

The Social Contract

Jean-Jacques Rousseau

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[Brackets] enclose editorial explanations. Small ·dots· enclose material that has been added, but can be read as though it were part of the original text. Occasional •bullets, and also indenting of passages that are not quotations, are meant as aids to grasping the structure of a sentence or a thought. Every four-point ellipsis indicates the omission of a brief passage that seems to present more difficulty than it is worth. Longer omissions are reported between brackets in normal-sized type.

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Glossary

agreement: The item that Rousseau calls a *convention* is an event, whereas what we call ‘conventions’ (setting aside the irrelevant ‘convention’ = ‘professional get-together’) are not events but enduring states of affairs like the conventions governing the meanings of words, the standards of politeness, etc. So ‘convention’ is a wrong translation; and ‘agreement’ is right.

alienate: To alienate something that you own is to bring it about that you no longer own it; in brief, to give it away or sell it,

arbitrary: It means ‘brought into existence by the decision of some person(s)’. It’s no part of the meaning here (as it is today) that the decision was frivolous or groundless.

ensorship: This translates Rousseau’s *censure*. It doesn’t refer to censorship as we know it today; *censure* didn’t have that meaning until the 19th century. Rousseau’s topic is a role that certain officials had in some periods of the Roman republic, namely as guardians of, and spokesmen for, the people’s *mœurs* (see below). They could be thought of as an institutionalising of the ‘court of public opinion’. On page 67 we see him stretching the original sense.

compact, contract: These translate Rousseau’s *pacte* and *contrat* respectively. He seems to mean them as synonyms.

constitution: In this work a thing’s ‘constitution’ is the sum of facts about how something is *constituted*, how its parts hang together and work together (so the constitution of a state is nothing like a document). Items credited with ‘constitutions’ are organisms and political entities; the mention on page 66 of the constitution of *a people* seems aberrant.

magistrate: In this work, as in general in early modern times, a ‘magistrate’ is anyone with an official role in government. The magistracy is the set of all such officials, thought of as a single body.

mœurs: The *mœurs* of a people include their morality, their basic customs, their attitudes and expectations about how people will behave, their ideas about what is decent. . . and so on. This word—rhyming approximately with ‘worse’—is left untranslated because there’s no good English equivalent to it. English speakers sometimes use it, for the sort of reason they have for sometimes using *Schadenfreude*.

moral person: Something that isn’t literally person but is being regarded as one for some theoretical purpose. See for example pages 9 and 36.

populace: Rousseau repeatedly speaks of a ‘people’ in the singular, and we can do that in English (‘The English—what a strange people!’); but in many cases this way of using ‘people’ sounds strained and peculiar, and this version takes refuge in ‘populace’. On page 4, for instance, that saves us from ‘In every generation the people was the master. . .’.

prince: As was common in his day, Rousseau uses ‘prince’ to stand for the chief of the government. This needn’t be a person with the rank of Prince; it needn’t be a person at all, because it could be a committee.

sovereign: This translates *souverain*. As Rousseau makes clear on page 7, he uses this term as a label for the person or group of persons holding supreme power in a state. In a democracy, the whole people constitute a sovereign, and individual citizens are members of the sovereign. In Books 3

and 4 'sovereign' is used for the legislator (or legislature) as distinct from the government = the executive.

subsistence: What is needed for survival—a minimum of food, drink, shelter etc.

wise: An inevitable translation of *sage*, but the meaning in French carries ideas of 'learned', 'scholarly', 'intellectually

able', rather more strongly than whatever it is that you and I mean by 'wise'.

you, we: When this version has Rousseau speaking of what 'you' or 'we' may do, he has spoken of what 'one' may do. It is normal idiomatic French to use *on* = 'one' much oftener than we can use 'one' in English without sounding stilted (Fats Waller: 'One never knows, do one?').

BOOK 2

1. Sovereignty is inalienable

The first and most important consequence of the principles I have laid down is that the directing of the state in the light of the object for which it was instituted, i.e. the common good, must be done by the general will. The •clashing of particular interests made it •necessary to establish a society, and the •agreement of those same interests made it •possible to do so. It's the common element in these different interests that forms the social tie; and if there were there nothing that they all had in common, no society could exist. It is solely by this common interest that every society should be governed.

I hold then that sovereignty, being nothing less than the exercise of the general will, can never be alienated [see Glossary], and that the sovereign, which is nothing but a collective being, can't be represented except by itself: the power indeed may be transmitted, but not the will.

Perhaps a particular will *could* agree on some point with the general will, but at least it's impossible for such an agreement to be lasting and constant. Why? Because it's of the very nature of a particular will to tend towards •favouritism, be •partial [i.e. to favour some people over others], whereas the general will tends towards •equality. It is even more impossible to have any guarantee of this agreement; for even if it did always exist that would be the effect not of skill but of chance. The sovereign may indeed say:

'Right now I will what that man wills (or at least what he says he wills)',

but it can't say

'What that man wills tomorrow, I too shall will',

because it's absurd for the will to bind itself for the future, and no will is obliged to consent to anything that isn't for the good of the being whose will it is. If then the populace promises simply to *obey*, by that very act it dissolves itself and loses what makes it *a people*; the moment a master exists, there is no longer a sovereign, and from that moment the body politic has ceased to exist.

This isn't to deny that rulers' commands can count as general wills, if the sovereign is free to oppose them and doesn't do so. In such a case, universal silence should be taken to show the people's consent. I'll explain this fully later on.

2. Sovereignty is indivisible

For the same reason that makes it inalienable, sovereignty is indivisible. Here is why. Either will **(a)** is general⁴ or it **(b)** isn't; it is the will either of **(a)** the body of the people or of **(b)** only a part of it. When it is declared, then, either **(a)** it is an act of sovereignty and constitutes law, or **(b)** it is merely a particular will or

the rest of the sentence: *un acte de magistrature ; c'est un décret tout au plus.*

which literally means: an act of magistracy—at the most a decree.

what Rousseau was getting at: regulations laid down by high-level bureaucrats, not basic laws issuing from the legislature, the sovereign. [Re 'magistracy', see Glossary.]

