

The Use and Abuse of Rousseau's The Social Contract in Modern Political Thought: Toward a Reinterpretation

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Jean-Jacques Rousseau's *The Social Contract, or Principles of Political Right* (henceforth the *Social Contract*) is one of the first and most central texts for the modern understanding of the people and its fundamental political authority, which undergirds and legitimizes democracy. In this highly controversial and influential volume, first published in Amsterdam and Paris in 1762, Rousseau analyzed the political self-constitution of the people as a coherent and sovereign collectivity with a general will, which he argued was necessarily both prior and superior to governments. He insisted that this sovereign and legislative power could not be represented by or alienated to a government. This challenged the contemporary political order characterized by absolute monarchies, and the book went on to exercise a significant posthumous influence on the French Revolution and subsequent political thought and practice. However, liberal critics have denounced Rousseau's conception of the people and the general will as absolutist threats to the individual and liberty, as well as the intellectual genesis of the excesses of the French Revolution, the totalitarianisms of the twentieth century, and, more recently, populism. In this article I will show that this view is wrong. Rousseau's *Social Contract* provides a highly original and insightful analysis of the formation and implications of popular sovereignty, which remains relevant to contemporary democratic theory and practice over and against these liberal critics.

This article offers a genealogy and a critique of post-revolutionary critiques of Rousseau's *Social Contract*, based on a historical recontextualization and reinterpretation of Rousseau's classical work. The first section of the article outlines and analyzes the origins and development of liberal critiques of Rousseau from the Thermidorean reaction to Cold War anti-totalitarianism and contemporary critiques of populism. In the second section, I consider the argument of the *Social Contract* in its original intellectual context, as an immanent critique of contemporary theorists of sovereignty, who argued that the people only achieved a political existence in and through the alienation of their freedom to a sovereign government. Rousseau showed that their arguments presupposed that the people were both prior to and, implicitly, superior to all forms of government. The third section examines the self-constitution of the people and the conceptual residue of the aforementioned theories of sovereignty, which renders the social contract inoperable and inadvertently reproduces the duality of multitude and people within the latter. This necessitates a reinterpretation of Rousseau's social contract that emphasizes his description of the people as the result of a continuous act of association that does not so much convert the multitude into a people once and for all as it unites them in and as a continuous and open-ended political process of self-determination and self-legislation. In the fourth section, I show that Rousseau anticipated many subsequent liberals' concerns about unrestrained popular sovereignty, in his considerations of the possibility of containing the duality of the people via the legal system. However, he concluded that only the people could formulate and legitimize the law and, as such, that the law could not be used to contain or constrain the people. Popular self-determination and self-legislation necessarily include the possibility of excesses, mistakes, and potentially even undoing itself and the conditions of its making. Finally, I address the limitations of the liberal post-revolutionary critiques of Rousseau in light of this reinterpretation of the *Social Contract*.

I. Who's Afraid of Rousseau?

Rousseau's arguments for popular sovereignty over and against contemporary absolutist governments provoked controversy from the outset, and the *Social Contract* was banned a few weeks after its initial publication in France, as was its author effectively shortly thereafter.¹ However, the

1. David Lay Williams, *Rousseau's Social Contract: An Introduction* (Cambridge: Cambridge Univ. Press, 2013), p. 1.

familiar critique of this work as the intellectual blueprint of (popular) despotism stems from its subsequent association with the French Revolution and, in particular, with the dictatorial measures and violent excesses of the second phase of the Revolution, which the Thermidorean reaction dubbed “the Reign of Terror.” The *Social Contract* was a central reference point in public discourse in the early stages of the Revolution.² The National Assembly’s “Declaration of the Rights of Man and Citizen,” issued on August 26, 1789, which also came to serve as the preamble to the constitution of September 3, 1791, insisted that national sovereignty was its essential political principle and that “law is the expression of the general will.”³ Such implicit references to Rousseau’s *Social Contract* were common throughout the Revolution, though they were often inconsistent with the actual source material.⁴ Thus, while the *Social Contract* explicitly rejected any representation of the people’s sovereign and legislative power,⁵ the aforementioned article in the “Declaration” continued to make reference to the *representatives* making the law.⁶ The Constitution of 1791 affirmed that “[t]he French Constitution is representative” and that “the legislative power” would be “delegated to a National Assembly, composed

2. Bernard Manin, “Rousseau,” in *A Critical Dictionary of the French Revolution*, ed. François Furet and Mona Ozouf (Cambridge, MA: Harvard Univ. Press, 1989), pp. 829–31.

3. “Declaration of the Rights of Man and Citizen,” in *The French Revolution: A Document Collection*, ed. Laura Mason and Tracey Rizzo (New York: Houghton Mifflin, 1999), p. 103. The Constitution of 1793 likewise invoked popular sovereignty and insisted that “law is the free and solemn expression of the general will.” See “The Constitution of 1793,” in *A Documentary Survey of the French Revolution*, ed. See John Hall Stewart (New York: Macmillan, 1951), pp. 456–57.

4. François Furet, “Rousseau and the French Revolution,” in *The Legacy of Rousseau*, ed. Clifford Orwin and Nathan Tarcoff (Chicago: Univ. of Chicago Press, 1997), pp. 173–74; Manin, “Rousseau,” pp. 832–41.

5. Jean-Jacques Rousseau, *Of the Social Contract, or Principles of Political Right*, in *The Social Contract and Other Political Writings*, ed. Victor Gourevitch (Cambridge: Cambridge Univ. Press, 1997), pp. 57 (2.1), 114 (3.15). References to the *Social Contract* will include the page numbers followed by the book and chapter numbers in parentheses.

