends to suffer from various problems, like its dependency on the capacities (and intentions) of the king. Other disadvantages include: education of kings often fails, not the right people tend to rise through royal courts, and intervals *between* kings are often dangerous and chaotic. Moreover, the kingly *virtue* needed to rule is often assumed 'as they are Kings', which is a clear sophism.

In reality, all governments are mixed forms (Ch.7), where government is divided in different intermediate levels, providing average (government) strength., and in Ch.8 Rousseau explains how every form of government does not suit every country, as climates (naturally) necessitate and enable certain forms of government.¹⁶ This is due to the amount of labour needed to cultivate the land and produce *sufficient food supplies*: if too much food is produced, this has a corrupting effect on society; although (monarchical) government could consume such a surplus. Liberty cannot even be achieved by all peoples, because *not all climates suit freedom*¹⁷ (due to *laziness* caused by easy cultivation and

¹⁶ (III.8 p.77/8): "[...] in every climate there are natural causes which make it possible to assign the form of Government necessitated by the climate, and even to say what kind of inhabitants it must have."

¹⁷ Rousseau refers to Montesquieu's *Spirit of Laws* (London: G. Bell and Sons., 1914) for this claim, (Book XVII ch.VI p.290): "Power in Asia ought then to be always despotic: for if their slavery was not severe, they would soon make a division,

the generated surplus); but this rule must be adapted to geographical or cultural factors like tendencies of consuming and spending.

How then should one measure the achievements of a Legislator, the properness of a government? As 'moral' views on the function of government are both *relative* to nations and persons as *unmeasurable*, another sign should be sought. The surest sign of success then is *population growth*, as the purpose of political association - "preservation and prosperity of its members" - is met. (Ch.9).

This success is however not for ever, as government inevitably *degenerates* (Ch.10), either by *contracting* (to a smaller type with less magistrates), or *dissolution* of the state, when either the government abuses its power by usurping sovereign power or when government officials individually exercise the power they have as a whole. The body politic will even *die* (Ch.11), the state will perish, and it is men's job to try to prolong it by giving it a proper constitution. The State subsists by legislative power, the heart of the State, not through laws: old laws do not bind today, but 'tacit consent is presumed from silence'. In a healthy state, the laws become stronger and are venerated, as the Sovereign did not revoke them all that time. If laws grow weaker, legislative power is no longer there.

How then could Sovereignty be maintained? (Ch.12) Firstly, by the Sovereign coming together in *assemblies*; this is possible, as even Rome managed to do this in Comitia. There should be a legal protocol to convene these assemblies - to discern illegitimate assemblies -, and there should be fixed, periodic ones that summon the Sovereign regularly and cannot be cancelled. (Ch.13) If the state is not one town, reduce it to proper limits, or convene them in each town successively; do not select a capital; concentrating people means subjugating others (on the countryside).

In Ch.14 Rousseau explains that when the represented is present, when the Sovereign is convened, the Government is suspended and everyone is equal. This curb on government threatens its power, causing the government to discourage citizens to assemble. Subsequently, *if citizens love ease more than liberty*, the Sovereign will soon collapse. Citizens should *want* to fulfil their public duties of making the laws and defending the fatherland themselves (Ch.15). If citizens rather select and pay *deputies* or *representatives* instead of convening as the Sovereign, they *de facto* give up their liberty. Instead, they should demonstrate *love for the fatherland* and a public spirit. Everything considered, a *small city* would be the best unit for a sustainable state.

The institution of the government is not a contract between People and rulers, as the Sovereign would give itself to the government and re-enter the state of nature (Ch.16). Government is instituted through the making and application of a law, and a first government (that applies this law) could be the Sovereign that (by one act of the general will) shortly converts itself into a democracy and decides by collective democratic decision. (Ch.17) Attempts of lawbreaking or usurpation by government become clearer by the legally convened periodic assemblies, that should start with two motions asking whether the Sovereign still consents to the *form* of government and the *officials* charged with it (which again presumes a prompt transformation in democratic government) (Ch.18).

Book IV

Book IV addresses the sustainability (health) of the state, and elaborates on shaping adequate (corruption-avoiding) political processes that are necessary for political activity (the operation of the

inconsistent with the nature of the country." And (ibid.): "In Europe the natural division forms many nations of a moderate extent [...]." Furthermore, (Book XVII ch.II p.284): "We ought not then to be surprised, that the effeminacy of the people in hot climates has almost always rendered them slaves; and that the bravery of those in cold climates has enabled them to maintain their liberties. This is an effect which springs from a natural cause."

Sovereign), e.g. suffrages and elections. Next, it addresses the example (and ideal) of Rome, and explains various (ancient and often Roman) 'institutional instruments' that could be used to maintain a unified healthy state where the general will is manifest. Lastly, the (long) plea for a civil religion does add to this same goal.

Ch.1 tells us how the general will is indestructible, 'so long as several men together consider themselves a single body [...]' (p.99). Normally, unanimity should reign in voting, as every citizen answers the question what is best for all (the State). A rise in disputes and political debates shows the state is in decline, the social knot loosens, and particular interests are taking centre stage. However, the general will is not corrupted but *subordinated* to particular wills, and not extinguished but *evaded* in individuals, as it is no longer truly interrogated in public deliberations. Instead, citizens ask themselves erroneously what is best *for them*, or for some other person or party.

In 'Of Suffrages' (Ch.2) Rousseau tells us that the social pact should be unanimous, whereby the citizens consent to laws that are later decided by the *majority vote*; if one voted for the minority opinion, this means one is mistaken in determining where the general will (or common interest) lied. The size of the required majority differs along two axes: the more important the deliberation, the closer the majority should be to unanimity; and the more urgent a deliberation is, the narrower the majority is allowed.

Elections (Ch.3) of the magistrates could be executed *by lot* or *by choice*. By lot suits both a democracy, as morals and talents are (relatively) equal, and posts where 'good sense, justice and integrity are sufficient, like judicial posts' (p.105). For positions that require specific talents (such as military posts) and for aristocracy, election by choice is the best option.

In Ch.4 'On the Roman Comitia' Rousseau provides more maxims and details on these matters of elections and counting votes by providing a historical outline of the birth and development of the great Roman People and Republic. He explains the various distinctions Legislators (Romulus, Numa, Servius) made in the Roman People (Tribes, Centuria, Curia), and how these were convened in different assemblies (*comitia*) with different functions or tasks. Rousseau explains how the Romans made this system sustainable, and how they adapted it to the situation, and balanced the effect of the various distinctions and mechanisms. He stresses the influence of the excellent but simple Roman mores in preserving the State (that long): their taste for rural life, military toil and liberty, and 'disdain for commerce and pursuit of gain'.

Rousseau also takes three public functions from his example of Rome that are potentially useful for a Legislator contemplating on a Constitution (set of legislation): the *Tribune* (Ch.5), the *Dictator* (Ch.6) and the *Censor* (Ch.7). If there is not a right proportion, or balance, between Government, Sovereign and People, one could institute a Tribune, a 'preserver of the laws and legislative power' with veto-power on executive (and other) matters.

Next, in times of crisis, executive power can be concentrated in one or two government members, or if necessary, a Dictator can be appointed that stands above the law. The Legislator should foresee he cannot foresee everything, and that laws could form an inflexible obstacle to reacting adequately to urgent matters threatening the preservation of the State. A dictator with a fixed term could *suspend laws* temporarily to act decisively and counter the threat; still, he could never *make laws*, as only the Sovereign can.

The Censor is the minister of public opinion and declares the opinion of the people to preserve the morals that were engendered by the laws; and 'the[se] opinions of a people spring from its constitution.' (p.121). The censor cannot re-establish the mores if the law fails (force of the laws

weakens) or when public opinion is already fixed otherwise; but he can use public proclamations of honour and shame to uphold and *preserve* morals by *preventing* opinions from being corrupted.

In 'Of Civil Religion' (Ch.8) Rousseau provides a historical outline of the development of political societies and religion. In the first (pagan) societies, each state had its own God at the top of political society with its own cult and laws, limited to the boundaries of the Nation. Political and theological war therefore were the same, and converting was done by subjugating. Then, the Romans conquered the rest, letting Peoples keep their Gods but subject them to Jupiter. Christians feigned this submission, as they only cared for the afterlife and little for life on earth. They separated the political and theological system, temporal and religious power, which, once they 'took over' generated 'perpetual conflicts of jurisdiction' (p.125) between Pope and Princes.

Consequently, Rousseau distinguishes three forms of religion in relation to society: the *Religion of Man or the Gospel*, the *Religion of the Citizen* and the *Religion of the Priest*. The first entails 'the purely inward cult of the supreme God' (p.127), and is without temples or rituals, focussed on 'eternal duties of morality'. The second is specific to a country or nation, with own gods, dogmas and rituals; 'extending duties and rights of men as far as its altars', making foreigners barbarous and infidel. The third (bizarre) form - e.g. Roman Christianity - gives 'men two legislations, two rulers, two fatherlands' (p.127), creating contradictory duties for people aspiring to be devout men *and* good citizens.

All forms have their (political) disadvantages: the third is terrible as it breaks social unity, making it 'worthless' (p.127). The second unites love of god with love of the laws and makes the fatherland the object of adoration, but it makes men credulous and superstitious, rendering people bloodthirsty and intolerant and causing them to be 'in a natural state of war against all others' (p.128). The first seems perfect *prima facie*, creating just rulers and perfect citizens. However, these 'true Christians' are aimed at the afterlife and not particularly bonded to their state, which therefore would lack cohesion, next to being vulnerable both to ambitious men taking advantage of the meek citizens as to attacks by nations that are passionate.

What then, could the Sovereign rightfully demand from its citizens concerning religion? '[...] subjects must account to the Sovereign for their opinions only in as much as these opinions concern the community.' (p.130). And it concerns the state that citizens have a religion that makes them love their duties; though in addition they may believe what they want. The sovereign should therefore determine a '*purely civil profession of faith*', prerequisite '*feelings of sociability*'. With as positive dogmas:

'the existence of the powerful, intelligent, beneficent, prescient and provident Divinity; the life to come; the happiness of the just; the punishment of the wicked; the sanctity of the Social Contract and of the Laws' (p.131).

Plus, one negative dogma: intolerance is not accepted, as intolerance belongs to *exclusive national Religion*. So, one should tolerate all those who tolerate others, as long as their dogmas do not oppose the duties of a Citizen.

Finally, Rousseau concludes (Ch.9) the whole book by stating he has 'set forth the true principles of political right' and 'ground[ed] the State', now one should 'buttress it by its external relations, including the right of nations, commerce, the right of war and conquest, public right, leagues, negotiations, treaties, etc.' (p.133); which he will not do here.

I will now turn to the interpretation and reception of the SC, its influence on political history, and Rousseau's elaboration or application of the SC in later works.

The General Will

The general will is arguably the most crucial concept in Rousseau's political philosophy and deserves more explanation, as it evoked a lot of confusion and debate following Rousseau's sometimes seemingly contradictory statements:

[...] it follows that the general will is always rightful and always tends to public utility. But it does not follow that the deliberations of the people always have the same rightness. You always will your own good, but you cannot always see it. [...] There is often a great deal of difference between the will of all and the general will: the latter takes account only of the common interest; the former takes account of private interest, and is only a sum of particular wills. (II.3 p.32)

In response to this, Bertram distinguishes two conceptions of the general will in Rousseau's text that help to interpret this concept.¹⁸ The first conception describes the general will as 'a fact of the matter where the common or public interest lies'; the public could see this, or not see it (not enlightened). The second describes the general will 'as a collective democratic decision': what the sovereign decides is always rightful, *because* it is the decision of the People. Bertram describes how many of Rousseau's ideas can be interpreted as helping these two conceptions to coincide: by creating the proper *formal, material and emotive conditions*, the People will *collectively choose* for laws that are in line with its *common (long term) interest*. One formal condition is already the process of making laws: to become general and from all to all, citizens have to transcend their narrow selfish standpoint and reflect on what the law means for them and anyone else. But for the effect of the law to be truly equal, material circumstances have to be relatively equal too, which Rousseau propounds in (II.11).¹⁹ Furthermore, to achieve the right material and emotive conditions, Rousseau also comes to agriculture and morals, which he even more than in the SC, expounds in his constitutional proposals.

Constitutional proposal for Corsica & Considerations on the Government of Poland

The CC and GP offer a great way of interpreting the SC, as Rousseau applies his political theory to a concrete People (and State) and offers a more detailed depiction of the life of citizens²⁰ – which is why I will use these works extensively later in the thesis. These manuscripts were never published (GP) or finished (CC) during Rousseau's lifetime, probably because both aspiring republics were invaded (Corsica) or partitioned (Poland) by other powers (resp. France; Prussia, Russia, Austria).²¹ These texts are treated extensively by scholars, although Rousseau's supposed psychological instability in his later life – becoming paranoid – could provide a reason to treat them with reservations if they explicitly contradict the SC. Moreover, Rousseau is pessimistic about his mental abilities of that time, although this reeks of feigned modesty.²²

¹⁸ Bertram, intro SC, p.xxiii-iv.

¹⁹ Supra p.10.

²⁰ Gourevitch, Victor. *Rousseau: The Social Contract and other later political writings*, Cambridge University Press, 1997: (p.ix).

²¹ Bertram, intro CC p.189, intro GP p.244.

²² GP, [I] p.245-6: "Even when my wits were in full vigour, I should not have been able to grasp the ensemble of those large relationships. Today, when I barely retain the ability to connect ideas, in order to obey Count Wielhorski and display my ardour for his fatherland I must limit myself to [reflections on the impressions of his work on me]."

In the CC Rousseau shows his insistence on agriculture in creating the right morals and preserving the population, and extensively describes the establishment of the adequate economic system that uses and distributes all resources the island of Corsica provides. Furthermore, he describes a yearly public 'solemn oath' to affirm the social contract, and how the nation is divided in different classes of inhabitants and citizens.

In the GP, Rousseau offers more thoughts on how the Legislator should try to steer the morals of the people, which he stressed in the SC and already described in his *Letter to d'Alembert*.²³ Taking Legislators from antiquity as his inspiration, Rousseau describes how education, games and patriotic feasts are essential in nation-building, and how Poland should preserve a distinct national character to resist foreign powers. Furthermore, he presents a *cursus honorum*, a system of rewarding good public service with public praise (medals), and flexibly applies the maxims of the SC by allowing representatives - though only with strict mandates from local assemblies that send them as spokespersons to the national assembly.

Rousseau's polity vs. now

Rousseau's preferred polity is of course a republic, where all citizens come together (as the Sovereign) to make laws that are formulated generally and thereby equal to all. After reflecting on the various kinds of governments, Rousseau gives his preference to an elective aristocracy, where a chosen group of wise and capable men governs the state. Prima facie, this contrasts with Western parliamentary *democracies*; but as many 'democracies' choose representatives to govern, they are in fact Rousseauian elective aristocracies. Similarly, many of the 'laws' that are passed in these parliaments are in fact acts of (executive) government according to Rousseau, as their content is particular: passing the state budget is a decree and not a law.

Still, the Sovereign is reduced to the parliament if only they have the power to consent to (real) general laws. We can remark that in many Western democracies the People at least chooses the Sovereign, and that the Sovereign is not hereditary, nor chooses itself. Furthermore, the rule of law, also expressed in the constitutions of modern democracies, guarantees the law is equal to all inhabitants. Lastly, as Rousseau describes how the Sovereign's consent to former laws can be drawn from silence (not removing them) but stresses periodical sovereign conventions to avoid government abuse, one could argue that people in Western democracies silently consent to the constitution, and that periodic convention is less necessary as contemporary technology enables the sovereign to react quickly to government abuse.

Influence on political (philosophical) history

What then is Rousseau's influence on the world he reacted to? Did the political context change after the publication of the SC in 1762? That (absolutist) regimes deemed the SC a threat is revealed in its (civil and ecclesiastical) ban from several countries (France, Geneva), and Rousseau's exile from both.²⁴ Subsequent political upheaval seems to confirm the reality of this threat, as Gourevitch tells us:

The French Revolution [1789] was profoundly influenced by his teaching, as, to a lesser extent, was the American Revolution [1776].²⁵

²³ Bertram, intro GP, p.244.

²⁴ Gourevitch, *The Social Contract*, p.ix.

²⁵ Gourevitch, Victor, *Rousseau: 'The Discourses' and Other Early Political Writings*. Vol. 1. Cambridge University Press, 1997: p.ix.

The first is illustrated by the story that Robespierre knew the SC from cover to cover, reciting passages on the barricades during the revolution. Furthermore, Rousseau's remains were later transferred to the Panthéon by French Revolutionaries as they sought a philosophical hero.²⁶ His influence on the American Revolution was inter alia through Benjamin Franklin,²⁷ but the lesser extent is apparent in Chernow's 700-page academic biography of Alexander Hamilton - American revolutionary who read and wrote an enormous amount - that does not name Rousseau once (but names Montesquieu and many other theorists).²⁸

Still, the 'positive' influence of Rousseau could also be distinguished in the first formulation of human rights, the 'Declaration of the Rights of Man and the Citizen' (1798), as Article VI names the 'general will'.²⁹ Also, one can recognise Rousseau's view of liberty and the (process of) general(ising) will in Kant's definition of freedom and his formulations of the Categorical Imperative; and Rousseau's insistence on (relative) material equality we find in Marx. So, arguably Rousseau has influenced 18th, 19th and 20th Century emancipatory developments; however, perhaps also the violent revolutions that accompanied them, e.g. *Le Terreur* after the start of the French Revolution.

Moreover, Rousseau is even blamed for legitimising totalitarian regimes, as 'legislators' claimed to represent the People and became totalitarian dictators. To counter this, Rousseau constantly repeats the will of the People can never be represented; the legislator should merely propose a constitution. Nevertheless, Rousseau's positive attitude to labour dues (for citizens and criminals)³⁰ and the death penalty (II.5) invoke grim thoughts; but these positions are not specifically blameworthy as they are prevalent until now. Similarly, his ominous statements 'forced to be free' (I.7 p.23) and 'Who wills the end, wills also the means' (II.5 p.37) can be explained, as the first is a clever formulation of the consequences of 'willing the social contract' that makes you free (thereby willing the laws, and the effects of its application, possibly forcing you to listen to the laws), and the last expresses the duties a citizen has against the fatherland that protects him (and is not an uncommon statement in political theory, see e.g. Madison in Federalist n.44).³¹

2.4 ARGUMENTATION AND STYLE

As the SC is a philosophical text and as I will criticise some of Rousseau's views, it is crucial to separate these views clearly. To enable this later dissection, I shortly address Rousseau's writing style and three kinds of argumentation he uses: logical conceptual reasoning, empirical observations (generalisations) and historical sources (authority).

Rousseau's style is one of rhetorical and literary force. Rousseau is able to phrase his ideas magnificently and offers plenty of catching mottos that inspire his readers. For some passages however, literary style or might seem to have triumphed over clarity and preciseness. Similarly, one could catch Rousseau passionately arguing for one thing, while seemingly contradicting or altering

²⁶ Others say his influence was not that immediate, and that many revolutionaries did not read his work.

²⁷ Dame, Frederick William, "*Jean-Jacques Rousseau and Political Literature in Colonial America*", E. Mellen Press, (1996); and Lau, Thomas. "Rousseau und die amerikanische Revolution." in *Der Bürger als Souverän: Jean-Jacques Rousseaus Lehre von der volonté générale im Spiegel der Zeit*, ed. by Thomas Lau, Volker Reinhardt, Rüdiger Voigt, (2018): p.79-87.

²⁸ Chernow, Ron, Alexander Hamilton, New York: Penguin, (2004).

²⁹ France, National Constituent Assembly. *Declaration of the Rights of Man and of the Citizen*, Adopted by the National Assembly during its sessions on Aug 20, 21, 25 and 26, and approved by the King . Paris: Mondharre & Jean, 1789.

³⁰ (IV.1 p.100): "set to hard labour by the people of Berne, and [...] clapped in a house of corrections by the Genevans." (III.15 p.91): "I am very far from the common opinion: I consider labour dues less contrary to liberty than taxes."

³¹ Chernow, p.252; or Scigliano, Federalist, p.290: "No axiom is more clearly established in law or in reason than that wherever the end is required, the means are authorized."

this twenty pages later. Rousseau also does not spare his opponents, and at times he dismisses people and thoughts more in rhetorical manner than with clear argument.³²

Nevertheless, Rousseau offers plenty of arguments, the most important ones resting on conceptual analysis and logical reasoning. We see him using thought experiments or *reductio ad absurdum* to argue for the formation of the People by voluntary consent, the conciliation of (his view of) liberty and authority in a legitimate government, or to criticise the contradictory implications of the former 'right of might or law of the strongest', arguing for a proper conception of law.

Next to this, some of Rousseau's statements depend on empirical observations and generalisations of himself or others. For example, he uses observations for geographical, climatological or cultural factors that serve as determinants for the Legislator to envision the best system of legislation. However, the 'generalisations' are often not obtained by a method that is up to current scientific standards: there is no critical scrutiny of data assemblage and hypothesis formation. To contemporary readers, some generalisations come across as vague folklore claims or instances of prejudice. For example, the claims that women of the mountains are more fecund (II.10 p.50), that in hotter climates peoples need to be abstemious to be healthy (III.8 p.79) (where Rousseau also not protests to the claim that Persians obtain a more beautiful complexion than 'Europeans' because of this) and that climate (of habitat) determines one's longing for liberty (III.8-10).

