

# ***Plausibility of the “General Will”***

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### *Abstract:*

Rousseau's influence on social and political philosophy has been formidable, and yet throughout his life and to this day his theoretical effort was constantly re-evaluated. Due to lack of clarity in his writings, his commitment to democratic ideals that seemed obscure and outdated for much of the 20<sup>th</sup> century, and especially due to misunderstandings that accompanied his concept of the general will, Rousseau's conception of legitimate society has received some serious and seemingly devastated criticisms.

In this paper I will address myself with the most important question that seems to underline all those criticisms, namely : is the idea of the society regulated by a general will a consistent political ideal, or does it necessarily conflate with the 'will of all' (will of the majority)?

I address this concern, first by providing a conceptual background to Rousseau's ideal society, specifying normative constraints that determine its subsequent framework. Second, I test the plausibility of the idea of the general will, in principle, by questioning its role in as a solution to the 'fundamental problem' – the possibility of reconciliation of political authority and personal autonomy. Although, I recognize that this idea has some plausibility, I conclude that it rests on some contentious epistemic considerations that need to be accounted for. I introduce these epistemic considerations in the last chapter, and I argue that Rousseau's ideal society can in fact generate appropriate epistemic support, under the assumptions that a set of normative constraints has been satisfied.

At the end however, I test Rousseau's account against the criticism of correctness theories, introduced by David Estlund, and argue that it seems like the most compelling objection against Rousseau's political society. In the conclusion, I argue that there might be a possible strategy to reject Estlund's objection, but that it requires resolution at the level of moral epistemology.

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## *Introduction*

Not so long ago, Rousseau's normative political theory, or more specifically its central tenet, an account of society regulated by a 'general will', appeared to have lost much of its credibility. His account of participatory politics and civic self-governance, focused on the conception of the common good, was largely discarded as an outdated political ideal, incompatible with the multi-cultural, pluralist nature of the contemporary societies. Lack of clarity in his writings, the obscure nature of the conception of the 'collective will', and the lack of explicit concern for the liberties of the 'modern'<sup>1</sup> - all seemed to play a part in describing Rousseau's political project as deeply problematic and implicitly totalitarian. This particular line of thought was most famously articulated by Berlin in his criticism of the positive concept of liberty.<sup>2</sup> (Berlin 1969, 134)

The underlying concern is that, absent substantive constitutional limitations, the exercise of political authority will eventually jeopardize the liberty of its citizens. It makes no difference whether the political authority in question is in the hands of democratic legislature or not. It is sufficient to suppose<sup>3</sup> that when it comes to voting, the decisions of the legislature will be enacted by majority<sup>4</sup>, leaving the minority exposed.

In the context of Rousseau's theory, the prospect of the majoritarian solution on the matters of collective choice seems to pose an even more pressing concern. Rousseau specifies a highly demanding standard of political legitimacy – a conception of authority compatible with full political autonomy. Each member of the society participates in the activities of the legislature. In the "Social Contract" Rousseau argues that a society,

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<sup>1</sup> liberties of person and conscience

<sup>2</sup> As Berlin indicates, from the notion of the self-government it was short step to the claim that the self in question is not the actual self, but the real and the rational self, and another short step to the conclusion that in imposing their real self on their actual self we can 'force people to be free'. (SC: 166)

<sup>3</sup> as Rousseau himself does

<sup>4</sup> simple or qualified

regulated by a general will, presents a way of reconciling political authority and autonomy, a society in which the members “obey no one, but only their own will”(SC: 2.4.8).

In what sense then do the members of the minority within the legislature exercise their self-determination<sup>5</sup>?

In order to resolve this problem Rousseau introduces an epistemic dimension to the democratic procedure. Throughout the social contract, he indicates that the appropriately exercised voting procedure “reflects the general will” and that every time the assembly polls votes, “when...the opinion contrary to mine prevails, this proves merely that I was in error.” (SC: 4.2.8.) Thus, the decisions of the legislature give expression to general will “which is always right” and supply its members with morally correct reason for action. (SC: 2.3.1.)

This, however, brings us to the principal concern regarding Rousseau’s theory: whether his account of general will is coherent and internally consistent? Is the concept of the general will an intelligible political ideal? Is it something over and above the will of the current majority, or does it necessarily conflate to ‘the will of all’? And consequently: what is the basis of Rousseau’s confidence that the decisions of the legislature reflect the general will?

This I understand as the problem of possibility of the society of general will. My concern in this paper will be to resist the principal criticism and to argue that Rousseau’s account of the general will has some inherent plausibility.

Since, according to Rousseau, the society regulated by general will is the only account of society capable of generating unanimous consent of the contractual parties, “taking men

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<sup>5</sup> It is important to bare in mind that Rousseau is not arguing for the democratic requirement that those who are subject to laws ought to have fair chances to participate in the processes from which those laws issue, and that the results of such fair processes ought to be authoritative – but this strong requirement of political authority.

as they are”( SC, 1.0), I start by giving background to the social contract in *Chapter 1*. Rousseau provides an explicit account of the pre-political context<sup>6</sup> in his ‘Discourse on Inequality’. I draw on his points made in that paper, as well as in few of his other writings, in order to sketch this background context.

In *Chapter 2*<sup>7</sup>, I start by giving a rough sketch of a society regulated by a general will and then argue about its general plausibility as the appropriate solution to the pre-political problem. I argue that this community of free and equals does have some genuine appeal as an account of political authority and counter the critics, I claim that the accusation of totalitarianism appears overemphasized, since Rousseau’s account of political society can be compatible with some account of personal liberties.