6. “Rights of Man and Citizen,” p. 103. Later in his private communication with a group of Polish politicians, Rousseau proposed that populous countries might rely on a representative legislative assembly, suggesting that frequent elections and imperative mandates could forestall corruption and ensure that they expressed the general will (contrary to *Social Contract*). In any case, the use of imperative mandates was rejected by the French Constitution of 1791. Jean-Jacques Rousseau, “Considerations on the Government of Poland,” in *The Social Contract and Other Political Writings*, pp. 200–202; “The Constitution of 1791,” in Stewart, *A Documentary Survey of the French Revolution*, p. 238.

of temporary representatives freely elected by the people.”⁷ While the revolutionaries frequently invoked Rousseau’s language and ideas, they did not follow or aim to realize them as such.

Chief among those invoking the language and ideas of the *Social Contract* were the Jacobins, some of whom would go on to play a central role in the dictatorship of the Committee of Public Safety and the Reign of Terror.⁸ This became the basis for the subsequent association of Rousseau with the dictatorship and the Reign of Terror—even though the Jacobins generally adhered to and promoted a representative form of government and explicitly avoided invoking Rousseau in relation to their dictatorial measures: “[T]he theory of revolutionary government is as new as the revolution which brought it into being. It should not be sought in the books of political writers,” as Maximilien Robespierre explained in his defense of the terror on December 25, 1793.⁹

Nonetheless, subsequent liberal critics identified the Reign of Terror as the logical conclusion to Rousseau’s doctrine of undivided popular sovereignty and his rejection of representation. They claimed that Rousseau’s doctrine of popular sovereignty reproduced the conceptual form of the *ancien régime* (i.e., “sovereignty”) and thus inevitably led to a similar form of absolutism and terror: “Some kind of patriotic pride seemed to demand that however powerful and terrible the sovereignty of the great kings had been, the sovereignty of a great people should still surpass it,” as Abbé Emmanuel Sieyès argued against Rousseau during the Thermidorean reaction.¹⁰ Sieyès contended that “the French people as a whole does not have these [sovereign] powers, these unlimited rights, which flatterers attribute to it. When a political association is formed not all the rights of the members, and thus not the sum total of all the individuals’ powers, come to be held in common,” insisting that such “unlimited powers are a

7. “The Constitution of 1791,” p. 234; Bernard Manin, *The Principles of Representative Democracy* (Cambridge: Cambridge Univ. Press, 1997).

8. See Michael Kennedy, “The Foundation of the Jacobin Clubs and the Development of the Jacobin Club Network, 1789–1791,” *Journal of Modern History* 51, no. 1 (1979): 713–25; François Furet, “Terror,” in Furet and Ozouf, *A Critical Dictionary of the French Revolution*, pp. 137–50.

9. Manin, “Rousseau,” pp. 833–37; Maximilien Robespierre, “On the Principles of Revolutionary Government,” in *Virtue and Terror* (London: Verso, 2007), pp. 98–99; Furet, “Rousseau,” pp. 167–76.

10. Emmanuel Sieyès, “Sieyès’s Views Concerning Several Articles of Sections IV and V of the Draft Constitution [First Thermidorian Intervention],” in *The Essential Political Writings*, ed. Oliver W. Lembcke and Florian Weber (Leiden: Brill, 2014), p. 156.

political monster and a great error of the French people, which it will not commit again in the future.”¹¹

Benjamin Constant proposed that “the *Social Contract* can only serve today to supply weapons and pretexts of all kinds of tyranny, that of one man, that of several and that of all, to oppression either organized under legal forms or exercised through popular violence.”¹² He explicitly linked this to the excesses of the French Revolution: “during the French Revolution, when the tide of events brought to the head of the state men who had adopted philosophy as a prejudice, and democracy as fanaticism, these men were bound by a boundless admiration for Rousseau. . . . They believed everything should give way before collective authority, and that all restrictions of individual rights would be compensated by participation in the social power.”¹³ Constant’s critique was reiterated in his famous address to the Royal Academy in Paris in 1819, “The Liberty of the Ancients Compared with That of the Moderns,” wherein he identified Rousseau with the ancients’ ideal of freedom as “exercizing collectively, but directly, several parts of the complete sovereignty,” which implied “the complete subjection of the individual to the authority of the community” and was thus tantamount to despotism and incompatible with modern freedom.¹⁴

This critique was resurrected in the middle of the twentieth century as part of the liberal democratic critique of so-called “totalitarianism,” designating a distinctly modern form of despotic government characterized by strict ideological control and the deployment of terror. This expansive category extended from the Jacobins in the second phase of the French Revolution, through Benito Mussolini’s fascist regime and Adolf Hitler’s National Socialist dictatorship, and up to and including Stalinism, and it primarily served to establish a continuity between fascism and communism in order to delegitimize the latter and promote liberal democracy during the Cold War.¹⁵

11. *Ibid.*, pp. 155–56.

12. Benjamin Constant, “The Spirit of Conquest and Usurpation and their Relation to European Civilization,” in *Political Writings*, ed. Biancamaria Fontana (Cambridge: Cambridge Univ. Press, 1988), p. 106.

13. *Ibid.*, p. 108. See also Benjamin Constant, “The Liberty of the Ancients Compared with That of the Moderns,” in *Political Writings*, p. 318.

14. *Ibid.*, pp. 318–20, 311; Furet, “Terror,” p. 149; see also Annelien de Dijn, *Freedom: An Unruly History* (Cambridge, MA: Harvard Univ. Press, 2020).