Lastly, Rousseau cites many political thinkers and uses their arguments, historical accounts, and examples. Some of them are '(early) modern', e.g., Hobbes, Grotius, Spinoza, Montesquieu, Locke, Abbé de Saint-Pierre, d'Alembert, Machiavelli, Sidney, Bayle and Warburton. Some of them belong to the 'classical' canon, like Tacitus, Livy, Plutarch, Homer, the Bible and Cicero. He often falls back to classical writers for their historical accounts on Legislators, telling us of Moses, Solon, Lycurgus, Romulus, Numa, Servius and Mohammed. ('Legislator' Calvin may be the exception in this, as Rousseau knows of his actions through his Swiss upbringing.)

However, Rousseau does not treat these classical sources with the scrutiny most historians would do now. He mostly takes over their historical accounts, even while he states [on the origin of Rome, and other peoples] 'it is even highly likely that most of the things retailed about those days are fables; [...]' (IV.4 p.106) – trusting 'those supported by the greatest authorities and [...] stronger reasons' (ibid.) is Rousseau's strategy here. But the accuracy of these accounts can be essential, as these ancient polities, Peoples or legislators often serve as praiseworthy examples which Rousseau frames as *achievable* ideals: '[on the possibility of assembling with large peoples, as Rome did.] Arguing from what has existed to what is possible seems valid to me.' (III.12 p.88). This is adequate reasoning, but it requires a careful assessment of the account of events one uses; trusting stories that are 'highly likely' fables goes against this and (still) taking them over could have significant theoretical consequences.

2.5 THE SC IN PERSPECTIVE: GOALS OF THE TEXT

To improve understanding of and assess (passages of) the text I offer six lenses that highlight specific aspects of Rousseau's work, also in relation to later political works and various audiences: what does Rousseau (envision to) do in this work? What (implicit or unconscious) objectives could be

³² Betts, p.xiii.

distinguished? I will later use these lenses to analyse, interpret and criticise Rousseau's position concerning the People.

Rousseau as Republican theorist: for the People, or subjected individuals

Firstly, Rousseau is a theorist concerned with a legitimate and reliable state for 'the People' or subjected individuals. We can call this *republican*, as his view that individuals that form a People and as Sovereign have a part in making and consenting to the laws they obey, retain their individual freedom, corresponds with the *political liberty* in the form of 'non-domination or independence from arbitrary power' that is the republican value *par excellence*.³³ So, the republican belief that 'you can only be free if you are not subjected to the arbitrary will of another' pertains definitely to Rousseau's philosophy.³⁴ De Dijn even argues Rousseau's idea of the general will solves a major problem of republican theory, *tyranny of the majority*, which worries a minority is subjected to laws made by majority vote. Rousseau solves this as laws are a collective decision but also should track the long-term public interest, as individuals should vote for what is best for the state.³⁵ Furthermore, the institutional make-up with *checks and balances* that Rousseau offers to avoid abuse by government (tyranny of the minority) is another republican feature.³⁶

Rousseau as political linguist: clarifying terminology

Secondly, Rousseau is in discussion with political thinkers of his day and attempts to (re)define political language, specifying 'clouded' political-philosophical terminology and concepts. Several times he goes to great lengths to detangle terms, offering etymologies, former uses and arguments for distinct terms for separate concepts. For example, he defines 'law' specifically – it has to come from all, be phrased in general terms, to apply as a law - thereby saving the term from misuse. In the same manner, he detangles Republic, State, Sovereign and Power, Citizens, Subjects and People,³⁷ as 'these terms are often confused and taken one for the other' (I.6 p.21), and also 'Town and City'³⁸ and 'Despot and Tyrant'.³⁹ As Rousseau stresses clear and unambiguous term use and (heavily) criticises others for this, I believe it is justified to treat him similarly – something I will do later on.

Rousseau offering a manual to Legislators

Thirdly, Rousseau is not only expounding political theory but from (especially) the second half of Book II he starts to provide practical advice to aspiring nation-builders on how to twitch general political maxims to empirical 'variables' as geography, history and climate, as to construct a proper constitution and public administration. After the introduction of the Legislator, Rousseau seems to switch his interlocutor from (dependent) individuals, or a People, to potential Legislators, offering tips and tricks and in Book IV even a 'toolbox' of some handy public functions (tribune, etc.). By suggesting the Legislator could be (helped by) an 'enlightened foreigner', he also suggests republican patriots in unfree nations could search for such an outside help, while even calling Corsica a potential 'free state' candidate explicitly (II.10 p.52). So, it is not surprising that both Buttafoco (for Corsica)⁴⁰

³³ Lovett, Frank, "Republicanism", in *The Stanford Encyclopedia of Philosophy* (Summer 2018 Edition), Edward N. Zalta (ed.).

³⁴ De Dijn, Annelien, "Rousseau and republicanism", *Political Theory*, (2018), 46(1), 59-80.: p.60.

³⁵ De Dijn, p.67.

³⁶ De Dijn, p.63-4.

³⁷ And administration, government, minister, magistracy, the Prince, etc.

³⁸ (I.6 p.20 *): 'The true meaning of this word [city] has been almost wholly erased in the modern world; [...]'.
³⁹ (III.10 p.85): 'In the vulgar sense, a Tyrant [...]. In the precise sense, a Tyrant [...].

³⁹ (III.10 p.85): 'In the vulgar sense, a Tyrant [...]. In the precise sense, a Tyrant [...].

⁴⁰ Bertram, Prefatory Note CC, p.189. "As a result of these words, a Corsican patriot [...] Matthieu Buttafoco, wrote to ask him if he would be willing to draft a constitution for the republic."

and Count Wielhorski (for Poland)⁴¹ requested Rousseau to take up his own manual and act as a (semi-)Legislator by writing a constitutional proposal for their country.

Rousseau as Christian Romanticist: leading us (back) to Eden

Fourthly, we can place Rousseau's intention to create a legitimate and reliable state in a Romanticist and Christian context,⁴² as he offers the state in a *reaction to the human pathological condition in societies*, exemplified by his opening sentence: 'Man was born free and everywhere he is in chains' (I.1 p.10). Not only can we recognise the 'Fall of Mankind' in his conjectural history and Eden in his 'original natural state', Christian Romanticist Rousseau also nostalgically longs back to Nature and Eden. However, as human psychological makeup has changed over time, reclaiming the original freedom, goodness and brotherhood is not possible. Recreating a place with resembling 'conditions' of liberty, equality and brotherhood in the State is the closest we can get to a 'Paradise on Earth': worldly 'salvation' is to be attained through the legitimate state.

Rousseau the patriot: defender of Geneva

Fifthly, in the SC (and other works) it is hard to ignore the love and admiration Rousseau holds for his home city⁴³, the Republic of Geneva, as he uses Geneva as a positive example, often formulating this in 'we', 'us' or 'our'⁴⁴. His preference for a small city state (with shared geographical, climatological and cultural conditions) and his admiration of Calvin (as a Legislator and moral-builder)⁴⁵ also fits this love for his fatherland; and the love of his fatherland fits the patriotism supporting Rousseau. While one can interpret some of Rousseau's claims as criticism on Geneva's contemporary administration,⁴⁶ he is by far not that critical as he is to other polities of his time, e.g. France.⁴⁷ Then again, Geneva (generally) fits his ideal picture; or maybe the other way around? Canivez calls the SC 'also an idealized description of his native city',⁴⁸ and perhaps Rousseau does not coincidentally remark: 'Fortunate indeed, whenever I reflect on Governments, always to find in my inquiries new reasons for loving that of my own country!' (I. Prologue p.9). Many of the troubles Rousseau foresees and the solutions he offers, can be connected to Geneva's position (threatened by larger catholic states as France and Savoy), its history (with Calvin) and the possibility of a confederation (Swiss cantons). Geneva seems the first example that springs to mind, the first concrete polity he worries about, that he tries to understand and defend in writing.

Rousseau wanting more: an unfinished political project

Sixthly, Rousseau tells us he intended to write a more extensive work on political institutions that would also cover international right, but he had to relinquish this vast project, as he tells the readers

⁴¹ Bertram, Prefatory Note GP, p.243: "Rousseau was approached by a Polish patriot, Count Wielhorski, acting on behalf of the Confederation of Bar, an association of wealthy noblemen [...] who had risen up in 1768 to resist Russian domination and proposed reforms of Poland's pro-Russian king, Poniatowski."

⁴² I could have separated Christianity and Romanticism as they form distinct traditions, but they often overlap in presumptions and attitude when we place Rousseau's work in perspective.

⁴³ Even the cover already proudly proclaims 'by J.J. Rousseau, citizen of Geneva.' (p.5).

⁴⁴ (II.7 * p.43): "Those who consider Calvin only as a theologian have poor knowledge of the scope of his genius. The drafting of our wise Edicts, in which he played a large part, does him as much honour as do his Institutes. Whatever revolution time may bring to our faith, the memory of that great man will never cease to be blessed in it, for as long as love of the fatherland and liberty have not been extinguished among us."

⁴⁵ *Supra* note 44.

⁴⁶ E.g. on periodic assemblies and power of the Sovereign (legislative) body; see Bertram, p.xv.

⁴⁷ Rousseau criticises (or: ridicules) the political situation in France; (III.15 p.92): "This is what in certain countries they dare to call the Third Estate, which means that the particular interest of two orders is ranked first and second, while the public interest is only third."

⁴⁸ Canivez, p.394.

in Confessions X.⁴⁹ He refers to this unfinished political-philosophical project repeatedly:⁵⁰ from one remark we learn there is more to be said on ‘voicing an opinion, debating, etc.’ in the people’s assemblies, from another and the conclusion of the book we learn Rousseau’s appreciates the significance of international relations (e.g. confederations and treaties) to fortify the state that he (theoretically) constituted, but that he did not yet formulate these principles.⁵¹ It is interesting to ask why Rousseau was not (yet) able to formulate these principles, as these would be intimately connected with his views in the SC.

⁴⁹ Bertram, Prefatory Note ‘Principles of the Right of War’, p.151; *and* Betts, p.xiv.

⁵⁰ (SC Foreword p.7), (IV.1 p.101), and (III.15 p.94), stating on combining external power with the good order and easy administration of a small State: “*This is what I had proposed to do in the remainder of this work, when, in dealing with external relations, I came to confederations. This is a wholly new topic, and one whose principles remain to be established.”, and (IV.9 End p.133): “Having set forth the true principles of political right [...] what remains is to buttress it by its external relations [listing topics]. But all this forms a new subject [...].”

⁵¹ Rousseau’s reconstructed text ‘Principles of the Right of War’ offers thoughts on international relations but is less applicable, as it is probably composed *before* the SC (in 1755–6), and *before* Rousseau’s (important) ‘engagement with the work of the abbé de Saint-Pierre’ (*ibid.*, p.151).

3 THE CONSTITUTION OF THE PEOPLE & THE FORMATION OF A NATION

As elaborated in the Introduction, one can ask a plethora of questions regarding ‘the People’. Now I will address Rousseau’s answers to these questions: what is his view of the People?

3.1 SKETCHING THE PROBLEM: CONFLICTING CLAIMS ON THE PEOPLE

First the two most forefront questions: Who constitute the People? And why constitute it? Rousseau addresses the importance of the latter explicitly:

So before examining the act whereby a people elects a king, it would be useful to examine the act by virtue of which a people is a people. For since this latter act necessarily precedes the former, it is the true foundation of society.” (I.5 ‘How It Is Always Necessary to Go Back to a Primary Pact’ p.18)

In the next chapter, (I.6 ‘Of the Social Pact’) Rousseau explains how a People becomes a People, as this is the answer to the main challenge of the book:

How to find a form of association that will, with the whole common force, defend and protect the person and goods of each associate, and through which each individual, while uniting with all, will nevertheless obey himself alone and remain as free as before? Such is the fundamental problem to which the social contract gives the solution. (I.6 p.19)

This contract is the solution to former ills: the state of nature forming too great obstacles for preservation that individuals cannot counter with their personal force alone. The necessary force is to be achieved by joining forces, by *cooperation*, but with a crucial condition: that every individual retains its freedom as ‘strength and liberty of each man are the first instruments of his preservation’ (I.6 p.19). Through the contract, individuals (re)gain their freedom and avoid the (inter)dependency, domination and instability of the state of nature. As everyone consents to this *contract of association*, a *People* that is Sovereign is formed.

This public person thus formed by the union of all the rest [...] is now given the name of *Republic* or *body politic*; which is called a [...] a Sovereign when it is active [...]. So far as the associates are concerned, they collectively take the name of *people*, and in particular are called *Citizens* as participants in the sovereign authority, and *Subjects* as subjugated to the laws of the State. (I.6 p.21; French⁵²)

Like this, Rousseau takes a clear position on the constitution of the People: by contract. By contract they ‘leave’ the state of nature and enter the civil state, in the process constituting a new collective social body. Throughout this whole chapter, the formation of the People is presented as something that *could* be done, in the past, present or future: the *possible* (association of a) People by individuals that consent to unite. Rousseau makes clear it is in individual self-interest to cooperate, if done like this. Yet, the most important clause or essence of this contract is ‘total alienation of each associate with all his rights to the community as a whole’ (I.7 p.19), where each citizen ‘*places his person and all his power in common under the supreme direction of the general will*’ (I.6 p.20).

⁵² (Livre I Ch.VI p.205): “A l’égard des associés, ils prennent collectivement le nom de Peuple, & s’appellent en particulier Citoyens, comme participant à l’autorité souveraine, & Sujets, comme soumis aux loix de l’Etat.”

So, forming a People to attain cooperation and liberty comprises a true transformation of individuals into a whole. Fortunately, the freedom of individuals is protected as this 'primitive act' becomes null if the 'body politic' gives its freedom away by submitting to another Sovereign, as 'violating the act whereby it exists would mean annihilating itself' (I.7 p.22). This contract can also be dissolved by the whole community (by common accord), and by individual contractors as long as they are not evading their citizen duty (III.18 p.98).

Although the clauses of this contract are very general, and the content (of laws) is still to be determined, the contract includes possible repercussions as to give force to its clauses (and avoid free-riding):

[As] the social pact should not be a vain formula, it tacitly incorporates a commitment [...] that whosoever refuses to obey the general will shall be constrained to do so by the entire body. (I.7 p.23)

Repercussions are also included for individuals that violate the contract, as the Sovereign can even exile individuals that do not adhere to the prerequisite 'feelings of sociability' formulated in the dogmas of civil religion, or apply the death penalty to anyone who affirmed these dogmas but acts against it: '[he] lied before the laws' (IV.8 p.131).

Drawing on this *thought experiment* or theoretical exercise further, there do not seem to be (and Rousseau does not explicitly posit) any more requirements on the People. So, in theory, all willing individuals in this state of nature could opt to join the contract, it is open to *everyone* and *anyone*, as long as 'the rest' (still) agrees to it. (But why would you not join forces?) Individuals could leave the association but as joining is in their long-term ('enlightened') self-interest, it seems preferable to a 'enlightened' individual to never leave the pact. Not much is known or said about when this association is or should be made, how it is initiated, and by whom, or where these people or People are, etc.. This seems all hypothetical or theoretical. Only the 'why' (to enable cooperation while retaining freedom) and general 'how' (by contract) are made clear.

But this is not all Rousseau says about 'the People' as he formulates answers to these other questions that seem to qualify or contradict this first explanation of the People. The first conflicting statement presents the formation of a People not as possibility or opportunity (that we are aware of by thought experiment) but as an established fact, and event in history that will not happen in the present:

But since peoples are no longer formed, we scarcely have anything better than conjectures to explain how they were formed. (IV.4 Of the Roman Comitia p.106; French⁵³).

Peoples are there, they are already formed (by contract?), and is this no longer done or possible? Moreover, more confusion arises as Rousseau seems to distinguish several peoples already by varying characteristics - food, gifts, clothing and buildings – while we do not know whether these are *the* distinguishing factors:

A Spaniard will live for eight days off a German's dinner. [...] In England, it is visible on a table laden with meats; in Italy you are regaled with sugar and flowers. [...] In Naples you will every day see men in gold-braided coats but no stockings walking on Mount Pausillipus. [...] Why do people eat so many vegetables in Italy? (III.8 p.79-80)

Furthermore, Rousseau claims that the body politics that are erected will 'degenerate and die':

⁵³ (Livre IV Ch.IV p.320): "[...] *mais comme il ne se forme plus de peuple, [...] comment ils se sont formés.*"

This is the inherent and inevitable vice that from the birth of the body politic tends unremittingly to destroy it, just as old age and death destroy the body of man. (III.10 p.83)

The body politic, as much as the human body, begins to die from its birth on [...]. (III.11 p.86)

Why should this Body Politic, the People together, (passively) die while forming a People in everyone's self-interest? Next, a people needs to be 'ripe to receive laws' too:

[...] the maturity of a people is not always easy to know, and if you anticipate it the undertaking [of subjecting a people to laws] is a failure. One people is susceptible to discipline at its birth, another is not after ten centuries. [...] Peter [...] failed to see that ['his people', i.e. 'the Russians'] was not ripe for civilization; [...]. He wished first to make Germans or Englishmen, when it was necessary to begin by making Russians; [...]. (II.8 p.47)

Here, individuals appear not to voluntarily agree to form 'a People' by contract but are already a people that receives laws passively at the right moment (not anywhere, anytime). Plus, a distinct People (Russians) first have to become 'Russians' before becoming like other (free?) peoples. And the confusion is not yet finished, as Rousseau claims that freedom is not to be achieved by every people:

Liberty, not being a fruit of every Clime, is not within the reach of all peoples. (III.8 p.76)

Again, seemingly presuming existent peoples, some Peoples cannot attain one of the two pillars of forming a People? Rousseau limits the opportunity to associate as a People further, as he claims becoming free is a *one-time opportunity* for an (existing) people:

[Revolutions] could not even take place twice for the same people; for it can free itself so long as it is merely barbarous, but can do so no longer once the civil order is eroded. Then troubles can destroy it without revolutions being able to re-establish it; and as soon as its fetters are broken, it falls in fragments and no longer exists. Henceforth it needs a master, not a liberator. Free peoples, remember this maxim: 'you can win liberty, but you can never regain it'! (II.8 p.46)

Why should the liberty achieved by social contract be a one-time-only opportunity? Why can nothing reverse this unfortunate loss?

In conclusion, Rousseau employs different accounts of the people, or at least uses these terms 'the People' or 'Peoples' in an ambiguous or contradictory way. He seems to switch to at least one different view distinct from his initial definition in (I.6). This forms the first point of criticism: as 'political linguist' Rousseau criticises other philosophers for their unclear term use, regarding 'the People' he makes the same mistake. He does not notice his ambiguous use of this term results in (seemingly) conflicting claims, and never explicitly addresses a mixed view (in the SC, GP, CC), despite three chapters titled 'Of the People' (II.8-10).

In the following I will show how we could clarify his use of the term, how this mix-up could have happened, and how we can resolve it.

3.2 'THE PEOPLE' UNRAVELLED

To clear up Rousseau's use of the term 'people' (and explain some conflicting statements from above) I will try to detangle this term by offering 4 accounts or conceptions of the People, drawing

on Canivez and Honig.⁵⁴ I offer four distinct terms: 'the People', 'the nation', 'the populace' and 'the multitude'. All of these terms Rousseau also uses himself (less or more frequently) in the SC⁵⁵ - they are underlined in the quotes below.

The 'theoretical' or 'republican' conception: a People of Citizens by contract of association

The theoretical conception we have just encountered. It is that of the People of citizens, formed by *voluntary agreement or consent* to the social contract that binds and unites all associates (I.6 p.21). This People of associates forms the core of Rousseau's republican ideas and is the key to the daunting problem of conciliating individual liberty with authority, enabling fair cooperation. In theory, every and any individual could join this contract of association; or leave it under certain conditions. Canivez calls this the 'political concept of 'a people'', 'a community of citizens united by the social contract'⁵⁶ calling the people in this respect 'a legal institution'.⁵⁷

The 'national' conception: a people of born nationals, linked by shared origin, language and culture

Another discernible view is that of a 'nation', a group of individuals that is linked together by a 'common origin, language, tradition and culture', by some called an 'ethno-nation'.⁵⁸ Here, membership of the People is typically seen as non-voluntary: it is membership or a connection by 'origin and early socialisation'.⁵⁹ This 'historical or cultural concept' points at people that (already) live together and are tied to each other in some other way than a contract.⁶⁰ The nation, from Latin translating to 'that which has been born'⁶¹ is connected by (something close to) blood bonds: sharing a common ancestry, they are or feel like kin, part of the same 'tribe'; and by ancestry and history, these nations feel bonded to a specific land (territory).

Countless nations have glittered upon this earth which could never have tolerated good laws; and even those which could have done so had throughout their span only a very short time for it. Most peoples like most men are docile only in their youth, becoming incorrigible as they grow older. (II.8 Of the People p.46)

For Nations, as for men, there is a time of youth or if you will of maturity, that must be awaited before subjecting them to laws; but the maturity of a people is not always easy to know, [...]. One people is susceptible to discipline at its birth, another is not after ten centuries. The Russians will never truly be civilized, because they were civilized too soon. Peter [...] wished first to make Germans or Englishmen, when it was necessary to begin by making Russians; [...]. (II.8 p.46-7)

To whatever end the Corsican nation may wish to civilize itself [...]. (CC p.193)

The conception of 'the populace': the mass of poor people; 'le peuple'.

⁵⁴ Honig, Bonnie, 'Between decision and deliberation: political paradox in democratic theory', *American political science review*, (2007), 101(1), 1-17.

