

Jonathan Dahlsten  
Qualifying Exam

### **Creating Citizens: Principle and Practice in the Legitimacy of Rousseau's State**

*It [the state/law] wishes to rule subjects only inasmuch as, in its very act, it also makes and educates them into citizens. This ideal task... is the real purpose of the state.*

-Ernst Cassirer, *The Question of Jean-Jacques Rousseau*

What makes the state legitimate? For Jean-Jacques Rousseau, the state is legitimate insofar as it enables individuals to obey their own wills and thus be free. Through the social contract, people agree to respect each other's freedom in order to secure their own. Rousseau aims to demonstrate that the state's coercive power is not arbitrary because such a state would be chosen by rational individuals concerned with their basic interests. Or at least this is the claim a number of recent interpretations of Rousseau would make. They highlight autonomy as the organizing concept through which to understand Rousseau's justification of the state. These readings can be broadly placed under the umbrella term of Social Autonomy theory, coined by Joshua Cohen (1986). Social Autonomy has been most fully developed by Cohen (2010), Frederick Neuhouser (2008), and John Rawls (2008), though it certainly has origins in Ernst Cassirer's (1954)<sup>1</sup> seminal Kantian interpretation.<sup>2</sup> While I agree with Social Autonomy readings of Rousseau that the social contract is principally justified through reason, I argue that it is not solely through reason that the vast majority of individuals agree to Rousseau's social contract in practice. Rousseau assesses that most human beings neither possess passions directed toward the correct ends nor do they possess the correct relationship between reason and their passions for the legitimate state. As such, most people must be educated and shaped to become the type of citizen that can correctly reason and accept a

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<sup>1</sup> Cassirer comes the closest to acknowledging the extra rational force necessary for the social contract (see the epigraph), but he ultimately roots the bonds of society in reason (1954, 124-6).

<sup>2</sup> Other accounts akin to or anticipatory of Social Autonomy theory include Maurizio Viroli (1988), Nicholas Dent (1989), and Anna Stilz (2011).

legitimate social contract. For Rousseau, it is not enough for a state to be theoretically legitimate. It must also be perceived as legitimate by its citizens. For this to occur, reason alone is insufficient.

In order to make this argument, I turn to the often-overlooked early draft of the *Social Contract* (*SC*) known as the *Geneva Manuscript* (*GM*). With one notable exception,<sup>3</sup> Social Autonomy interpreters either ignore the *GM*, or use it sparingly, paying little attention to differences between it and the final *SC*. The *GM*, and especially the second chapter, contains pertinent evidence for rationalist readings of Rousseau, but these passages are often omitted or altered in the final draft of the *SC*. By paying attention to the changes that Rousseau made in framing his work, I argue we can more clearly see the distinction between principle and practice and thereby better understand Rousseau's uneasiness with a purely rational justification of the state in the final version of the *SC*.

My reading helps to explain a figure that Social Autonomy theorists either ignore completely or have trouble with: the lawgiver. The lawgiver is the practical mode Rousseau proposes that will turn men into citizens and maintain them in this role. It is not that people become citizens when they agree to the social contract, it is that the state molds people into citizens who can agree to the social contract. Rousseau assesses that very few people, if any, would agree to a legitimate state before they have been transformed. Rousseau takes "men as they are and laws as they can be" (*SC*, 163), but men as he assesses are moldable and in need of molding by mores, laws, and the lawgiver. Social Autonomy accounts, by paying little attention to the *GM* and lawgiver, have missed the practically necessary extra-rational aspect of Rousseau's thought.

In the first section of the paper, I turn to *GM* and the problem of the independent reasoner. This figure frames the problem in a useful and important way ultimately consistent with the final draft. Then, in the second section I move to look at the *SC* proper and the nature of the transformation from independent person to citizen. In the third section, I look at the lawgiver and

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<sup>3</sup> Viroli (1988), which I will discuss later.

the practical requirements for bringing a legitimate state into being before drawing together the principle and practice to provide a more complete picture of the transformation from independent person to citizen.

### **The Problem of the Independent Reasoner**

The *GM* is an early draft of the *SC*, written six years prior to the publication of the final version. It has been well-established (Williams 2007 81-3, Masters 1968 261-4) that Rousseau wrote the *GM* in 1756 at least in part in response to Diderot's 1755 *Encyclopédie* entry on natural right. While most of the content of the *GM* is maintained and expanded upon in the final draft, there are key alterations. Book I, chapter 2 of the *GM* is entirely omitted in the final draft. This is the chapter where Rousseau directly critiques Diderot. Scholars have turned to this chapter for insights into Rousseau's views on natural law (e.g. Masters 1968 269-276, Williams 2007 83-8, Melzer 1983, Viroli 139-48), but less attention has been paid to how this chapter frames the work as a whole or how Rousseau evaluates the role of reason. Canon (2022) has recently utilized the *GM* to understand Rousseau's development of the idea of the general will, and while my argument is consistent with his, I read the omitted sections of the *GM* as ultimately consistent with the *SC* which offers further insight into Rousseau's thought. This is in line with the other scholarship attending to book I, chapter 2 (Viroli 1988 139-48, Masters 1968 265-300, Williams 2007 82), which treats the chapter as fully consistent with the final edition.