15. Enzo Traverso, “Totalitarianism between History and Theory,” *History and Theory* 56, no. 4 (2017): 97–118; Marco D’Eramo, “Populism and the New Oligarchy,” *New*

Jacob Leib Talmon proposed that democracy has two modern traditions, both of which affirm liberty as their supreme value but conceive it in fundamentally incompatible ways. Echoing Constant, Talmon suggested that the liberal democratic tradition “finds the essence of freedom in spontaneity and the absence of coercion,” whereas the parallel “totalitarian democratic tradition,” which he identified with Rousseau, “believes it to be realized only in the pursuit and attainment of an absolute collective purpose.”¹⁶ Moreover, he insisted that Rousseau’s doctrine of popular sovereignty was conceptually identical to absolute monarchy and supported either an unlimited majoritarianism or a dictatorship of those who (claimed they) knew the general will and were willing to impose it on the people, which produced the Jacobin dictatorship as well as subsequent totalitarianisms.¹⁷ Isaiah Berlin’s 1958 inaugural lecture “Two Concepts of Liberty” reconceptualized Constant’s ancient and modern liberties as positive and negative freedom.¹⁸ Berlin identified the positive notion of freedom with Rousseau and the *Social Contract*, which he identified as “the most sinister and most formidable enemy of liberty in the whole history of modern thought” and as responsible for the totalitarian excesses of the French Revolution and the twentieth century.¹⁹

François Furet’s 1978 *Interpreting the French Revolution* identified the Jacobin Reign of Terror as the inevitable, totalitarian result of attempting to replace the *ancien régime* with the revolutionary ideology of “pure democracy” drawing on Rousseau. He insisted that “[Rousseau’s] political thought set up well in advance the conceptual framework of what was to become Jacobinism and the language of the Revolution.” While successive political groups took power, they consistently “pursued the same objective,” which was “to radicalize the Revolution by making it consistent with its discourse.”²⁰ Furet held that Rousseau’s doctrine of

Left Review 82 (2013): 20. See also Abbott Gleason, *Totalitarianism: The Inner History of the Cold War* (Oxford: Oxford Univ. Press, 1995).

16. J. L. Talmon, *The Origins Of Totalitarian Democracy* (London: Mercury, 1961), pp. 1–2, 43.

17. *Ibid.*, pp. 46, 43–49.

18. Isaiah Berlin, “Two Concepts of Liberty,” in *Liberty*, ed. Henry Hardy (Oxford: Oxford Univ. Press, 2002), pp. 178–79, 169.

19. *Ibid.*, pp. 207–12, 190–98; Isaiah Berlin, *Freedom and Its Betrayal: Six Enemies of Human Liberty* (Princeton, NJ: Princeton Univ. Press, 2014), pp. 52, 48–52.

20. François Furet, *Interpreting the French Revolution* (Cambridge: Cambridge Univ. Press, 1981), pp. 31, 70; see also *ibid.*, pp. 183–204.

popular sovereignty “unwittingly recovered the mythical image of unlimited power” from the absolute monarchy and identified it with “the people” (and those who claimed to speak for them), thereby inevitably leading to the Reign of Terror.²¹

The most recent and influential reiteration of this critique of Rousseau is to be found in contemporary critiques of populism. Most of the literature now converges around Cas Mudde’s influential definition of it as movements and parties adhering to “an ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, ‘the pure people’ versus ‘the corrupt elite,’ and which argues that politics should be an expression of the *volonté générale* (general will) of the people.”²² Mudde also explains that populists “[reject] all limitations on the expression of the *general will*” and are thus “inherently hostile to the idea and institutions of *liberal democracy*”—reiterating the alleged

21. Ibid., pp. 36, 63, 77–79, 183–84, 193, 201; Claude Lefort, *Democracy and Political Theory* (Cambridge: Polity Press, 1988); Lefort, *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism* (Cambridge, MA: MIT Press, 1986). Hannah Arendt also formulated an influential antitotalitarian critique of Rousseau, but it focused solely on his view of social inequality. Hannah Arendt, *On Revolution* (London: Penguin, 1990), pp. 59ff; see also Arendt, *The Human Condition* (Chicago: Univ. of Chicago Press, 1998), pp. 22–78; Hanna Pitkin, *Attack of the Blob: Hannah Arendt’s Concept of the Social* (Chicago: Univ. of Chicago Press, 1998).

22. Cas Mudde, “The Populist Zeitgeist,” *Government and Opposition* 39, no. 4 (2004): 543. See also Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism: A Very Short Introduction* (Oxford: Oxford Univ. Press, 2017), pp. 5–20; Cristóbal Rovira Kaltwasser et al., “Populism: An Overview of the Concept and the State of the Art,” in *The Oxford Handbook of Populism*, ed. Cristóbal Rovira Kaltwasser et al. (Oxford: Oxford Univ. Press, 2017), pp. 10–13. Another influential strand of literature on populism draws on Claude Lefort’s antitotalitarian political thought, which suggested that any modern attempts to represent the people as a coherent body with a general will (“the people-as-one”) reiterates the absolutist logic of incarnation and undermines the pluralism of liberal democracy, thus degenerating into totalitarianism. This argument has been deployed to identify populism as an attempt to manifest the people and, as such, a totalitarian threat to liberal democracy, often with reference to Rousseau. Jan-Werner Müller advances a parallel and highly influential argument against populism, which he defines as the moral imagination of a coherent and morally pure people opposed to a corrupt elites and other groups, which he argues is inherently anti-pluralist and anti-democratic (that is to say, totalitarian) and explicitly identifies with the Jacobins but dissociates from Rousseau. Lefort, *Democracy and Political Theory*, esp. pp. 9–21; Nadia Urbinati, “Democracy and Populism,” *Constellations* 5, no. 1 (1998): 116–19; Andrew Arato and Jean Cohen, “Civil Society, Populism and Religion,” *Constellations* 24 (2017): 283–95; Jan-Werner Müller, “‘The People Must Be Extracted from Within the People’: Reflections on Populism,” *Constellations* 21, no. 4 (2014): 485–87; Jan-Werner Müller, *What Is Populism?* (London: Penguin, 2017), pp. 93f, 29.

contradiction between Rousseau's conception of the general will and contemporary liberal democracy.²³

The post-revolutionary critiques of Rousseau's *Social Contract* are closely related and can be grouped into two primary clusters: the first one, primarily advanced by Sieyès, Constant, and Furet, alleges that Rousseau's insistence on popular *sovereignty* makes his doctrine identical to the absolutist monarchies that he criticized insofar as "sovereignty" denotes an indivisible and absolute power unrestrained by law and/or institutions. The second strand of critique can be found in the work of Constant, Talmon, Berlin, and, to a lesser extent, Mudde, and suggests that Rousseau prioritizes and promotes a distinct conception of freedom as collective power at the expense of individual liberty, which is bound to become oppressive. Both of these strands of critique coincide in their insistence that Rousseau's conception of the people as a coherent and collective sovereign will inevitably become despotic and oppress individuals unless it is constrained by liberal democratic institutions of representative government, the division of powers, and constitutionalism.