⁵⁵ Frequency of terms: in original French edition: 24x 'nation' or derivatives; 275x 'peuple'; 4x 'populace'; 8x 'multitude', 1x 'aggrégation'. English Bertram edition: 21x 'nation' or derivatives; 300x 'people'; 4x 'populace'; 6x 'multitude', 2x 'aggregation'. Notably, in the whole Bertram-edition (incl. GP, CC, Geneva MS, etc.): 172x 'nation'; primarily used in the constitutional proposals vs. 583x 'People'; the other terms not mentioned many more times, total: 5x populace; 9x multitude, 2x aggregation.

⁵⁶ Canivez, p.395.

⁵⁷ Canivez, p.398.

⁵⁸ Miscevic, Nenad, "Nationalism", in *The Stanford Encyclopedia of Philosophy* (Summer 2018 Edition), Edward N. Zalta (ed.). Ch.1.2 The Concept of a Nation.

⁵⁹ Miscevic, (ibid.).

⁶⁰ Cf. Canivez, p.395: "[...] the historical and cultural concept of a 'nation' [...]".

⁶¹ See etymology of 'nation'; <https://www.etymonline.com/word/nation> (retrieved at 10-8-2020): "from Latin nationem (nominative natio) "birth, origin; breed, stock, kind, species; race of people, tribe," literally "that which has been born,"[...]"

A third view of 'the People' is that of the *populace* (rabble, mob, plebs). The mass or collection of 'simple' peasants, uneducated or poor labourers, or even beggars without homes. Canivez describes this as "the social concept of 'the people' – referring to the lower classes, that is (in the 18th century): to the overwhelming majority of laborers, farmers and artisans."⁶²

[On young but poor Roman plebeians not being part of military classes:] The reason [...] is that the populace which made it up was not granted the honour of bearing arms for the fatherland. It was necessary to have homes in order to win the right to defend them; [...]."⁶³ (IV.4 p.110; French⁶³).

Wise men intent on speaking their own language to the common man instead of his could not be understood by him. But there are innumerable kinds of idea that cannot be translated into the language of the people. (II.7 p.44; French⁶⁴)

This conception is related to a similar view, inspired by Honig, that is distinct in 'theoretical function' as it often serves as direct contrast to a functioning Republican 'People':

The conception of the (blind) multitude: unconnected and unenlightened aggregation of people

A mere aggregation of individual humans, this multitude is not able to act together, to take up its own political right and choose the right laws for itself. It is not yet legally or materially bonded or group-spirited, and in capacity (unenlightened) not under the condition to be a People of citizens, to which it primarily stands in contrast, according to Honig.⁶⁵ I add to this that this aggregation is not only unenlightened but can also be insufficiently bonded for Rousseau: so, yet without sufficient (emotive) ties; thereby standing in contrast to the nation and a functioning People that have these bonds.

In the fact that dispersed men may successively have been enslaved – in whatever numbers – to a single individual, I perceive only a master and slaves, and by no means a people and its ruler. It is an aggregation, if you will, but not an association; neither public good nor body politic is involved here. (I.5 p.18; French⁶⁶)

How should a blind multitude, which often does not know what it wants, because it rarely knows what is good for it, by itself implement so great and difficult an undertaking as a system of legislation? The people of itself always wants what is good, but it does not of itself always see it. (II.6 p.41; French⁶⁷)

3.2.1 THE LEGISLATOR AS THE MISSING LINK

These views can be related in one narrative. As said, the People of Citizens is the theoretical basis of the legitimate state. But the *populace* (that would be better off in a legitimate state) is not capable of setting up the social contract and agreeing to the proper legislation that will make them a stable and legitimate republic: they are a 'blind multitude' and need the (enlightened) Legislator (II.7) to come to

⁶² Canivez, pp.395, 399-400.

⁶³ (Livre IV Ch.IV p.325): "[...] c'est qu'on n'accordoit point à la populace dont elle étoit composée, [...]."

⁶⁴ (Livre II Ch.VII P.235): "Les sages qui veulent parler au vulgaire leur langage [...] de traduire dans la langue du peuple."

⁶⁵ Honig, p.5-7.

⁶⁶ (Livre I Ch.V p.201): "je n'y vois point un peuple [...]; c'est si l'on veut, une agrégation, mais non pas une association; [...]."

⁶⁷ (Livre II Ch.VI p.231): "Comment une multitude aveugle qui souvent [...]. De lui-même le peuple veut toujours le bien [...]."

their help. But the people has to be ready for this, according to Rousseau. Which people then is ready to form the proper basis of a Republic? As Rousseau says it:

So which people is fit to be given laws? A people that, finding itself already bound by some link of origin, interest or convention, has not yet borne the real yoke of laws; [Rousseau naming more conditions for this People]. (II.10 'Of the People' p.51)

With this quote, Rousseau comes awfully close to the 'national conception', providing the already bonded 'nation' as the unit of choice for the People, instead of some disbanded (but motivated) aggregation of individuals. The Legislator then determines the best legislation for this 'people' (nation), and persuades them (the populace) to pass this constitution; thereby they take sovereignty in their own hands and become a republican People.

The view of the nation is by far the most prominent mix-up in Rousseau's view of the people. It enters his philosophy primarily in relation to and after the introduction of (the need of) the Legislator - from that point on, I noticed he also uses it more, often interchangeably with 'People'. Canivez states Rousseau 'prefers' to use 'the nation' when he 'refers to the historical and cultural development of a people',⁶⁸ but 'preferring' pictures this too much as a conscious and explicit choice. This shift seems more unconscious, as Rousseau does not address it explicitly, while it comprises a major conceptual change with large potential consequences – for one, because the choice of people ready for a state is heavily restricted. Moreover, even more is happening, as Rousseau increasingly starts to use 'nation', 'State' and 'Country' interchangeably, or in close relation to each other.

Nor do you need a nation so large that the rulers dispersed to govern it ape the Sovereign, each in his own department, and begin by making themselves independent only to end up becoming the masters. (III.5 p.69)

Monarchy suits only opulent nations, Aristocracy suits States of middling wealth and size, Democracy suits small and poor States. (III.8 p.77)

The latter [Religion of the Citizen], inscribed in a single country, gives the latter its Gods, its own tutelary Patrons: it has its dogmas, its rites, its external cult prescribed by the laws; outside the single Nation that follows it, all is infidel for it, foreign, barbarous; it extends the duties and rights of man only as far as its altars. (IV.8 p.127)

When the discussion becomes more 'practical' – later in the SC, but also in GP or CC - Rousseau identifies the 'nation' with the People and the State (organisation) they form and the Country (territory) they occupy, and the other way around. The People 'of the land' make their own laws, for *their* territory (I.9). We can assess this as Rousseau making a step from a theoretical vision of what a Republic (with an 'undetermined People') entails to the *practical implementation* of this, where a chosen nation that is already tied together by origin, interest or convention is selected and undergoes a 'transformation process', as, by consenting to the social contract, social, cultural and ethnic ties are made legal and civil too.⁶⁹ Like this, a *national republic* or *nation-state* is erected.

Perhaps some more conflicting statements from above can be interpreted in this light: of Rousseau switching from a Republican view of the people to a view of the Nation, although hereby this switch is not justified (yet). In the following, I will try to (re)construct Rousseau's view of the nation by

⁶⁸ Canivez, p.398.

⁶⁹ Canivez, p.399.

applying some of the earlier ‘questions regarding the people’ to this ‘national’ conception – which enables me to later discuss why he opts for it.

3.3 THE REALITY & FORMATION OF NATIONS (IN ROUSSEAU)

What is Rousseau’s view on the formation of nations? How and when were they formed? How does Rousseau distinguish nations? Does this perhaps relate to the one-time freedom, maturity and death of peoples?

To start, this idea of different nations is not a view unique to Rousseau but a more common (or even widespread) view in the past and present. For example, Descartes also names several peoples or nations and confirms their distinctiveness:

[...] were he brought up from infancy among the French or the Germans, [he] would become different from what he would be had he always lived among the Chinese or the cannibals, [...].⁷⁰

Also Spinoza repeatedly refers to the ‘Hebrew nation’ in his Theological-Political Treatise, describing the loss of many of ‘its’ idioms and language and addressing ‘its’ particular relation with the country and God of Israel, as read in the Bible.⁷¹ In general, various views on the *reality* and *formation* of nations are defended by philosophers. Some claim ‘nations are real *bona fide* entities’ (like Herder and Otto Bauer do), that have existed since time immemorial (primordialist realist), or since modern times, emerging at the ‘genesis of capitalism’ (modern realist).⁷² But others see nations as *imagined communities* (Anderson⁷³) and mental structures (Tamir⁷⁴). So, what does Rousseau think? How real are nations and their differences?

Firstly, should *humankind* not already be a nation according to Rousseau’s ‘definition’, as this people could ‘find itself already bound by *some* link of origin, interest or convention’? All people descend from free-roaming noble wilds, Adam and Eve or evolutionary ancestors, and are linked by interest, as a social contract is in everyone’s self-interest. Apparently, what Rousseau sees as a nation is bound by more interest or closer origin - or perhaps he believes people themselves do not *imagine* to be bound by those links - as he names many separate peoples (sometimes by their ‘states’): Poles, Russians, Frenchmen, Englishmen, Germans, Holland, Berne, Geneva, Swiss, Sweden, Spain, Italy, Naples, Venice, Florence, Corsican nation, Sicily, Persians, Romans, Albins, Sabins, Spartans, Greeks, Athens, Hebrew People, Asiatics, Africa, Egypt. At least some of these have to be nations, as they are not all said to be(come) free (republican) Peoples.

Of course, Rousseau differentiates these peoples (nations) often by *conventions* as distinct language and cultural practices – in clothing, food, gifts, architecture – and also describes how peoples can be distinctively *national* in other ways, by different upbringing, values and mores - and formerly by religion and gods as national borders were aligned with national religions (IV.8). Furthermore, as Rousseau intertwines ‘People, nation, state and country’ we see that nations are distinguished by their land, rulers, armies and laws. Overall, nations have their typical customs and features, often

⁷⁰ René Descartes, ‘Discourse on Method’ (1637), in *Discourse on Method and Meditations of First Philosophy*, trans. Donald A. Cress (Indianapolis: Hackett Publishing Company, 1998), AT VI 16: p.9.

⁷¹ Benedict de Spinoza, “Theological-Political Treatise,” in *A Spinoza Reader*, ed. Edwin Curley (Princeton: Princeton University Press, 1994), Ch.II §45-6 and Ch.VII § 38 (Gebhardt III/06 and III/39); p.21 and p.47.

⁷² Miscevic, “Nationalism”, 1.2 The Concept of a Nation.

⁷³ Anderson, Benedict, *Imagined Communities*, London: Verso, 1983; revised edition, 2006.

⁷⁴ Tamir, Yael, *Why Nationalism*, Princeton: Princeton University Press, 2019; p.58.

assembled under the heading of *national character* or *physiognomy* by Rousseau. This character is important to Rousseau, and he repeats in the SC, GP and CC it can and should be stimulated to build or mould a people:

The first rule we have to follow is the national character. Every people has or should have a national character, and if it lacks one we should have to begin by giving it one. Islanders, being above all less mixed or intermingled with other peoples, usually have one that is more pronounced. (CC p.203)

It is national institutions which form the genius, the character, the tastes and the manners of a people, causing it to be itself and no other; [...] customs that cause it to die of boredom among other peoples [...]. (GP [III] p.252)

So, national characters can be further moulded, but by what process and at what moment do these peoples and their national character come to be? What is the origin of (separated) nations? Rousseau himself talks about the role of religion in this, but seems to mean the creation of the state (with help of the Legislator):

From all this it would be wrong to conclude with Warburton that among us political thought and religion have a common object, but rather that in the origin of nations the latter serves as an instrument of the former. (II.7 p.45; French⁷⁵)

Canivez explains we can find Rousseau's view on the origins of nations in the Second Discourse:

These origins are purely accidental. Earthquakes, floods, all kinds of natural events, conditions, have forced human beings to live together in delimited areas. Habits of reunion, first cooperations, development of language and technique, and finally settlements are consequences. A community of culture, a national character, derive from this process. The features of a nation result from the way people adapt to their natural, geographical conditions.⁷⁶

Rousseau sees people already cooperate to some degree (before they are a free people), with a level of societal trust, next to shared practices and distinctive features that are shaped by (arbitrary reasons of) *climate, geography and history* – which could have set them apart as separate entities. Alternatively, these people live and cooperate together and maybe therefor see or imagine differences with other groups and sameness with their own – as imagined community they maybe even feel (to belong) together. Like this, cooperating people could start to form a nation; which Rousseau suggests as the tribes or *races* that fought together form the new Roman people:

After the foundation of Rome the infant Republic, in other words the founder's army, made up of Albans, Sabines and foreigners, was divided into three classes, which from this division took the name of Tribes. (IV.4 p.106)

The formation of nations would not stop as natural processes go on and new cooperations spring up between people. Nevertheless, Rousseau's statement 'since peoples are no longer formed' (IV.4 p.106) hints at a primordialist view of people having been formed in some far past, once differentiated now adorned with different natural qualities. Rousseau's comments on ancient peoples sometimes seem to confirm this view; although his statements on modern peoples (that often exhibit capitalist vices) seem to imply that peoples are also created later on:

⁷⁵ (Livre II Ch.7 p.237): "[...] mais que dans l'origine des nations [...]."

⁷⁶ Canivez, p.399.

Such were all the Religions of the first peoples, which can be given the name of civil or positive divine right. (IV.8 p.127)

I am merely stating the reasons why modern peoples which think themselves free have Representatives, and why ancient peoples had none. (III.15)

[on 'what people is fit to receive laws'] finally one that combines the resistance of an ancient people with the docility of a new people. (II.10 p.52)

The words *stranger* and *enemy* were for long synonyms among several ancient peoples, even among the Latins: [...]. (Geneva MS p.147)

For you, modern peoples, you have no slaves, but you are slaves; you pay for their liberty with your own. (III.15)

In conclusion, it is hard to determine Rousseau's exact view on the formation of nations. The same holds for the *reality* of nations: are there national differences because of different imagined communities, or because of naturally divided entities? Rousseau's primordialism and view that features of peoples have been adapted to geographical factors leans to the latter; but the new peoples formed by cooperation and his emphasis on moulding national character suggest the former. Illustratively, some of the differences in *culture* Rousseau sees appear to be(come) present in *physical* qualities like skin complexion, appetite, or greediness:

[Persians their way of living is better, which one can see in their complexion] Indeed the complexion of the Persians is smooth, they have a beautiful, fine, polished skin; whereas the complexion of the Armenians, their subjects who live in the European manner, is coarse and blotchy, and their bodies are big and heavy.' (III.8 p.79)

The closer you come to the equator, the more peoples live off little. They scarcely eat meat: rice, maize, couscous, [etc. form their diet]. In the Indies there are millions of men whose food costs less than a sou a day. In Europe itself we see perceptible differences in appetite between the peoples of the north and those of the south. A Spaniard will live for eight days off a German's dinner. In the countries where men are greediest, luxury thus turns towards articles of consumption. (III.8 p.79)

Still, Rousseau does not seem to hold the view of ethnic 'races', as he names 'race' only once in SC (on Servius) and once in CC:

[Servius changed the] division, replacing that by race [...] with a different one, derived from the areas of the town in which each Tribe dwelt. [...] and so that this division would be not just between places but between men, he forbade the residents of one neighborhood to move into another, which prevented the racés from merging. (IV.4 p.107; French⁷⁷)

It has occurred to me that, in this view which bases the fundamental law upon distinctions drawn from the nature of things, you could divide the entire Corsican nation into three classes, the still personal inequality of which could be substituted satisfactorily for the inequality of race or domicile that results from the feudal municipal system we are abolishing.

So, it is unclear whether *nationality* is cultural, conventional - and surmountable? - with (possibly) changing and overlapping imagined communities and national characters; or by birth, physical and

⁷⁷ (Livre IV.4 p.321): "[...] fut de changer la division, & à celle des races, [...] ce qui empêcha les races de se confondre."

ethnic, an exclusive belonging to some ontological entity with a fixed physiognomy. Sometimes, Rousseau alludes to some seed or cell-structure that makes a human belong to *this* nation exclusively (from nature), sometimes not; still, this natural belonging can also be imagined (by the people themselves), perhaps forming an equally insurmountable divide. Either way, Rousseau's view on the reality and formation of nations seems ambiguous, and his mix-up of terms (People, nation, country) complicates an interpretation. Illustratively:

[...] every People contains within itself some cause that orders these in a particular way and makes its legislation suitable for it alone. Thus formerly the Hebrews and recently the Arabs had Religion as their main aim [...] What makes the constitution of a State truly solid and lasting is when conventions are observed in such a way that natural relations and laws always coincide on the same points (II.11 p.54)

This ambiguity also presents itself in the controversial statements. Rousseau told us how some 'nations' gained freedom (Romans, Greeks, Bern, Geneva, Venice) for some time, but lost it (Romans, Venice, Greeks) – while seemingly staying nations. Others, primarily nations in the south but also the Russians, will not be able to achieve freedom, while others can (Poland, Corsica). But if we presume *descendants* of a people are the same people, would there not be descendants of the free Romans that live on the island at the left of Italy (Corsica) be able to gain liberty through Rousseau's plan for the Corsican republic, while 'this people' lost its freedom with the demise of the Roman Republic?⁷⁸ Did peoples disappear, or go over into other peoples? When does a people stop being that people?

Furthermore, Rousseau's *use* of nations is also questionable. The conventions (of culture and cooperation) he observes were often not developed out of habit or practicality but coerced by arbitrary powers: Kings and armies forcing individuals to become nationals, determining their faith, language, cultural practices - forbidding others - and drawing national borders. Many of Rousseau's 'peoples' are generated by (pre-)existing states and are intimately connected with the titles of Kings and Princes, e.g King of France and Navarre, or Kingdom of Sardinia and Corsica. So, it seems strange for Rousseau to take up the borders of former states or pre-political societies to assume where (the borders of) nations – and the constituted people - lie. Taking the dominions made by power and illusionary rights as the starting block for legitimate states ignores the power-grabs of the past and like this directly incorporates and indirectly enforces or even legitimises the effects and orders of past regimes.

Now, could we assess Rousseau's use of nations (further) by putting it onto perspective? And use these perspectives to interpret Rousseau's ambiguous view of the reality and formation of nations, perhaps explaining the statements on maturity, death and one-time freedom of peoples?

3.4 ROUSSEAU'S PEOPLES AND NATION(-STATE) IN PERSPECTIVE

Could we interpret or explain Rousseau's ambiguous view of peoples, nations and the nation-state by looking at his views from the different perspectives articulated in Ch. 2.5?

Rousseau as a transitory figure (in republican theory)

One way to interpret Rousseau's ambiguous view of the Nation (and in first instance, the People), is by assessing him as a transitory figure. Remember kings were formerly thought to be legitimate rulers by nature, divine right or through a contract (of submission) with a People. Rousseau, (self-

⁷⁸ Ignoring the myth that Romans fled to the swamps of Venice and initiated the Republic (of Venice) there.

)proclaimed 'enemy of Kings',⁷⁹ vehemently attacks this view, saying that such a contract is null and calling it illegitimate (royal ruling). He thereby removes this role of the ruler-King and eliminates the upper layer of the *Herrschaftsvertrag* (the king, rulers) and transfers the power to the People by stating that only a contract of association could be the basis of legitimate law and government. Perhaps the old conception of the People remained present in latent form though: Rousseau gives the power to the same (French) People that were formerly ruled by the French King.

↙ French-King ↖
↘ French People ↗

But this bypasses questions concerning the *legitimacy of the People*. As Näsström says, '[Rousseau] submit[s] the legitimacy of the people to the arbitrary and asymmetrical forces of the present', thereby running 'into the arms of history'.⁸⁰ We will later see whether this legitimacy can be attained.

Providence and original peoples

Secondly, Christian Romanticist Rousseau sometimes – in the case of the Hebrew Nation, or when he refers to the People of Ishmael's child⁸¹ - seems to think with 'the Peoples of God' and Abraham being the father of nations.⁸² Maybe some seed of national difference may be planted by God at Creation, or emerged in the biblical genealogical line? Also, his view that freedom is not for every people invokes thoughts of global *providence*, as some peoples are 'destined' for a fate of liberty, or not – notably, the more northern Protestant countries seem to win the jackpot in Rousseau's time. Alternatively, perhaps Rousseau sometimes presumes the seed of nations to originate in the very first primitive societies (nations, tribes), that were still happy and free with the first signs of morality and reason; and as he wants to (re)create similar conditions, he unconsciously incorporates ideas of these first 'nations'. Lastly, Rousseau's view of the nation-state's inevitable death could be influenced by a Christian human humility motive, as he says we should not expect 'solidity that does not belong to human things' (III.11 p.86).

Historical and political reality kicks in

Thirdly, Rousseau seems to intertwine (conclusions) from TE and (observations) from historical and political reality - we see and feel a French People -, and perhaps political reality also should kick in when you are providing a manual. Furthermore, active input for concrete cases comes from political reality, even from peoples (nations) asking for guidance in this 'transformative' step.⁸³ People have national feelings and shared histories, so it is excusable Rousseau (unconsciously) took over these historical and imaginative realities, like other philosophers did too – even if this means the choice of the Legislator - what People? - is now filled out in advance (these nations).

The other way around: the basis of Geneva.

Fourthly, Rousseau's reliance on the nation and his mix-up of terms could originate in starting his theoretical project the other way around: Rousseau does not (always) conceptualise how (hypothetical) individuals could combine forces and reach a reliable and legitimate authority from

⁷⁹ Nouvelles lettres de J. J. Rousseau, (Volume 17), [Du Peyrou/Moultou 1780-1789 quarto édition; t. XVII, pp. 1 [141/]-301[441/] (1782)], p.45 [00-09-1762] Lettre au roi de Prusse, (via rousseauonline.ch/home.php,2/5/22): "& J. J. Rousseau, *l'ennemi des rois, ira mourir aux pieds de son trône!*"

⁸⁰ Näsström, Sofia, "The legitimacy of the people." *Political Theory* 35.5 (2007): 624-658: p.624.