But our political theorists, unable to divide sovereignty on

⁴ To be general, a will need not always be unanimous; but every vote must be counted: any exclusion is a breach of generality.

the basis of its •source, divide it according to its •object.
They divide it into

- force and will,
- legislative power and executive power,
- rights of taxation, justice and war,
- internal affairs and foreign relations.

Sometimes they run these sections together and sometimes they separate them; they turn the sovereign into a fantastic being composed of several connected pieces: it is as if they were making man of several bodies, one with eyes, one with arms, another with feet, and each with nothing else! We're told that the jugglers of Japan dismember a child before the eyes of the spectators; then they throw the pieces into the air one after another, and the child falls down alive and whole. The conjuring tricks of our political theorists are pretty much like that: having dismembered the body politic by a huckster's trick they then re-assemble it. . . somehow!

This error comes from a failure to think precisely about the sovereign authority, regarding as different •parts of it what are really just different •emanations from it.

[Rousseau seems to mean that they are just different actions that are performed under the authority of the sovereign. In distinguishing **(a)** parts of the sovereign authority from **(b)** actions performed not by the sovereign authority but by subordinate governmental agencies, he may be

- distinguishing parts of x from actions of x, or
- distinguishing the sovereign's actions from those of subordinate agencies.

In fact he seems to be thinking only of the second of these distinctions. Read on.] Thus, for example, the acts of declaring war and making peace have been regarded as acts of sovereignty, but they aren't. None of them are laws; each of them simply applies a law to a particular case, involving a decision ·not about what the law is to be, but only· about how the law applies in this case. This will be clear when the idea attached to the word 'law' has been fixed.

If we track the other divisions in the same way, we would find that whenever anyone takes sovereignty to be divided there is a mistake: the rights that are taken as being part of sovereignty are really all subordinate, and always presuppose the existence of supreme wills that they are merely applying.

This lack of exactness has thrown a cloud of obscurity over the conclusions of writers on political right who have laid down principles on the basis of which to pass judgment on the respective rights of kings and peoples. When I try to say how much obscurity, words fail me! Everyone can see in Grotius's work (Book 1 chapters 3 and 4) how the learned man and his translator, Barbeyrac, entangle and confuse themselves with in their own sophistries, for fear of saying too little or too much of what they think, and so offending the interests they have to placate. Grotius, a refugee in France, discontented with his own country [Holland], and wanting to pay court to Louis XIII, to whom his book is dedicated, will go to any lengths to strip the peoples of all their rights and clothe kings in them with every conceivable decoration. This would also have been much to the taste of Barbeyrac, who dedicated his translation to George I of England. But unfortunately ·for him· the expulsion of James II, which Barbeyrac called his 'abdication', compelled him to be on his guard, to shuffle and switch positions, in order to avoid making William ·of Orange, who succeeded James on the throne· a usurper. If these two writers had adopted the true principles, all ·their· difficulties would have been removed, and they would have been always consistent; but they'd have told the truth *sadly*, and they wouldn't have been paying court to anyone except the people. Well, the truth is no road to fortune, and the populace doesn't give out ambassadorships, university chairs, or pensions.

3. Can the general will be wrong?

It follows from all this that the general will is always in the right and always works for the public good; but it doesn't follow that the people's deliberations are always equally correct. Our will is always for our own good, but we don't always see what that is; the populace is never corrupted, but it is often deceived, and then—but only then—it seems to will something bad. [The French for Rousseau's endorsement of the general will is *toujours droite*, which has been translated as 'always right' and also as 'always within its rights'; the matter is controversial. The rendering 'in the right'—here and twice more—is a cowardly compromise.]

The •will of all is very different from the •general will; the latter looks only to the common interest, while the former looks to private interest and is no more than a sum of particular wills: but remove from these same wills the pluses and minuses that cancel one another⁵ and what is left of the particular wills adds up to constitute the general will. [In that sentence, and four times in the next paragraph, 'particular will(s)' translates Rousseau's *différence(s)*, which in this one context he uses in an oddly non-relational way.]

If the populace held its deliberations (on the basis of adequate information) without the citizens communicating with one another, what emerged from all the little particular wills would always be the general will, and the decision would always be good. But when plots and deals lead to the formation of •partial associations at the expense of •the big association, the will of each of these associations—the

general will of its members—is still a particular [*particulière*] will so far as the state is concerned; so that it can then be said that *as many votes as there are men* is replaced by *as many votes as there are associations*. The particular wills become less numerous and give a less general result. And when one of these associations is so great as to prevail over all the rest, the result is no longer a sum of small particular wills but a single particular will; and then there is no longer a general will, and the opinion that prevails is purely particular [*particulier*].

If the general will is to emerge clearly it's important that there should be no partial society within the state, and that each citizen should think only his own thoughts:⁶ which was indeed the sublime and unique system established by the great Lycurgus. And if there *are* partial societies, it's best to have as many as possible and to prevent them from becoming unequal, as was done by Solon, Numa and Servius. These precautions are the only ones that can ensure that the general will is always enlightened and that the populace is never in error.

4. The limits of the sovereign power

If the state or city is nothing but a moral person whose life consists in the union of its parts, and if its most important concern is for its own preservation, it must have a universal force to move and place each part in the way that is most advantageous to the whole. Just as nature gives each man absolute power over all his members, the social compact

⁵ 'Every interest', says the Marquis d'Argenson, 'has different principles. What brings **two** particular interests into agreement is their •shared• opposition to **a third**.' He could have added that what brings **all** interests into agreement is their •shared• opposition to **each**. If individual interests didn't differ from one another, the common interest would have nothing to bump up against, and so it would hardly be felt. . . .

⁶ 'In fact,' says Machiavelli, 'some divisions are harmful to a republic and some are advantageous. Those that stir up sects and parties are harmful; those attended by neither are advantageous. So, since the founder of a Republic can't help enmities arising, he ought at least to prevent them from growing into sects' (*History of Florence*, Book 7).

gives the body politic absolute power over all *its* members; and I repeat that it is this power which, under the direction of the general will, is called 'sovereignty'.