In *Chapter 3*<sup>8</sup> I try to give a more detailed account of the procedure that leads to the general will, arguing that it presupposes some epistemic considerations that seem persistent throughout the tradition of participatory politics, considerations that stand at the very core of contemporary account of deliberative democracy (Bohman, Rehg: 1997). I also introduce some of the more specific objections to Rousseau’s epistemic account of the voting procedure (Cohen, 2010), and its possible consequences on his normative political standards (Estlund, 2008). Although some of the objections do pose a considerable challenge to Rousseau’s political project, I try to argue that they are not devastating and propose a Rousseauian way to answer them.

I conclude that much of the criticisms directed against Rousseau’s political account appears misguided and that his account of general will can (in principle) resist the consistency objection – even though it might be dependant on a specific meta-ethical standpoint. I do not concern myself with issues of desirability of such a political project, but I take it that, since some of the accounts presented in the contemporary tradition of deliberative democracy appear to draw heavily on Rousseau’s ideas, they do seem to have some genuine appeal. (Cohen 1997, Pettit 2001)

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<sup>6</sup> the history of human development

<sup>7</sup> ‘What is ‘the general will’?’

<sup>8</sup> ‘How do we know ‘the general will’?’

## *1. Background Conditions to the Society of General Will*

Throughout his political opus, Rousseau appeared to have addressed one distinctive concern: how is it possible that “Man was born free, and everywhere he is in chains”? (SC 1.1.1) To specify this claim, we will need to specify both Rousseau’s conception of freedom and its lack in the circumstances of present day societies.

As his predecessors within the tradition, for Rousseau, the social contract serves as an argument for the legitimacy of political authority – specifying that the only legitimate basis of political obligation can be consent of an individual. Of course, it was never assumed that any kind of consent generates these obligations, because:

- a) There are conditions under which the apparent acts of consent are null<sup>9</sup>.
- b) There are usually some set of standards<sup>10</sup> that an institutional arrangement has to meet, in order for it to generate these obligations.

In the social contract tradition, these standards, eschewed from the pre-political context<sup>11</sup>, are commonly understood to be able to provide an optimal<sup>12</sup> account of human cooperation, with regards to the pre-political interests of natural men.

Rousseau, in his historical account of the state of nature, rejected the possibility that contractual situation can be specified, with regards to the pre-social men who deliberate on the principles of their cooperation, and discarded this idea as misguided.

The problem is that, in the absence of the society and distinctively social development, humans wouldn’t be capable of realizing much of their capacities, including their rational

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<sup>9</sup> i.e. coercion

<sup>10</sup> differing from one normative political theory to another

<sup>11</sup> the state of nature

<sup>12</sup> For Locke, these interests specify pre-political requirements of justice.

and moral nature. The contractual problem and the conceptual requirements, that such a situation triggers, would have been cognitively inaccessible to pre-social men.

Against Locke, Rousseau argues that the pre-political context knows no natural rights, nor laws of nature that regulate the conduct of individuals. Against Hobbes, Rousseau argues that even though the human corruption in present day societies seems to be strangely compatible with his account of psychological egoism, the corruptibility is not inherent to the essence of men, but is rather an unforeseen result of a series of free choices conjoined with contingent natural occurrences.

What is needed, according to Rousseau is a more speculative account of human anthropology, in order to fix the normative background to the contractual situation. Only by doing that, we will be able to specify fair principles of human cooperation that such men would agree to, compatible with their fundamental interests and capacities.

In this chapter we will present the important remarks that Rousseau made regarding the state of nature, and about human anthropology in general<sup>13</sup>, and try to make more sense of the quotation “Man was born free, and everywhere he is in chains”, from the beginning of the chapter.(SC 1.1.1) We will see in what sense the members of the present societies lack freedom, and what is the nature of these distinctively ‘social’ chains. By doing so we will also sketch the background to the contractual situation in which individuals are interdependent, capable of engaging in just forms of cooperation, and sharing a fundamental interest in security and freedom, understood as self-determination.

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<sup>13</sup> Although it is in ‘Discourse’ that we find his only elaborate account of the state of nature, a more comprehensive account of his anthropology cannot be given without including the content of his other works, most important of which are ‘Emile’ and ‘Social Contract’. Rousseau himself was not always using his terminology consistently and this poses a considerable interpretative difficulty.



### ***1.1. Historical account of the State of Nature and rise of the ‘Amour-Propre’***

The man of nature, as Rousseau understands him, is neither morally bad, nor good, for he is not moral to begin with. He cannot abuse his reason, as Hobbes thought, because he is not capable of its elaborate use (SC 1.2.1). He is motivated by self-love<sup>14</sup>, concerned for his own well being, which manifests itself as a basic need in securing his protection and the means to his survival. A man of nature is self-sufficient, he can satisfy his needs without cooperation, and in this sense the man of nature is free. He is independent of other humans.

It is by his continuous cooperation with others, in which he engages for easier satisfaction of his basic needs, that a man loses his natural independence. This seems to be the first step to his loss of freedom. The continuous cooperation brings men in a form of societies, simple at first, but more complex as the cooperation continues.

This process of socialization induces a cognitive development in humans, development of their rational and moral capacities, consequently gives rise to distinctively social desires - desires that cannot be satisfied without other humans (in principle).

He starts comparing himself with others – and self-love, our concern for our well being, now transmutes into a concern for our self-worth, and an associated concern to be treated with respect. This general concern for my self-worth and the desire to be recognized by others - to seek the esteem, approval, admiration or love – is what Rousseau calls amour-propre.