⁸¹ (II.7 p.45): "The Judaic law which still lives on, and that of Ishmael's child which for ten centuries has ruled half the world, proclaim to this day the great men who dictated them."

⁸² These thoughts are also present in Filmer's *Patriarcha*.

⁸³ Canivez p.399.

the state of nature, but (sometimes) theorises what original pact has to be the basis of (pre-)existing (nation-)states, as Canivez also remarks.⁸⁴ These existent states have a people that is (presumed) a nation. Furthermore, especially Geneva is such a state: the city-state of Protestants,⁸⁵ with a strong nation-builder (Calvin). As Rousseau feels part of the Genevan people, or eagerly wants to belong to a nation (as Betts claims),⁸⁶ he presumes other country-names (Poland, France) refer to a people too.

Metaphors: a slip of the mind

Fifthly, every political association comes with its own metaphorical associations, and Rousseau from the start calls the People (so: the nation) also *Body Politic*, which could have influenced his view of peoples and nation-state.⁸⁷ The body politic is 'born',⁸⁸ just like a nation is, and enabled by a Legislator – the father of the nation? It also has a will, heart (sovereignty), brain and force (government) aimed at its preservation and general welfare.⁸⁹ Maybe this body then also has a *soul* (national character) that needs to be stimulated and protected, and goes through similar *human stages of development*? It can be young, docile, vigorous and healthy; *mature*, ripe and ready; and old and ill, or even *dead*, the inevitable end of the body politic, or nation(-state).⁹⁰

Other metaphors that Rousseau uses to describe the association of people are an *organism* (e.g. plant or tree), that has similar connotations, e.g. 'flourishing'; and of course, we could call the *contract with clauses* in Rousseau's TE a metaphor too, as it is used to describe the formation of a people – perhaps making explicit a more silent, hypothetical presumed relation. Lastly, the connection that is to be established between individuals Rousseau calls social bond (*le lien*).

The further the social bond stretches, the looser it grows; and in general a small State is proportionately stronger than a large one. (II.9 p.47)

When at last the State, close to ruin, [...], when the social bond is broken in every heart, when the basest interest shamelessly flaunts the sacred name of the public weal, then the general will falls silent. (IV.1 p.100)

Still, other practical reasons could be there to still choose to *rely* on nations: maybe not legitimate (theoretically), but practically unavoidable – there are nations – and even a practically defensible choice (because it resolves problems). Indeed, Rousseau also says the State (or People) has to be 'reduced to proper limits' (III.13 p.89).

3.5 WE, PEOPLE OF THE WORLD: THOUGHT EXPERIMENT IN PRACTICE

⁸⁴ Canivez, p.394: "Of the Social Contract' does not deal with a purely ideal state. It deals with the rational foundation of historical (empirical) states."

⁸⁵ Kapossy, Béla, The sociable patriot: Isaak Iselin's protestant reading of Jean-Jacques Rousseau', *History of European Ideas* (2001), 27:2, 153-170: p.154, 160. and: Bertram p.xiv.

⁸⁶ Betts, p.xv: "From adolescence onwards he was in many respects a social outsider. He seems to have yearned for the sense, which he never had, of belonging to a group."

⁸⁷ Rasmussen, Claire, and Brown, Michael, "The body politic as spatial metaphor." *Citizenship studies* 9.5 (2005): 469-484: p.471.

⁸⁸ (III.10 p.83): "[...] it must happen sooner or later that the Prince will at last oppress the Sovereign and break the Social treaty. This is the inherent and inevitable vice that from the birth of the body politic tends unremittingly to destroy it, just as old age and death destroy the body of man."

⁸⁹ (III.11 p.86): "The principle of political life is in Sovereign authority. Legislative power is the heart of the State, executive power is its brain, which gives movement to every part." (IV.1 p.99): "So long as several men together consider themselves a single body, they have but a single will, which is directed towards their common preservation and general welfare."

⁹⁰ See quote p.24.

The paradox of the People

Still, the theoretical account of the People that we encounter in Rousseau's republican thought experiment seems to be wider than the Nation-State I described above, and I would like to follow it in practice to see where it leads. Recall the (undetermined) individual is not secure in the (later stage of the) state of nature, there is not a stable chance to self-preservation. Power reigns. The only opportunity to preserve yourself is to dominate others by power and deceit or by joining (unstable and unfair) orders. Because of this, it is in the interest of every individual to form a stable and fair cooperation, which can formally be achieved by the social contract. Inciting and sustaining this fair cooperation now is the challenge.

Aiming for this opportunity, an aspiring contractor would hit a wall soon. In this TE or Republican conception of the People, the picking of the possible 'contractors' or 'associates' is not yet defined or determined, it is up to themselves. There is no theoretical reason, nor a rule or law to exclude anyone that is interested in joining the social contract. Here, a *paradox* or *aporia* comes to the forefront: who determines who is in, if no one is already in? We encounter a problem of initial membership, of who is included at the constitution of the People.⁹¹ As preservation and freedom are in the interest of all and any human, why should the whole of humanity not be included, to form a universal *United People* and a cosmopolitan state?

If 'the People' is determined, Rousseau's theoretical frameworks starts rolling. As they convene, they choose the form of government. Turning in a starting democracy, they chose the government officials. From then on, making new laws is a matter of voting (in line with the general will) - also laws on extending (joining) the people can be made. But who can vote is defined by this first moment of who is considered as part of the People. Moreover, this process of determining the People can result in an endless negotiation, especially in the case of a global People, as some people could only want to join on the condition that some rule of the contract (law) is (not) accepted, or some others are (not) included. The endeavour for freedom could in practice get jammed before it even takes off.

Rousseau's addition of the Legislator and the nation (selected by him) resolve these challenges. Where the TE of establishing a social contract lacks concrete substance for undetermined individuals to act – only the contours of duties, rights, revision, disputes and authority (sanctions) of the contract are offered, but no clue on the concrete contracting parties, content (laws), instigator, negotiation, or moment or place of signing is put forward – the view of the nation-state fills this, as the people is *delineated* and the Legislator averts endless (starting up) negotiation as he proposes a constitution. (Plus, the Legislator offers insight in legislation that most people lack.)

Still, there is an idea of a universal contract in the interest of all. Why does the Legislator not propose a constitution for the world? Rousseau does not think it is possible: there are practical reasons to reduce the People to its proper limits in order to create a sustainable free state *in practice*. Now, I will assemble Rousseau's considerations (from various treatises) around some challenges that illustrate why a (free) cosmopolitan state (and United People of the world) is impossible to initiate and sustain. Simultaneously, this explains why in contrast to the TE and the preamble of Book I, the prospect of freedom is limited to a narrow collection of individuals at specific times and places in history, and why Rousseau believes we have to fall back to (specific) nations as the unit of the People. Hopefully, we will also be able to interpret the last confusing statements on Peoples.

Problem of contact between citizens: assembling, discussing & thinking together

⁹¹ Näsström, p.625: 'an infinite circle of self-definition'.

Firstly, how should aspiring individuals establish and maintain such a cosmopolitan republic? Even if assembling to establish the People (and the State after this) would be possible, Rousseau already formulates problems for larger nations in general. Maintaining liberty will be hard as assembling the Sovereign is a challenge. Discussing legislation would be complicated by the various languages individuals speak, as languages are shaped by the land (as Rousseau explains in *Origin of Languages*⁹²). Furthermore, Rousseau wants citizens to have direct contact, as they need to see, meet and know each other in order to become aware of each other's interests and their shared interest, which is needed to come to proper laws, to let the general will reign in voting. This contact Rousseau already deems impossible for larger nations; although the 'representatives' he grudgingly allows in the GP provide some tiered form of assembling.

Limited and directed sympathy

One could suggest that communication tools could help our undetermined individuals, as papers – but also novels and plays - help to make people aware of each other's interest, especially with later inventions as photography and television in mind, like Engel remarked.⁹³ But these are not sufficient for Rousseau: he believes the passion of 'caring for others' is only effective if concentrated on people around you.⁹⁴ It cannot (easily) be extended to the whole of humanity effectively and should be restricted to the fatherland. Rousseau expresses this thought the most clearly in *Discourse on Political Economy*, that, published before the SC in the *Encyclopédie* in 1755, says more on patriotism than the SC:⁹⁵

It seems as though our feelings of humanity evaporate and weaken as they extend across the earth, as though we cannot be as sensitive to calamities in Tartary or Japan as to those that are suffered by a European people. Concern and compassion have in some way to be limited and compressed, in order that they should be active. And as these inclinations of ours can be useful only to those with whom we have to live, it is good that the feeling of humanity should so be concentrated among fellow-citizens that in them it takes on renewed strength, because of their habitual meetings and the common interest that unites them. Certainly, the greatest marvels of virtue have been done out of patriotism: a vigorous and pleasurable feeling [...] the most heroic of all passions.⁹⁶

So, undetermined individuals aspiring for a cosmopolitan republic will be confronted by the fact that relations between humans within humankind are just too far and abstract; without seeing, caring will be hard. Human psychology forms a barrier: the empathy and cohesion needed for a state cannot be achieved on a global level. But it can on a larger scale than your direct neighbour: through patriotism, love for the fatherland, individuals can feel for their fellow-citizens. Furthermore, in the Geneva MS Rousseau even claims that we only can start to imagine a world republic and care for humanity *after* the experience of a smaller one and learning to care for our fellow-citizens.⁹⁷

Climate and geography: splitting interests and breeding vice

The effects of climate and geography would also form a challenge for sustaining a cosmopolitan contract, as these shape the morals and life practices of the people and consequently people themselves; in a diverse and large territory, the differentiation in morals and life practices becomes

⁹² Bertram, p.xviii.

⁹³ Engel, Steven T., "Rousseau and Imagined Communities." *The Review of Politics* 67, no. 3 (2005), pp.515–37: p.530.

⁹⁴ Cobban, Alfred, *Rousseau and the modern state*. (2nd edn., London, 1964): p.106.

⁹⁵ Betts, *Discourse on Political Economy and The Social Contract*: Introduction, p.xiii.

⁹⁶ PE (II.), p.17.

⁹⁷ Gourevitch, *Social Contract and Other Later Political Works*, p.xiv.; and Geneva MS 1 2 [15].

too large, resulting in diversification of groups and cultures, while individuals should share cultural life practices to get to know and trust each other and develop an appreciation of the public interest. The lack of shared climatological circumstances causes interests to diverge, and ultimately even *splits* interests. A global people is impossible as the association becomes too complex, and (like large nations) it needs (too) much 'repressive' force to get everyone on the same page. Reducing the People to a nation practically solves this.

Furthermore, climatological and geographical factors (e.g. fertility of the land) generate circumstances for easy surpluses in food, which consequently causes laziness and greediness to arise in the people. So, some territories are *not fit for liberty* as they foster vice. Similarly, territories where people cannot find everything to survive are (materially) dependent on others by trade, and these dependency-relationships inherently create the vices of the state of nature. This explains Rousseau's focus on *autarkia* by agriculture, and why not all Rousseau's 'peoples' (nations) or undetermined individuals can achieve liberty: on the wrong piece of land, one is helpless.

Internal threat of slacking cooperation and free riding

Next, even after 'total alienation' in the People, there remains a constant problem of trust and faith in the association, as individuals keep their own will, aimed at self-interest. Free-riding is an attractive option to every human born with amour de soi – which Rousseau describes in (I.7 p.22) and by discussing the 'ultimate cost of the contract', dying while defending the fatherland (II.4-6). Feeling the individual (egoistic) will in yourself, you will also project this on others,⁹⁸ which creates distrust in the cooperation of everyone. This distrust would easily expand in a global state, where the relations are so formal and abstract, and be exacerbated by the vice-inducing climatological circumstances of some territories, together with the inability to understand each other's language.

Eradicating these particular wills in people is not possible but mitigating its impact and focus on amour-propre is. Although in some people, the effects of past luxury are not easily eliminated too: a new state with individuals with egoistic attitudes will not be durable; that is one reason why not every 'people' is ready to receive laws. Generally, Rousseau tries to remove objects and processes that provoke and develop egoistic inclinations and self-love and to redirect amour-propre to public objects of esteem (i.e., into patriotism). He dismisses luxury – even by sumptuary laws –, and tries to avert the commercialism (trade, arts) of the city.⁹⁹ Illustratively, Rousseau propounds (in the SC, GP, CC and PE) magistrates preferably are paid with goods, as the enormously corrupting effect of money could then be avoided. Instead, Rousseau emphasises agriculture, that adds to independence, provides rustic working life with good morals and less time for frivolous luxury. Furthermore, by games, education, feasts that have the fatherland, collective and unity as their object, Rousseau (GP) wants to stimulate public spiritedness and public virtue. The nation seems especially suitable for this as 'the national land' and shared national physiognomy (could) exemplify the unity.

Problems of government: corruption, inefficiency and disconnection

A global government would also not work, as government business will become too slow over long distances, making it less efficient and effective. Trust and faith in government (actions) will slack as the leaders do not see their work and citizens do not see their leaders. Paid taxes take too long to 'come back' in the form of public services ((II.9), PE), and could require the introduction of money and its corrupting effects. As larger territories require more repressive and concentrated force to

⁹⁸ Canivez, p.400-1; human capacity for sympathy.

⁹⁹ Rousseau describes the city as corrupted, vice-ridden, effeminate, weak and even less fertile, see SC (IV.4 p.107-8, 110), GP, CC (for 'less fertile': p.195, 201).

keep the citizens in harmony, the concentration of power leads to abuse, corruption and degeneration – a small city has a better chance.

External threats: foreign Powers

Following Rousseau's conjectural history, his empirical statements on states, and the considerations on vice-creating climates above, there are 'pre-political' societies (or nations) that cooperate without ever becoming a civil state. Rousseau is a *realist* in international relations,¹⁰⁰ as far as he sees Powers (without tendency to liberty) that will look for more wealth and territory, and not only hinder the formation of a cosmopolitan republic, but even threaten the establishment of a smaller one. Therefore, the real world requires not only equalising legislation to install a free state but also *force to defend* the association and the land associates occupy. But this is hard for undetermined individuals that are abstractly related, as it requires strong union and civic engagement. It is even hard to visibly distinguish cooperative associates from people that are against you. The nation solves this, as it brings the necessary 'patriotism' (love for the fatherland), national distinctiveness and strong emotive ties and critical minimum of trust *at the launch of the state* that a random group of individuals (that is maybe not even concentrated at a territory) lacks – with the national border even showing where to stop.

Rousseau's free People: reduced to its proper limits and features

Like this, we could practically explain Rousseau's preferred or appropriate makeup of the people, which he summarises in (II.10 Of the People p.51). Freedom is not achievable by anyone and not by humankind as a whole; only individuals of certain groups under specific conditions in history are able to constitute a republic¹⁰¹ - the liberty-prospects of many undetermined individuals in history are meagre. Practically, there is a need to draw a line, to keep (vicious and hostile) forces out and create freedom from within. For launching the state, it is important the group is already (something close to) a nation, offering the necessary *cohesion*. To make it durable, a good system of legislation, (stimulation of cohesion through) patriotic morals, mitigation of objects that corrupt morals and the absence of bad geography is needed to *avoid corruption* springing up. Then, realising a free state is possible, although the rest of mankind is excluded from the People to achieve it. In a vice-ridden world that includes vice-creating mechanisms creating liberty for more 'easily corruptible humans' is not possible, and this *legitimises* the reduction of the People to its proper limits. So, reliable and legitimate state is only practicable in a small city (III.15 p.94),¹⁰² where citizens feel a *social bond* that combines cohesion from the nation with justice and freedom from the People – consequently, only *they* realise Rousseau's promise of republican freedom.

In the next chapter, I will criticise Rousseau by showing how the liberty-prospects of even more individuals are negated; and how the idea of the nation is a ticking time-bomb for the people that obtain liberty.

¹⁰⁰ Williams, Michael C., "Rousseau, Realism and Realpolitik." Millennium 18, no. 2 (June 1989): 185–203: p.185.

¹⁰¹ Answering to this ideal state are Geneva, Sparta, Poland (as confederation), Corsica, Rome (with explanations). Maybe Venice (earlier on), Holland, Berne, Athens, 'Switzerland'.

¹⁰² That is why Rousseau calls the size of Poland its 'radical defect' (GP [V]).

4 THE NATION VS. THE PEOPLE: PROBLEMS OF COHESION, EXCLUSION & ENMITY

As Rousseau's political philosophy and view of the people are explained, it is now (finally) time to criticise these. In the following I will show how his republican (TE) promise could be realised further, had he not stuck with the nation and the stimulation of national feelings (nationalism). These ideas can be both counter-acting as contradictory to his goal of achieving non-domination and enabling fair and stable cooperation. Along the way, I will loosely sketch alternatives to Rousseau's national view that meet his practical challenges, or show ways to tackle these are already present in his philosophy. Finally, I will show some conflicting claims can be resolved, or even should be retracted.

My criticism could be summarised as: I diagnose an (ignored) exclusion of many groups from citizenship and great potential for repression - (proto-)totalitarian hints -, and these are intimately linked to Rousseau's reliance on a view close to 'the nation'. Furthermore, Rousseau's pessimistic outlook (on preservation of the free state) and inability to envision fortifying external relations – his unfinished political-philosophical project - are too. Lastly, his reliance on the Legislator conceals but also illustrates his lack of trust in the People, next to showing his excessive faith in national myths.

4.1 CREATING THE PEOPLE: FOR LIBERTY OR DOMINATION?

As explained in the last chapter, Rousseau consciously limits the People, arguing we should draw a line and erect a civil state from within. He singles out specific 'nations' that under strict conditions can fulfil the (republican) promise of creating liberty for individuals. However, this constitution of the state with the nation at its basis, could be characterised as a *power-grab with an unjustified 'initial exclusion' of many groups within the nation or territory*, depriving them of the citizenship - membership of the People - that would render them free individuals. For instance, in the SC it is not explicitly said but implicitly assumed that the contractors are men, while women *are* part of the nation:¹⁰³ *Fraternité* seems to be taken literally, as *Liberté* and *Égalité* appear to be reserved for those who are brethren. Although Rousseau declares the subordination of women in *Émile*,¹⁰⁴ there is no practical reason from the last chapter that justifies the (internal) exclusion of women from the social contract and their subjection to an arbitrary will.

Alike, atheists are excluded (and can be exiled) as their lack of faith in the positive dogmas of Rousseau's civil religion makes them 'unsociable' and incapable citizens, who even can receive the death penalty if 'they lie before the laws' (IV.8 p.131); but discussing whether faith in God and hell is essential to function as a citizen falls outside the scope of this thesis. Furthermore, in the GP, many peasants - the populace - are excluded from citizenship, though we see Rousseau arguing for their gradual 'emancipation' into citizens;¹⁰⁵ more on this later. Lastly, foreigners and non-natives are excluded, but this group requires explanation. 'Foreigners' could mean people that are citizen of another state, part of another Sovereign: it seems acceptable that they are not (immediately) a contractor, member and citizen of a second nation-state. But for some the circumstances seem to be different. These 'foreigners' are living in the territory (e.g. Geneva) but are not citizen of another

¹⁰³ (III.12 p.87): "The last census recorded four hundred thousand Citizens bearing arms in Rome, and the last count of the Empire more than four million Citizens without including subjects, foreigners, women, children or slaves."

¹⁰⁴ See Book IV, how girls (Sophie) are taught to be subordinate. Still, others explain this 'subordination' is more nuanced: Schwartz, Joel, *The Sexual Politics of Jean-Jacques Rousseau*, University of Chicago Press, 1985: p.6.

¹⁰⁵ GP [VI]-[VIII].

state or at least not *voluntary* members of another *free* state. They are excluded as they are non-nationals or do not agree to the social contract (or the constitutional laws).

Considering this initial exclusion of people residing in the town or country from the city and state (the citizens), we can characterise the constitution of such a nation-state not only as a nation that 'frees itself from the state of nature' but also as an illegitimate power-move, or power-grab, vis-à-vis individuals that live on the same territory and are excluded from (liberating) citizenship. The constitution of a State does not only entail the creation of legal ties between individuals (citizens) to create a Sovereign body but also a claim of *supreme authority over territory*¹⁰⁶ – a *fatherland* that should be defended with force. This claim (to sovereignty) would not be (that) problematic if each 'chosen' nation unitarily occupies a moderate, uncontested, and unwanted stretch of land and constitutes its republic there; but it becomes problematic when there are other residents that are excluded because of arbitrary or unargued reasons or choose not to be included as they oppose to the social contract. As Rousseau formulates it:

So if at the time of the social pact there are opponents to it, their opposition does not invalidate the contract, it merely prevents their being included in it: they are foreigners among the Citizens. When the State is instituted, residence is consent; to dwell in the territory is to submit to the sovereignty. * (IV.2 p.103)

Provided that the state where we are talking about is in fact a free state and not one that forbids its residents to leave:

* This should always be understood in relation to a free State, for elsewhere family, goods, lack of refuge, necessity and violence may keep an inhabitant in the country unwillingly, and then his mere residence no longer presupposes his consent to the contract or to violation of the contract. (IV.2 * p.103)

But if all the neighbouring states are not free states, what choices does an individual actually have? To leave this nation because he does not agree to be subject to these sovereign laws to exchange it for the illegitimate laws of a neighbouring (tyrannical) 'state'? A question that arises would be why the individual would not agree to the social contract in the first place, why it does not want to be included in the people and become a citizen. If we think about Rousseau's (and the Legislator's) choice for the People, and the maintenance of it, one could understand why: the People should be a nation which's national character (including language, rituals, tastes, opinion) should be stimulated. But what if one does not feel part of this 'imagined community' and does not want to be subject to these nation-forming policies with the unity of the state or nation as its object? What if the 'national character' or (constitutional) laws clash with one's own language, rituals or personal preferences and characteristics?¹⁰⁷ What if someone wants to be different?