Book I, chapter 2, is titled "On the General Society of the Human Race". In it, Rousseau directly critiques Diderot, often using Diderot's own words. In his *Encyclopédie* entry on natural right, Diderot makes four key assumptions. The first is that human beings have metaphysical or moral freedom. The second is that humans are fundamentally self-interested creatures. On these first two assumptions, Rousseau agrees. It is on the last two assumptions that Rousseau forcefully departs. The third is that humans are capable of universalizing maxims and relatedly the fourth is

that humans are fully capable of an enlightened reason in the state of nature. From these assumptions, Diderot assesses that people in the state of nature are quite capable of discerning and agreeing to a just social contract based on what he terms a “general will of the species” (Diderot, 1755). Rousseau argues that no general will of the species can possibly exist and assesses that people in the state of nature are incapable of reasoning based on self-interest to accept a just social contract. Because of this, Rousseau must develop a different solution to the independent reasoner.

Like Diderot’s article, Rousseau’s chapter is an account of human beings before the creation of the social contract. Rousseau assesses that humans have gone through a process to develop desires that “finally encompass the whole of nature” and as such require the cooperation of the whole human race to even hope to satisfy them (*GM* i.ii. 158). However, unlike Diderot’s account, this dependence does not immediately lead to fair cooperation toward the common good. Instead, Rousseau writes

It is false that in the state of independence, reason leads us to cooperate for the common good out of a perception of our own interest. Far from there being an alliance between private interest and the general good, they are mutually exclusive in the natural order of things, and social laws are a yoke that each wants to impose on the other without having to bear it himself. (*GM* I.ii. 160)

The state of independence Rousseau refers to here is a sort of state of nature that exists before the bonds of the social contract, or at least Rousseau’s social contract. The result of this state of independence has been laws imposed unequally, with each person attempting to impose laws on others while remaining exempt themselves.<sup>4</sup> In the state of independence, reason is not the capacity that can bring humans to cooperate for the common good. Instead, reasoning only with the end of narrow self-interest leads to the pursuit of the private good at the expense of the public good.

The conflictual nature of private interest leads Rousseau to pose the character of the independent reasoner, taken directly from Diderot. This man, existing in the state of independence,

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<sup>4</sup> This is consistent with the account of existing political societies Rousseau gives near the end of the *Second Discourse*.

reasons only with a view to his individual self-interest. Rousseau gives this character voice to fully outline his reasoning: “I am aware that I bring horror and confusion to the human species... but either I must be unhappy or I must cause others to be so, and no one is dearer to me than myself” (*GM* I.ii. 160). The independent man reasons that his self-interest does not lead to the common good because political society as it exists is a zero-sum game. Either he<sup>5</sup> takes advantage of his fellow-man or his fellow-man takes advantage of him. This is the first (1) objection of the independent reasoner and the core of his position. In addition, he argues “I would try in vain... to reconcile my interest with that of another man. Everything you tell me about the advantage of the social law would be fine if while I were scrupulously observing it toward others, I were sure that all of them observe it toward me” (*GM* I.ii. 160). Here, the independent reasoner momentarily concedes his core position, but still objects to acting for the common good on prudential grounds. This is the independent reasoner’s second (2) objection. Even if he were to agree to a just social contract, he would need assurance it would be respected by his fellow man, but he finds no such assurances. The independent reasoner thinks that most everybody else is like him, and Rousseau has assessed that he is right. In society as it exists, there is no guarantee that people will respect the good of others when their own interest is in conflict. Furthermore, the independent reasoner can recognize justice and knows it when he sees it, but claims “it is not a matter of teaching me what justice is but of showing what interest I have in being just” (I.ii. 161). The independent reasoner knows what the common good is but refuses to act out of a concern for it because it conflicts with his individual interest. In sum, the independent reasoner only looks out for his own good and ultimately sees the common good as incompatible with it. While Rousseau agrees with Diderot that

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<sup>5</sup> I use masculine pronouns for the independent reasoner, following Rousseau. For the classic feminist critique of Rousseau, see Okin (1979).

the independent man is primarily self-interested, he does not see that interest being led by reason towards justice.

Given the stubborn logic of this character, it is perhaps surprising that Rousseau posits him as the judge for the whole of his proposed social contract. He writes: “Let us use new associations to correct, if possible, the defect of the general association. Let our violent speaker himself judge its success” (*GM* I.ii. 162). Rousseau aims to correct the defect he has identified in general society that individual interest does not lead to associations that work toward the common good. As he writes at the beginning of the final version of the *SC*, he seeks to “join what right permits with what interest prescribes, so that justice and utility are not always at odds (*SC* I. 163).” He wants to create a state that takes the interest of citizens as they exist and lead them to accept a state that is just and works toward the common good. His task will be successful if the principles and practices he outlines in the rest of the essay could be accepted by the independent reasoner.

But how is Rousseau supposing to convince the independent reasoner to agree to his principles? As he has already outlined contra Diderot, reason does not naturally lead a person in the state of independence toward the common good. With big rhetorical flourishes, Rousseau answers this question at length:

Let us show him in perfected art the reparation of the ills that the beginnings of art caused to nature. Let us show him all the misery of the state he believed happy, all the falseness in the reasoning he believed solid. Let him see the value of good actions, the punishment of bad ones, and the sweet harmony of justice and happiness in a better constituted order of things. Let us enlighten his reason with new insights, warm his heart with new feelings; and let him learn to enlarge upon his being and his felicity by sharing them with his fellow men. (*GM* I.ii. 162)

The first sentence in this passage reiterates the goal Rousseau has already laid out in this chapter.

“The beginning of art” is the artificial structure of general society that naturally came about.