But as well as the public person, we have to consider the private persons who compose it, and whose life and liberty are naturally independent of it. So now there's the matter of clearly distinguishing

- the citizens' rights from the sovereign's,⁷ and
- the citizens' duties as subjects from their natural rights as men.

Agreed: each man alienates by the social compact only the part of his powers, goods and liberty that it is important for the community to control. But something else should also be agreed: the sovereign is sole judge of what is important.

Any service a citizen can give to the state should be performed as soon as the sovereign demands it; but the sovereign on its side can't impose upon its subjects any fetters that are useless to the community. Indeed it can't even *want* to do so, because there's no reason for it to want to, and 'Nothing can happen without a cause' applies under the law of reason as much as it does under the law of nature.

The undertakings that bind us to the social body are obligatory only because they go both ways; and their nature is such that in fulfilling them we can't work for others without working for ourselves. Why is the general will always in the right, and why do •all continually will the happiness of •each? It can only be because there's not a man who doesn't think of 'each' as meaning *him*, and considers himself in voting for all? This shows that equality of rights, and the idea of justice arising from it, originate in •the preference each man gives to himself, and accordingly •in human nature. It shows •that the general will, to be really general, must be

general in its object as well as its essence; i.e. must come from all and apply to all;

and •that when it is directed to some particular and determinate object it loses its natural rightness, because in such a case we—the joint owners of the general will—are judging of something foreign to us, so that we don't have any genuine standards to guide us.

Indeed, as soon as a question of particular fact or right arises in some context that hasn't already been regulated by a general agreement, the matter becomes contentious. It is a case—like a trial in a court of law—where the individuals concerned are on one side and the public are on the other; but I can't see what law should be followed or what judge should decide. Couldn't we ask the general will for an explicit decision on this matter? That is an absurd proposal: the deliverance of the general will can only be the conclusion of one of the sides and will therefore be seen by the other as merely an external and particular will that is subject to error and has on this occasion fallen into injustice. Thus, just as a particular will can't represent the general will, the general will. . .—just because it is general—can't pronounce on a particular man or fact. When for instance the Athenian populace nominated or displaced its rulers, decreeing honours for one and penalties for another, and by hosts of particular decrees exercised all the functions of government indiscriminately, it no longer had a general will in the strict sense; it was acting no longer as sovereign, but as magistrate [see Glossary]. This will seem contrary to current views; but you should give me time to expound my own.

So you can see that what makes the will *general* is less the number of voices than the common interest uniting them; for under this system each person necessarily submits to

⁷ Attentive readers, please don't rush in with the charge that I am contradicting myself. The poverty of the language has forced this on me; but wait and see.

the conditions he imposes on others; and this admirable alignment of •interest with •justice gives to the common deliberations a quality of fairness, evenness of balance, which is visibly absent from the discussion of any particular issue, in the absence of a common interest that would bring unity. . . .

From whatever direction we approach our principle, we always reach the same conclusion: the social compact creates an equality among the citizens so that they all commit themselves to observe the same conditions and should all have the same rights. Thus, from the very nature of the compact, every act of sovereignty—i.e. every authentic act of the general will—obliges or favours all the citizens equally; so that the sovereign recognises only the body of the nation and doesn't distinguish among the individuals of whom it is made up. Then what strictly speaking is an act of sovereignty? It's not an agreement between a superior and an inferior, but an agreement between the body and each of its members—an agreement that is

- legitimate, because it is based on the social contract,
- equitable, because everyone takes part in it,
- useful, because the only object it can have is the general good, and
- stable, because guaranteed by the public force and the supreme power.

So long as the subjects have to submit only to agreements of this sort, they don't obey anyone—only their own will; and to ask how far the respective rights of the sovereign and the citizens extend is to ask •not two questions but only one, namely: Up to what point can the citizens make commitments to themselves, each to all and all to each?

This shows •that the sovereign power—utterly absolute, sacred and inviolable as it is—doesn't and can't cross the boundaries set by general agreements, and •that every man

can do what he likes with any goods and liberty that these agreements leave him; so that it is never right for the sovereign to burden one subject more heavily than another, because that involves a particular decision and •therefore• isn't within the range of the sovereign's legitimate activity.

Once these distinctions are admitted, it is •seen to be• false that the social contract involves any real renunciation on the part of the individuals; so false that the situation that the contract puts them into is really preferable to the one they were in before. Instead of an alienation [see Glossary], they have made an advantageous exchange, trading in

- an uncertain and precarious way of living for •one that is better and more secure;
- natural independence for •liberty,
- the power to harm others for •security for themselves, and
- their strength, which others might overcome, for •a right that social union makes invincible.

Even their life, which they have dedicated to the state, is constantly protected by it; and when they risk it in the state's defence, aren't they just giving back what they have received from it? What are they doing that they wouldn't do oftener and more dangerously in the state of nature, in which they would inevitably have to risk their lives in battles in defence of their means of survival? Everyone does indeed have to fight when his country needs him; but then no-one ever has to fight for himself. We may have to run certain risks on behalf of the source of our security; the alternative is to lose our security and run greater risks on behalf of ourselves; haven't we profited by this exchange?

5. The right of life and death

This question has been raised: ‘Given that individuals have no right to dispose of their own lives, how can they give that right to the sovereign, transferring something that they don’t possess?’ This looks hard to answer only because it is wrongly stated. Every man has a right to risk his own life in order to preserve it. A man who jumps from a high window to escape from a fire—is he ever said to be guilty of suicide? Has that crime been alleged against anyone perishes in a storm that he knew, when he went on board, had some probability of occurring?

The social treaty aims for the preservation of the contracting parties. He who wills •the end also wills •the means, and the means must involve some risks, and even some losses. Someone who is willing to save •his life at others’ expense should also be ready to give •it up for their sake, when there is a need for this. Now, the citizen is no longer the judge of the risks that the law wants him to run, and when the prince says to him: ‘It is expedient for the state that you should die’, *he ought to die*. Why? Because his life is no longer merely a natural good, but is a gift made conditionally by the state; •it is conditional on his always meeting the state’s demands, and •it’s only on that condition that he has been living in security up to the present.