Taking up the same issue – the constitution of a State as a power-move of a Sovereign nation – from a different perspective, we can problematise Rousseau's choice for the nation further. As said, the nation cooperates to some degree because of historical, imaginative or practical realities, and these former cooperations of national groups resemble or coincide with the pre-political societies that Rousseau criticises for their 'illegitimate authority', as only Kings (and noblemen) make laws and are sovereign. But does the choice for the male nation, and the subsequent initial exclusion of women, (atheists, uneducated peasants), non-natives and 'foreigners by choice' not entail the continuation of

¹⁰⁶ Philpott, Daniel, "Sovereignty", in *The Stanford Encyclopedia of Philosophy* (Fall 2020 Edition), Edward N. Zalta (ed.). Ch.1 Definition of Sovereignty.

¹⁰⁷ This problem will return in Ch.4.2. Think of forbidding being gay, speaking your own language, publishing thoughts.

the exact same illegitimate oppression but now with a *multiplication of the constitutive elements* (citizens) of the Sovereign? The King does not longer decree over its subjects but now the citizens decree over non-citizens – in the national republic ‘nationals’ over ‘non-nationals’. The tyranny of the majority (or minority) may be still there in practice but formally pushed out to an easily forgotten moment before the constitution of the state, or is successfully removed from it as the ‘state’ is made up out of citizens only: the rest is just a resident in the country. The same holds for other silent, silenced or initially forgotten or neglected individuals: Rousseau’s theory leaves ample space and huge opportunity for their initial exclusion and subsequent subjection, justified or defended by the practical necessity of starting somewhere, of having to choose a first people to constitute the state with.

What to do with this? As subsistence is one of the two main goals of the free state, and subsistence does rely on the use of land, the state seems to necessarily have to include a claim to (the use) of land; a claim that seems even more unavoidable to Rousseau and his ‘national republic’ as love of agriculture (the cultivation of land) serves an important double function: it is both crucial for keeping up the (national) morals necessary to sustain a healthy state as it is strategically necessary to render the state and individuals independent from other countries in its subsistence (*autarkia*).

Furthermore, ‘love of the (national) fatherland’ (patriotism) is also focussed on the land, and has similar essential double-role: by focussing the admiration of the citizens away from ‘pathological objects of desire’ (e.g. luxury) to the healthy and virtuous object of the (unity of the) collective, and offering the virtuous citizen a primary motive for *defending* the (independence of the) free state or fatherland against other hostile Powers (that necessitated Rousseau to limit the People to the nation in the first place). But simultaneously, this claim to land seems illegitimate, as the occupation of land (or communal property) is a *power claim* which subjects non-citizens to arbitrary power. So, is the promise of freedom even more restricted and limited to less ‘lucky bastards’ on top? Is even the ‘legitimate island’ of the nation-state not free from within (to everyone)? What does Rousseau do with this? Could this claim be made more legitimate?

One way to mitigate this tension is to make this claim to land less brusque and contested (in principle), by not only letting non-nationals leave the state, but also by ‘making room for them’: providing them with an assigned portion of land or at least an exit with a realistic possibility to survival and freedom.¹⁰⁸ To generate this ‘realistic possibility’ it is necessary that a bounded people makes sure its claim to land is moderate, i.e. it corresponds with the nation’s or people’s ability to cultivate the land and their needs of foodstuffs to survive, as Rousseau explains it should, as then it will be less experienced as an offensive power-move and be more easily (implicitly) approved and accepted by ‘foreign’ (groups of) individuals. By this mechanism of implicit approval or acceptance, one could even draw a justification or legitimisation of the use of the land, as it comes close to the consent of the social contract.

This argument connects to Rousseau’s explanation of the ‘right of the first occupant’ (I.9), a claim to land by some non-existent ‘natural right’ (in the state of nature) that is at once a power-claim but also one that is tacitly accepted by all or many. This ‘right’ seems to function as a kind of coordination rule: by initial, precautionary reflection people recognise each other’s basic needs and try to avoid hostility (that endangers their own existence). It is wise to choose a lot that is not yet occupied, and not one that should be taken by force or that is too big to cultivate or defend. So, we

¹⁰⁸ We could think of reservations, but Rousseau does not discuss these. He only advises to moderate the national claim to land, which we could assess as ‘leaving more room for others’. Beyond this, he does not talk much about residents that have to live under the laws or leave the country, and that they possibly end up ‘between states’ (stateless); he just focusses on preservation of the constituted nation-state.

could recognise *amour de soi* (extended, projected to others) and *empathy* at the basis of this 'right'.¹⁰⁹ Individuals will 'from nature' accept the need of other individuals to survive, resulting in a 'coordination' of space and resources.

The other way we could say Rousseau handles this painful discrepancy between the proclamation of achieving liberty for a People, and the reality of the subjection of others to an arbitrary will (by their convenient exclusion from the People) is to stick with it as a paradoxical fact of life, a negative consequence that may be inherent to the artificiality of the 'civil state'. Rousseau:

What! Is liberty to be maintained only with the support of servitude? Perhaps. The two extremes meet. Everything unknown to nature has its disadvantages, and civil society more than all the rest. There are certain unfortunate situations in which you can preserve your liberty only at the expense of that of others, and in which the Citizen cannot be entirely free without the slave being utterly enslaved. Such was the situation in Sparta. For you, modern peoples, you have no slaves, but you are slaves; you pay for their liberty with your own. (III.15 'On Representatives or Deputies' p.93)

Are slaves sometimes the consequence of inciting or upholding the (political) liberty of others? Rousseau seems to acknowledge and even permit this fact as he observes the free Spartan People subjecting others for their freedom while not immediately criticising this process. Likewise, two other instances of Rousseau's preferred republic, Rome and Athens, were heavily dependent on slaves and do also not receive explicit criticism for this,¹¹⁰ while – at least for Rome – they are constantly and extensively praised. At the same time, we know Rousseau propounds:

There is but one law which by its nature demands unanimous consent. This is the social pact. For civil association is the most voluntary act in the world. Every man being born free and his own master, no one on any account whatsoever may subjugate him without his permission. To decide that the son of a slave is born a slave is to decide that he is not born a man. (IV.2 p.103)

Why would the Spartans or others only be able to preserve their liberty at the expense or costs of others? An explanation could be *economical*: that citizenship asks for material conditions - not being able to buy other citizens or having to sell yourself - that requires that others live below these conditions to provide the materials. The conditions for equality and liberty (between citizens) cannot be achieved by working citizens alone, as citizens maybe have to spend too much time on civil tasks and consequently cannot produce enough (or at all, but that would clash with Rousseau's emphasis on agriculture to obtain the right citizen morals). In the next paragraph though (III.15 p.93-4), Rousseau explains that that he does *not* consider holding slaves is necessary, and repeats that the right to enslave does not exist (see I.4). He merely wanted to warn that installing deputies when performing political citizen duties seems inconvenient, means giving up freedom and accepting 'slavery'. Rousseau consequently concludes the City should be small for the Sovereign to retain its rights.

Still, I would like to offer an another (figurative) explanation of this 'necessary slavery to uphold freedom': does the State, or do free citizens, maybe 'need' slaves as they are there from the initial 'power-grab' by that nation at the constitution of a state? Rousseau repeats slaves are made by

¹⁰⁹ See Canivez, p.400-1.

¹¹⁰ While Rousseau knows for sure about the slaves of the Romans; (III.12 p.87): "The last census recorded four hundred thousand Citizens bearing arms in Rome, and the last count of the Empire more than four million Citizens without including subjects, foreigners, women, children or slaves."

convention, not by nature; and that the civil state above all is such an artificial convention. The necessary power-move of claiming sovereignty over territory by the nation *creates slaves by convention*: claiming and defending the fatherland means forcing or subjecting others. Slaves (non-citizen subjects) could be the debris or collateral damage from the constitution of the national republic; debris that we cannot clean up *without questioning the legitimacy of the People* (that was limited to the nation) and the State itself: questioning the existence of these slaves or subjects would amount to questioning the rightfulness of 'our Sovereignty', 'our' laws and 'our' existence as a free state.

Knowing this, we encounter a problem. It becomes hard to judge whether the constitution of the state is a justified liberating power-move by a subjected people or nation to rid and protect themselves from arbitrary 'external' dominating forces, or a (veiled) power-grab in your 'own' claimed land, resulting in or even aiming at the domination of others. Rousseau's SC, read as a manual, seems to inspire and legitimate both of them, without a context-independent way of distinguishing between them. (Is it the fall of Rome, or the liberation of many tribes? What should Rousseau think about slave revolts in the Republic of Rome?) The only context-independent criterium for good government Rousseau names, is population growth; but this takes years to show, and more importantly: does this concern population growth of citizen-nationals or also non-citizens or non-nationals on the territory?

This difficulty should raise questions in the mind of republican Rousseau. An initial exclusion may be justified as a critical minimum of trust is necessary *at the launch* of the state, but this exclusion on the territory becoming permanent makes the whole claim for legitimacy quite unbelievable: if the People is defined 'statically' as the nation (or descendants of the nation), initial inequalities (citizen/non-citizen) would be made structural. Republicans, striving against domination, cannot accept such a permanent exclusion of individuals. 'Legitimate' states should not be a bubble of lawfulness with legitimacy from within to 'nationals' only. The laws then are just as rightful as the laws of the former Kings; the State becomes a Power to non-citizen residents; and where social or political order was established by coercion by supporters of the King and inspired by an ideology of the King's right to rule (that made supporters cooperate) or their assessment that they would profit more from this order by cooperating than by working against it, it is now created by coercion by nationals against residents, inspired by an ideology of the male nation's right to rule (the territory of) their free state or at least their believe that they would profit more from cooperating with this order than working against it.

Furthermore, the possible domination and exclusion of named groups (and the rest of the world)¹¹¹ that the constitution of the state entails and the way it was achieved – by pointing out some emotive (national) tie -, offers a continuous motivation and permanently available blueprint for other groups to do the same: initiate a move to liberate *these* people, as *they* are 'the People', should be equal and make laws, or cynically stated, a power-grab under the guise of freedom. The motivation for freedom all humans possess (although some become lazy and greedy) but it is not strange to assume this inclination for freedom would rise in individuals that are excluded from the start. This 'ideology' speaks to everyone, and there is no reason for other kinds of groups, also at other levels of organisation, to not copy its tactics, starting with such an 'exclusive contract'. So, Rousseau's acceptance of 'slaves' in a free state makes his claim for the legitimacy of the constitution of the

¹¹¹ As the people is brought to its proper limits, the rest of the world is continuously excluded.

state questionable, providing everyone with an ideology to transform force in 'legitimate' force, as collectives (with group characters) function as bubbles with legitimacy from within.

As a result, different nations or collectives with some emotive ties (e.g. women, lower classes, but also blue-eyed or red-haired people, or gamers) could compete, resulting in a constant power struggle and striving for 'freedom' (or domination) that counter-acts on the internal unity and stability Rousseau desires to achieve to enable the freedom and preservation of *individuals* under a reliable authority. While Rousseau repeatedly disapproves of revolution or too much or rapid change,¹¹² I doubt whether he could escape revolutionary emancipation and secession movements, as they form an unforeseen consequence of the clash between his universally heard call for freedom in his manual and the implications of his choice to reduce the People to its proper limits, the nation.¹¹³ These problems also arise because the choice for nations with a national (group) character that should be stimulated is primarily a *tactical* move from practical motives – just as a *national story* or *myth* of belonging, used to inspire unification and justify claims to land or rights is.

Because of this, I argue that Rousseau's republican thought and aim for stability demand and deserve more, and that the addition of *rules for becoming citizen* (later on) are necessary. The institution of such rules are essential for his goal and promise of reconciling freedom and authority. 'The People' may be restricted to 'the nation' to make the constitution of his State *viable*; but to make it *durable* and *legitimate on the long term* 'the People' should be *open to new members* and there should be republican *precepts to gain membership* (citizenship); mere 'residents' should have a way to emancipation. Reflecting on these rules of membership is an instance of continuously criticising the freedom and legitimacy in existing states, as we are questioning the *legitimacy of the people*, which Näsström explains offers a continuous 'productive' gap.¹¹⁴ Although a fully legitimate people can never be achieved, questioning and reiterating what makes the people legitimate and rules of membership justifiable makes sure one does not close this question too easily (e.g by falling into the arms of history), while this quest for legitimacy at least creates *some* legitimacy.¹¹⁵

What kinds of rules does Rousseau offer? What (justifiable) rules should Rousseau prefer by following his republican thought (experiment)?

4.2 BECOMING CITIZEN VS. PROTECTING THE NATIONAL CHARACTER

Now, we can infer a not to negative attitude to this possibility of gaining membership, as Rousseau implicitly tells us some Roman slaves became citizens, without criticising this process (IV.4 p.108). Also, in the GP he clearly sees his call for freedom should be broader, at least within a territory, and recommends the 'emancipation of the (male) peasants' and even propounds an administration process to achieve this ([VI]-[VIII], [XIII]). Still, the openness of 'the People' to new members is so central to the essence and durability of the Republic that Rousseau should have discussed it more systematically in the SC, like I will now. This discussion will also touch the national character and education, as these are central in becoming a good citizen. Finally, I will conclude what kind of

¹¹² See GP [XIII]. Generally, Rousseau believes revolution easily results in the opposite of despotism, i.e. *anarchy*, instead of the better, legitimate order he envisions. (see Hamilton for the same worry; despotism vs. anarchy.)

¹¹³ This universal emancipatory potential is illustrated by: the French Revolutionaries, emancipation of slaves (USA), women (feminism), lower classes (Marx), secession movements (e.g. Ireland, Catalunya, Flanders), but also by 19th Century nationalist movements and racial ideologies as 'the Aryan Nation'.

¹¹⁴ Näsström, p.626-7, 642, 649. Similar notions of 'productive gaps' we see in many others, e.g. Habermas, Arendt, Mouffe.

¹¹⁵ Näsström, p.644.

‘emancipation’ and ‘immigration’ laws republican Rousseau could and should endorse, and how the national character should be shaped.

Rules of joining the social contract should not only resolve the former challenges of excluded groups, but also address the matter of ‘being born within (the territory of) the social contract’, as the birth of new citizens, the regeneration of the People, or *inner migration* as Arendt calls it is a necessary feature of the State.¹¹⁶ Practically, people that start to form a body politic will not all be of the same age, nor die in chorus, at which instant the social body would dissolve. The group is mixed in age, and moments of death differ, possibly because some citizens die early while defending their fatherland. Rousseau propounds citizen-duties are always to the collective (by alienation), but analysed into personal relations, inter-citizen duties are extended to new-comers or new-borns and silently removed from the deceased. The regeneration and growth of the population is also Rousseau’s main empirical criterium for distinguishing good government - so, surprisingly, to determine whether a government was good or bad to an *individual*, we have to ascend to the level of the social body.

Taking the new-born’s ascension to citizenship as the litmus test of joining the social contract: do they automatically gain citizenship, or are they excluded if they are born from non-citizens? Rousseau’s own citizenship of Geneva was acquired by a hereditary law but at the same time also based on a religious condition of being Protestant.¹¹⁷ The first is called *jus sanguinis*: granting citizenship to descendants, no matter where they live.¹¹⁸ Rousseau sometimes appears to implicitly assume this right in the SC, but as a sole condition for becoming citizen it is questionable as it structurally excludes non-nationals. The second, religious, condition at least seems to welcome anyone to the people as long as they voluntarily choose to adapt, but clashes with Rousseau’s toleration dogma (no exclusive national religion). Furthermore, in the CC Rousseau himself recommends a process that grants citizenship to all that have fought in the national battle for freedom, while assigning ‘candidacy’ for citizenship to each person born on the land (*jus soli*) that was not old enough (<20) to do so. These candidates become ‘patriots’ by marrying and having some ‘holding’ of their own, and only ‘citizen’ by having ‘two living children, a residence of his own and a land-holding sufficient for his subsistence’ (CC p.210).

For new-borns that acquire (potential) citizenship by birth, and at the right age or under the right conditions are included in the people, holds the same as for initial contractors: they obtain the right to vote on laws and if they are part of the proper majority, change these. Furthermore, as they reside in the territory, they agree to the laws implicitly. But it is the *content of these laws* that could indirectly still exclude individuals from becoming citizens. Rousseau’s civil religion forbids laws that prohibit religious practices that do not contradict the positive dogmas of civil religion. But what about other individual preferences or features of new-comers or new-borns that clash with national laws and policies? If someone is gay or trans, has another skin colour, or is physically impaired (unable to toil the land)? What if someone behaves or thinks differently?¹¹⁹ Rousseau leaves this all to the People: the content of the laws – and the formulation of rights of the individual (citizen) - is up to them (and to the assisting Legislator). This issue is solved however, as ‘the People’ should be *open to new laws*, and as they (should) vote in line with the general will - what is best for the state -, if being gay is not contrary to being a good citizen, the law should allow it.

¹¹⁶ Hannah Arendt, “Civil Disobedience,” in *Crisis of the Republic* (New York: Harcourt, 1972): p.88.

¹¹⁷ Bertram, p.xvii.

¹¹⁸ Perina, Mickaella L., "Race and the Politics of Citizenship: The Conflict over Jus Soli and Jus Sanguinis." *International studies in philosophy* 38.2 (2006): 123-139: p.123.

¹¹⁹ To illustrate, Rousseau banished from Geneva because of a book.

However, the *content of the national character and related national morals* that Rousseau deems necessary for the cohesion between citizens could also clash with the features of individuals. These '*morals of a nation*' refer both to more *universal* or *civic* morals (virtue) that denote republican behaviour (military toil, civic engagement, public focus), as to *nationally distinctive morals* (opinion, tastes). Because of this, new-borns could find a majority against them that is taught the necessity of their *unifying national character* by Rousseau. Questioning the possibly oppressive content of this national character in a general vote seems taboo and dangerous.¹²⁰ So, new-born nationals that are granted citizenship but exhibit 'problematic' features, ideas or preferences - just like initial minorities of foreigners - could be the victim of tyranny of the majority: they are *forced to swallow* the laws and national cohesive policies that are already in place as they find a majority opposing them, or risk being sanctioned or even banished from the territory – the only territory they know!

Because of the lack of concretely advised individual rights for citizens and residents and the obscurity of the potential content of the national character, it makes you wonder whether Afghanistan under Taliban rule would fit Rousseau's 'free state' - as initial contractors (tribal leaders) agree to a constitution that does not include the 'right to be gay' as it clashes with their 'national' image; similarly, one can imagine a white supremacist nation. Tyranny of the majority could return through this national *character, culture, core, aim, cause, identity* or *image* and the national *morals* or *opinion* that make them up. This recurring threat of tyranny of the majority was the reason Mill argued another theory of political freedom was necessary, one where freedom consisted of the 'existence of a private sphere that government should not be allowed to infringe'.¹²¹ But to support Rousseau first: what is the chance that this tyranny of the majority is actually produced by the national character in Rousseauian republics? This depends on how far nation-building and national morals go and what they make up, as on whether any individuals with diverging tastes, morals and features would actually spring up.

We can form a view of this if we look at the GP, where nation-building, patriotism and morals are discussed more extensively, next to *education*, that was not even discussed in the SC. What should nationals learn to their children to make them good citizens? How far does nation-building and national upbringing or education go?

At twenty a Pole must not be another man, he must be a Pole. I want him, when learning to read, to read about his country's affairs; to know at ten all its products, at twelve all its provinces, roads and towns, at fifteen to know the whole of its history and at sixteen all its laws. I want there not to have been in all Poland a fine action or an illustrious man of which his memory and his heart are not full, [...]. ([IV] Education, p.258)

Rousseau also proposes public (children's) games, feasts, spectacles and sporting competitions, next to public rewards and honours, periodic ceremonies and a monument to remember resistance ([III] Application) to stimulate unifying national feelings. Generally, children should be raised with a *focus on the fatherland*, like was done in exemplary ancient republics:

So how to move hearts, and inspire love for the fatherland and its laws? [...] Through children's games, through institutions pointless to the eyes of superficial men, but which form cherished habits and invincible attachments. ([I] p.247-8)

¹²⁰ Are these nation-building events concerning the national character laws or *policies* (decrees)? And can all citizens even propose new laws? see (IV.1 p.101).

¹²¹ De Dijn, p.65; and Mill, John Stuart, *On Liberty with The Subjection of Women and Chapters on Socialism*, ed. Stefan Collini (Cambridge: Cambridge University Press, 1989), p.7–8.