Rousseau seeks to show the independent reasoner that politics does not *have to be* a zero-sum game like he understands it currently. The independent reasoner has reasoned incorrectly about his own

interest and must be shown or taught that what he understands as happiness (individual advantage) is not true happiness. True happiness can apparently be rightly found when the independent reasoner learns to “enlarge upon his being” and learns to identify his interest with the interest of others.<sup>6</sup> He would feel even greater felicity and happiness than he does now by sharing his happiness with his fellow man. Certainly, some of this showing or convincing of the independent reasoner is done through reason. Rousseau aims to “enlighten” the reason of the independent man with the “new insights” he will present in the rest of the *GM*. He will show the independent reasoner the “falseness in the reasoning he believed solid”. However, he will also “warm his heart with new feelings”. This does not seem to be an appeal to reason. Instead, Rousseau promises to somehow alter the passions of the independent man. No longer can he be entirely concerned with his narrow self-interest if and when he develops new feelings. Rousseau will also “let him learn to enlarge his being” to include other men. These changes are difficult to fully explain with reason.

A Social Autonomy reading of Rousseau would highlight the enlightenment of the independent man’s reason and in fact, Maurizio Viroli (1988) has done just that. Being the only author akin to Social Autonomy who treats this passage of the *GM* at length, he focuses on the logical conditions that must be met in order to Rousseau to have a reasonable answer to the independent man. For Viroli, upon hearing and understanding Rousseau’s reasoned answers, the independent reasoner becomes what Viroli terms the “individual and enlightened man” who is able to “accept the social compact” “out of self-interest, correctly understood” (132). And as we have just seen, that aspect of Rousseau’s thought is present in this chapter. Rousseau does appeal to the reasonability of his proscriptions as a way of judging and justifying his social contract. The independent reasoner will ultimately come to reason the way Rousseau wants him to. And, when he reasons correctly, he will agree to the social contract. However, to get the independent man to

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<sup>6</sup> This adds supporting evidence to Rafeeq Hasan’s (2016) argument that happiness is key to the justification of the state.

reason in this state, he seems to need more education than just reasoned arguments. He needs his heart warmed with new feelings and for his sense of self to expand to encompass other people.

This one, later omitted, chapter of the *SC* does not and cannot constitute a full answer to the problem, but it does frame the question in a useful way. How does Rousseau answer the independent reasoner? Does he enlighten his reason? Does he alter his passions? Both? Social Autonomy theory has already demonstrated how Rousseau enlightens the reason of this man. However, I wish to show that the *SC* also features a transformative education for the independent man not based in reason that will change his character so that he can be in the right frame to accept the social contract and will the general will. There is substance to what Rousseau means what he talks of “warm[ing] his heart with new feeling” and expanding his being to include others, and that substance will be unpacked below.

### **Reading the Social Contract**

One of the most striking differences between the *GM* and the final draft of the *SC* is that the independent reasoner is nowhere to be found. In order to move from the *GM* to the *SC*, it is important to determine that the independent reasoner is still in Rousseau’s mind in the *SC*, considering he decided to omit this way of framing the work. The question as to why it was omitted in the final draft will never fully be answered, but I will draw some connections between the two to show them to be fundamentally consistent. Instead of framing the treatise around answering the independent reasoner in a lengthy chapter, he opens the *Social Contract* with these two sentences: “I want to inquire whether there can be any legitimate and reliable rule of administration in the civil order, taking men as they are and laws as they can be. In this inquiry I will try to join what right permits with what interest prescribes, so that justice and utility are not always at odds” (*SC* 1. 163). On the surface, this seems compatible with the goal set out in the *GM* if “men as they are” are in

fact like the independent reasoner.<sup>7</sup> Rousseau is attempting to outline laws, or at least a way towards them, that answer the fundamental problem of the independent man. For the independent reasoner, justice and utility are always at odds. This is true both in and out of society. One can always gain more by being unjust to his fellow man in the independent reasoner's unmoderated view. The independent reasoner could see the potential benefit of a just society but does not believe that it can be guaranteed. The institutions that Rousseau will outline over the course of the *Social Contract* are supposed to make this guarantee, or at least outline the best approximation of it. However, Rousseau will only "try to join" justice and utility, he does not claim that his inquiry will be convincing or succeed. By omitting the discussion of the independent reasoner, he dodges the question of the judgment of the work's success. It is not clear from the outset if Rousseau believes the treatise can actually convince the independent reasoner with right reason.

While this account seems plausible, how can we be assured that Rousseau means the independent reasoner when "taking men as they are"? There are two different passages, present both in the *GM* and *SC* though in shifted locations (*GM* I.vi., *SC* I.vii-i), where Rousseau addresses the logic of the independent reasoner. The first is in the chapter "On the Sovereign" where Rousseau writes "Indeed, each individual can, as a man, have a particular will contrary to or differing from the general will he has as a citizen. His particular interest can speak to him entirely differently from the common interest" (*SC* I.vii 175). This individual man seems akin to the violent reasoner. He has an understanding of his own self-interest that is at times at odds with the common interest. Rousseau goes on: "His absolute and naturally independent existence can lead him to view what he owes to the common cause as a gratuitous contribution, the loss of which will be less harmful to others than its payment is burdensome to him" (*SC* I.vii 175). This individual man follows the same logic as the independent reasoner. When this man sees he can gain more for himself at the expense

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<sup>7</sup> Viroli (1988 126-7) agrees this is the case.

of the collective, he does so. He values his own good over the good of the collective. The fact that Rousseau acknowledges this way of thinking and takes it seriously implies that he is concerned with the fundamental problem of the independent reasoner in the final draft of the *Social Contract*.