II. The People before Despots

However, it should be remembered that Rousseau's *Social Contract* was formulated in opposition to contemporary absolutism and took the form of an immanent critique of the theories of sovereignty that were used to legitimize it, arguing that the people could only have a political existence in and through their submission to and representation by the sovereign. Rousseau showed that their arguments in fact presupposed the existence of the people as a coherent and sovereign political entity:

A people, says Grotius, can give itself to a king. So that according to Grotius, a people is a people before giving itself to a king. That very gift is a civil act, it presupposes a public deliberation. Hence before examining

23. Mudde actually acknowledges the tensions between liberalism and democracy, and he even suggests that populism contains a "biting critique of the democratic limitations within liberal democracies." Jan-Werner Müller, on the other hand, forcefully rejects conceptualizations of populism as "illiberal democracy" for legitimizing populist attacks on (liberal) democracy. Mudde, "The Populist Zeitgeist," p. 561; Müller, *What Is Populism?*, pp. 49–60. The *Social Contract* itself predates modern liberalism and representative government, and as such it does not offer any pronouncements on either. Representative government is here employed in the modern sense of the term, where it is vested with sovereign and legislative power (contrary to Rousseau). See Bernard Manin, *The Principles of Representative Democracy* (Cambridge: Cambridge Univ. Press, 1997).

the act by which a people elects a king, it would be well to examine the act by which a people is a people. For this act, being necessarily prior to the other, is the true foundation of society.²⁴

Hugo Grotius has the dubious honor of standing in for a broader tradition of political thought, which Rousseau describes as “the abettors of despotism,” who conceived the people as defined by their subjection to an absolute monarch.²⁵ As Grotius argued in his 1625 *Rights of War and Peace*:

[W]e must first reject their Opinion, who will have the Supreme Power to be always, and without Exception, in the People; so that they may restrain or punish their Kings, as often as they abuse their Power. What Mischiefs this Opinion has occasioned, and may yet occasion, if once the Minds of People are fully possessed with it, every wise Man sees. I shall refute it with these Arguments. It is lawful for any Man to engage himself as a Slave to whom he pleases; as appears both by the *Hebrew* and *Roman* Laws. Why should it not therefore be as lawful for a People that are at their own Disposal, to deliver up themselves to any one or more Persons, and transfer the Right of governing them upon him or them, without reserving any Share of that Right to themselves?²⁶

Grotius proceeded to insist that not only was it possible for a people to alienate their freedom and submit to a ruler or a group of such, but that the peoples’ antecedent alienation and submission formed the origin and basis of all societies and their various forms of government. Thomas Hobbes, who also figured amongst Rousseau’s abettors of despotism,²⁷

24. Rousseau, *Social Contract*, p. 49 (1.5).

25. Ibid., p. 48 (1.5). The term despotism is derived from the ancient Greek *despotēs*, denoting a master’s rule over a household, but it was also used to describe various “barbarian” forms of government. Its modern political usage, which Rousseau is relying on here, derives from Charles-Louis Montesquieu’s 1748 *The Spirit of the Laws*, where it is identified as a form of government wherein a single ruler exercises sovereign power unrestrained by law. Montesquieu contrasted despotism with monarchy, in which the single ruler’s authority was delimited by law, and a republic, in which the people or a part thereof exercised sovereign power. Charles-Louis de Montesquieu, *The Spirit of the Laws* (Cambridge: Cambridge Univ. Press, 1989), p. 10; Roger Boesche, “Fearing Monarchs and Merchants: Montesquieu’s Two Theories of Despotism,” *Political Research Quarterly* 43, no. 3 (1990): 741–61.

26. Hugo Grotius, *The Rights of War and Peace*, 3 vols., ed. Richard Tuck (Indianapolis: Liberty Fund, 2005), 1:260–61.

27. Rousseau, *Social Contract*, p. 43 (1.2).

went even further, arguing that “the people” only existed as a political entity in and through their mutual agreement to subject themselves to and be represented by a single sovereign. Insofar as the people only existed politically through the sovereign’s representation, it could not oppose the sovereign without dissolving into an incoherent multitude of individuals incapable of governing.²⁸

In the first chapters of the *Social Contract*, Rousseau outlines the fundamental illegitimacy of any alienation of freedom, from slavery to despotism, and then proceeds to engage with the arguments of the abettors of despotism in more detail. Despotism here denotes any form of government not characterized by popular self-determination and self-legislation.²⁹ He formulates an immanent critique of these abettors of despotism, arguing that if a people is capable of giving itself to a king, as Grotius and Hobbes argued, it must be assumed to have a coherent and independent political existence and the capacity to act collectively that predates its subjection to a king. It is possible to have a people without a king but not a king without a people. As such, the people must be understood as more than the subjects of a king or any other form of government that they might institute. The people are both prior to and, implicitly, superior to any and all forms of government.³⁰ Rousseau argues that the people thus constitute “the true foundation of society” and all of its possible governmental forms, which must consequently be conceived as derivative of and subordinate to the fundamental sovereignty of the people, which cannot be alienated or represented.³¹ It is therefore relevant to examine the first convention whereby “a people is a people” in more detail.

28. Thomas Hobbes, *The Elements of Law Natural and Politic* (London: Routledge, 2013), pp. 172–73; Hobbes, *Leviathan: With Selected Variants from the Latin Edition of 1668* (Indianapolis: Hackett, 1994), pp. 75–86, 106–10, 116–17, 213; Quentin Skinner, *Visions of Politics III: Hobbes and Civil Science* (Cambridge: Cambridge Univ. Press, 2014), pp. 204–8.