The death-penalty for criminals can be seen in much the same light: it is in order to save ourselves from assassins that we consent to die if we become assassins. In this treaty—this social contract—so far from disposing of our own lives, we think only of securing them; and it isn’t to be assumed that any of the parties then expects to get himself hanged!

Every criminal by attacking social rights becomes a rebel and a traitor to his country; by violating its laws he stops being a member of it—he even *makes war* on it. The state’s

survival is inconsistent with his survival, and one of the two must die; when we put the guilty to death, we’re doing this not so much to a citizen as to an enemy. He has broken the social treaty—the investigation and trial show this, and the judgment declares it—so he is no longer a member of the state. But he has recognised himself as a member if only by living there; so he must be lopped off

by exile, as a violator of the compact, or
by death, as a public enemy.

Such an enemy isn’t a •moral person [see Glossary], he’s a •man; and in such a case the right of war is to kill the vanquished.

You’ll say ‘But the condemnation of a criminal is a particular act •and is therefore, according to your chapter 4 of this Part, not something that the sovereign can do’. Right! But this condemnation is not something the sovereign does; it’s a right the sovereign that can confer without being able itself to exert it. All my ideas hang together, but I can’t expound them all at once.

We may add that frequent punishments [*supplices* = ‘punishments involving death or torture’] are always a sign that the government is weak or lazy. *Every* wrong-doer could be turned to some good. There’s no right to put to death, even for the sake of making an example, anyone who could safely be left alive.

The right of pardoning a guilty man, or letting him off from a penalty imposed by the law and pronounced by the judge, belongs only to the authority that is above the judge and the law, i.e. the sovereign; and even *its* right in this matter is far from clear, and it’s hardly ever called for. A well-governed state has few punishments, not because there are many pardons, but because criminals are rare: it’s easier to get away with crimes when there are a great many of them and the state is terminally ill. In the Roman republic

neither the senate nor the consuls ever offered to pardon anyone; nor did the populace, though it sometimes revoked its own decision. Frequent pardons are an announcement that before long crime *will* pay, and anyone can see where that leads. But I feel my heart protesting and restraining my pen; let us leave these questions to the just man who has never offended and would himself never stand in need of pardon!

6. The law

By the social compact we have given the body politic •existence and •life; now it is up to legislation to give it •movement and •will. The basic act that forms the body and pulls it together does nothing to settle what it must do in order to survive.

It's the nature of things that makes an item good and in conformity with order—human agreements don't come into it. All justice comes from God, who is its sole source; but if we knew how to draw it from that high source we wouldn't need government or laws! No doubt there is a universal justice emanating from reason alone, but this justice can be admitted among us only if it is mutual. In the absence of natural sanctions. . . .the laws of justice are ineffective among men. . . . Agreements and laws are needed to join rights to duties and relate justice to its object. In the state of nature where everything is common, I don't owe anything to someone to whom I haven't promised anything; I recognise as belonging to others only what is of no use to me. It's not like that in the state of society, where all rights are fixed by law.

But what, when we come down to it, *is* a law? As long as we settle for attaching only metaphysical ideas to the word, we'll go on arguing without understanding one another. If

someone tells us what a law of nature is, that won't bring us any nearer to knowing what a law of the state is.

I have already said [page 15] that there is no general will directed to a particular object. [Rousseau's proof of that, which follows, is severely compressed. The present version eases it out in ways that the •small dots• convention can't easily signify.] We are to suppose that the general will of populace *x* dictates that (for example) individual person *y* is to be given a pension. Either *y* is a member of *x* or he isn't. **(i)** If he isn't, then *x*'s will doesn't count as a general will in relation to him—it may have absolutely nothing to do with *y*'s own will. **(ii)** If *y* is a member of *x*, i.e. a part of *x*, then *x*'s will that *y* receive a pension is a relation between whole and part that makes them two separate beings, •*x*-without-*y* and •*y*. But *x*-without-*y* isn't the whole; and while this relation persists it's a relation between two unequal parts; and it follows that the will of one is no longer in any respect general in relation to the other.

But when the whole people decrees for the whole people, it is •not looking outside itself, but• considering only itself; and if a relation is then formed, it is •not between two separate objects, but only• between two aspects of a single entire object, with no need to split it into two parts. In that case the matter about which the decree is made is, like the decreeing will, general. This act is what I call a law.

When I say that the object of laws is always general, I mean that law considers subjects collectively and considers *kinds* of actions, never a particular person or action. Thus the law can decree that there shall be privileges, but it can't name anyone who is to get them. It can set up different classes of citizens, and even stipulate the qualifications for belonging to each of these classes, but it can't pick out any individuals as belonging to this or that class. It can establish a monarchy with hereditary succession, but it can't choose

a king or name a royal family. In short, any action that has an individual object falls outside the scope of the legislative power.

We see at once that on this account of things certain questions can be laid aside. ‘Whose business it is to make laws?’ (They are acts of the general will.) ‘Is the prince above the law?’ (‘No’, because he is a member of the state.) ‘Can the law be unjust?’ (‘No’, because nothing is unjust towards itself.) ‘How can we be both •free and •subject to the laws?’ (‘There’s no problem about this’, because the laws are nothing but records of our volitions.)

We see further that because the law unites universality of will with universality of object, nothing that a man—*any* man—commands on his own initiative can be a law. That holds even for the sovereign: what he or it commands with regard to a particular matter is not a law but a decree, an act not of sovereignty but of magistracy.

So I give the name ‘republic’ to any state governed by laws, whatever form its administration takes; for only when the laws govern does the public interest govern, and the public thing is something real. [Rousseau expected his readers to recognize that *chose publique* (= ‘public thing’) is in Latin *res publica*, which is the origin of *république* (= ‘republic’).] Every legitimate government is republican;⁸ what government is I will explain later on.