A child opening its eyes must see the fatherland and until death must see no more than that. Every true republican sucked with his mother's milk the love of his fatherland, in other words the love of laws and liberty. This love makes his whole existence; he sees only the fatherland, he lives for it alone; once he is alone, he is nothing; once he no longer has a fatherland, he is no more; and if he is not dead, he is worse. (GP, [IV] Education p.258)

[Lycurgus] constantly showed the fatherland to the people in its laws, in its games, in its homes, in its loves, in its feasts; he did not leave it a moment of relaxation to be on its own, and that continual constraint, ennobled by its object, engendered in it that ardent love of the fatherland [...] the strongest or rather sole passion of the Spartans [...]. ([II] p.249)

Despite this strong focus on the collective fatherland, maybe there are not immediately threats to the individual, as the national cohesive practices that Rousseau proposes often seem quite innocent: any new contractor seems to be able to join feasts and games and recognise itself in this (image of the) fatherland. But the national culture can become more demanding:

I regard it as fortunate that [Poles] have a particular style of clothing. Preserve this advantage carefully: Let neither the King, nor the Senators, nor any public man ever wear any other apparel than that of the nation, and let no Pole dare to appear at Court dressed in the French style. ([III] p.254)

But we also read why Rousseau is so fixated on the national character of the Poles. It creates the necessary cohesion to resist subjugation and absorption by other nations (Russia):

If you cannot prevent them from swallowing you up, at least ensure that they cannot digest you. If you make sure that a Pole can never become a Russian, [...] Russia will not subjugate Poland. ([III] p.252)

For this, Rousseau once again takes inspiration from exemplary legislators (Moses, Lycurgus, Numa) that moulded nations into national bodies with a strong and *exclusive* national character:

In order to prevent his people from melting away among alien peoples, [Moses] gave it manners and customs impossible to blend with those of other nations; he burdened it with rites and particular ceremonies; [to] render it always alien among other men; and all the bonds of brotherhood that he placed between the members of his republic were so many barriers that kept his people separate from its neighbours and prevented it from mingling with them. This is how that singular nation, so often subjugated, so often dispersed and apparently destroyed but always idolizing his rules, nevertheless preserved itself until our day, scattered among others without merging into them; and how its manners, its laws, its rites, survive and will last as long as the world, despite the hatred and persecution of the rest of mankind. ([II] p.249)

Remarkably, Rousseau here emphasises the preservation of the customs and character of the Jewish People *despite* the subjugation of its individuals. But as stimulation of national feelings was there to create the necessary cohesion to launch a free state, why care so much for the preservation of national character while liberty for individuals is lost? The essence of the body politic seems to become its (national) morals and distinctiveness, and the stimulation of these, instead of the reconciliation of obedience and liberty (III.13 p.89). Rousseau seems to care more about the nation as a *collective (totality)*, then as a *distributive totality* (each citizen individually).¹²² he cares about the

¹²² Canivez, p.389.

national body that they make up, which is defined by its character.¹²³ Also the Poles should aim for such a long-lasting and *unmergeable* character:

Give another inclination to the passions of the Poles, you will give their souls a national physiognomy that will distinguish them from other peoples, and prevent them from merging, feeling at ease, or intermarrying with the latter; [...]. ([III] p.252-3)

The old customs must be maintained and re-established, and suitable ones introduced that are specific to the Poles. These customs, should they be indifferent [or] even be bad in certain respects, [however] not essentially bad, will always have the advantage of inspiring the Poles with affection for their country, and giving them a natural repugnance for mingling with the foreigner. ([III] p.254)

A result of this fixation on national physiognomy, Rousseau (as Legislator) starts to care for the 'purity' of the national character, and wants to keep foreigners out as not only liberty but also the national character can be lost.¹²⁴ Furthermore, the stimulation and protection of morals seems to develop into *indoctrination* of new-borns and *demanding homogeneity*: to become citizen, loving liberty, the laws and the state is not enough; one has to be national to the core, almost obsessed by love the fatherland, as *becoming citizen means becoming national*. This raises worries concerning *puritan tendencies*, especially if the national image contains specific physical features or life practices that are seen as *essential* and not open to debate. This risk of puritan tendencies as the national character gains primacy over liberty, and the collective over the individual, we can see realised in the Legislator-led sectarian exiles of Rousseau's favourite state Geneva, by Calvin.¹²⁵

Joining the People for new-comers or 'foreigners' seems even harder, as they (are believed to) lack the natural 'national cell-structure' that makes them a part of the nation: some process of 'naturalisation' seems to be needed to let new-comers in, an impossible barrier. But even if this is not the case, joining (the imagined national community, to join the People) seems impossible as the national education is restricted to free citizen-nationals:

National education belongs only to free men; it is they alone who have a common existence, and who are truly bound by the Law. ([IV] Education p.258)

It is unclear why foreigners could (and should) not be raised and educated as good citizens like the descendants of founders are. Noticeably, this exclusion or hostility of foreigners could also hamper individuals in the nation, as, when the state degenerates, it obstructs descendants of the nation to (re)integrate in other, *evenly exclusive*, Rousseauian national republics.

At the same time, new-borns seem to become citizens more out of national upbringing and *involuntary* membership, than because of *voluntary* 'rational' consent to the social contract, laws and liberty. In GP Ch.[II]-[V], nationals learn the laws, learn to be virtuous, get the right morals, all in the national way, but do not extensively learn to *reflect* on this, or see the use of it. This epitomises Rousseau's partial shift of focus (from liberty to national character) as he astonishingly does not

¹²³ Who would not start caring for (the growth and struggles of) Poland while watching this video? YouTube, by kolakox1, Borders of Poland 990-2008 (Jak zmieniły się granice Polski w latach), <https://www.youtube.com/watch?v=NeQ3H6gPRuc>.

¹²⁴ Miscevic, Ch.3.2 Arguments in favor of nationalism: the deep need for community.

¹²⁵ Cranston, Maurice, *A discourse on inequality*. Harmondsworth, Middlesex, England: Penguin Books, 1984: Introduction: "which enabled [Calvin] to enlarge with immigrants a roll of citizens which was diminished by his own harsh policy of expelling from the city all those native Genevans who resisted conversion to the Reformed religion."; and: "[in Calvin's Geneva] the Consistory [...] controlled people's morals by elaborate surveillance [...]".

propose to teach the Polish population *republican theory*, or read his SC.¹²⁶ They should be bonded, they should love the fatherland, but they are not learned why these matter, or why good laws, civic engagement and liberty *in general* matter. They seem to love the republic because it is *their* fatherland, *their* laws, *their* liberty, and *their* national character: no salvation outside *their* Nation-state.¹²⁷ This love for country is therefore better characterised as (cultural) *nationalism* than (constitutional) *patriotism*¹²⁸ – although, further in the GP Rousseau seems to remember why he is in the game (liberty and reliability) and stresses the importance of ‘equitable institutions’ to the Poles.

How then could we hold Rousseau more to his republican TE? Rules of joining are debatable by the People, but they should meet republican standards; if some individuals can never be(come) citizens as they are excluded permanently by unchangeable natural qualities they did not voluntarily choose, laws of joining the people are exclusionary and discriminatory,¹²⁹ adding to the possibility of domination. *Jus soli* and *jus sanguinis* can be chosen to *include* individuals in the People, but they cannot be chosen to permanently exclude people.¹³⁰ So, republican Rousseau should demand the Legislator or People to remove static natural or physical qualities (like race) from emancipation or immigration laws; instead, those should aim at ‘citizen-worthy’ *attitudes or behaviour* that any human could exhibit, for example ‘an invested attitude in the state, laws and liberty’ – so, (constitutional) *patriotism*.¹³¹ This kind of *proof of civic engagement* (or absence of egoistic vices) we can recognise in Rousseau’s advice to ‘emancipate’ those hard-working and well-behaving peasants ‘worthy of liberty’ in the GP (p.266). Also, some *proof of (understanding and) subscribing to equitable institutions, laws, and liberty* can be required, e.g. exemplified in the yearly solemn oath of agreeing to the social contract that Rousseau requires in Corsica (CC p.233), or in following education or the laws, or participating in the political process – which reinstate or reiterate the legitimacy of all associates in the People.

Nevertheless, following Rousseau,¹³² if you let anyone and everyone join the social contract, we know liberty can be lost due to practical problems, as too many people on the territory creates problems of nourishment and labour, leading to corruption and hampering autarky. These *practical* reasons (of limitations of size and nature of territory) are *explainable to out-groupers* and could form justified rules to limit (joining) the People. Similarly, rules for ‘gradual’ emancipation can be adopted

¹²⁶ Why not teach citizens how pre-political societies or unfree states oppress people? Why they should want to invest in community and state?

¹²⁷ ‘Ubi patria ibi bene’, Rousseau says, where ‘(ubi patria), ibi res publica ibi bene’ would be better; while Rousseau’s view comes down to ‘ubi gens, ibi bene’.

¹²⁸ De Dijn, p.73; and: Primoratz, Igor, "Patriotism", in *The Stanford Encyclopedia of Philosophy* (Winter 2020 Edition), Edward N. Zalta (ed.). Ch.1.2 Patriotism and Nationalism.

¹²⁹ Similar to what many constitutional articles on equal treatment and non-discrimination proclaim, e.g. Article 1 of the Dutch Constitution; Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Grondwet voor het Koninkrijk der Nederlanden 2018*, Stb. 2019, 33: p.9.

¹³⁰ These lead to what various sociologists call ‘nativism’ or ‘culturalism’. Kešić, Josip, and Duyvendak, Jan Willem. "The nation under threat: secularist, racial and populist nativism in the Netherlands." *Patterns of prejudice* 53.5 (2019): 441-463; and: De Leeuw, Marc, and van Wichelen, Sonja, "Institutionalizing the Muslim other: Naar Nederland and the violence of culturalism." *Dutch racism*. Brill, 2014. 337-354.

¹³¹ See Habermas, Jürgen, *The Inclusion of the Other*, (MIT Press 1998), p.105–154; and Müller, Jan-Werner, and Scheppele, Kim Lane, Constitutional patriotism: An introduction, *International Journal of Constitutional Law*, Vol 6, Iss. 1, Jan 2008, p.67–71: “the concept of constitutional patriotism designates the idea that political attachment ought to center on the norms, the values, and, more indirectly, the procedures of a liberal democratic constitution.”; and Miscevic, Ch.1.2: patriotism as ‘valuing civic community and loyalty to state’.

¹³² Note I do not question Rousseau’s other economic, social and psychological views here, as I focus on criticising the reliance on the nation. But the need for universal agriculture and aversion to (vice-creating) crafts and trade can also be criticised, which would alter the requirements a republic should place on citizens.

as to keep the distribution of intergenerational duties and rights (pensions, taxes) between citizens fair. Also requirements concerning a common language in the country could be adopted.

Although a distinct group-character may help to resist subjugation and absorption, the fear of losing some 'national essentialist character' that was determined at the constitution, by the Legislator or by nature is not a legitimate republican argument against letting individuals join. Also, discouraging citizens to intermingle or marry with foreigners just because they are foreign seems unrepublican xenophobia. Rousseau pleads for religious toleration, but as he (sometimes) divides humankind in naturally separate nations, and/or convinces people of this, he sets them up for intolerance too; as Rousseau's quote [alternative, by RE] illustrates:

So national divisions gave rise to polytheism [polynationalism], and thereafter to theological [nationalist] and civil intolerance, which are naturally [in Rousseau's theory] the same, [...]. (IV.8 p.123)

This intolerance is *unnecessary* and *does not follow* from the aim of the national character: cohesion. The national character should bind, and for this it does not need to contain exclusive physical or unchangeable qualities – it should be *inclusive* (in the territory). The People should be aware their bond is *imagined*, national prejudices about (natural) qualities of the People (skin colour, sex, gender) should be sworn out. The People must be aware this image of themselves may still change, merge, adapt, and become a broader inclusive image – and *Rousseau should teach them this*. That is not to say that there are no national differences,¹³³ but that these are surmountable. The exclusive essentialist national characters Rousseau sometimes supports create exclusion, intolerance and puritan tendencies, and are not necessary as to protect against dominating powers, as an inclusive, bottom-up national character (of Poles) – a 'liberal' nationalist or 'thick' patriotic commitment - is already distinct from a dominating (culturally nationalist) force that suppresses this inclusive character.¹³⁴ So, Rousseau's religious toleration, reducing prejudices, could and should be extended: discriminatory features should also be *explicitly* removed from the national character by Rousseau.¹³⁵

To bind all citizens, new-borns and possible new-comers, the People should have as a political goal to create an *inclusive 'national' identity* for themselves, like Miller says,¹³⁶ with an important role for politicians and *storytelling*¹³⁷ - although this will forever remain hard, even for Peoples that identify themselves with this open inclusivity.¹³⁸ For this, one can require (new) citizens should be *willing to be 'brethren'*, to join the inclusive culture of the imagined community and participate in cohesive rituals. Furthermore, one can require from citizens they have *no nationalist essentialist dogmas* that lead to intolerance against other citizens, as this does not add to the required 'feelings of sociability'. In conclusion, Rousseau's civil religion should become more explicitly republican instead of national(ist):

¹³³ Hofstede, Geert, "Dimensionalizing cultures: The Hofstede model in context." *Online readings in psychology and culture* 2.1 (2011): 2307-0919.

¹³⁴ Following Miscevic, this 'moderate' or 'liberal' nationalism, or 'thick' patriotism lie close to each other, all assuming love for the state or focus on liberal rights, but also some affection (celebration) and role for connecting national traits, while differences are not seen as threatening and divisive, and other cultures are accepted, even within the (multicultural) state.

¹³⁵ But to determine a list of these features, we need a view of human rights that Rousseau does not offer.

¹³⁶ Miller, David, 2013, *Justice for Earthlings: Essays in Political Philosophy*, Cambridge: Cambridge University Press: p.91. and: Miscevic, Ch.3.2.

¹³⁷ Sørensen, Eva, "Metagovernance: The changing role of politicians in processes of democratic governance." *The American review of public administration* 36.1 (2006): 98-114: p.105.

¹³⁸ Van Reekum, Rogier, "As nation, people and public collide: Enacting Dutchness in public discourse." *Nations and Nationalism* 18.4 (2012): 583-602; p.584.

Now that there is no longer, and can no longer be, an exclusive national Religion [character], we must tolerate all those which tolerate others, in so far as their dogmas have nothing contrary to the duties of the Citizen. But anyone who dares to say *No salvation outside the Church* [Nation] must be driven from the State. Unless the State is the Church [Nation], and the Prince is the Pontiff [(Tribal) leader of the Nation]. Such a dogma is good only in a Theocratic [Nationalist] Government; in any other [republican] it is pernicious. (IV.8 p.132)

Lastly, because of the installation of fair, *justifiable* rules of becoming citizen,¹³⁹ states can make a moderate claim of (inside and) *outside* fairness and legitimacy to individuals. Furthermore, regeneration or growth of the (citizen) population can now be a sign of good government *and/or good laws*, as not only new-borns (nationals) but also *new-comers* that could be attracted by the freedom and stability of the state are *integrated*.

Rousseau's reliance on the nation does not only relate to problems I diagnose; but also comes back in another form: the *degenerating body politic* and *one-time opportunity for freedom* - the last unexplained confusing statements.

4.3 CONSERVATION OF THE CONTRACT OR DEGENERATION BY THE NATION?

Rousseau pessimistic outlook on the sustainability of the state is clear from the following quote:

Such is the natural and inevitable trend of the best constituted Governments. If Sparta and Rome perished, what State can hope to last for ever? Hence, if we wish to form a lasting institution, let us not think about making it eternal. In order to succeed we should not attempt the impossible, or flatter ourselves that we are giving the work of men a solidity that does not belong to human things. The body politic, as much as the human body, begins to die from its birth on, and bears within itself the causes of its destruction. But both may have a constitution that is more robust or less, [...]. The constitution of man is the work of nature, that of the State is the work of artifice. It [...] depend[s] upon them as far as possible to prolong that of the State, by giving it the best constitution it could have. The best constituted one will come to an end, but later than others, if no unforeseen accident brings it to destruction before its time. (III.11 Of the Death of the Body Politic p.86)

While there is possibly a (Christian) human humility motive in his statement that eternal 'solidity does not belong to human things', Rousseau also provides a description of the degeneration of the state and explains by what reasons this development unfolds. To start, in Book III Rousseau explains how by concentration and corruption of power, the government and officials subsume sovereign power, and how government slowly contracts (from democracy to aristocracy to monarchy).

A first criticism (not directly linked to 'the nation') is that Rousseau does not install or support an *independent judiciary* nor stresses the importance of administrative law. Rousseau is familiar with Montesquieu's work, but does not take over his *trias politica*, while I believe it would fit his theory excellently: the corporate body and will of judges could form a strong countervailing force against the corporate will of government, countering several mechanisms of concentration and corruption of power. Instead, Rousseau leaves judgement on cases to citizens, or to government officials - in the GP, judge is one of the tiers in the *curriculum honorum*. More importantly, it is not clear whether judges could adjudicate between government and individual, as, apart from the (restricted) right to

¹³⁹ Benhabib, Seyla, *The Rights of Others*, (Cambridge: Cambridge University Press, 2004): p.138; and Näsström, p.649.

vote, Rousseau does not advise individual citizen rights that protect and empower individual citizens against the government:

[...] the simple right to vote in every act of sovereignty: a right that no one can take away from Citizens. Also upon the right of voicing an opinion, proposing, dividing, and debating – which the Government always takes great care to confine to its own members. (IV.1 p.101)

This lack of *advised* delineated citizen right (or universal human rights), again creates a dangerous gap for tyranny of the majority, exclusion of minorities and government corruption, and could accelerate the degeneration of Rousseau's state. All laws are up to (the Legislator and) the initial contractors to determine, and where Rousseau stresses collective national interest to them, he does not stress the importance of free speech or public papers as contemporaries like Jefferson do.¹⁴⁰ Remarkably, Rousseau himself is a victim of this, as he and his book are banished from Geneva.

Would an added independent judiciary in a State with correctly delineated citizen rights then halt the degeneration, for Rousseau? No, as Rousseau tells us that degeneration also occurs by laws that slowly do not match their goals and the people (nation) anymore. When the Legislator draws up the Constitution (that the People will install), he tries to match nature and convention:

What makes the constitution of a State truly solid and lasting is when conventions are observed in such a way that natural relations and laws always coincide on the same points, so that the latter in a manner of speaking only ensure, accompany and rectify the former. But if the Legislator, erring in his aim, takes a different principle from that which springs from the nature of things – if one principle tends towards servitude, the other towards liberty; [riches - population; peace - conquest] then you will see laws imperceptibly weaken, the constitution deteriorate, and the State will not cease to be in turmoil until it is destroyed or changed, and until invincible nature has reasserted its sway. (II.11 p.54)

Joining this with the opening quote, the goal is to make the most robust constitution (like the good constitution of a healthy man), a set of legislation that is balanced and in harmony, and linked to the *nature* of the people, that hopefully will not be disbalanced by unforeseen events. But the people has to participate in the right way. Morals are central in this set-up, as these most important laws are engraved in their hearts and form the habits of the People, helping them to preserve the Constitution (II.12). Consequently, the censorship is important, as by steering opinion and handing out praise and shame, morals are protected and degeneration of morals and consequently faith in laws is deferred.

Whosoever judges mores judges honour, and whosoever judges honour takes his law from opinion. The opinions of a people spring from its constitution. Although the law does not regulate morals, it is legislation that engenders them; when legislation weakens, morals degenerate, [...]. [...] the Censorship can be useful for preserving morals, never for re-establishing them. (IV.7 p.121)

Again, we read that some morals pertain to a specific people, and legislation to these morals. Although Rousseau constantly tries to establish the *right* morals in the people – stimulating universal or 'simple civic morals' by agriculture (military toil), averting effeminate morals (vices) of the commercialist city, training public spirit and national morals by nation-building (feasts, games) – to avert corruption of the people and uphold the constitution, corruption is inescapable. As the machine of legislation goes rolling, the parts go moving; and after some time, rules of the machine no longer match the movement of parts. Over time, morals degenerate, public spirit diminishes, and

¹⁴⁰ Thomas Jefferson, *The Works of Thomas Jefferson*, Federal Edition (New York and London, G.P. Putnam's Sons, 1904-5). Vol. 5. 22-1-2020. <https://oll.libertyfund.org/titles/802>.

laws get less force as polarisation, faction-formation and distrust in society grows. Would it then be an idea to change these laws? Rousseau definitely believes the People can revise the laws. Otherwise, there would be no internal legitimacy, no political liberty: listening to the laws that you have set yourself, but that a Legislator proposed and you cannot change, is a scam.

Laws properly speaking are only the conditions of civil association. The People subjected to laws must be their author. It is the province only of those who associate in a society to regulate its conditions. (II.6 p.41)

I assume here what I believe I have demonstrated, viz. that in the State there is no fundamental law that cannot be revoked, not even the social pact. (III.18 p.98)

But, sometimes, Rousseau does not seem to fully believe in the *effectiveness* of these changes: something gets lost, something gets out of wind, some initial fixation was 'the right one'. Changes could be made but not more than necessary, as they bring you away from the initial 'simple' laws - that Rousseau loves (IV.1 p.99). Preferably, the Sovereign constantly reinforces the old laws (III.13 p.87). Moreover, this adaptive process sometimes primarily seems to be used to adapt laws to degenerating government, morals and people, and to stall the *further* corruption of the state. For example, Rousseau shows how in general (IV.1) and for Rome (IV.4)¹⁴¹ complementary laws are needed as people become lazy and spoiled, citizens behave and vote with particular interest in mind - evade the general will in them -, which 'inspires' other citizens to free-ride and sell votes too. As a consequence, citizens get less faith in the (workings of) the laws. Still, back to the first vigorous Constitution is not possible.