This link is further made by Rousseau in the following chapter, “On the Civil State”, in a telling passage that starts to get at the kind of transformation that takes place in civil society. Here, Rousseau discusses the transition from the state of nature to the civil state. This transition “produces a very remarkable change in man, by substituting justice for instinct in his conduct and by giving his action the morality they previously lacked” (*SC* I.viii 175). Here, the civil state brings about a fundamental change in the make-up of man, who had apparently lacked justice and morality. Rousseau goes on: “Only then, when the voice of duty replaces physical impulse and right replaces appetite, does man, who until then considered only himself, see himself forced to act on the basis of principles and to consult his reason before listening to his inclinations” (*SC* I.viii 175-6). Here we see that the core of man in the state of nature consists of narrow self-interest, just like the independent reasoner. The appetite of the man in the state of nature is the same appetite as the independent reasoner: it encompasses the whole of the universe. From the combination of these two passages, it is clear that man in the state of nature is the independent reasoner both in the *GM* and the final version of the *SC*.

Neuhouser (2008) reads the passage in I.viii as vindicating a fully rationalist reading of Rousseau. He argues that modern citizens “conceive of and value themselves as individuals and, most important, submit to the general will only on the basis of their rational insight into the goodness of the laws that obligate them” (22). For Neuhouser, reason is the driving force behind the shift that takes place as people move from the state of nature to the civil state. Reason replaces impulse, appetite, and instinct as the motivating force of action. He writes “reason is able to do this only by introducing into conduct the idea of right (or duty and justice) and by recognizing the

principles of right as a higher authority than mere inclination.” (192). While Neuhouser is correct that the principles of right come to have higher authority than inclination in the civil state, the passage does not necessitate that reason is the transformative force. Looking again, Rousseau identifies the capacity to reason correctly only as a result of the movement to the civil state, not the cause of that movement. In fact, it is only after the transformation that reason comes into play. This not only leaves open the possibility, but even suggests that it is something outside of reason that brought about the change that allows citizens to reason correctly.

We have now seen that the problem of the independent reasoner remains relevant in the final version of the *SC* and I have suggested that reason is not the means of the transformation from independence to civil society. Before we can go on to discuss the nature of that transformation, it is important to take a step back to look at the different overarching structures of the *SC* and the *GM* in order to clearly see the distinction between principle and practice. Up to now, the analysis has focused primarily on Book I of both texts. John T. Scott (2020, 259-78)<sup>8</sup> has pointed out that Rousseau makes two principal readings of the *SC* available. The first is as a treatise on the principles of political right and the second is a treatise on the creation and maintenance of a legitimate political association. I agree with Scott (2020) that these readings are not exclusive, and that the second supplements the first. In both editions the first book pertains directly to the principles of political right. As such, these chapters outline the nature of the social contract, contend with alternative accounts, and describe the nature of a legitimate social body. In the *GM*, book I ends with Rousseau’s argument for the principled necessity of positive laws. He then transitions after a very brief first chapter on the ends of legislation at the start of book II to discuss the lawgiver and the practical establishment of the laws. This original way of organizing the text sets a stark distinction between principle and practice between books I and II. The end of book I wraps up the exposition

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<sup>8</sup> I need a better way to integrate this citation.

of the principles and book II moves to discuss how those principles, through law primarily, can be/come to be established in a political society.

In the final edition, the transition from principle to practical establishment does not occur between books because the books are topically organized. In Rousseau's table of contents,<sup>9</sup> book II is detailed as "*Discussing legislation.*" (157). With this description, it is not surprising that Rousseau continues his exposition of the principles of political right as they pertain to legislation in the first six chapters of book II. He then transitions in the middle of book II to discuss the practical establishment of the laws. This transition mid-book makes sense in the final edition because it is topically concerned with legislation generally and not just its establishment, but the *GM* is useful for demonstrating the move from principle to practice that Rousseau maintains in the final edition, though with different organizational emphasis. In both cases, the move from the discussion of principles of political right to their practical establishment occurs as Rousseau turns to discuss the figure of the lawgiver. Rousseau omits the transitional opening chapter of book II of the *GM* in the final edition, but apart from this the move from the discussion of the principles of law to the lawgiver is the same in both editions. It is only when one reads the two works together that the nature of this transition comes fully clear.

Now that I have identified a major place where Rousseau transitions from principle to practice, I will move to discuss how Rousseau transitions from principle to practice and draw out what this means for the move from independent man to citizen. Beginning the transition to the lawgiver chapter in the *SC* at the end of II.vi, "On Law", Rousseau writes "Private individuals see the good they reject; ...All are equally in need of guides" (190). Though in different words, Rousseau tersely reiterates here the final objection of the independent reasoner. The independent

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<sup>9</sup> which has only even been examined by Scott (2020) and is only available in English in Scott's (2014) translation and the edition in Rousseau's collected works (1994).

reasoner understands what justice is but does not have any interest in being just. In the same way, private individuals understand what the common good is, but ultimately reject it in lieu of their private good. To solve this problem, Rousseau identifies that the people need guidance. He then immediately outlines what this guidance entails: “[private individuals] must be obliged to make their wills conform to their reason” (190). The transformation they need guidance for is the same as the transition from the natural to the civil state outlined in I.viii. The private man, through guidance, will be obliged “to act on the basis of principles and to consult his reason before listening to his inclinations” (176). This move does not happen spontaneously through individual reasoning. Rousseau is clear that this transition requires a guide and that the private individuals must be “obliged” to make this change. The guide who brings about this transition in the private individuals is the lawgiver.