Amour-propre is psychologically fundamental, in the sense that it follows ‘naturally’ from self-love in the conditions of interdependence. It is important, for every member of the society, to be recognized as worthy of respect, and in the society, one of the primary

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<sup>14</sup> amour-de-soi

motivations will be to gain public confirmation of my self-worth. But, this drive for public confirmation can take two distinct forms in the actual societies.

A person might regard himself equally worthy as others. He might think that others ought to take his judgment and well being equally into account, on a par with theirs. If our sense of self-worth takes this form, then we won't make impossible demands on others, and we will take them in equal regard.

But the inflated amour-propre, the other form of self-worth, is to think of oneself as more worthy of regard than others. And, as in the case of the prior form, the failure to gain this public recognition - generates discontent. But, if we "prefer ourselves to others" and this preference reflects a sense of self-worth, then we also "demand others to prefer us to themselves, which is impossible"(Emile, 214).

It does not only provoke inner anxiety and discontent<sup>15</sup>, the more pressing problem seems to be that the satisfaction of these desires happens at the expense of others. Individuals aim to establish external and publicly recognized signs of their worth for and in relation to others. It presents a powerful incentive for humans to invent new forms of inequality by creating numerous opportunities to satisfy their desire to gain recognition in the eyes others. "It makes our neighbors our rivals and enemies, yet binds us to them by chains impossible to break. Vanity makes slaves of us" (Plamenac:1965,380). So, this inflamed amour-propre "is the principal source of an array of evils ... enslavement (or domination), conflict, vice, misery, and self-estrangement" (Neuhouser:2008, 2)

The rise of the inflamed amour-propre happened through instantiation of individual property, because prior to it, the differences between men were of no social significance. In the societies that recognized the property right, the differences became socially relevant<sup>16</sup>. In such social circumstances the only way of gaining recognition appears to be through establishing advantage over others. And the natural desire that my self-worth is publicly recognized - transforms into desire that I am held in higher regard than others. It

<sup>15</sup> because it generates desires that are hard to satisfy

<sup>16</sup> They became perceptible and with deep and pervasive influence on the lives of individuals. The differences were then regarded as reflecting differences of worth.

becomes an “ardent desire to raise one’s relative fortune less out of genuine need than in order to place oneself above others” (D2 171)

## ***1.2. Rousseau’s Account of ‘Natural Goodness’***

Situation in present-day societies suggest the rise of the inflamed amour-propre. Rousseau’s argument seems to be that it is down to social circumstances, rather than to any characteristic inherent to human nature: “The man is naturally good, and that is solely by institutions that men become wicked”. (MI 1135-6).

The natural goodness of men is one of the more obscure parts of Rousseau’s philosophy. He uses this term in at least two different senses. In ‘Discourse on Inequality’ he uses it to refer to ‘innocence’ of the man of nature. However, in ‘Emile’, natural goodness seems to refer to a certain form of development of men’s natural capacities and passions, which benefits his sense of well being and disposes him to be benevolent and just in his dealings with other men. He comes to conceive of it in the process of his development, and once he realizes it, every time his action falls short of it - he experiences dissatisfaction<sup>17</sup>.

It is of importance here to distinguish two elements that are at the essence of Rousseau’s account of natural goodness. One is a fundamental human capacity to be free and the other seems to suggest a kind of innate regulatory principle, namely, our conscience.

During the course of his natural development, men become aware of the distinctively human capacity – a capacity for freedom understood as self-determination. Namely, the ability to: resist inclinations<sup>18</sup>, make judgment about the best aim of our conduct, and

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<sup>17</sup> “When I abandon myself to temptations, I act according to the impulsion of external objects. When I reproach myself for this weakness, I listen only to my will. I am enslaved because of my vices and free because of my remorse” (E:280).

<sup>18</sup> impulsion of external objects

regulate our conduct in light of that judgment.<sup>19</sup> This “power of willing or rather choosing’ (D2:141) is considered to be the source of humanity’s special worth, and it is in virtue of which we are constituted as moral agents.

The freedom understood as self-determination stands at the core of Rousseau’s normative political theory. It puts a considerable normative constraint on any subsequent institutional arrangement, for “to renounce one’s freedom is to renounce one’s quality as a man, the rights of humanity and even duties” (SC:1.4.6).

Rousseau, however, also distinguishes a second principle which figures in his account of natural goodness: “conscience is an innate principle of justice and virtue, according to which, in spite of our own maxims, we judge our own or other men’s actions to be good or bad” (E:289). Of course, ‘principle’ is here not to be understood as a rule of reason, because it induces the feeling of remorse. Conscience here seems to be strangely akin to Hume’s idea of moral sentiment. However, this doesn’t seem to be in accordance with some of Rousseau’s other considerations. For Rousseau the right action seems to be right because it is a requirement of reason, not because the conscience pulls us towards it. As a way of reconciling these issues with Rousseau’s main line of thought, we could regard conscience as a part of a natural disposition to act morally, disposition activated through use of reason and exercise of our free will.

These two aspects of ‘natural goodness’ seem to explain Rousseau’s optimism regarding the possibility of his political ideal, a society which would be conducive to the more egalitarian form of amour-propre, one in which people recognize themselves and others as free and equals. So, how come that Rousseau’s account of human history ends up with a society dominated by an inflated form of amour-propre?