In general, we can formulate the view that the Legislator tries to create some perfect constellation of 'natural' morals (that hang together with geography of the fatherland), in relation with laws and institutions that are balanced and a systems of making laws (Sovereign) that sets People free. This initial fixation, this island, should be regenerated in the first manner to uphold its internal stability (balance) and freedom. Ideally, this first constellation becomes permanently upheld. But this initial fixation, a status(-quo) that should be frozen and upheld, is problematic. Firstly, I already questioned the national(ist) and possibly exclusive character of these morals, and whether initial inequalities are made structural. Furthermore, as far as morals pertain to civic, universal or republican virtues aimed at liberty and equality, I question why Rousseau does not put emphasis on education and *Bildung* of citizens, teaching them republicanism and the advantages of a social contract that could reinvigorate the People. Also, as far as public spirit is corrupted by government power and faction-formation, Rousseau could employ an independent judiciary to stall corruption. But the more distinctively national morals can form another problem of their own.

Because, as Rousseau fixates this initial, arbitrary difference between nations, formed by natural processes that go on, and institutionalises it in a constitution, he creates a weak spot, as the link to the environment is locked, making the *nation*-state not resistant to change that interferes with its national morals despite its adaptive capacity of changing laws. Rousseau teaches us 'peoples' are made by their environment, but freezing this in a constitution makes it unresistant to outside influences or internal mutations. These could include the natural accidents that form peoples (e.g. flooding rivers, and climate change in general), but also changing attitudes or power of foreign countries, technological change (new seductive goods that enhance *amour propre*, industrialisation that causes shift in military power) and ideological change (imported books); or human change, for

¹⁴¹ (IV.4 p.115): I think [...] that the downfall of the State was hastened because not enough changes of the kind were made. Just as the diet of healthy people is not fit for the sick, you should not seek to govern a corrupt people through the same Laws which suit a good people.

that matter. Do these external and unplanned reasons not cause change and disbalance the state? and therefore demand change of institutions?

Although climate change is perhaps a slow process for Rousseau, and he cannot foresee *what* technologies will come, we can criticise him for not accounting for *any* technological innovation, while he can see how this influences societies and power-relations (e.g. Europeans conquering South-America with the help of guns). The national(ist) thinking Rousseau sometimes displays, leads him to a *static utopia* that is only able to be upheld by stimulating nationalism and averting all outside influence and change, *or* is destined to degenerate – and the adaptive capacity of changing laws often seems more aimed at stalling but *not reversing* this last process. So, Rousseau's state could not only be made more legitimate but also more durable if the national character was more adaptive - which goes against a belief in ontologically distinct (and primordial) nations.

Furthermore, perhaps the nation adds to degeneration in another way, as the focus on the (conservation of the) nation and old laws, belief in the great initial constitution, and the lack of independent judiciary and citizen rights could form the perfect mix for corruption of power *under the veil of nationalist constitutionalism*. While the government riles up people against foreigners and free-thinking individuals, citing the preservation of the constitution and the nation, the People agrees to (or does not notice) the concentration of power. Is the focus of the People not easily shifted from liberty and equitable institutions to national feelings in Rousseau's national republic?

Either way, Rousseau propounds the social bond gets weaker, and ultimately the body politic dies and liberty is lost, which cannot be regained according to (II.8 Of the People p.46). Why can it not be regained? Why could people that lose their liberty not make another new contract? Especially when in the face of chaos, civil disorder or falling back to (the dependency of) the state of nature, (social) unrest in the civil state should make citizens aware of the State's advantages, and motivate them to politically participate as good citizens and restructure societal processes (by laws)?

There are some reasons why Rousseau thinks liberty cannot be regained. Firstly, Rousseau looks at his preferred empirical states (see opening quote: Rome and Sparta), and sees they died and did not come to exist again. I problematised this earlier: if a Genevan or Corsican now has or obtains liberty at the same spot some Roman did, while he could be a descendant of the Romans: is this not liberty regained? Welcome back to the problem of Ch.3: why are they different peoples? Are new peoples formed? Liberty is not lost for that geographical spot; only the Roman national character is (believed to be) lost (as belief in some national myth deteriorates). Furthermore, perhaps Rome and Sparta also degenerated *because* they were *nation*-states. Was Rome successful because it protected its (nationalist) Roman core, or because it upheld an (inclusive) republican core?

Secondly, we can suspect the influence of the body politic metaphor that is pervasive in (II.8): a body politic is born, youthful, mature, aged; so it also *dies*. But the question is why resurrection is not a possibility for the State. Following the republican TE, the State is there to procure political liberty for the individual, and I argued the nation is chosen as the people to make the state viable. Is it a problem when the nation or national character 'dies' - perhaps due to environmental factors -, while liberty comes back in another state? As Rousseau sometimes focusses on the preservation of the nation despite subjugation, the French *Republic* is resurrected over and over again - now Fifth - to protect liberty and reliable administration for individuals.

A third explanation is that, as Rousseau sees people living onwards after the collapse of the State, they cannot regain liberty as the former laws have changed them.

Anyone who dares undertake to give a people institutions must feel capable of so to speak changing human nature; of transforming every individual [...] into part of a greater whole from which this individual in a sense receives his life and his being; [...] (II.7 p.42)

Where citizens first were ripe to receive transformational laws by the Legislator, they now seem overdue. The Constitution has changed or reconstituted man. The leap to the civil state, the transformation that the Legislator catalyses, seems not only a one-time opportunity but also an *irreversible development*. People seem to get redefined or 'programmed' by the laws, and after some time the software falters. However, why should a new Legislator not be able to take into account that citizens are defined or 'pre-programmed' by laws of a former state? Would no set of legislation fit these people? Can the People not be reborn, or these individuals not be made a People by some magical-religious session? To the contrary, the former citizen's psychology seems to be definitely ruined. Why? Rousseau could provide a lead:

So which people is fit to be given laws? [..]; one that has no well-rooted customs or superstitions; (II.10 p.51)

Are these not the *prejudices around their nationality*, as these hamper their cooperation with other individuals (possibly in a new state)? As a person becomes national-citizen, he cannot (re)gain liberty anywhere else because of his (believed) natural nationality and ingrained customs. Reintegration is not possible. Citizens are made to believe there is some seed or cell-structure that makes them belong to *this* people, to *this* body politic; if it fails, and the magic of the social contract (or national myth) evaporates, they have nowhere to go. Again, national characteristics seem to become a *hindrance* instead of a help to *sociability*.

Here, I would like to offer another line of thought to Rousseau, as a change in human psychology could also rather enable the former citizen to be free again. As the transformation of humans into citizens does not only entail becoming national; the Legislator is originally needed for something else:

Individuals see the good they reject; the public wills the good that it does not see. All are equally in need of guides. The former must be obliged to adapt their wills to their reason; the latter must be taught to know that which it wills. Public enlightenment then results in the union of understanding and will in the social body, [...]. Thence arises the need for a Legislator. (II.6 p.41)

Why does public enlightenment not change the People? Can the use of reason and reflective capacities not be a transformation in human make-up like we have seen in Rousseau's conjectural history? That civil man learns to use its reason better than for amour-propre? If citizens would know why they are in the game (of erecting a State), would this *enlightened public* really degenerate and not intervene? Furthermore, when enlightened citizens reflect on themselves and their *prejudices*, would they not conceive that if national prejudices are left behind, or at least politically put away, regaining liberty is possible? In Rousseau, a nation-state degenerates and loses its liberty; but stays a nation. While it could be: a nation-state loses its nationalistic feathers; but stays a free state.¹⁴² As Rousseau says:

The body politic, as much as the human body, begins to die from its birth on, and bears within itself the causes of its destruction. (III.11 p.86).

¹⁴² This enlightened people could determine political liberty is linked to organisational makeup (equitable institutions) and try to procure this universally: by human rights, and also: human development goals (to guarantee 'claim to land' and subsistence). But for Rousseau, freedom is also linked to climate and averting commercialism, so not possible everywhere.

In many ways, the nation is the cause of destruction it carries from birth. As it is 'men's job to give the (artificial) state the best constitution', 'better ones will come to an end later than others', this is by focussing on constantly (re)developing a republican constitution instead of upholding a nationalistic one. With new circumstances also *renegotiation* of the 'rules of contract' (legislation) ensues: the promise of the contract (liberty) is conserved, not the nation. Instead of political discussion being a sign of an unhealthy body politic, as Rousseau propounds in (IV.1), it is maybe needed as to discuss how to react to societal change to uphold the *equality* under law and relative material equality. So, at the birth of the state, the republican could allow the idea of the nation or other features that inspire to resist and defend freedom; later on, one should work towards legitimacy and emancipation, including changing (constitutional) laws to achieve these, to avoid domination *and* degeneration.

Civic engagement and public spirit should in the first place be stimulated in the form of constitutional patriotism: an invested attitude in the state, people, laws and politics¹⁴³ – possibly with agriculture, while averting distraction of luxury and money. Although the nation offers some sense of belonging and faith in cooperation, and national characteristics and events can help to see, feel and live the group connections, a static national character is not fit for the future, as it can become a limiting factor for the survival of the free state – next to reducing legitimacy. Instead, Rousseau's republican People should also attempt to create (and allow) cohesion through a collective image that is *adaptive, dynamic and plural* – as natural (outside) forces also go on -, and that binds and is inclusive;¹⁴⁴ this is a political challenge, but it will make such a free state more resistant to environmental and technological change.

Rousseau's national republic cannot be eternal, perhaps because of external threats and influences, but rather because of the internal (preventive) nationalist reaction to this. To external threats and how Rousseau's inability to envision external relations is also substantially due to the nation I will turn next.

4.4 A CONTRACT BETWEEN PEOPLES: INTER-NATIONAL RELATIONS

As said, external relations are an unsolved challenge for Rousseau. One can illustrate this already in the difficulty of international or global law: as the People is limited for practical reasons, one or various separate Peoples are constituted. But these Peoples are legitimate from within, rights and laws only go as far as 'their national altars' or borders go. As these Peoples are not united in some higher body (like individuals are in the body politic), the state of nature lives on internationally, as there is no higher authority nations can refer to:¹⁴⁵

Moreover, since the alienation is made without reservation, the union is as perfect as may be, and no associate has anything further to claim. For if individuals did retain some rights, there would be no common superior able to adjudicate between them and the public. Then everyone, being his own judge on certain matters, would soon claim to be his own judge on

¹⁴³ Müller, Jan-Werner, 'A general theory of constitutional patriotism', *International Journal of Constitutional Law*, Vol 6:1, Jan 2008, p.72–95; p.92-94.

¹⁴⁴ So, Rousseau should opt for a more liberal or moderate nationalism, or 'thick' patriotism – only constitutional patriotism is probably too 'thin' for him, as natural forces go on influencing and moulding people.

¹⁴⁵ Hoffmann, Stanley, and Fidler, David P., *Rousseau on International Relations*. (Oxford; New York: Oxford University Press, 1991): p.xxiv.

all. The state of nature would thus live on, and the association would necessarily become tyrannical or vain. (I.6 p.20)

Furthermore, international cooperation and avoidance of international conflict are a difficulty for Rousseau too. A (to be) constituted People has to claim a land for subsistence and ward off any other hostile powers. In this sphere of power, the nation is offered as a tactical move, as it brings the necessary group ties (sense of belonging) and critical minimum of trust. Moreover, as the nation or national identity could be suppressed by other powers, the link to land and will for freedom could bring the motivation to strengthen the claim of land by force – as Rousseau wants Poland to do. So, it can be useful to stimulate national identity as to steer internal forces, to work together in harmony, in order to fight off oppressors or enemies. But I hypothesise this idea(l) of the nation and the cultivation of national identity could lead to national self-esteem in this (collective) ‘body’. This means *amour-propre* would be transferred to the national level, perhaps bringing (competitive) *pathologies* between nations too?

Nevertheless, Rousseau offers a strategy to avoid national republics getting caught up in international conflict (or subjection) and that is his focus on national self-sufficiency (*autarkia*), which we could liken to collective *amour de soi*. Only by being non-dependent on other nations, the state can be an island of freedom, equality and lawfulness. This is to be achieved by citizens working in agriculture, while the commerce and arts of the city are (almost) forbidden. Consequently, Rousseau wants the people to be evenly dispersed over the country (III.13 p.89). This ‘project of an equal population’ (CC p.212) raises worries though, as this far-reaching policy should be wanted by all people in the territory.

Bertram says Rousseau does not advise a lot of concrete laws (e.g. citizen rights),¹⁴⁶ but between the lines, he advises quite some (concrete) policies that heavily structure economic, cultural and social life (e.g. by censorship). These policies in name of national independence could be repressive, especially for residents without voting rights. For example, would (some) citizens or residents be forced out of the cities and delegated - or transported? - to the countryside if the Constitution did not stimulate them to love and choose this life?¹⁴⁷ Rousseau’s views here show considerable similarities with his predecessor Fénelon’s ‘quasi-totalitarian’ society of Salentum,¹⁴⁸ and they seem to refer forward to the ‘agrarian totalitarianism’ of Pol Pot,¹⁴⁹ with his ‘city dwellers’ that are sent to the countryside.¹⁵⁰ Together with Rousseau’s insistence on these policies, his positive attitude to labour dues and capital punishment and statements as ‘ends legitimate the means’ *do* raise concern for totalitarian tendencies.

Rousseau seems to impress his view of the good life on the population: a nostalgic longing to go back to simpler, pre-industrialised times, a garden of Eden. But that is not completely true, as for Rousseau, upholding republicanism *means* choosing for a specific view of the good life, as only *this* economic and social system supports political liberty. However, one should note these

¹⁴⁶ Bertram, note 24 of SC Book IV, p.345: the only concrete laws are the dogmas of civil religion.

¹⁴⁷ See e.g. (CC, ‘Proposal’, p.194): “I mean a constitution that will induce a people to spread across the whole surface of its territory, to settle there and cultivate it at every point, to love rural life and its related labours, [...].”

¹⁴⁸ Schuurman, Paul, ‘Fenelon on luxury, war and trade in the Telemachus.’, *History of European Ideas*, (2012), 38(2), 179-199; p.192: “The quasi-totalitarian model offered by reformed Salentum seems designed to maintain a static society. In this model a nation of subsistence farmers is kept from mischief by constant toiling that can never produce luxury.”

¹⁴⁹ Turner, Brandon, ‘Fénelon and the refinement of self-love’, *European Journal of Political Theory*, (2021), 20(3), 575-579: p.577.

¹⁵⁰ CC, p.194-196.

recommended policies do *exclude* some laws in advance (e.g. ‘the right to live where you want’). Furthermore, – my point – this system can do without ‘the nation’.

But these critical notes aside, autarky could be the way to national independence and political liberty for at least some people, perhaps the only realistic opportunity in a world of power. Still, Rousseau’s view of autarkic nation-state leads to a state that is closed off from the external world, and I question whether this nationalistic inward-looking state would succeed in avoiding puritan tendencies and international competition and conflict. To avoid conflict, nation-states not only be non-dependent, but also non-invasive. Fortunately, in the GP Rousseau gives us reason to believe his national(istic) state is not out for conquest or invasion.

It would be a still greater one to seek to make conquests and endow yourself with an offensive strength: that is incompatible with your form of government. Whosoever seeks to be free must not seek to be a conqueror. [explanation of nature of Roman conquests.] ([XII] p.305)

And it must be conceded that the state of liberty does deny a people offensive strength, and that in following the plan I propose you must renounce all hope of conquest. [...] But [...] these men of peace know how to [defend] their own homes. ([XV] p.330-1)

But if by chance you would prefer to form a free, peaceful and wise nation that neither fears nor needs anyone, that suffices for itself and is happy, then you must adopt a quite different method: retain or re-establish among yourselves simple manners, healthy tastes and a martial spirit without ambition; form courageous and disinterested souls; apply your peoples to agriculture and to the arts necessary to life; make money contemptible [...]. ([XI] p.295)

However, Rousseau praises the power of the Romans and Spartans, while these states heavily tended to conquest and domination:

The Romans were conquerors out of necessity [...]. Always attacked and always victorious, they were the only disciplined people amid those barbarians, and became masters of the world while still defending themselves. ([XII] p.305)

Sparta was just a city [...] but by the sole strength of its institutions that city gave laws to all Greece, became its capital, and made the Persian Empire tremble. Sparta was the source from which his legislation spread its effects all around her. ([II] p.249)

Nevertheless, we see Rousseau doing his best to make the state economically non-invasive too as he emphasises balance between production and consumption of the land. Where Fenelon siphons off (vice-inducing) surpluses and throws them outside the state to avoid their negative consequences,¹⁵¹ Rousseau solves this problem partly internally by choosing a government system that consumes more (but also tends to degeneration and usurpation more). However, the sign of good government could become a nagging problem for Rousseau:

That is the spirit I should like to have prevail in your economic system. Think little about abroad, worry little about commerce; but at home multiply both staples and consumers as much as possible. The infallible and natural effect of a free and just Government is

¹⁵¹ Schuurman, (ibid.): “The farmers are constantly supervised by a rigidly hierarchical elite that has been taught the dangers of offensive warfare. Limited trade acts as a safety valve that siphons off economic surpluses so that luxury never gets a chance to trigger warfare and internal dissent.”

population. So the more you perfect your Government, the more you will multiply your people without even giving it a thought. (GP [XI] p.300)

Because of population growth, every good government will ultimately cause a disbalance of population and territory (consumption and production). Rousseau does not explicitly discuss this, but it seems inevitable. He would probably propound this adds to degeneration of government, as we see him pushing this problem of overproduction to later times in the CC.¹⁵² However, the growth of population can also be seen as a *threat* by foreign powers; Rousseau himself refers to the 'power' the size of population brings in the CC:

The power that comes from population is more real than that which comes from finances, and produces its effect more surely. Use of manpower being impossible to hide, it always goes to its public destination [...] This means that a state rich in money is always weak, and that a state rich in men is always strong. ('Proposal' p.194)

This is added to the fact that foreign powers already do not entertain a lot of admiration for republics:

[...] they will generally without jealousy see you working to reform your constitution. [Because] your undertaking aims only to reinforce legislation, hence liberty; and that this liberty is viewed in every court as [...] rather to weaken than to strengthen a State. [...] However often, deceived by the low opinion they have of republics, they may find [...] a resistance they were not expecting, they will never shake off a prejudice based on the contempt that they feel befits them [...]. (GP [XV] p.330)

And as (aspiring) republics are never out of danger:

Poland is surrounded by warlike powers, which constantly maintain at the ready large numbers of highly disciplined troops ([XII] p.304)

The most inviolable law of nature is the law of the strongest. There is no legislation, no constitution, that can exempt you from that law. To pursue the means to safeguard yourself from the invasions of a neighbour stronger than you is to pursue a pipe-dream. ([XII] p.305)

Taken together, it seems (almost) impossible to leave the theatre of international powerplay as a nation, as other states or Kings could want to attack you out of greed, feel threatened by your population power, or as other nations claim (parts of) the same territory. As said, the internal reaction to this outside threat is stimulating national feelings (nationalism) to achieve internal unity and strong resistance (being indigestible), combined with a focus on autarky. But as this internal reaction is not clearly limited to certain domains and levels by Rousseau, I doubt whether he can hold of the formation of national *amour-propre*, especially because foreign states and Kings will not leave your nation alone, as *they* are also dependent *on you* for their international glory (recognition).

This worry is aggravated if we look at nationalistic feelings and competition that Rousseau likes to stimulate within the Polish population:

¹⁵² (CC p.195): "You will say that Corsica, more fertile and with a milder climate, can support a costlier government. That would be true at another time, but now, burdened by a lengthy enslavement and desolated by lengthy wars, the nation first and foremost needs to recover. Once it has put its fertile soil to good use, it will be able to think about becoming prosperous and endowing itself with a more splendid administration. The success of the original institution will subsequently make necessary its transformation."

[...] continually setting them ablaze with emulation and glory, raised their courage and their virtues to a degree of energy that has no comparison today, and that is even inconceivable to modern men. ([II] p.250)

[Let children play *together* in *public* youth games], so that there is always a common aim to which all aspire and which stimulates competition and emulation. ([IV] p.260)

The effervescence this common emulation stimulates will give rise to that patriotic intoxication which alone is capable of raising men above themselves, and without which liberty is merely an empty word and legislation a pipe-dream. ([XII] p.310)

I shall explain later the administrative regime that, [...] strikes me as capable of carrying patriotism and the virtues inseparable from it to the highest possible degree of intensity. But whether you adopt this regime or not, still begin by giving the Poles a high opinion of themselves and their fatherland: after the way in which they have just displayed themselves, this opinion will not be false. ([III] p.253)

I question whether in a citizenry raised with the feelings of fatherland, glory, emulation and competition at levels of 'patriotic intoxication', these will never drip over to the national level of the body politic, stimulating (comparative) national superiority feelings and a drive to compete internationally. At least Rousseau seems to be gripped by these emotions, as he lauds the spread of Spartan legislation and the conquests 'out of defence' - of honour? - by the Romans. As having a high reputation of yourself means having a lower reputation of others, would republics not start to look down on non-republics with their vice-ridden wealth and fake liberty? And together with the stress of overpopulation, would states really be able to hold off the consequences of the national pride Rousseau is stimulating? Maybe not, but Rousseau washes his hands in innocence:

In the plan that I imagine, [...] all Poland will become warlike, as much in defence of her liberty against the schemes of the Prince as against those of her neighbours; [with my plan the risky merge of functions of general and king is not even dangerous] unless the Nation were to let itself be seduced by plans for conquest, in which case I should no longer answer for anything. ([XII] p.308)

I would like to take this last sentence literally: 'unless the *Nation* would let itself be seduced'. If there are elements in Rousseauian states that lean to conquest, they are the nationalistic and not the republican elements, and he should take the former out. This is illustrated even more by the fact that Rousseauian national 'republics' would not easily recognise each other.