29. Rousseau, *Social Contract*, pp. 42–49 (1.2–5).

30. Rousseau diverges from his famous monarchomarch forebears insofar as he insisted that popular sovereignty was not representable by nobles, lesser magistrates, etc. See Julian Franklin, ed., *Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, and Mornay* (New York: Pegasus, 1969).

31. Recall Rousseau’s insistence that “sovereignty cannot be represented for the same reason that it cannot be alienated; it consists essentially in the general will, and the will does not admit of being represented: either it is the same or it is different; there is no middle ground.” Rousseau, *Social Contract*, p. 114 (3.15). Governments are appointed as agents of the people, subject to recall, to execute and maintain its general will and/as laws; see *ibid.*, pp. 82–86 (3.1), 115 (3.15).

III. The Act by Which a People Is a People

Rousseau's description of the "act by which a people is a people" appears misleadingly simple at first glance: the two iterations of the term "people" united by the copula "is" make it appear as a basic statement of (self-) identity or a tautology. However, the word "act" indicates that there is more at work. Rousseau identifies this "act" with the "act of association," which is a unanimous decision of an assembled "multitude" of individuals, i.e., the initial "people," to form a cohesive political "body," i.e., the second "people."³² In other words, a fundamental transformation of the concept of the "people" takes place between the two iterations of the term in this passage. The repetition and the copula "is" appear devised to emphasize the immanence of this (self-)transformation of the initial people (the multitude) into a coherent political entity oriented toward their common interests *qua* "the general will."³³ The people assemble and constitutes itself as a coherent political collective without the need of any external authorities or institutions.

Rousseau famously conceptualized this originary and transformative act of association as a form of "social contract" that implicitly or explicitly governs all societies. He summarizes the fundamental clauses of this social contract:

Each of us puts his person and his full power in common under the supreme direction of the general will; and in a body we receive each member as an indivisible part of the whole. At once, in place of the private person of each contracting party, this act of association produces a moral and collective body.³⁴

The social contract consists in the assembled multitude of individuals unanimously agreeing to surrender and combine their natural freedoms to form a collective self-legislating body united in their mutual commitment

32. Rousseau, *Social Contract*, pp. 50 (1.6), 51 (1.7).

33. This concept has traditionally been attributed to theological origins, but Richard Tuck argues that Rousseau derived it from Samuel von Pufendorf's (proto-Hobbesian) account of the social covenant transforming the multitude into a people. Patrick Riley, *The General Will before Rousseau: The Transformation of the Divine into the Civic* (Princeton, NJ: Princeton Univ. Press, 1986); Williams, *Rousseau's Social Contract*, pp. 245–48; Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge Univ. Press, 2016), p. 128; Samuel von Pufendorf, *Of the Law of Nature and Nations: Eight Books* (Oxford: L. Lichfield, 1703), p. 144.

34. Rousseau, *Social Contract*, p. 50 (1.6).

to pursue the common good in and as their “general will” over and above their individual preexisting and/or private interests.

However, Rousseau’s reliance on the legal form of the (social) contract complicates his account of this founding act, as Louis Althusser has shown: a contract is, per definition, a voluntary and reciprocal agreement between two or more formally equal and independent parties. In the case of the social contract, these parties are the initial multitude of individuals (“each of us”) and the people as a coherent political body (“the whole”). However, the latter is supposed to be the result of the social contract and thus cannot preexist the contract or be party to it, which thus appears to forestall both the social contract and its own coming into being.³⁵ The social contract, in other words, presupposes what it is supposed to produce, namely, the act of association that constitutes the people as a coherent political entity. The act of association must instead be conceived as prior to and a necessary precondition of the social contract, “the true foundation of society.”

While the initial act of association produces a collective body out of the multitude of individuals, it does not replace the latter with the former; rather, they continue to coexist alongside one another as different modalities of social life. The people is a multitude of individuals with particular interests at the same time that they form and partake in the collective political body that pursues its common interests; as such, the people is and remains double. The social contract outlined by Rousseau presupposes and organizes this duality. More specifically, it subordinates the multitude of individuals to the people as a whole, alienating the initial multitude’s individual and natural liberties to constitute their collective sovereignty. This marks the transformation of these (private) individuals into citizens and members of a self-determining and self-legislating political collectivity, where each individual is committed to living together with the others under their collective authority and laws.³⁶

35. Louis Althusser, “Rousseau: The Social Contract,” in *Politics and History: Montesquieu, Rousseau, Marx* (London: Verso, 2007), p. 129. See also Bruno Bosteels, “This People Which Is Not One,” in Alain Badiou et al., *What Is a People?*, trans. Jody Gladding (New York: Columbia Univ. Press, 2016), pp. 6–8.

36. It is worth noting that Rousseau insisted that popular assemblies are not confined to a single founding moment or convened merely at the behest of the government: “there must be fixed and periodic assemblies that nothing can abolish or prorogue,” which “have no other object than to maintain the social treaty,” and they can always dissolve or replace government. Rousseau, *Social Contract*, pp. 111 (3.13), 119 (3.18). Pace Tuck, *Sleeping*

In spite of Rousseau's insistence that any forfeiture of freedom was inherently illegitimate, his social contract is formulated in precisely the same terms as the aforementioned abettors of despotism and thus involves "the total alienation of each associate with all of his rights" as the basis of their collective sovereignty.³⁷ However, Rousseau argues that the coincidence of the two parties, i.e., the initial multitude and the people as a whole, entails that the social contract is not similarly illegitimate. Since the initial multitude of individuals do not give up their freedom to some external party such as a king or any other form of government, but rather to themselves as a collective body, they do not lose their freedom as such: "each, uniting with all, nevertheless obeys only himself and remains as free as before."³⁸ However, as with the concept of the people in the previous passage, the seeming continuity of the concept of freedom also conceals a fundamental transformation of its contents. The freedom that each individual gives up in the social contract is different from the one that they gain: each gives up their individual "natural freedom and...unlimited right to everything that tempts him" in return for the "civil freedom" and "moral liberty" of collectively authoring and submitting to laws of their own making oriented toward the common good, including the protection of individual rights and property by the whole of the community and its laws.³⁹

Rousseau's seemingly paradoxical claim that individuals subjected to the general will are "forced to be free" must be read in light of this change in the concept of freedom.⁴⁰ This claim simply denotes the enforcement of individuals' binding commitment to a collective decision-making process irrespective of its particular outcome and implications, which is the common precondition of all collective and/or democratic legislative processes and the rule of law.⁴¹ The social contract consists in the initial

Sovereign; Nelson Lund, *Rousseau's Rejuvenation of Political Philosophy* (Basingstoke: Palgrave, 2016), pp. 252–53.