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<sup>19</sup> “One chooses the good as he has judged true; if he judges wrong he chooses badly. What then is the cause which determines his will? It is his judgment.” And the cause that determines his judgment is “his intelligent faculty, his power of judging”. (E:280)

I think that there are two relevant reasons. One is that conscience doesn't seem to have a considerable motivational strength in itself, and that it easily gives way to temptations. The other reason is down to a certain conceptual confusion that appears in Rousseau's historical account. The content of 'justice' is not specifiable in principle in the pre-political context. The requirements of justice and right are only determined through social contract. However, because of the natural tendency of people to moralize their conflicts of interests<sup>20</sup> - which are bound to appear in any cooperative venture - people end up subordinating the will of others to their own.<sup>21</sup>

This point has a significant consequence on the specification of the fair context in which people deliberate on the content of the social contract. Since individuals cannot have any antecedent claims in their debate on the content of Social Contract, contractual parties deliberate from a position of manifest equality. And this is an important background condition for Rousseau's contractual situation.

### ***1.3 Background conditions for Social Contract***

There are two senses in which we should understand Rousseau's concern with the distinctively 'social chains' that humans experience in present-day circumstances.

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<sup>20</sup> Once people start conceiving of themselves as moral beings, and this happens in the context of continuous interaction, they start to regard themselves as subjects of rights and obligations, and they start to think that they are entitled (rather than just need) to the goods that meet their needs, to the products of their labor, etc.

<sup>21</sup> I will explain what I mean by this: Let us think for example about Rousseau's treatment of the property right. People, who started using the language of morals, started thinking that they are entitled to the products of their labor (D2:169). Some thought that their continuous work on the piece of land, gives them full property right over that land – exclusive right of usage of that piece of land. Since there is no basis for such a claim in pre-political context, this is to be understood as an act of violence. Person, who imposes such arrangement in the cooperative venture, imposes his will (his understanding of right) on others. He subordinates them to his will. Now, as Rousseau presents his course of history, the actual agreements to form political society (Social Contracts so to speak) have been made on the background of prior property rights, fostering the circumstances of subordination.

People are un-free because they are ruled by the desires that are induced through an inflamed form of amour-propre<sup>22</sup>.

But people are also un-free in the sense that they engage in the social arrangements in which they surrender their judgment (about the right way of action) to a foreign authority. They are obligated to obey rules and regulations that are imposed on them by a will which is not their own.<sup>23</sup>

This seems to be a distinctively republican line of thought in Rousseau's theory - the resentment of subordination to arbitrary rules and regulations. (Pettit, 1999:165)

But for Rousseau, our capacity for self-determination presents a difficult challenge to any possible contractual agreement: any legitimate social arrangement must preserve this freedom to the greatest degree possible and to the same extent for all individuals. This does not only imply that citizens must be equally subject to the laws of their state, but that each of them exercises full political autonomy – stays “as free as before”(SC:1.1.6). .

The claim, that the content of justice is not accessible in the pre-political context, appears to be in conflict with some quotations that we introduced here, and that Rousseau makes through his work, namely, that we have an innate principle of justice (E: 289).

Even more so, what Rousseau says in the ‘Social Contract’ seems to indicate without a doubt that there are principles of reason which are fixed and have validity independently of human agreements.<sup>24</sup>

In an important sense I take Rousseau to recognize at least one requirement of justice in pre-political context, and this is the requirement of non-subordination. Any interaction between human that leads to a subordination of a will of one human to another is unjust.

So, maybe we should think of the idea of a convention itself - what human beings can agree to - as that which determines the content for the principles of ‘universal justice’. To

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<sup>22</sup> They are concerned solely with their social status and their relative gain over others and only in order to gain recognition from them. They are ruled by the desires that are not in their fundamental interest, and not by their reflective judgment.

<sup>23</sup> “In the relations between man and man the worst that can happen to one is to find himself at another’s discretion” (D2:176)

<sup>24</sup> “Whatever is good ... is so by the nature of things and independently of human conventions; ... there is without doubt a universal justice that emanates from reason alone.” (SC:2.6.2).

put the point differently - we might say that a correct account of what is right, follows from an analysis of the conditions under which the rational individuals (deliberating from manifestly equal positions) are able to reach agreement on the principles that ought to regulate their cooperation. (Neuhoser:2008, 206)

### ***1.4. The Background to the Social Contract***

Actions of individuals, primary motivated by considerations of self-love, indicate common concern for security and preservation of their goods. Individuals are interdependent, which indicates that they need others in order to satisfy their interests, while on the other hand it opens a possibility of the conflicts of interests. Conflicts of interests easily transmute into conflicts of rights and entitlements and conflicts of worth, since individuals have differing and highly contested views about the legitimate claims that they can make on one another.

The problem in the pre-political context is that these conflicts are not resolvable in principle, since the content of right is unavailable. Consequently, much of human interaction in the later stages of human development necessarily leads to subordination of will of a human being to the will of another.

There is a need for a common authority that would determine the content of rights and that would adjudicate in case of the conflict.<sup>25</sup> Cooperation is therefore the only optimal solution.

Not any type of cooperation will do, however. The problem is that our capacity to be free (our fundamental interest in exercising freedom) puts significant limitations on possible (legitimate) institutional arrangements. There is no adequate trade-off between an interest in protection and interest in freedom. And any institutional arrangement that fails to satisfy this strong requirement of full political autonomy is essentially suboptimal.