Laws are really only the conditions of civil association. Because the populace is subject to the laws, it ought to be their author: the conditions of •the society ought to be regulated solely by those who come together to form •it. But how will they do this? By a common agreement? By a sudden inspiration? Does the body politic have an organ—like vocal cords and a tongue—to declare its will? Who can give it the

foresight to formulate and announce its acts in advance? or how is it to announce them in the hour of need? How can a blind multitude, which often doesn’t know what it wills because it rarely knows what is good for it, carry out for itself such a great and difficult enterprise as a system of legislation? The populace left to itself always wills the good, but left to itself it doesn’t always see what that is. The general will is always in the right, but the judgment that guides it isn’t always enlightened. It ought to be

- made to see objects as they are, and sometimes as they ought to appear to it;
- shown the good road it is in search of,
- secured from the seductive influences of individual wills,
- taught to look carefully at other places and times, and
- made to weigh the attractions of present and sensible advantages against the danger of distant and hidden evils.

Individuals see the good that they reject; the public wills the good that it doesn’t see. Both need guidance. Individuals must be made to bring their wills into line with their reason; the populace must be taught to know what it wills. If that is done, public enlightenment leads to the union of understanding and will in the social body: the parts are made to work exactly together, and the whole is raised to its highest power. For this there has to be a law-maker.

⁸ I apply this word not merely to aristocracies and democracies but quite generally to *any* government directed by the general will, which is the law. To be legitimate, the government must be not identical with the sovereign, but its minister; so even a monarchy can be a republic. I’ll clarify this in Book 3.

7. The law-maker

What would be needed to discover the best rules of society. . . . is a superior intelligence that could see all men's passions without having any of them. This intelligence would have to meet these conditions:

- it is wholly unrelated to our nature, while knowing it through and through;
- its happiness is doesn't depend on us, yet it concerns itself with our happiness; and lastly
- it can take the long view, working in one century for something to be enjoyed in the next.⁹

It would take gods to give men laws! . . . But if a great prince is a rare kind of man, what will a great legislator be? All the prince has to do is to follow the pattern that the law-giver has to lay down in the first place. The law-giver is the engineer who invents the machine; the prince is merely the mechanic who sets it up and makes it go. 'At the birth of societies,' says Montesquieu, 'the rulers of republics establish institutions, and then the institutions mould the rulers' (*The Greatness and Decadence of the Romans*, ch. 1.)

Someone who ventures to tackle the task of making a *people* needs to have a sense of being able

- to change human nature, so to speak—to transform each individual, who on his own is a complete and solitary whole, into part of a greater whole from which he in a way receives his life and his being;
- to alter man's constitution in order to strengthen it;
- to replace the physical and independent existence that nature gave us by a partial and moral existence.

[In the French, as in this version, it's clear that Rousseau is presenting these not as three tasks but as three ways of looking at one task.] In short, he must deprive man of •his own resources, replacing them by •new ones that are alien to him and that he can't employ without help from others. The more completely those natural resources are annihilated, the greater and more lasting are the new ones that he acquires, and the more stable and perfect are the new institutions. •If you find that last statement extravagant, consider•: If each citizen is nothing and can do nothing without all the others, and if the resources acquired by the whole are equal or superior to the natural forces of all the individuals put together, it can be said that legislation is at the highest point of perfection.

The law-giver is an extraordinary man in the state. If his intellectual abilities make him so, his office [here = 'job'] does also. It's not magistracy or sovereignty. This work that •constitutes the republic isn't part of its •constitution; it is an individual and superior role that has nothing in common with human power; for if anyone who commands men oughtn't to have command over the laws, then anyone who has command over the laws oughtn't to have it over men; for if he did, his laws would be the servants of his passions and would often merely perpetuate his injustices; his private aims would *inevitably* mar the sanctity of his work.

When Lycurgus gave laws to his country, he began by abdicating as king. It was the custom of most Greek towns to have foreigners establish their laws. The republics of modern Italy in many cases followed this example; Geneva did the same and profited by it.¹⁰ Rome was at its most prosperous

⁹ A people becomes famous only when its legislation begins to decline. We don't know for how many centuries the system of Lycurgus made the Spartans happy before the rest of Greece took any notice of it.

¹⁰ Those who know Calvin only as a theologian much under-estimate the extent of his genius. The codification of our wise edicts, in which he played a large part, does him great honour. . . . Whatever revolution time may bring in our religion, so long as the spirit of patriotism and liberty still lives among us the memory of this great man will be for ever blessed.

when it suffered a revival of all the crimes of tyranny and came close to death, because it put the legislative authority and the sovereign power into the same hands.

[In the next sentence, *Decemviri* = 'ten men', referring to the men who in the 5th century BCE were delegated to draw up a code of laws for the Roman republic.] Nevertheless, the *Decemviri* themselves never claimed the right to pass any law merely on their own authority. 'Nothing we propose to you', they said to the people, 'can pass into law without your consent. Romans, be yourselves the authors of the laws that are to make you happy.'

So he who draws up the laws doesn't or shouldn't have any *right* to legislate; and the populace can't deprive itself of this non-transferable right, even if it wants to, because according to the basic compact the only thing that can bind individuals is the general will, and the only way to be sure that a particular will is in conformity with the general will is to put it to a free vote of the people. I have already said this, but it's worth repeating it.

Thus in the task of law-giving we find two things together that seem incompatible: an enterprise that surpasses human powers, and for its execution an authority that isn't anything!

Another difficulty deserves attention. Wise [see Glossary] men who try to speak in their language to the common herd, instead speaking as the herd does, have no chance of being understood. There are countless kinds of ideas that can't possibly be translated into •the language of the people. Views that are too broad and objects that are too distant are equally out of •its range: each individual, having no taste for any plan of government that doesn't suit his particular interests, can't easily see the advantages he would get as payback for the continual privations that good laws impose on him. For a populace that is just coming into being •as a body• to be able to relish sound principles of political theory and follow

the fundamental rules of statecraft, the effect would have to become the cause! The social spirit that is to be created by these institutions would have to preside over their very foundation; and men would have to be, •in advance of the laws, what they should become •by means of the laws. So the law-maker, being unable to appeal either to •force or to •reason, must resort to an authority of a different order that can •constrain without violence and

Rousseau's next three words: *persuader sans convaincre*.

flatly translated: persuade without convincing.

probable meaning: get people on-side without giving them reasons for this.