37. Rousseau, *Social Contract*, p. 50 (1.6).

38. Ibid., pp. 49–50 (1.6).

39. Ibid., pp. 53–54 (1.8).

40. Ibid., p. 53 (1.7).

41. Rousseau's insistence that the general will must necessarily take a universalizable form that applies equally to everyone ensures the rule of law. See ibid., pp. 58 (2.2), 61–62 (2.4), 66–68 (2.6), 82 (3.1), 115 (3.15), 124 (4.3); Joshua Cohen, *Rousseau: A Free Community of Equals* (Oxford: Oxford Univ. Press, 2010), pp. 135–36. In the sixth letter from the mountain, Rousseau defines law as "a public and solemn declaration of the general

multitude of individuals' mutual agreement to surrender their individual natural freedoms to invest themselves as a collective entity with absolute legislative authority over themselves. This form of collective autonomy is, according to Rousseau, the only true form of freedom: "For the impulsion of mere appetite is slavery, and obedience to the law one has prescribed for oneself is liberty."⁴²

IV. The Limits of Law

The duality of the people, which both facilitated and legitimized Rousseau's social contract, reappears in the subsequent legislative assembly of the people in the division between the "will of all" and the "general will." Rousseau explains that "there is often a great deal of difference between the will of all and the general will. The latter considers only the general interest, whereas the former considers private interests and is merely the sum of private wills."⁴³ While Rousseau insists that it is enough to "remove from these same wills the pluses and minuses that cancel each other out, and what remains as the sum of the differences is the general will," this "arithmetic" conception of the general will is directly contradicted by his prior rejection of its identification with "the sum of private wills."⁴⁴ Rousseau thus seems to vacillate between an understanding of the general will as the result of the combination of individual particular wills in the assembly and something that exists outside of them. However, this apparent contradiction can be resolved by considering the general will as the sum of all the individuals in the assembly considering and pursuing what they consider to be the common good, as opposed to their private or particular interests, which would merely yield the will of all.⁴⁵

will." Jean-Jacques Rousseau, *The Collected Writings of Rousseau*, 10 vols., ed. Roger D. Masters and Christopher Kelly (Hanover: Univ. Press of New England, 2011), 9:232.

42. Rousseau, *Social Contract*, p. 54 (1.8). "Autonomy" means self-legislation and is derived from the combination of the ancient Greek *auto* meaning self and *nomos* denoting law or legality.

43. *Ibid.*, p. 60 (2.3).

44. *Ibid.*

45. Rousseau subsequently expands: "When a law is proposed in the people's assembly, what they are being asked is not exactly whether they approve the proposal or reject it, but whether it does or does not conform to the general will, which is theirs; everyone states his opinion about this by casting his ballot, and the tally of the votes yields the declaration of the general will. Therefore when the opinion contrary to my own prevails, it proves nothing more than that I made a mistake, and that what I took to be the general will was

The coincidence of the multitude of individuals and the people as a whole means that they cannot be effectively separated from one another, and it is impossible to ascertain whether the people legislate in the latter capacity in accordance with the common good or as a multitude of individuals pursuing their own particular interests. While Rousseau insists that the people cannot be corrupted and that the general will that guides them always wills the common good and is never mistaken,⁴⁶ the same cannot be said for the multitude. Rousseau is thus forced to confront the question: “How will a blind multitude, which often does not know what it wills because it rarely knows what is good for it, carry out an undertaking as great, as difficult as a system of legislation?”⁴⁷

Rousseau is heavily invested in the formative role of the law in shaping the initial multitude of individuals into a coherent people guided by the general will, as we have already seen, insofar as he conceived the self-institution of the people in the distinctly legal form of the (social) contract (however contradictory) and insisted that the general will must necessarily take the generalizable form of law. This poses the fundamental problem of the sequence of law and people, that is to say, that the laws can only be instituted by the very people that they are meant to shape, as Rousseau acknowledges:

For a nascent people to be capable of appreciating sound maxims of polities and of following the fundamental rules of reasons of state, the effect would have to become the cause, the social spirit which is to be the work of the institution would have to preside over the institution itself, and *men would have to be prior to laws what they ought to become by means of them.*⁴⁸

The paradox that Rousseau inadvertently confronts here derives from his initial claim that the people is both prior and superior to any and all laws, institutions, and procedures, which therefore cannot be used to contain or constrain the duality of the people: “there is not, nor can there be, any kind of fundamental law that is obligatory for the body of the people, not

not. If my particular opinion had prevailed, I would have done something other than what I had willed, and it is then that I would not have been free.” Ibid., p. 124 (4.2).