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<sup>25</sup> “for...the opposition of private interests has rendered necessary the establishment of societies”(SC:2.1.1)

People are also endowed with some capacity to distinguish just from unjust arrangements and are aware that if the society is to satisfy these fundamental individual interests – the sociopolitical circumstances need to foster the experience of others as equals, thus discouraging inflamed amour-propre and the forms of vice and conflict following from it.

## ***2. What is the General Will?***

In *Chapter 1* we identified the background conditions to the Social Contract. We specified the fundamental interests in security and protection of goods that people share and that they need to cooperate in order to ensure their protection, because of the irresolvable conflicts of interests. So a legitimate social arrangement would be the one capable of providing protection to each person without demanding a morally unacceptable alienation of their freedom<sup>26</sup>.

And this brings us to the fundamental problem of “Social Contract”.

“The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.” (S.C:1.1.6)

In the “Social Contract” Rousseau presents a determinate solution to this contractual problem, an ideal of legitimate society that all contractual parties could agree to. The ideal society envisaged by Rousseau is the one in which “each of us puts his person and all his power in common under the supreme direction of the general will”.(SC:1.6.9)

My aim in this chapter will be to provide what I think to be the most plausible interpretation of the general will, and consequently analyze what it means for a society to be regulated by it.

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<sup>26</sup> “To renounce one’s freedom is to renounce one’s quality as a man, the rights of humanity and even its duties.” (SC:1.4.6, D2:141, 179).



In order to do so, I will start by giving a short sketch of Rousseau's proposed solution to the fundamental problem - the account of free community of equals assembled in the popular legislature. Then, I will explain in detail how Rousseau understood that commitment to further our own interests transmutes into a commitment to further the common good (good of every member of the society) and in what sense a conception of common good functions as fundamental standard of political justification within the society. In the two sections afterwards I will try to specify what kind of considerations figure in the context of public deliberation within the popular assembly and why people ought to give primacy to those considerations. This will help us understand in what way, society regulated by a general will resolves Rousseau's fundamental problem. After that, I try to present an account of the common good and argue that Rousseau's society can be compatible with some portion of personal liberties. I conclude that Rousseau's solution has some plausibility in principle, but that we need to account for the high epistemic value of the procedure leading to the general will (which I will do in *Chapter 3*).

### ***2.1. Society Regulated by the General Will***

“Right away, in place of the particular individuality of each contracting party, this act of association produces a moral and collective body, composed of as many members as the assembly has voices, and which receives from this same act its unity, its common self, its life, and its will.” (SC:1.6.10)

Political body, the association that has been constituted through the social contract (comprised of all contractual parties), exercises its political authority through popular legislative assembly<sup>27</sup>. The decisions of the legislative assembly (laws) are expressions of the general will. This is part of what Rousseau means, when he says that general will is general in its form and in its content: It comes from all citizens (gathered in the assembly)

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<sup>27</sup> In determining the laws, the votes of each citizen must be counted (SC:2.2.1 footnote)

and it enacts only general rules that apply equally to all citizens (SC:2.6). This political equality is entailed by the fundamental interest in freedom – because the legitimate contract must preserve freedom to the greatest degree possible and *to the same extent* for all individuals.

The supreme political authority<sup>28</sup> in Rousseau's society, therefore, rests with the 'people', not understood as a mere aggregation of individuals, but understood as a unitary, moral agent (SC:1.6.6) – constituted through its having a general will.

What Rousseau seems to be clear about is that the general will is directed to the advancement of the common good of its members. (SC 2.1.1). On the other hand, what Rousseau didn't specify is: in what sense can we attribute will to a group of men?

On one plausible interpretation, a society can be said to be regulated by a general will in case they satisfied these two conditions:

- a) its members share an understanding of their common good, and
- b) they make collective decisions by giving priority to considerations of that common good.<sup>29</sup>

Although, as we will determine in the course of this chapter, Rousseau hardly ever specifies the exact content of that common good, it is without the doubt the point on which the particular interests of the members agree.<sup>30</sup>

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<sup>28</sup> In Rousseau's society popular decision making is restricted to votes on laws, rather than implementation of the laws in particular cases. Therefore, there is a need for executive government. However, according to Rousseau, its role is restricted to enforcement of the laws. The government 'represents' the popular assembly and it's constantly held accountable to the popular assembly – both for the adequacy of its interpretation of the laws as well as their appropriate enforcement. In that sense, the popular assembly is the supreme political authority. (LM: 247-8)

<sup>29</sup> Citizens, in their legislating capacity, recognize the interests that they share with others and they deliberate and make decisions on the basis of a commitment to advance these interests. (Cohen 2010: 62 , Neuhaus 2008: 194)

<sup>30</sup> Because it is "the agreement of these same (private) interests which made it possible. What these different have in common is what forms the social bond, and if there were no some point on which all the interests can agree - no society could exist." (SC: 2.1.1.)

It would be helpful at this point to distinguish between two different ideas, that seemed to be conflated by some of Rousseau's critics<sup>31</sup> – that society is regulated by a supreme direction of the general will, and that society is regulated by a 'complete' (exclusive) direction of the general will.

The former idea suggests that even though the common good of the social compact is the supreme consideration that citizens take into account, that they can also be guided in their actions by different kinds of considerations – their private interests. It is not to be expected that the citizens of general will ever transcended conflicts between inclination and duty<sup>32</sup>, and that Rousseau's account of social compact, in that sense, resembles Plato's ideal of complete civic unity. Rousseau concludes himself that "private persons who constitute the public person have a life and freedom that are naturally independent of it" (SC:2.4.2). It seems more in line with Rousseau's thought therefore, to argue that the unity, in the society of general will, is not acquired through *complete* integration of citizens, but through their shared effort to conduct public matters by giving priority to the common good, over their private interests<sup>33</sup>.