That's what has down the centuries compelled •the fathers of the nations to appeal to divine intervention and credit the gods with •their own wisdom, in order that the peoples—submitting to the laws of the state as to the laws of nature, and recognising the power that formed the city as the very one that formed mankind—might obey freely, and bear with docility the yoke of the public happiness.

What the legislator puts into the mouth of the immortals are decisions based on a high-flying reason that is far above the range of the common herd, the aim being to constrain by divine authority those who can't be moved by human prudence. But it's not just anyone who can make the gods speak, or be believed when he claims to be their interpreter. The only miracle that can prove a legislator's mission is his great soul. Any man can

- engrave words on tablets of stone, or
- purchase the services of an oracle, or
- fake secret communication with some god, or
- train a bird to whisper in his ear, or

find other crude devices for imposing on the people. Someone who can't do better than *that* may perhaps gather round

him a band of fools; but he'll never found an empire, and whatever crazy thing he does found will die soon after he does. Idle tricks create a temporary bond; only wisdom can make it permanent. The Judaic law, which still survives, and Islamic law that has ruled half the world for ten centuries, still today proclaim the great men who laid them down; and while •proud philosophy and •the blind spirit of political partisanship sees those men as nothing but lucky impostors, the true political theorist admires in the institutions they set up the great and powerful genius that presides over durable political structures.

The right conclusion to draw from all this is not. . . .that among us politics and religion have a common object, but that when nations are first starting up religion is used as an instrument for politics.

8. The people

Before putting up a large building, the architect surveys and tests the ground to see if it can support the weight; and in the same way the wise legislator doesn't start by laying down his good laws but by investigating whether the populace they are intended for is in a condition to receive them. Plato refused to legislate for the Arcadians and the Cyreniens because he knew that both peoples were rich and couldn't put up with equality; and Crete had good laws and bad men because all Minos had done was to impose discipline on a people already burdened with vice.

A thousand nations that *shone* around the earth couldn't endure good laws for long, and most couldn't have endured them at all. Most peoples, like most men, are teachable only in youth; as they grow old they become impossible to correct. Once customs have become established and prejudices are dug in, trying to reform them is dangerous and useless; the

populace can't stand having anyone *touch* its faults, even to remedy them; it's like the foolish and cowardly patients who tremble at sight of the doctor.

I'm not denying that there are times in the history of states when. . . .violence and revolutions jolt the populace into remembering the past, so that the state, set on fire by civil wars, is so to speak born again from its ashes, and with a renewed vigour of youth springs from the jaws of death. Examples: Sparta at the time of Lycurgus, Rome after the Tarquins, and in our own day Holland and Switzerland after the expulsion of the tyrants.

But such events are rare; they are exceptions, always to be explained in terms of the particular constitution [see Glossary] of the exceptional state. They can't even happen twice to the same people, for a populace can make itself free as long as it is merely uncivilized, but not when the civic spring has wound down. Then disturbances can destroy it, but revolutions can't rebuild it: it needs a master, not a liberator. Free peoples, remember this maxim: 'Liberty can be gained, but it can never be recovered.'

Youth is not infancy. For nations, as for men, there is a period of young adulthood—we may call it 'maturity'—before which a nation shouldn't be made subject to laws; but it isn't always easy to recognise a people's maturity, and if political developments are set going before that, the developments will fail. One people is amenable to discipline from the beginning; another, not after ten centuries. The Russians will never be really civilised, because they were 'civilised' too soon. Peter ·the Great· had a genius for imitation, but he didn't have the true creative genius that makes everything from nothing. Some of the things he did were good, but most of them were wrong for that time and place. He saw that his populace was barbarous, but didn't see that it was not ripe for civilisation: he wanted to civilise it when all it needed was to be prepared

for war. At first he wanted to make Germans, Englishmen, when he ought to have started by making Russians; he blocked his subjects from ever becoming what they could have been, by persuading them that they were what they are not. This was like a French teacher who shapes his pupil to be an infant prodigy, and for the rest of his life to be nothing. The empire of Russia will try to conquer Europe, and will itself be conquered. The Tatars, its subjects or neighbours, will become its masters and ours, by a revolution that seems to me inevitable. Indeed, all the kings of Europe are working together to speed it along.

9. The people (continued)

Just as nature has set limits to the size of a well-made man, and outside those limits makes only giants and dwarfs, so also for the constitution of a state to be at its best, there are upper and lower bounds to the size of the state if it isn't to be too large for good government or too small for self-maintenance. Every body politic has a maximum strength that it can't exceed, and that it won't even reach that maximum if it becomes too large. Every extension of the social tie slackens it; and generally speaking a small state is stronger in proportion than a great one. There are countless reasons why this is so. I shall present one of them, and then a cluster of others.

(1) The burden of government: Long distances make administration more difficult, just as a weight becomes heavier at the end of a longer lever. The further up the hierarchy you go, the more burdensome the administrations is. First, each city has its own government, which is paid for by the people; so does each district, still paid for by the people; then each province, then the great governments. . . .and so on, always costing more the higher

you go, and always at the expense of the unfortunate people! Last of all comes the supreme administration, which swamps all the rest. These costs are a continual drain on the subjects; and far from being better governed by all these different levels of government they're much worse governed than they would be if they had only a single authority over them. And with all this going on, there are hardly any resources remaining to meet emergencies; and whenever these are needed the state is on the brink of destruction.

(2) The effectiveness of government: When part of a nation is far distant from the seat of government, this has bad effects on both sides. On the one hand, the government is weaker and slower

- in law-enforcement there,
 - in preventing people from ill-treating one another there,
 - in correcting abuses there,
 - guarding against seditious undertakings begun there;
- and on the other hand the populace of that region has less affection for
- its rulers, whom it never sees,
 - its country, which to its eyes seems like the world, and
 - its fellow-citizens, most of whom are unknown to it.