### **The Lawgiver**

“On the Lawgiver” is the chapter where Rousseau discusses the way a society built on his principles could actually be founded. The lawgiver’s role is to “discover the best rules of society suited to each nation” and would require seeing “all men’s passions” without experiencing any of them (*SC* 2.7, 190). Relating this back to the opening lines, the lawgiver literally takes men as they are when he sees all their passions and gives them the laws as they can be. He would also have to be content with “distant glory for himself” because he works in one age and enjoys the reward in another (*SC* 2.7, 190). Since these are seemingly superhuman feats, Rousseau immediately concludes that “Gods would be needed to give laws to men” (*SC* 2.7, 190). However, the rest of the discussion outlines what is ostensibly the role of a man.

The lawgiver holds a controversial place in Rousseau’s thought to say the least, though this figure has been a productive and recurring one in contemporary democratic theory. Seyla Benhabib (1994) invokes the lawgiver as an instance of idealized rationality that reconciles legitimacy and the

democratic will.<sup>10</sup> In contrast, other commentators such as Bonnie Honig (2007), William Connolly (1994), and Geoffrey Bennington (1994) each in different ways read the lawgiver as a problematic heteronymic legitimator of democratic autonomy.<sup>11</sup> What is important for the current argument is not the feasibility of the lawgiver in a real state, but rather what sort of guidance/obligation Rousseau conceives the lawgiver provides to private individuals. The nature of this guidance reveals the nature of the transformation that must occur in a private person in order to be a good citizen in a just society. And once we understand the nature of the transformation, I will return to contemporary democratic theory readings of the lawgiver and the Social Autonomy reading.

From the outset, it is clear Rousseau conceives of the lawgiver as bringing about a robust change in man, the very change promised in the *GM* and earlier in the *SC*. He writes

He who dares to undertake to establish a people's institutions must feel that he is capable of changing, so to speak, human nature; of transforming each individual, who by himself is a complete and solitary whole, into a part of a greater whole from which that individual receives as it were his life and his being; of weakening man's constitution in order to reinforce it; of substituting a partial and moral existence for the physical and independent existence we all received from nature. II.vii.191

This transformation is the same kind of transformation alluded to at the beginning of the *GM* and constitutes the shift from natural to civil society. Each individual starts as a solitary whole, an independent person who lacks a moral existence. The movement from the individual to a greater whole seems to require the enlargement of his feelings Rousseau promises to provide the independent reasoner in the *GM*. The moral existence the lawgiver imparts is the same as the “value of good actions, the punishment of bad ones” (*GM* 1.ii.162) the independent reasoner will come to understand in the *GM*. This transformation lines up with the move from nature to civil society as described above.

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<sup>10</sup> Though Benhabib (1994) ultimately rejects Rousseau's lawgiver and civil religion and argues for a deliberative model for democratic legitimacy.

<sup>11</sup> For the purposes of this paper, I mostly focus on Honig's account on this side of the debate as it is the most prominent and recent.

The lawgiver has to bring about the transformation without direct coercive force. Rousseau is clear that the lawgiver is not allowed to legislate or be a prince/executive in the government (*SC* II.vii, 190-1). One might think that this leaves reason alone as the method of guidance for the lawgiver, but Rousseau dispels this option as well: “The wise who want to speak in their own language to the vulgar rather than in the language of the vulgar cannot be understood by them” (*SC* II.vii, 192). The language of the wise is later called the “sublime reason, which exceeds the grasp of vulgar men” (*SC* II.vii, 193). This line makes it clear that reason alone is not enough to bring about the right transformation in private individuals. They cannot understand the “sublime reason” of the lawgiver. The lawgiver imparts the values and institutions of Rousseau’s social contract onto private individuals, but the vulgar, a seemingly large number of the private individuals cannot understand from reason alone.

Rousseau goes on to describe why they cannot understand: “Each individual, appreciating no other plan of government than that which bears on his particular interest, has difficulty perceiving the advantages he is to derive from the constant privations imposed by good laws” (*SC* II.vii, 192). This is the same logic the independent reasoner offered. The independent reasoner also did not want to give up his particular interest and was dissatisfied with the privations imposed by good laws. The vulgar are shown to be a mass of independent reasoners. And these independent reasoners are unable to be convinced by the enlightened or sublime reason of the lawgiver. However, while each individual has difficulty perceiving the advantages he derives from good laws, this does not necessarily mean that the advantages are not real.

From here, Rousseau poses the fundamental paradox of making his principles of political right practicable. It is worth quoting at length:

In order for a nascent people to be able to appreciate sound maxims of politics and to follow the fundamental rules of statecraft, the effect would have to become the cause: the social spirit that is to be the work of the institution would have to preside

over the institution itself, and men would have to be prior to the laws what they are to become through the laws. *SC* II.vii, 192

Rousseau has a chicken and egg problem, and he knows it. One that Honig (2007) argues Rousseau never satisfactorily solves and can never be solved. The laws form the people who form the laws. This cycle is difficult if not impossible to initiate because the people cannot make nor obey good laws before they have been shaped by those laws. Rousseau is committed to a sovereign democratic people who create the laws, but those people need to be able to will the common good over their private good in order to make good laws. Rousseau clearly assesses they are incapable of this without guidance, but this guidance cannot be done through force or reason alone.

The way that the virtuous society can be brought about is through an appeal to divinity. In this sense, gods do make laws for men. The lawgiver will put his sublime reason into the “mouth of the immortals, in order to motivate by divine authority those who could not be swayed by human prudence” (*SC* 2.7, 193). This is what allows him to “persuade without convincing” (*SC* 2.7, 193). He persuades the vulgar independent reasoners through his appeal to divinity, but he does not convince them because convincing would need to be done through reason. Divinity is an extra-rational tool that can be used to “so to speak” change human nature by modifying the passions.