This commitment to further the common good, for Rousseau, suggests the commitment to give equal consideration to the interests of each member of the society, and in the next section we will address the problem of how such a commitment stems naturally from the contractual position as he understands it.

## ***2.2. Common Good as a Foundation of Rights within the Society***

According to Rousseau, all the clauses of the social contract that members agree to "can be reduced to a single one, namely, the total alienation to the whole community of each associate with all his rights". (SC:1.6.6.)

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<sup>31</sup> In his criticism, Ernst Cassirer presents Rousseau's account of the society regulated by a general will as a society that requires "complete renunciation of all the particular desires" (Cassirer:1963, 52)

<sup>32</sup> Not being idle as the ancient people's were, you cannot ceaselessly occupy yourselves with the Government as they did: but by the very fact that you can less constantly keep watch over it, it should be instituted in such a way that might be easier for you to see its intrigues and provide for abuses" (LD 67)

<sup>33</sup> Cohen calls this "unity through ordering" (Cohen 2010: 40)

As we argued in the previous chapter, Rousseau's account of the contractual situation does not recognize any antecedent right claims or claims of justice, but rather that all such claims are to be established through an agreement of the contractual parties. The deliberation on the content of those rights is held in the context of legislative assembly comprised of all the contracting parties – the collective decisions of such an assembly, come from all members and affect all members.

This clause about 'total alienation' suggests nothing other than that people deliberate on the content of their right claims from the position of notional equality. Since the social contract establishes conditions that "are equal for all" – "no one has any interest in making them burdensome to others." (SC:1.6.6)<sup>34</sup>

So, under this shared commitment to limit burdens on others and not impose on others the constraints we would not want to impose on ourselves - every agent, interested in protecting his own interest, being motivated primarily by self love, acts for the benefit of every other associate. "This proves that equality of rights and the idea of justice which such equality creates originate in the preference each man gives to himself, and accordingly in the very nature of man." (SC:2.4.5).

And how such a commitment to share the common interest is agreed upon, and what does it consist off, is indicated by an interesting observation that Rousseau makes: "take away from these same (private) wills (interests) the pluses and minuses which cancel one another, and the general will remains as the sum of the differences"<sup>35</sup>

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<sup>34</sup> Or as Rousseau says in his "Letters Written from the Mountain": "The first and the greatest public interest is always justice. All wish the conditions to be equal for all, and justice is nothing but this equality". (LM 301)

<sup>35</sup> Gildin (1983, 55-57) provides an explanation of what Rousseau might have meant, by providing an illustration of Common's Dilemma. Let us suppose that a group of fishermen is fishing on a lake. There is a limit on the number of fishes that they can catch and this limit is determined by a long-run social advantage, since, those few fish that they catch will not extinguish the fish population. And yet, if each fisherman "cheats," all will suffer. Off course, each fisherman would prefer that the rule specifies that all other fishermen must obey the limit (this peculiarities can be understood as Rousseau's pluses and minuses). If we subtract out of these egocentric peculiarities, the "common" preference is for there to be a limitation on fishing all fishermen. Private wills in this sense are for example concerned with

In this sense the conception of the common good<sup>36</sup> serves as a standard of political right within society, and as a fundamental standard of political justification.<sup>37</sup> Judgments about what is right, become judgments about what advances common interests. In this sense Rousseau says that “the general will is always right” since it “always tends to the public good”. (SC:2.3.1)

All the right claims that citizens can legitimately make on one another are therefore founded on the considerations of their common good, on the ultimate authority of the shared understanding of that good. So, when I claim my rights as a member of the society of the general will: “I’m equally committed to acknowledging my obligations as a member, since those obligations are equally founded on the common good.” (Cohen 2010: 83).

This pervasive experience of political equality and reciprocation makes it less likely that the inflated amour-propre will appear<sup>38</sup>.

Although we recognized the line of thought that made Rousseau think that people can come to share a conception of the common good - it is still not clear why the supreme reason for individual’s conduct has to be a consideration of common good. Even more so, the problem is that in most of the cases, even for Rousseau, the law proposals will be made by simple majorities. And in each situation in which the collective choice is not being made by a unanimous vote, there is a possibility of that vote being a reflection of the ‘will of all’, rather than the general will. Even though I address this possibility and its consequences in the next chapter, my aim is to explain the content of distinction, and try

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securing protection, but want all other to bear the costs. How ever in the context of cooperation from Rousseau’s position all that they can agree to is that they bear equal costs, i.e. that they ascertain what is in common interest. (Gildin: 1983, 55 - 57).

<sup>36</sup> Interests that people can share

<sup>37</sup> In such circumstances people will only ever likely agree to establish those rights that are in some connection to their shared interests. The regulations of the society of the general will constitute the standard of justice within the society and determine the content of rights.

<sup>38</sup> The context in which the associates choose and specify the basic principles of the society of general will makes them conceive of the common good in the sense of giving equal consideration to the interest of each. In this sense individual in the association has in his everyday experience the other member promoting his interests as well as his own.

to understand in what sense people's deliberations in the legislative assembly give rise to the general will.

### ***2.3 General Will vs. the Will of all***

“When a law is proposed in the assembly of the people, what is asked of them is not exactly whether they approve the proposition or reject it, but whether it conforms or not to the general will, which is their own; each one in casting his vote expresses his opinion thereupon; and from the counting of the votes is obtained the declaration of the general will.”(SC:4.2.8).