As Rousseau sometimes regards peoples and their ways of life (habits, morals, customs, culture) as unmergeable or incompatibly different, their laws and rights can become too: how would nationals be treated in another Rousseauian republic? Without a common denominator of what humanity, human life or human rights entail, recognising each other's national rights, national-citizens and status of republic¹⁵³ will be hard – even for Rousseau. Even if *all* humans would constitute a People with *their* nation,¹⁵⁴ this would not amount to more than a collection of individual islands or body politics with lawfulness from within, and never from outside: isolated and solitary.¹⁵⁵

Furthermore, as 'national aims' could generate diverging interests and sensibilities, and nations could endorse competing (nationalist) claims to territory or sea, Rousseauian republics could even start to

¹⁵³ 'How could that State limit the People to women? That is illegitimate, it is domination of what we call real citizens, men!'

¹⁵⁴ Ignoring Rousseau's view that not every climate is suitable for liberty.

¹⁵⁵ A world full of national islands can also create problems of 'stateless individuals', which Arendt discusses in her work.

compete and clash. The state of nature is never terminated but just transferred to a higher level: the clash of individuals becomes a clash of nations. Rousseau constantly fears social unity will be disrupted,¹⁵⁶ but with the (particularistic) nationalism he chooses he creates the international hostility a republic would like to end.¹⁵⁷ Also (from a rational choice approach), the emphasis on national differences could foster caution against foreigners in republics, that evokes more caution in these foreigners (of other republics), which cumulative process could end in outright hostility.¹⁵⁸ As long as republics cannot or do not want to recognise each other, rights of nations will just be stand-off agreements of power¹⁵⁹ or tactical alliances out of necessity – explaining Rousseau’s distrust in treaties (CC p.193, GP p.328-9). For recognising the other as free state, we need some view of humankind, citizen or human rights and equitable institutions that crosses national borders. So, Rousseau’s belief in the existence of nations ‘divided by nature’, his excessive focus on (stimulation of) exclusive national characters and the *internal* legitimacy of the nation-state could hamper the durability of the (nation-)state but also obstructs Rousseau to buttress the state by external relations (contract between peoples), or create protection of citizens outside the (nation-)state.

A Republic is a State to a citizen as he consents to the social contract, but a Power to others: would consent from other republics (recognition), make a state legitimate ‘externally’? Another *res publica* instead of a hostile power? Seeking some consent behind the border would legitimate your claim to territory, as well as possibly extend the right of your citizens (to acceptable treatment) in other territories. This recognition would probably require some alignment between republics.¹⁶⁰ The alignment necessary for international cooperation between republics - the confederations Rousseau talks about,¹⁶¹ but also a broader rule-based international order or ultimately international ‘cosmopolitan’ law - could be better realised with universalizable ‘thick’ *constitutional patriotism* (love of liberty and the republic)¹⁶² than (cultural) nationalism¹⁶³ (love for national land, physiognomy and traditions). For this, the content of the national core should be inclusive and not spark hate against foreigners. (Also, *tiered* identities and citizenships of local, regional, national, continental and universal communities could help for this.)¹⁶⁴

Still, Rousseau’s focus on autarky and inward-looking attitude is maybe emblematic for his *realism*, as he answers to a different world: a world with many Kings, few Republics, few Confederations and no international law or human rights. Practically, trying to achieve your own closed-off Garden of Eden is perhaps the only thing we can realistically hope for, so one should focus on achieving and prolonging this. But between this realism and idealism rests the emancipatory force of (his) ideas, and exactly this force has changed our world in what it is today.

¹⁵⁶ Betts, p.xxi.

¹⁵⁷ (*ibid.*), p.lx; *and* Cobban, p.119.

¹⁵⁸ Miscevic, Ch.1.2 Concept of a Nation.

¹⁵⁹ It is hard to agree on inter-*national* right as the right of seafaring will be essential to Athens but not to Sparta.

¹⁶⁰ Furthermore, do Rousseau’s internationally acclaimed novels, plays and books (like *Émile*) not show there is international human ‘emotional’ alignment that transcends borders?

¹⁶¹ Hoffmann & Fidler, p.lxiv.

¹⁶² Or ‘liberal’ nationalism that works towards an inclusive national image. (see also Miscevic, Ch.3.2).

¹⁶³ Although Hoffmann & Fidler contend Rousseau’s ‘patriotism’ is different from contemporary forms of ‘nationalism’, as it is designed to *replace* malicious forms of amour-propre (vanity), thereby making the emphasis on national character less risky, they admit ‘aggressive nationalism would have destroyed Rousseau’s ideal’ (p.lxi). However, I think believing Rousseau’s ‘patriotism’ will not turn aggressive is naïve, as it amounts to saying ‘the citizen-army is just for defence and national pride is fine’. Furthermore, to adopt his non-aggressive ‘patriotism’ to such a degree that it would really counter amour-propre, it would oppress and indoctrinate the individual, thereby countering the goal of the state (from voluntary consent). Lastly, the internal exclusion of non-nationals from ‘patriotism’ is not even mentioned. Therefore, more pronounced constitutional patriotism with no emphasis on exclusive national differences is necessary.

¹⁶⁴ See, Brubaker, Rogers. "In the name of the nation: Reflections on nationalism and patriotism." *Citizenship studies* 8.2 (2004): 115-127.

4.5 THE LEGISLATOR: GREAT MANIPULATOR OR GREAT ILLUMINATION?

Then, to drive the former points home, a last critical discussion of the idea and function of the legislator to show we could fulfil the republican promise of Rousseau's theory more, if we mitigate the idea of the nation and its pernicious correlatives, and causes, like *national myths*.

As explained, the Legislator serves an important theoretical function: as an aggregation of individuals cannot come to a social contract alone to form a 'People', as the mob of ignorant people does not yet see their (common) interest, the Legislator guides people to their transformation into 'the People', and for this chooses a nation that is already connected emotively by living together and having imagined ties. The Godlike Legislator seems necessary as a *transitional quick-fix* in Rousseau's theory.¹⁶⁵ However, he sounds unbelievable and is also very problematic as the Sovereign People does not appear to be in the driver's seat of making their own laws, as the Legislator 'persuades [them] without convincing' (II.7 p.45). Furthermore, as he limits the People to the nation, provides them with this 'initial fix' of Constitution and national core that should be upheld, the People *never* seems to become the real driver of its own (political) destiny. As the Legislator indoctrinates a people to follow the laws he has devised, believing in an ideology of freedom while suppressing non-nationals, we should call him the *Great Manipulator*. Instead, Legislators are usually revered as Fathers of the Nation.

Theoretically necessary, but unbelievable and problematic for Rousseau's republican goals. Why does Rousseau still come to this godlike figure? For one, because of empirical reality: Rousseau finds Legislators all through history. Lycurgus for Sparta, Numa for Rome, Moses moulding the Hebrew nation, Solon for Athens, and last but not least: Calvin, the legislator that gave laws to his great republic of Geneva. (His belief in the existence of Legislators could also be derived from taking Geneva as his inspiration for the SC.) And as Rousseau reasons 'from what has existed to what can exist' (see Ch.2.4), Legislators can still be there – which he also shows by acting as a (semi-)Legislator in the GP and CC.

But I believe Rousseau's reasoning here is flawed, as his (empirical) observations are prone to bias and fairy tales. It is questionable that there were Legislators that enabled this 'magical' transformation with their ideas and powers (of persuasion) alone. This is illustrated by the first theoretical problem for Rousseau, formulated as a 'chicken and egg' problem by Honig:¹⁶⁶ how does the Legislator get the insight (enlightenment) and public spirit he needs to become a Legislator and conceive he should take up this essential task? Rousseau argues the ignorant people (populace) is not yet up to the task of devising laws that are in common interest, as it lacks this insight in laws and morals and public spirit. But if a Legislator is raised in the community, where does he get his ideas from? If this is from the outside, from another (un)free state, still stands: who raised and educated the first Legislator?

A more credible narrative would be that this transformational leap is in reality a more gradual development, and that traces from the legislator's ideas and public spirit are already prevalent in society, and copied from other states (outside influence), and that many people (leaders, advisors, officials) added to and adapted legislation – maybe even in a process of trial and error. Rousseau also describes *multiple* central figures in the making of legislation and institutions for Rome: Romulus and the founders army, Numa (whom he declares 'the true founder of Rome' in the GP), and Servius

¹⁶⁵ Bertram, intro, p.xxvi: "The legislator is one of a group of similar characters in Rousseau's writings whose task is to manipulate their subjects into a condition where they can take charge of their own lives (or, on a more sinister reading, acquire the illusion of being in charge of themselves)."

¹⁶⁶ Honig, p.13.

(who adapted laws to the growth of the population, adding Tribes). We can imagine that for Poland, it would be count Wielhorski *and* Rousseau. As Rousseau connects his theoretical figure of one Legislator with historical examples of Legislators, he uses a false picture: they have often not existed with the ideas and powers he imagines. Rousseau also tells us himself these origin stories are like fables (IV.1 p.106); why then believe them?

Is Rousseau, by claiming that Legislators really had this transformative 'quick fix' function in history, not falling for *national origin myths* that portray a Father of the Nation, myths sparked by these Fathers or the initial contractors, or by others looking back, searching for someone to adore? Earlier developments (from absolute monarchy to some civil rights) are maybe not recognised by later 'revolutionaries' as (part of) the *real* transition (that they instigated); likewise, failures or dark chapters are conveniently left out of fabulous origin stories, e.g. the Calvin-led expulsions. Furthermore, we would not have heard of a Legislator if a group of people had not supported him. Why only honour the catalyst of the transformation? Because we like personalisation, and believe in the idea of a romantic genius and great men leadership?¹⁶⁷

Nevertheless, we can recognise the theoretical transformational leap to the civil state in the moment 'a people' frees itself from domination by some other people and throws off its chains, e.g. when Poland drives out Russian forces and 'for the first time' makes its own constitution. But if this is a step from nothing - an unfree state of interdependence - to all - a republican free state of independent equal citizens -, should this new state then not be 'perfect' from the start? But the nation-state in the beginning is not perfectly free and legitimate, as it excludes i.a. non-nationals from citizenship. It can only become more legitimate through time. Moreover, historical examples of the unfreedom of starting states we can see Calvin's expulsion, or in the French Revolution and the later phases of Terror. It is more probable a state develops into Rousseau's civil state over time, or keeps (and should keep) *redeveloping* and *reiterating* its free and legitimate character, like Habermas, Arendt and others describe.¹⁶⁸

That said, what could also have influenced Rousseau's theoretical thinking here, it that he thinks of a ruler-like person as the means for change from *Herrschaft* to *Gesellschaft*. The pre-political societies in his conjectural history are not republican democracies but hierarchical monarchies: maybe he thinks an enlightened Kingly leader could and should force this transformation by transferring power to the People and enlightening the mob by his perfect set of legislation. Of course, there is some role for a leader, especially when he comes at the top of a hierarchical society and proposes to change it. But enactment comes by force of the people, who believe in the *conservation* or *transformation* of an old process. The people does not automatically change in an enlightened self-governing people by top-down directive: inclined to following a superior, they would rather follow a new ruler that quickly would turn up. What would make the top-down switch to a self-governing, more egalitarian system viable and sustainable are the bottom-up forces in the people that were already directed to this, which are likely developed over a longer period of time.

So, to produce a lasting republic, you need a collection of People that was ready and motivated to choose these rules of association out of *voluntary consent*. If this was not the case and the laws work and hold the nation together, they did not produce a completely free People but rather seem to have indoctrinated a nation by national morals and a national myth to follow a constitution. The Legislator remains a manipulator as long as the power to make laws is not really transferred to the People: only when the People is clear headed and actively involved, Rousseau's republican promise is fulfilled.

¹⁶⁷ Gardner, John, *On leadership*. Simon and Schuster, 1993: p.6.

¹⁶⁸ Bernstein, R. J., The normative core of the public sphere. *Political theory* (2012), 40(6), 767-778: p.772-3.

Remarkably, Rousseau already showed the way, as by public enlightenment the (ignorant) People could become its own Legislator and is no longer in need of one. So, Rousseau's Legislator should go from Great Manipulator to *Great Enlightenment*. Coincidence or insightful slip of the tongue, Rousseau sometimes calls the Sovereign Legislator:

It is not good that he who makes the laws should execute them, nor that the body of the people should turn its attention from general considerations [to] particular objects. Nothing is more dangerous than [this], and abuse of the laws by Government is a lesser evil than corruption of the Legislator, inevitable consequence of particular considerations. (III.4 Democracy p.66; French¹⁶⁹)

It is strange that Rousseau does not recognise this fully, while he names enlightenment repeatedly at crucial places in his theory.¹⁷⁰ Does he believe only he and some Legislators can fully grasp the rightness of these republican ideas? It is not without reason that French Revolutionaries recognise the more universal appeal for liberty in Rousseau's work, while also revering him in the Panthéon as part of *their* national myth. Whereas Rousseau, because of his trust in national myths, seems to overlook the real driver(s) of this transition to the civil state: enlightenment and its values of reflection, toleration, freedom and equality.¹⁷¹ Causing individuals to not see themselves as subjects of history¹⁷² and kings, but to take making laws into their own hands, designing a free, fair and stable society. Rousseau should hold more trust in the capacity of the People and in the force of his ideas, while being aware that enlightening the People - convincing them of their rights and the advantages of equal laws – is a development that takes time. So, he should not hope for an enlightened Manipulator that with the force of God and a lightning bolt illuminates the People, because *Enlightenment is a process, not a spell*.

As enlightened and republican ideas can be stimulated and disseminated, but also forgotten, and as societal (corruption), human, technological and climatological change can force society's design out of balance, liberty can be lost. But by resurrection or (re)vitalisation of these republican ideas, liberty can be regained; also, for people living on the same stretch of land where once other people were free: something Rousseau cannot explain. This (re)vitalisation can take place with the help of (republican) thinkers like Rousseau and the others he adores, adding to the reflective capacity of the People that they *by alienation* are part of. As their ideas do not respect national borders (as Legislators are influenced by the outside), we see humankind in the production of enlightened ideas is a global United People after all. With a right to free thought (!) and with the help of public education then, the people can choose more egalitarian institutions and guide itself to Enlightenment and a sustainable state.

Still, humans long for symbolism and inspirational ideas that motivate civic engagement and cohesion: they need to belong.¹⁷³ Maybe a national origin myth, fathers or mothers of the nation and story of national character is needed to fund the believe in the constitution and sustenance of a State

¹⁶⁹ (Livre III Ch.4 p.265): "[...] le corps du peuple détourne son attention [...] que la corruption du Législateur, [...]"

¹⁷⁰ Rousseau calls the general will enlightened (II.3 p.33), public should be enlightened by Legislator (II.6 p.41), in his favourite (!) government form, elective aristocracy, enlightened individuals are chosen (III.5 p.69), because of the better process, as the public chooses (III.6 p.72). Furthermore, the only negative dogma of his civil religion is *toleration*, a core value of the Enlightenment.

¹⁷¹ Bristow, William, "Enlightenment", in *The Stanford Encyclopedia of Philosophy* (Fall 2017 Edition), Edward N. Zalta (ed.). Ch.2.1 Political Theory.

¹⁷² As Edmund Burke, early critic of social contract theory propounds in his *Reflections on the Revolution in France* (Oxford: Oxford University Press, 1993): p.91ff, 95-97.

¹⁷³see Baumeister, Roy F., and Leary, Mark R. "The need to belong: Desire for interpersonal attachments as a fundamental human motivation." *Interpersonal development* (2017): 57-89.

and bring the necessary *Fraternité* to uphold *Liberté* and *Égalité*. Believing in the transformative story could enable a reiterative quest for freedom that leads to historical (gradual) emancipation. Moreover, *Fraternité* could perhaps be brought by other things than national ties and empathy could perhaps be extended, as Rousseau shows us in and by the reaction to his novels *Julie, ou la nouvelle Héloïse* and *Émile* - but we will leave full treatment of this for another time.

So, the ideas, motives and maybe means for broader freedom are there in Rousseau, but he should first learn to look past the nation after the constitution of the state. Means should not become an end; negative nationalistic side-effects should be tempered to uphold republican freedom. Origin stories and national myths are risky as they can easily be manipulated for political goals of domination. For example, often these myths are not only used as a description of origins that adds to cohesion (imagined community) or as a defining moment of liberation that should be celebrated, but also as a *legitimation* of a claim to land and exclusion of others. Often, it operates as an exclusive national ideology that proclaims *this* nation came to contract and claimed *their* land (which is often more land, and less or more people than it covers now¹⁷⁴). This is not republican but nationalist, as only practical rules explainable to out-groupers can legitimise the limitation of the People and the occupancy of territory. So, an origin myth is only acceptable (and desirable for cohesion) if meeting republican standards. As a test, if an origin myth can be used to exclude non-nationals permanently, it was never an origin story of a republican People, but a story of the formation of a nation and its rise to power. In conclusion, our common origin should be *imagined*, our commitment to the moment of contract should be *real*.

¹⁷⁴ One could recognise elements of many nationalist wars and invasions in this narrative.

To conclude this thesis, I have traced Rousseau's view of the People, and shown that is his reliance on the nation and the stimulation of national characters is a ticking timebomb in his political philosophy, as it counter-acts on his goal of achieving non-domination and enabling fair and stable cooperation. Like this, my criticism has almost turned out to be a project of 'enlightening Rousseau': against national prejudice and for reflection, education, humanity and human rights. If Rousseau likes his republican promise to be realised further, his republican People should be(come) open, looking for justifiable rules of membership and an inclusive and dynamic collective image, not afraid to change constitutional laws to reinstate liberty, equality and legitimacy, while looking for these in other republics to align itself with them, while stimulating these republican and enlightenment ideas in its citizens, also through education.

I will end this thesis with a short inexhaustive list of its merits: through what features of Rousseau's philosophy can one extrapolate my criticism to other theories? Where can one recognise these issues concerning the People and nation in modern political reality? What republican policies could this inspire?

Firstly, we can recognise Rousseau's belief in existence of the nation and (exclusive) national characters in contemporary discourse and prejudices about foreigners, integration and immigration. Simultaneously, just like Rousseau, many would not be able to explain unambiguously what nations exactly comprise, and how and when they are formed. Moreover, quite some people (implicitly) believe that 'their nation' is the basis of their *legitimate* state, while this historic and 'fixed' legitimacy could potentially cause exclusion and oppression. The same for (cultural) nationalism, which has been stimulated in many states and in history, and together with a (Rousseauian) static, isolated and inward-looking view of the nation-state has shown to develop in repression, puritan tendencies and international conflict. Also Rousseau's use of the body politic (metaphor), and the idea of flourishing and degenerating nations (or cultures), we can find in later politicians and publications, like Oswald Spengler's *Untergang des Abendlandes*.¹⁷⁵ Lastly, Rousseau's account of human psychology, the role of empathy and his focus on care for compatriots instead of humans generally, is visible in many nationalistic statements and political decisions that cause international conflict.

Discussions on the People and nation become apparent in contemporary discussions or events like the secession or 'independence' movement in Catalonia, the given historical reasons for Russian invasion of Ukraine, or in discussion concerning the EU as the constitution of an European People - Constitution dismissed in 2005 - or a 'Concert of Nations'. Differences in how to acquire membership of the People we see in the possibility of *earning* citizenship 'meritocratically' in France,¹⁷⁶ compared to the far-reaching rights to citizenship by being born on the soil (USA) or for descendants (Germany) – although all have a combination of membership rules. One can also spot meaningful differences in how members of the state are called, e.g. the Dutch Constitution calling all members *Nederlander* instead of *Nederlands staatsburger*,¹⁷⁷ or how politicians call the state, as Prime-Minister of India, Narendra Modi, speaks of *Hindustan* (Land of the Hindus) instead of the constitutional (and more inclusive) terms *India* or *Bharat*. Lastly, how the self-image of a People can or should be adapted, we

¹⁷⁵ Spengler, Oswald. *Der Untergang des Abendlandes*. e-artnow, 2018.

¹⁷⁶ Tonkiss, Katie, "Spiderman of Paris shows the superhuman demands placed on migrants to earn their citizenship", on *The Conversation*, May 30, 2018: "Article 21-19 of the French civil code states that a person can be granted citizenship as a consequence of performing "exceptional services" for the nation, and has traditionally been applied in the case of Foreign Legion soldiers from other countries who fight for France."

¹⁷⁷ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, p.9.

find in discussions on Dutch national cultural images as *Zwarte Piet* (Black Pete), or ‘the fight against the water’, the latter being problematised by a changing policy-reality (climate change) that demands *making room for* and *retaining* the water.

Some ‘republican’ policies (my criticism on) Rousseau could inspire, are instances of the general views on emancipation and immigration laws, international attitude, etc. I have advised in the first paragraph of this conclusion, for example the challenge or even obligation for politicians to add to an inclusive, adaptive national (but maybe also local) image, or the education of children (*Bildung* of citizens) on equitable institutions and advantages of republics, as is e.g. done during *Maatschappijleer*, a Dutch high school course. Besides those, one could take the agreement to the social contract as basis of legitimate society more seriously, and organise a *citizen initiation ritual*, where all new citizens that acquire the right to vote (symbolically) agree with the social contract and constitution – which ritual is already performed for ‘naturalised’ immigrants in the Netherlands. Furthermore, ‘national’ (free) holidays should unite and bind the republican People: celebrating liberation (day) instead of religious festivals seems better suited to this. Of course, Rousseau teaches us that official public roles that are not open to any citizen but by ‘law’ fixed to a *particular* person should be abolished, e.g. royal families. Lastly, my criticism could inspire the establishment of the *United People* as complementary organisation to or name for specific tasks of the United Nations.

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