It is clear that an appeal to some sort of extra-rational entity is necessary for the guidance of the lawgiver to be effective. In a footnote, Rousseau quotes Machiavelli “*And truly, states Machiavelli, there was never any orderer of extraordinary laws for a people who did not have recourse to God, because otherwise they would not have been accepted. For a prudent individual knows many goods that do not have in themselves evident reasons with which one can persuade others*” (II.vii, 193 n. [Machiavelli 1531 I.11]).<sup>12</sup> This quotation makes it clear some recourse to the divine is practically necessary for the acceptance of a

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<sup>12</sup> Rousseau quotes Machiavelli in the original Italian. I have used Scott’s (2014) English translation.

good social contract. Persuasion through reason alone is unconvincing. It is important to note that even in this quotation from Machiavelli, reason is still principally behind the social contract that is being created. It is only that the principle by itself cannot be communicated through reason alone.

However, divinity can also be used as just another tool of deception by an independent reasoner. Rousseau emphasizes that “Any man can engrave stone tablets, or bribe an oracle, or feign secret dealings with some divinity, or train a bird to speak in his ear, or find crude ways to impress people” (*SC* II.vii, 193). An appeal to divinity is exactly the kind of deception that the rich and powerful use to convince the weak to agree to an unjust social contract. Rousseau has just revealed to his reader that they have no reason to trust an appeal to divinity. He has given yet another tool as to why he should not accept the virtuous social contract. However, he has also provided an argument for why people should be persuaded by the appeal to divinity when made with enlightened reason: “Trifling tricks may form a fleeting bond; only wisdom makes it lasting” (*SC* II.vii, 193). Only enlightened reason is capable of forming a lasting institution. And “whereas proud philosophy... sees in them [great founders] merely lucky imposters, the true politician admires in their institutions that great and powerful genius that presides over enduring establishments” (*SC* II.vii, 193). The people continue to be unconvinced by the virtuous lawgiver, but the true politician, who is presumably the person with enlightened reason, will understand and value the work of the virtuous lawgiver.<sup>13</sup> The unconvinced people will become persuaded by the use of the extra-rational means the lawgiver employs.

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<sup>13</sup> Paradoxically, the reason to become a virtuous lawgiver seems to be based in pride. However, it is not pride understood in the context of his contemporaneous political community, it is pride on the grand scale of history. It is recognition by those who also possess enlightened reason. This is what actually seems to constitute the motivations behind the enlightened reason of the lawgiver. When one reasons fueled by pride to the farthest extent, they come to realize that true prideful recognition comes in establishing a good and lasting regime. To the independent reasoner capable of or open to enlightened reason, Rousseau offers an argument as to why they should choose to become a virtuous lawgiver. The problem is, not many of the independent reasoners are open to this type of thinking.

It is clear from the chapter on the lawgiver that reason and philosophy sit behind and must be the guiding force for the civil religion of the virtuous society. Rousseau ends the discussion of the lawgiver writing: “One need not conclude... that among us politics and religion have a common goal, but that at the origin of nations the one serves as an instrument for the other” (*SC* II.vii 193-4). Religion or at least some sort of extra-rational appeal, in the hands of the enlightened lawgiver, serves as an instrument for the establishment of a just political society. An extra-rational appeal is a necessary instrument because reason alone is insufficient for the transformation people need to become good citizens. However, while reason is insufficient to convince citizens in practice, it is a necessary condition that the guidance the lawgiver gives be ultimately justified by reason in principle. This would mean that the lawgiver must be animated and guided by the very principles of political right Rousseau has outlined up to this point in the *SC*.

This understanding of religion lines up well with Rousseau’s brief account of religion in I.ii of the *GM*. Just after outlining the logic of the independent reasoner, he briefly considers religion on its own as an answer for him. However, Rousseau quickly concludes that when and wherever politics serves as the instrument of religion, “The whole earth would be covered with blood and the human race would soon perish” (*GM* 160). However, this is only the case if “philosophy and laws did not hold back the furies of fanaticism and if the voice of men was not louder than that of the Gods” (*GM* 160). When religion itself is the basis of the political system, fanaticism takes over and the multitude indulges in “a thousand horrible, destructive passions” (*GM* 160). Religion itself is not an answer to the independent reasoner at all because it allows them to continue to be ruled by their passions and even exacerbates those passions. “Philosophy and the laws” hold back that fanaticism by ensuring both that reason is consulted before the passions and that people care for more than their own narrow self-interest.

At this point we have now determined that extra-rational religious or divine means are necessary to transform individuals into citizens. We have also determined that these extra-rational means must be used as an instrument by the lawgiver in his enlightened reason. However, this process should not be confused for civil religion itself. The civil religion's substance is determined by the sovereign once it has been created. Rousseau writes "There is, however a purely civil profession of faith whose articles it belongs to the sovereign to determine, not precisely as dogmas of religion but as sentiments of sociability, without which it is impossible to be a good citizen and a loyal subject" (IV.viii, 271). The civil religion continues to hold the citizens in their new sociable state, but it only formally comes into being after the sovereign has been created. However, civil religion has the same flavor as the lawgiver's guidance. The end of civil religion is to maintain citizens in the sociability the lawgiver creates. The lawgiver imbues the citizens with the sentiments of sociability and the civil religion is one of many institutions that maintains them in it.