There seems to be a rather straightforward interpretation of the distinction between the ‘general will’ and the ‘will of all’, baring in mind the substantive difference in content as much as in the character of the procedures that brings them about.

While the will of all is to be understood as a mere aggregation of self interested considerations, “ a sum of particular wills” (SC:2.3.2), the general will is best understood as an judgment on how best to advance the interests of the community taken as whole. The general will is supposed to will a good that is common to all, a good that serves the individual interest of everyone.

Since the legitimate decisions of the legislature of the society of general will ought to reflect the general will, let us explain this distinction in virtue of the decision making process of popular assembly.

Let us suppose that the legislature is comprised of people who act according to purely self-interested considerations, and suppose that acting according to self interested considerations means acting according to a private will. Now, when a person deliberates and acts according to his self-interested considerations, his input into the voting process could be interpreted as his preference.

Since (at least in an important sense) the general will is revealed through a voting process, the question is: can the aggregation of private wills (i.e. personal preferences) produce an outcome that represents the interest that is common to all? Well, any decision making procedure whose outcome falls short of unanimity (which is to be expected for the almost all the laws) must fail to do so. The outcome of such aggregation reveals the “will of all”, rather than the “general will”.

It is in the essence of such an aggregating procedure that it is directed to advancing the good of the majority.<sup>39</sup> If an input is a preference (a self interested consideration) only the unanimity can guarantee that the law enacted is in everyone’s interest, but it is not in the essence of such a procedure to serve the interest of everyone – it is devised to serve the interest of current majority (or qualified majority). The will of all would issue very little points of agreement, with continuous disregard for the interest of minority, and therefore fail to provide equal consideration to interests of each.

The voting procedure that leads to an expression of general will therefore has three distinctive characteristics:

- 1) Members have an understanding of what their common good is;
- 2) The common good (whatever its content) should be understood in the sense of giving equal considerations to the interests of each member;
- 3) Members are voting their judgments regarding whether the proposal in question accords with the common good of the members.

It is important to bear in mind that by constituting procedure in this way, there is still a pressing prospect that the collective choice will be made by a vote of the majority, since citizens are expected to disagree about what advances the common good. This is also a challenge for Rousseau’s theory and in the next chapter I will address it in more detail.

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<sup>39</sup> The outcome it produces aims at pleasing as many individuals as possible (Estlund, 1989: 1317).

This distinction, however, highlights that the considerations that lead to a general will cannot be self-regarding and that the Rousseau's account of the common good, is not utilitarian.<sup>40</sup>

Even though people might agree to further a common good that gives equal consideration to each member – it is still not sure why should they always give priority to the considerations of common good (over those private interests that they still have).

This brings us to the essential component of Rousseau's proposed solution for a fundamental problem, namely: in what sense, an individual obeying only the general will remains as free as before?

## ***2.4. Self-Determination under the Authority of the General Will***

In the previous chapter we discussed Rousseau's conception of freedom as self-determination.<sup>41</sup>

As we said, Rousseau thought that his society provides a definite answer to the fundamental problem: “man acquires in the civil state, moral liberty, which alone makes him truly master of himself; for the mere impulse of appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty.”(SC 1.8.3). In the society of general will, by complying with laws which reflect the general will, I'm having my own will as a rule.

There seems to be an obvious difference, however, between following the law which we prescribe to ourselves<sup>42</sup> and following the law in whose enactment we participated, even though that law might be in my interest.

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<sup>40</sup> There is no talk of maximizing (net benefit) the desire satisfaction of as many as possible, but rather satisfying fundamental interests of each, giving equal consideration to the interests of each member. Joshua Cohen highlights this point by saying that common good is to be understood in the distributive and not in aggregative sense.

<sup>41</sup> As we mentioned there, the essence of self-determination consists in our ability to recognize reasons for action, reflect on them and act upon our judgment, or as Rousseau puts it - act upon our will.



In order to trace this line of thought we should explain what Rousseau might have understood by will, and consequently how he thought that citizens can have multiple wills.

Broadly speaking, having a will means - having a capacity to act for reasons. A person in Rousseau's society has different wills when he uses different considerations in deciding on matters of public policy.<sup>43</sup>

A citizen can, therefore, have a private will – when his deliberation and decision making is guided by the considerations of his private, particular interests, and what Rousseau calls “constant will”<sup>44</sup> when his deliberation and decision making is guided by considerations of interests that he shares with every member of the political community. These different interests can, and in majority of cases do, provide different reasons for action, which brings us to the conclusion that individual has a private will that is “contrary to or differing from the general will he has as a Citizen” (SC:1.7.7).

Each member of the social compact shares a set of reasons for action<sup>45</sup> and is primarily motivated to act on the basis of those reasons. Each member reflects on the best way to advance the common good and votes on the basis of that judgment. Consequently, he regulates his conduct according to that judgment, he follows his own will, and is obedient to the law he has prescribed to himself (SC:1.8.3)

In that way, by acting upon their constant will, citizens of the society of general will have “their will alone as a rule”. (SC:1.8.3, 2.4.8)

As we said before, every member has a fundamental interest in exercising his capacity of self-determination. It appears as if the only way for him to achieve self-determination under the specified conditions would be to adopt this shared understanding of the

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<sup>42</sup> which is a common understanding of self-determination

<sup>43</sup> or as Cohen puts it “different reasons for ranking social outcomes” (Cohen, 2010, 61)

<sup>44</sup> his share of the general will (SC: 4.2.8.)