The same laws can't suit so many diverse provinces with different *mœurs* [see Glossary] and utterly different climates, differing also in what kind of government they can put up with. 'Well, then, let the government have different laws for different provinces.' No, because different laws lead only to trouble and confusion among populations which—living under the same rulers and in constant communication with one another—intermingle and intermarry, and when they come under the sway of new customs don't know whether they can call their family fortune their own. Among such

a multitude of men who don't know one another, crammed together at the seat of the central administration, talent is buried, virtue unknown and vice unpunished. The leaders, overwhelmed with business, don't see anything for themselves; the state is governed by bureaucrats. Finally, the measures that have to be taken to maintain the general authority, which all these distant officials wish to evade or abuse, absorb all the governmental energy, so that there's none left for the happiness of the people, and barely enough to defend it when need arises. That's what happens when a body is too big for its constitution: it cracks, and falls crushed under its own weight.

On the other hand, it's bad for a state to be too small. A state needs a secure base if it is to be stable—not shaken to pieces by the shocks that are bound to come its way or by the efforts it will be forced to make to maintain itself. All populations have a kind of centrifugal force by which they continually act against one another, and tend to enlarge themselves at their neighbours' expense—like Descartes's vortices! Thus the weak run the risk of being soon swallowed up; and it is almost impossible for any one state to survive except by putting itself in a sort of equilibrium with all the others so that the pressure on all sides is about equal.

So you can see that there are reasons for contraction and reasons for expansion; and it's no small part of the statesman's skill to balance out the two sides in the way that is best for the preservation of the state. It can be said that

the reasons for expansion, being merely external and relative,

should be subordinate to

the reasons for contraction, which are internal and absolute.

A strong and healthy constitution is the first thing to look for; and it is better to count on the vigour that comes from

good government than on the resources a great territory furnishes.

I would add that we have known states that were so constituted that the need to make conquests entered into their very constitution, and had to expand ceaselessly merely in order to survive. Perhaps they congratulated themselves greatly on this fortunate necessity; yet what it marked out for them were the limits of their greatness and the inevitable moment of their fall.

10. The people (further continued)

A body politic can be measured by the extent of its territory or by the number of its people; and the relation between these two needs to be right if a state is to be really great. The men make the state, and the territory sustains the men; so the right relation is this:

the land should suffice to maintain the inhabitants, and there should be as many inhabitants as the land can feed.

That's the proportion that provides the maximum strength of a given number of people. If there's too much land, it will be troublesome to protect, inadequately cultivated, and over-productive; it will give rise to defensive wars; if there isn't enough land, the state has to depend on its neighbours to meet some of its needs; this will give rise to offensive wars. Any population whose geographical situation forces it to choose between commerce and war is intrinsically weak: it depends on its neighbours, depends on outcomes; its existence will be uncertain and short. It either conquers others and changes its geographical situation, or it is conquered and becomes nothing. Only insignificance or greatness can keep it free.

There's no way of stating the ideal relation of size to population— n hectares per m people—because that varies according to differences in •the quality and fertility of the land, in •the nature of what grows on it, in •the climate, and in •the temperaments of the people who live on the land. Some people live in a fertile countryside and consume little, others living on poor soil eat a lot. The legislator also has to take into account regional differences in the fertility of women, in how favourable the land is to the growth of population, and in how much difference is likely to be made by governmental activity. So the legislator should go not by what he •sees but by what he •foresees; he shouldn't settle for the actual level of the population but should aim for the level that it ought naturally to attain. Lastly, there are countless situations where the particular local circumstances demand or allow the acquisition of more territory than seems necessary. Thus, expansion will be great in a mountainous territory where the natural products—i.e. woods and pastures—need less labour, where it turns out that women are more fertile than in the plains, and where a great expanse of slope presents only a small level stretch that can be relied on for growing things. On the other hand, contraction is possible on the coast, even in territories of rocks and nearly barren sands, because •there fishing largely makes up for the lack of land-produce, because •the inhabitants have to cluster together order to repel pirates, and further because •it is easier to get rid of excess population by starting up colonies.

To these conditions for establishing a people there's another that must be added; it doesn't take the place of any of the others, but without it they are all useless. This is the enjoyment of peace and plenty. •The threat posed by want or warfare is especially grave•, because when a state

is initially getting itself in order it is at its least capable of offering resistance and is easiest to destroy. (A battalion that is in process of forming up is vulnerable in the same way.) It could resist better at a time of absolute chaos than at a moment of •politically creative• agitation, when everyone is occupied with his own status and not with the danger. If war, famine, or sedition breaks out at this time of crisis, the state will inevitably be overthrown.

It's true that many governments have been set up during such storms; but in those cases it was the governments themselves that destroyed the state. Usurpers always create or select times of disturbance and public fear to get destructive laws passed—laws that the people would never have adopted when they were thinking coolly. One of the surest ways of distinguishing a legislator's work from a tyrant's is through the question: *When* did he choose to act?

Then what people is a fit subject for legislation? One

- which is already held together by some unity of origin, interest, or agreement, and has never yet felt the real yoke of law;
- which doesn't have deeply ingrained customs or superstitions,
- which isn't afraid of being overwhelmed by sudden invasion,
- which, without entering into its neighbours' quarrels, can resist each of them unaided or can get the help of one to repel another,
- in which each member can be known by every other, and there is no need to lay on any man burdens too heavy for a man to bear;
- which doesn't need and isn't needed by other peoples,¹¹

¹¹ If there were two neighbouring peoples, one of which *needed* the other, it would be very hard on the one and very dangerous for the other. Every wise nation, in such a case, would make it a priority to free the other from dependence. . . .

- which is neither rich nor poor, but self-sufficient; and finally
- which combines the solidity of an ancient people with the docility [here = 'willingness to be led'] of a new one.

What makes the work of legislation difficult is not so much what has to be constructed as what has to be destroyed; and what makes success so rare is the impossibility of finding •natural simplicity combined with •the features that are needed for society to be possible. All these conditions are indeed rarely found united, which is why few states have good constitutions.

There is still in Europe one country capable of being given laws—Corsica. That brave people has shown such valour and persistency in •regaining and •defending its liberty well that it deserves to have some wise man teach it how to •preserve it. I have a feeling that some day that little island will astonish Europe. [Napoleon Bonaparte was born there!]

11. Differences among systems of legislation

What precisely is the greatest good of all, the good that should be the goal of every system of legislation? It comes down to two main things: •liberty and •equality—liberty because any constraint on one individual means that that much force is taken from the body of the state, and equality because liberty can't exist without it.