Though not directly the work of the lawgiver, it is worth understanding the content of the civil religion as it helps to clarify the kind of extra-rational appeal the lawgiver makes. We have already seen that the civil religion does not look like traditional religion because it does not dictate dogmas, but sentiments of sociability. Like the lawgiver, the civil religion cannot coerce individual belief through force. Rousseau writes "Without being able to obligate anyone to believe them, it may banish from the state anyone who does not believe them. I may banish him, not as impious but as unsociable, as incapable of sincerely loving the laws, justice, and if need be sacrificing his life to his duty" (IV.viii 271). The transformation from independent man to citizen is necessary for acceptance into the state, but it cannot be a forced transformation. Once the society has been established, the citizens can and should banish anyone who renounces their sociability and citizenship. They cannot tolerate independent reasoners in their midst. The state would become illegitimate if independent reasoners were allowed to put their own good before the public good, especially in their legislative

capacities. Over time, the logic of the independent reasoner returns to society and destroys the reciprocity of the social contract (see *SC* III.xi).

Rousseau goes on to outline the dogmas (which Rousseau states are not precisely dogmas in the religious sense) of the civil religion: they are “the existence of a powerful, intelligent, beneficent, foresighted and provident divinity, the life to come (*la vie à venir*), the happiness of the just, the punishment of the wicked, the sanctity of the social contract and the laws” (IV.viii 271). While a divinity of some sort must be believed in,<sup>14</sup> the actual content of that divinity is a belief in the personal good of being just and the punishment of the unjust, something vindicated by enlightened reason and ensured by Rousseau’s principles of political right. More to the point, the sanctity of the laws and the social contract are the exact kind of value the lawgiver imbues the citizens with. While the sanctity of the laws comes to be a dogma willed by the sovereign, the lawgiver’s key act is the sanctification of the laws. By sanctifying the laws, the lawgiver gives the laws power. It is through this act that the laws come to be respected by each citizen and therefore become legitimate in practice.

### **Creating Citizens**

We now understand how the transition from man to citizen occurs. The independent reasoner must be guided through non-rational means to develop broader social sentiments and believe in the sanctity of the laws. This is how the independent reasoner develops an interest in being just. Practically, this guidance is done by the lawgiver. It is only when we look at the practical establishment of the political society that this transformation becomes clear. In practice, Rousseau believes a mass of independent reasoners capable of this transformation, just not capable of *reasoning*

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<sup>14</sup> And maybe a belief in the afterlife. Though, while the most obvious reading of “the life to come (*la vie à venir*)” is as a promise of eternal life, this is not a necessary interpretation of the phrase. Rather, it is possible that the life to come is simply hope for and belief in the future continuation of the just political society as well as good life as an individual i.e. the temporal life to come. This interpretation fits well with what has been earlier stated about the enlightened reason of the lawgiver, but I cannot substantiate it here.

their way to it. From the outset, the independent reasoner could understand justice but saw no interest in being just. For Rousseau, reason, at least as it exists in most people, cannot alter the passions. This is what the Social Autonomy accounts miss. They presume that when given reasoned arguments, most people will see the interest they have in being just and agree to a just social contract. As seen above, Neuhouser (2007) in no uncertain terms argues that people agree to the social contract “only on the basis of their own rational insight” (22). Cohen (2010) on the other hand, argues that human beings have at least some interest in the good of others from the start. In his words “it is wrong to suppose the parties to Rousseau’s social contract are moved solely by self-love” (87). Because of this, he too assesses that reason alone brings people to agree to the contract. However, as I have shown, an interest beyond the self is only present after the lawgiver’s extra-rational transformation. People are capable of having an interest beyond just narrow self-interest, but they do not have it inherently, and they cannot be brought to have it through reason. Instead, on Rousseau’s account, one reasons instrumentally in pursuit of their passions. The independent reasoner possesses reason (as his moniker dictates), yet his independence sets his purview to himself alone. Reason guided by self-interest is not conducive to justice and the legitimate state so he must be made to care about others, to feel bonded with them in political society. His feelings must be enlarged.

Once these feelings are enlarged by the lawgiver, the Social Autonomy arguments function well in outlining Rousseau’s principles of political right. The principles of political right outlined in the *SC* actually do answer the independent reasoner of the *GM*. The independent reasoner’s two main objections were that (1) politics is a zero-sum-game and (2) the social contract offers no real assurance that one’s rights will be respected by others. If and when people are affectively transformed to care for the common good, they desire the common good over their own good, resulting in a non-zero-sum reality of politics. In addition, when the laws are viewed as sacred and

legitimate, they will be respected by their fellow citizens, ensuring reciprocity. This all flows from the whole group of independent reasoners developing an interest in being just. In fact, if the independent reasoner could see the legitimate social society from the outside and possessed a high aptitude to reason instrumentally, he would join. He would have already witnessed justice being done, the benefits that result from it, and the guarantee that it continues. The issue is that at the moment of founding, an independent reasoner, when faced with dealing with individuals exactly like himself (or even who he fears are like himself), has no such guarantees.

While I have just sketched a very brief answer for the independent reasoner, Cohen (2010) best argues for and explicates how the social contract is legitimate in principle. The guiding ideal of Rousseau's political thought, according to Cohen, is that of a free community of equals: "a social-political world in which individuals realize their nature as free by living together as equals, giving the laws to themselves, guided in those lawgiving judgments by a conception of their common good" (10). He is correct in this. Once the shift to the civil state has occurred, Rousseau outlines a number of formal and informal institutional features, some necessary and some advisory, that help maintain the newly minted citizens in their role, including civil religion as discussed above. Cohen persuasively outlines many of these aspects such as the rule of law (135-6), universal suffrage (137), and property rights (139-40), though he does not address the direct role of civil religion. These aspects and many more are what constitute and maintain the legitimate state for Rousseau, but as I have shown, they all come into being after or as the lawgiver transforms people into citizens that can endorse these institutions. The legitimate state is justifiable through reason, but with the caveat that most people would not be able to comprehend that legitimacy under Rousseau's understanding because they reason narrowly guided by self-interest.