46. Ibid., p. 59 (2.3).

47. Ibid., p. 68 (2.6).

48. Ibid., p. 71 (2.7), emphasis added.

even the social contract.⁴⁹ The people is always double, simultaneously an anarchic multitude and a coherent people; it never completely coincides with itself, and as such there can never be any guarantees that it is what it should be or wills what it ought to. It cannot be guaranteed that the people is in fact assembled and acting in their capacity as the people and not merely as a multitude of individuals. The only difference between them is the people's collective dedication to the common good (*qua* the general will) over and above private interests, but this cannot be objectively determined or verified from the outside in any meaningful manner.⁵⁰

Rousseau attempts to resolve this problem through the introduction of an external lawgiver, who can found good laws and institutions that can shape the people.⁵¹ However, he is well aware that this could potentially compromise the fundamental principle of popular self-determination and self-legislation, and he therefore denies the lawgiver independent authority apart from the possible support of the people, who alone are sovereign and empowered to pass laws and found institutions. Rousseau's argument thus comes full circle, back to the people as the origin and condition of possibility of all legitimate laws and institutions.⁵²

The fundamental point is that it is only the people that can determine the general will. There can be no legal or institutional guarantees of its specific content or (self-)identity, and it cannot be determined from the outside or predetermined in the abstract. The people constitutes the "true foundation" of society, but it is not a stable foundation of a given legal and institutional edifice as much as a continuous process defining and redefining the people's (non-)identity and general will, which is at the heart

49. Ibid., p. 52 (1.7).

50. Moreover, note that the related but different and unresolved question of the delimitation of the people (the so-called "boundary problem") does not necessarily undermine the people's democratic legitimacy, but keeps the question of its composition open as part of the political process that constitutes it. See, among others, Sophia Näsström, "The Legitimacy of the People," *Political Theory* 35, no. 5 (2007): 624–58; Arash Abizadeh, "The Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem," *American Political Science Review* 106, no. 4 (2012): 867–82; Judith Butler, *Notes Towards a Performative Theory of Assembly* (Cambridge, MA: Harvard Univ. Press, 2015), pp. 4–8, 154ff; Jacques Rancière, *Disagreement: Politics and Philosophy*, trans. Julie Rose (Minneapolis: Univ. of Minnesota Press, 1999).

51. Rousseau, *Social Contract*, pp. 68–72 (2.7).

52. Ibid., p. 70 (2.7). See also Bonnie Honig, "Between Decision and Deliberation: Political Paradox in Democratic Theory," *American Political Science Review* 101, no. 1 (2007): 5–6.

of democratic politics—a perpetual process of popular self-determination that precedes and determines its legal and institutional expressions.⁵³ Ten years after the publication of the *Social Contract*, when Rousseau returned to ponder this question in his private communications with a group of Polish politicians about possible reforms, he confirmed that “putting law above man is a problem in politics which I liken to that of squaring the circle in geometry,” that is to say, a perpetual challenge that cannot be completed once and for all.⁵⁴

And this is precisely what is at stake in Rousseau’s *Social Contract*, even when he seems to lose sight of it or recoil from its implication: the assertion of the people as its own highest authority voids any external or transcendent guarantees of its form, as well as its laws and institutions.⁵⁵ This necessarily involves the recognition that any and all legitimate decisions about the legal and political conditions of the people’s collective coexistence must necessarily come from the people itself—and that no one else can judge or determine what its results should be. There is no objective way of determining whether the people is acting as a multitude or as a people; it is impossible to know if its decisions are motivated by genuine orientation toward the common good or private interest. All that its members can do is to maintain their faith in each other and their commitment to pursuing their common good, and as long as they do so, the general will does not err.⁵⁶ However, the general will is not given once and for all; it is an ongoing and open-ended process immanent to the people, which continues to constitute and reconstitute it as such, as a coherent

53. Jürgen Habermas correctly observes that the basic form of popular assembly and legislation implies a commitment to some fundamental (liberal) conventions as its practical presupposition. However, there is no guarantee that the assembly will codify the conditions of its own making. Popular autonomy also involves the possibility of inconsistency and its own undoing. Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1996), pp. 84ff.

54. Rousseau, “Considerations on the Government of Poland,” p. 179.

55. This runs directly counter to the prominent contemporary constitutionalist subsumption of popular sovereignty and/as constituent power to juridical procedure and its concomitant legal form. See Martin Loughlin and Neil Walker, “Introduction,” in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, ed. Martin Loughlin and Neil Walker (Oxford: Oxford Univ. Press, 2007), p. 6.

56. In many ways this parallels what Alice Ormiston has described as the modern tragic desire for unity, which orients modern politics but cannot be realized. See Alice Ormiston, “A Tragic Desire: Rousseau and the Modern Democratic Project,” *Telos* 154 (Spring 2011): 8–28, esp. pp. 25–28.

self-determining and self-legislating collectivity, the continuous act by which a people is a people.

V. Should We Be Afraid of Rousseau?

As already outlined, the post-revolutionary critiques of Rousseau were primarily articulated in one of two ways. The first type of formulation identified the doctrine of popular sovereignty with the absolutism that preceded it based on the conceptual continuity of the term “sovereignty.” This is taken to denote an indivisible absolute power that cannot be alienated or represented, which precludes representative government and a division of powers and is potentially despotic. This critique is particularly evident in the works of Sieyès, Constant, and Furet (as well as that of Lefort, Müller, Urbinati, Arato, and Cohen). The second type of formulation posits an opposition between two different conceptions of freedom: one as the collective power of the people, and the other as individual liberty. This type of critique is most evident in the works of Constant, Talmon, Berlin, and, implicitly, Mudde. Both formulations fear collective sovereignty will inevitably turn despotic unless constrained by representative government and constitutionally guaranteed rights.

However, even liberal democracy must necessarily posit some sort of coherent political collectivity and authority as its origin and (direct or indirect) ruler to legitimize itself.⁵⁷ The people are the only possible legitimate origin of the legal and political system that guarantees individual liberties. The people’s inherent political authority precedes this system and remains superior to it; it cannot be alienated or exhausted in it, as Rousseau rightly points out, and, as such, it persist alongside this system.⁵⁸

57. Andreas Kalyvas, “Democracy, Popular Sovereignty and the Constituent Power,” *Constellations* 12, no. 2 (2005): 223–44; Kalyvas, “Constituent Power,” in *Political Concepts: A Critical Lexicon*, ed. J. M. Bernstein, Adi Ophir, and Ann Laura Stoler (New York: Fordham Univ. Press, 2018), pp. 87–117; Loughlin and Walker, “Introduction,” pp. 1–8; Jason Frank, “Populism and Praxis,” in Kaltwasser et al., *The Oxford Handbook of Populism*, pp. 629–43; Paulina Ochoa Espejo, “Populism and the Idea of the People,” in Kaltwasser et al., *The Oxford Handbook of Populism*, pp. 607–28. Pace Sophia Näsström, *The Spirit of Democracy: Corruption, Disintegration, Renewal* (Oxford: Oxford Univ. Press, 2021), pp. 33–57.