I have already defined civil liberty. As for equality: we should take this to mean not that the degrees of power and riches are to be absolutely the same for everyone, but that

- those with power shan't sink to the level of using violence, and that their power will always be exercised by virtue of rank and law;

and that

- No citizen will ever be wealthy enough to buy another, and none poor enough to be forced to sell himself¹²

—which implies, on the part of the great, no extremes of goods and credit [= 'borrowing power'] and on the side of the ordinary folk no extremes of miserliness or greed.

They say that this equality is a theoretical pipe-dream that can't exist in practice. But •even• if it is certain to be abused, is that a reason for not at least making regulations concerning it? It's precisely because the forces at work in the world always tend to destroy equality that the force of legislation should always tend to maintain it.

But these general goals of any good constitution [see Glossary] need to be adapted in each country to the local situation and the character of the inhabitants; it's *these* that should determine the particular institutional system that is best, not perhaps in itself, but for the state in question. For example: what if the soil is barren and unproductive, or the land too crowded for its inhabitants? Then turn to industry and the crafts, and exchange what they produce for the commodities you lack. If on the other hand your territory is rich and fertile, focus your efforts on labour-intensive agriculture, and drive out the crafts that would only depopulate your territories by clustering what few inhabitants you have in a few towns.¹³ If you live on an extensive and manageable

¹² Do you want the state to be solid? Then make the wealth-spread as small as you can; don't allow rich men or beggars. These two conditions are naturally inseparable: •any state that has very wealthy citizens will also have beggars, and vice versa•. And they are equally fatal to the common good: one produces supporters of tyranny, the other produces tyrants. It is always between *them* that public liberty is put on sale: one buys, the other sells.

¹³ 'Any branch of foreign commerce', says the Marquis d'Argenson, 'creates over-all only an apparent advantage for the kingdom in general; it may enrich some individuals, or even some towns, but the nation as a whole gains nothing by it and the populace is no better off.'

coast-line, cover the sea with ships and develop trade and navigation; your state will have a life that is brilliant and short! If on your coast the sea washes nothing but almost inaccessible rocks, settle for a primitive way of life based on fish-eating; you'll have a quieter life, perhaps a better one, certainly a happier one. In short, every nation has, along with principles that all nations have, something that gives them a particular application in its case, and makes its legislation strictly its own. Thus, among the Jews long ago and more recently among the Arabs, the main thing has been religion, among the Athenians literature, at Carthage and Tyre commerce, at Rhodes shipping, at Sparta war, at Rome virtue. The author of *The Spirit of the Laws* [Montesquieu] has shown with many examples the skills the legislator uses in directing the constitution in one or other of these directions.

What makes the constitution of a state really solid and lasting is its having a population whose members behave so decently to one another that natural relations are always in harmony with the laws, so that all the law does is, so to speak, to assure, accompany and adjust those natural relations. But if the legislator aims wrongly and adopts •a principle other than •the one that is rooted in the nature of things—

- his makes for servitude while the natural one makes for liberty, or
- his makes for riches, while the other makes for population-growth,
- his makes for peace, while the other makes for conquest

—the laws will gradually lose their influence, the constitution will alter, and the state will have no rest from trouble till it is either destroyed or changed, and invincible nature has re-asserted its power.

12. Classifying laws

If the whole thing is to be set in order—i.e. if the public thing is to be put into the best possible shape—there are various relations to be taken account of. [Rousseau used *chose publique* = 'public thing' expecting his readers to know that the Latin for this is *res publica* = 'republic'.] **(1)** There is the action of the complete body upon itself, i.e. the relation of the whole to the whole, of the sovereign to the state. This relation is composed of the relations among the parts of the whole, as we shall see in due course.

The laws that regulate this relation are called **political laws**, and they deserve their name 'fundamental laws'—if they are well done. What does their quality have to do with their status as fundamental? Well, if for each state there's only one good way of organising things, the populace that has found it should stick to it, which means that for them it is fundamental; but if the established organisation is bad, why should laws that prevent it from being good be regarded as fundamental? Actually a people is *always* in a position to change its laws. Even if they are good laws? Yes; for if the populace chooses to do itself harm, who can have a right to stop it?

(2) Then there's the relation of the members **(a)** to one another or **(b)** to the body as a whole. There should be as little as possible of **(2a)** and as much as possible of **(2b)**. Each citizen would then be perfectly independent of all the rest, and at the same time very dependent on the city; and these two results are brought about always by the same means, because only **(2b)** the strength of the state can secure **(2a)** the liberty of its members. From this second relation arise **civil laws**.

(3) We may consider also a third kind of relation between the individual and the law, the relation of •disobedience to

•punishment. This creates a need for **criminal laws**, which are basically not so much a kind of law as the sanction behind all the other laws.

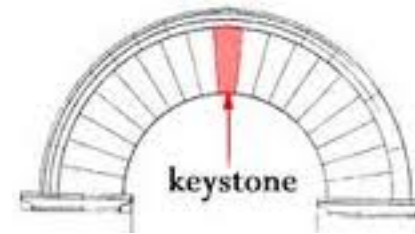
(4) Along with these three kinds of law goes a fourth, most important of all, which

- is inscribed not on tablets of marble or brass but on the hearts of the citizens;
- forms the real constitution of the state;
- takes on new powers every day;
- restores or replaces other laws when they decay or die out, keeps a people in the spirit in which it was established, and gradually replaces authority by the force of habit.

I am speaking of *mœurs* [see Glossary], of custom, above all of **public opinion**; an element in the situation that our political theorists don't recognise, though success in everything else depends on it. This is the element that the great legislator

is secretly concerned with, though he seems to be attending only to particular regulations. The regulations are only the arc of the arch; *mœurs* come into it only later, but they eventually constitute the arch's immovable keystone.

[Rousseau is referring to the classical method of building stone arches:



The stones making the arc are held in place by external supports until the final stone, the keystone, is dropped into place, and then the whole thing holds itself up.]

Of these different sorts of laws the only ones that are relevant to my subject are the political laws, which determine the forms of the government.