What Social Autonomy readings need is an emendation in how to understand Rousseau's account and assessment of reason. Reason is not a motivating force; it is only an evaluative and

instrumental force. As such, reason functions only with a view to what the passions point toward. While the enlightened reason of the lawgiver actually does provide a political schematic which would allow for the self-interest of each individual to be maximized, this vision cannot be accessed by the average citizen due to their lower capacity to reason on the grand scale.<sup>15</sup> Instead, for this vision to be realized, the multitude must develop an interest in the good of one another. The lawgiver's act is a sort of stop-gap practical measure to make up for the lack of reasoning. The transformation alters the people's emotions and passions, allowing them to more easily understand their true interest in being just.

Returning now to the democratic theory accounts of the lawgiver, the understanding of reason I have just outlined is implicitly the one that Benhabib (1994) adopts when she reads the lawgiver as a an "instance of idealized rationality" (30). The lawgiver reasons in a way that the masses are incapable of, and he practically enacts a founding that is still theoretically justified in reason. However, on her account which goes beyond the bounds of Rousseau, the lawgiver compromises the democratic legitimacy of the people in the process because the lawgiver exists outside their democratic will. She posits that the paradox of founding is fundamental to Rousseau's thought and argues that a deliberative model of legitimacy is preferable to Rousseau's model of lawgiving and civil religion.<sup>16</sup>

Honig (2007) on the other hand, reads Rousseau as understanding a deep and perennial problem with political practice. She correctly identifies that as ideal as the lawgiver's reason may be

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<sup>15</sup> This is consistent with Rousseau's account of reason in the *Second Discourse* when one reads the reason of Socrates as enlightened reason: "In a word, it is in this natural feeling [pity], rather than in subtle arguments, that we must seek the cause of the repugnance every man would experience in doing evil, even independently of the maxims of education. While it may belong to Socrates and minds of his stamp to acquire virtue through reason, the human race would have ceased to exist long ago if its preservation had depended on the reasoning of those who make it up" (85).

<sup>16</sup> Her account of Rousseau's civil religion is along the lines of my own. (30 n.12)

in theory, in practice the lawgiver is a political actor enmeshed in the messy reality of politics. For Honig, the lawgiver

simply does not provide the certainty or force that Benhabib and other commentators associate with him for good or ill. The lawgiver may offer to found a people, he may even attempt to shape them, but in the end it is up to the people themselves to accept or reject his advances. They may be dependent on his good offices, but he is no less dependent on their good opinion. (6)

The lawgiver's transformative act is truly practical and ultimately rests on persuasion.<sup>17</sup> While in theory laws may be justifiable in reason, in practice laws and the bonds of society are legitimate because the people believe they are. And people believe things not just because their reason leads them to. The people are constituent to the founding along with the lawgiver. While their will may be transformed by the lawgiver, it is still ultimately their will that they allowed to be transformed. The lawgiver's transformative power is a contingent and uncertain one; there is no guarantee that a people will be formed by a persuasive force guided by enlightened reason. Luckily and perhaps also unluckily, for Rousseau humans are emotional beings capable of feeling that they are a part of something bigger than themselves. They are able to be persuaded of any number of things and develop sentiments in any number of ways. Emotional bonds are artificially created either purposefully by a lawgiver (with enlightened reason or not) or accidentally from historical contingency, but it is a necessary condition for a political community of equals to come into being. Honig understands and explicates the practical side of the *SC*. For her, the lawgiver and ultimately the whole political society acts and exists in the world, the messy political world without known outcomes and perfect reason.

The disagreement between Benhabib and Honig on the lawgiver is ultimately a debate between theory and practice. Benhabib highlights the theoretical aspect of the lawgiver's reason, but Honig explicates the practical political nature of the lawgiver's actions. While Benhabib's theoretical

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<sup>17</sup> The persuasive nature and language of the lawgiver has been fully fleshed out by Christopher Kelly (1987).

understanding of the lawgiver is indeed present in Rousseau's thought and consistent with Social Autonomy readings of Rousseau, I join Honig in emphasizing the practical aspects of Rousseau's thought.

### **Conclusion**

As explications of Rousseau's principles of political right, Social Autonomy readings are useful and insightful. They persuasively outline what Rousseau means when he takes "laws as they can be" (*SC*, 163). However, they assume that "men as they are" (*SC*, 163) are willing and able to accept these laws through their own rational insights. I have argued that this is not the case. By paying attention to the distinction between theory and practice and attending to the GM and the lawgiver, I hope to have shown how Social Autonomy readings of Rousseau are incomplete. Rousseau assesses that most human beings are narrowly self-interested and do not possess an enlightened capacity to reason. Because of this, most people must be educated and shaped to become the type of citizen that can correctly reason to accept and participate in a legitimate social contract. At the end of the day, political society is conventional and contingent, even if it can theoretically be legitimated in reason.

My reading of Rousseau emphasizes the practical side of the social contract. Rousseau is not just concerned with the principles of political right in the *SC*, he is also concerned with the less-than-ideal reality of actually bringing a state that adheres to his principles into being. Social cohesion and a commitment to the common good are not things Rousseau sees as flowing from reason in practice. Instead, people must be persuaded to buy into a political society and develop an interest in each other.

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