58. The constitutionalist interpretation is the most prominent trend to emerge in recent scholarship on the *Social Contract*. See Tuck, *Sleeping Sovereign*; Joel Colón-Ríos, “Rousseau, Theorist of Constituent Power,” *Oxford Journal of Legal Studies* 36, no. 4 (2016): 885–908; Jason Frank, *The Democratic Sublime: On Aesthetics and Popular Assembly* (Oxford: Oxford Univ. Press, 2021), pp. 45–47.

Perhaps it is because Rousseau's *Social Contract* acts as a reminder of the heteronomous origins of liberal democracy and representative government that it continues to attract so much critique from liberals in an inherently futile effort to repress and exorcize the popular sovereignty that was logically and historically necessary to found and sustain liberal democracy.

In evaluating the merits of the widespread post-revolutionary critiques of Rousseau as the (inadvertent) progenitor of the Reign of Terror, various totalitarianisms, and contemporary populism, based on the twin allegations that his concept of popular sovereignty reproduces the conceptual and practical form of absolutism and promotes collective power at the expense of individual liberty, it is first of all worth remembering that the *Social Contract* was originally formulated as a critique of absolutism and the alienation of freedom to absolute governments. This critique was formulated as an immanent critique of the theorists of sovereignty, who legitimized this legal and political order through their arguments that the people could only attain a political existence in and through their submission to and representation by a government. Rousseau showed that these arguments in fact presupposed the people as a coherent political collectivity capable of acting together in concert, which was both prior and, implicitly, superior to any and all governments that they might institute. This collectivity was and remained sovereign in and through their mutual commitment to each other and their association, and this distinctly *popular* form of sovereignty therefore cannot be alienated to or represented by a government.

Second, it is also relevant to note that insofar as we identify absolutism as the concentration of absolute power in a government, then Rousseau's doctrine of popular sovereignty does not qualify since it is not and, indeed, cannot be vested in a government. The popular assembly is the highest authority of the community and its sole legislative power; it is also the popular assembly that appoints specific agents to execute the functions of government. Whereas absolutism is defined by the absolute powers that a government wields over its subjects, popular sovereignty is simply the people's authority in relation to itself; it is the power of a collective deliberately acting in concert to create the conditions of its members' coexistence in accordance with what they consider to be the common good.

Third, the general will necessarily assumes the universalizable form of law, which applies equally to everyone, thus ensuring the rule of law. However, he simultaneously realized that law could only be legitimate

insofar as it was formulated by the people and that it therefore could not become an external guarantee of the continuity of its form and content. The inherent duality of the people meant that it could come together and legislate as a coherent people in accordance with the general will or as a multitude of individuals with disparate interests, producing partial and bad laws, that might even undo the legal system or their political unity. But this is what must necessarily be at stake in politics once the people have been declared their own highest authority: the people must be trusted to make its own decisions without any guarantees of the result. It is not without risk to leave the form and content of the legal system in the hands of the people, but it does not necessarily lead to the Reign of Terror or the horrors of fascism and Stalinism, which were all carried out by precisely the type of despotic government, claiming to represent the people, that the *Social Contract* challenged. The philosopher Peter Hallward efficiently summarizes the stakes of this debate: "In spite of all that has changed over the past two hundred years, the alternative remains much the same: either an insistence on the primacy of popular self-determination, or a presumption that the people are too crude, barbaric or childlike to be capable of exercising a rational and deliberate will."⁵⁹

VI. Conclusion

This article has provided a comprehensive genealogical account and a critical reexamination of the post-revolutionary reception of Rousseau's *Social Contract* mediated by a reinterpretation of this classical work. It proceeded by means of a historical recontextualization and reinterpretation of the *Social Contract*, which was used to reassess and reevaluate prevalent conceptions of this controversial work expressed in post-revolutionary liberal thought, Cold War-era antitotalitarian political thought, and the contemporary literature on populism. In the first part of the article, I scrutinized the historical origins, development, and contents of the liberal critique of Rousseau's doctrine of popular sovereignty. In the second section, I situated the *Social Contract* in its original intellectual context, which showed that it was formulated as an immanent critique of contemporary theorists of sovereignty. These theorists posited that the people's political existence hinged upon the alienation of their freedom to the

59. Peter Hallward, "The Will of the People: Notes towards a Dialectical Voluntarism," *Radical Philosophy* 155 (2009): 18. See also Hallward, "The Will of the People and the Struggle for Mass Sovereignty," *Crisis and Critique* 9, no. 2 (2022): 143–219.

sovereign. However, Rousseau showed that their arguments presupposed that the people preceded and remained superior to any and all governments. The third section examined the lingering traces of these theories of sovereignty, which greatly complicated Rousseau's account of the social contract and recreated the duality of multitude and people inside the latter. This prompted a reevaluation of Rousseau's conception of the social contract, which emphasized its characteristics as a continuous and open-ended process of individuals combining into a coherent self-determining and self-legislating collective. The fourth section examined Rousseau's attempt to contain the inherent duality of the people and its potential excesses through the medium of law, which he ultimately abandoned, concluding that since the law could only be legitimated by the people, it could not simultaneously be used to constrain it. Popular self-determination and self-legislation necessarily also encompasses the possibility of excesses and errors, which are the unavoidable stakes of democratic polities. Finally, the limitations of the liberal critiques were considered in light of the previous reinterpretation of Rousseau's *Social Contract* in the fifth and final section. This section concluded that Rousseau's influential and controversial work was not a blueprint for despotism but a profound and significant exploration of the formation, implications, and contradictions of popular sovereignty.

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