<sup>45</sup> Since, as we argued in one of the previous sections, there is a strong requirement that the public deliberation and decision making is conducted on the basis of considerations of the common good, it is presupposed that every member of the society of general will has a ‘constant’ will.

common good as his primary reason for action.<sup>46</sup> In this sense, freedom, understood as self-determination, can be achieved through organized political society, and this is Rousseau's proposed solution to the fundamental problem.

Being autonomous, in the society of the general will, means following my constant will, acting according to considerations of the common good, both in the process of assembly vote, and in my regulating my conduct according to the decisions of such an assembly.

Since the judgments about what advances the common good are judgments about what is right<sup>47</sup> – when I act according to the considerations of the common good, I'm acting morally. Seeing how the requirements of morality are not-specifiable in principle in the pre-institutional context – we can only attain moral freedom by entering the society regulated by a general will. (SC:8.3)

However, whether I am in fact autonomous depends on two important conditions:

- a) That other members of the society also act according to considerations of common good.
- b) That institutions of the society do in fact advance common interests and that they don't do so by accident.

If any of these two conditions isn't satisfied, it is less likely that the regulations of the legislative assembly will reflect the general will, and that I will be autonomous.

We can distinguish two distinct problems for the society of general will here.

One is the assurance problem. In order for myself to make the common good of the society my primary aim, I would need some assurances that other people are appropriately (institutionally) motivated to act on the basis of that good. I would also

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<sup>46</sup> Since every individual is motivated by self-love, and since no antecedent right claims enter the content of the Social Contract, only the order which advances common interests (interests that he shares with others) can gain popular consent.

<sup>47</sup> as we argued in the section 2.3

need assurances that the institutions of the society are capable of tracking the right way to advance those interests, and that they do not do so by accident<sup>48</sup>.

But, more importantly, these two conditions present a conceptual problem for the society of general will. Firstly, we need to presuppose that the members of the society of general will are capable of making the furtherance of common good their primary goal<sup>49</sup>. Secondly, and more importantly, we need to provide some arguments to back Rousseau's claim that the decisions of the legislative assembly will in fact reflect the general will. If we cannot provide such arguments, or if those arguments appear to be inconclusive, it presents a serious difficulty for Rousseau's proposed solution. I address this concern in *Chapter 3*.

## ***2.5. Rousseau's Account of the Common Good***

Rousseau himself was not entirely clear regarding the content of the common good of the society. We rarely, and not in much detail, get an account of those interests that the members of the social compact share.

One of the points of disagreement regarding Rousseau's theoretical framework is whether the content of the general will should be understood in terms of pure proceduralism or as an account resting on the substantive interpretation of common good.<sup>50</sup>

The issue in broad terms is whether what Rousseau understood as the common good<sup>51</sup> is specified prior to the assembly deliberation<sup>52</sup> or whether the decisions of the legislature

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<sup>48</sup> that the output of the decision making procedure tracks the common good

<sup>49</sup> For if they don't, I wouldn't in fact be free, I would be subordinated to the 'will of all'. Unlike the assurance problem, here it is not the problem of incentives to act for the common good. If members of the society are not capable of acting from these considerations, or if they are not appropriately motivated to do so, then the society can not be governed by the general will.

<sup>50</sup> This lack of definite specification presents a serious flaw in Rousseau's theory and is probably one of the reasons why the purely procedural interpretation of common good gained some plausibility.

<sup>51</sup> interests that members of the society share

<sup>52</sup> in which case the decisions of the legislature provide the right way to advance that common good

actually define the general will and common good.<sup>53</sup> Here I entertain the former possibility, and try to specify what are those common interests that Rousseauian individuals share.

Regardless of lack of definite specification, it seems that we can provide some specifications of the common good simply by reiterating the points made throughout this chapter:

- Common good in Rousseau's society should not be understood aggregatively<sup>54</sup>. It requires equal consideration for the interest of each member.
- So far, we recognized a shared interest in security and protection of resources, and a fundamental interest in exercising freedom understood as autonomy.

However, Rousseau never explicitly recognizes a shared interest in individual independence, and consequently fails to provide an explicit institutional guarantee of the liberties of conscience and liberties of person.

Be as it may, I would like to provide two types of considerations that figure in Rousseau's work, that could indicate that Rousseau regarded independence of judgment (which is closely associated with these liberties) as an important element of the society of general will, and that some protection of these liberties seems to be internally related to the supremacy of the general will.

Rousseau does seem to recognize the importance of the independence of judgment, and for Rousseau it seems to provide a consideration in favor of religious toleration. Talking about the reformation, he continues how all Protestants "acknowledged each of them as a competent judge for himself. They tolerated and they ought to tolerate all interpretations except one, namely, that which removes liberty of interpretation". (LM:154)

I think that, although the issue is never explicitly addressed, fostering independence of judgment figures as an important aspect of the institutional possibility of the society of

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<sup>53</sup> In the next chapter I will provide an argument in favor of the more substantive interpretation, however, here I will proceed as if the matter is already resolved.

<sup>54</sup> it is not a question of maximizing aggregate utility

general will. The importance of the independence of judgment is presupposed by the high epistemic standards that the procedure of the legislative assembly ought to satisfy.<sup>55</sup>

Since Rousseau does indicate the importance of the independence of judgment and since he recognizes that the liberty of conscience is closely associated with this independence - it seems that the liberties in question have to be protected in the society of general will, out of concern for the epistemic competence of the popular legislature.

On the other hand, the society of the general will does seem to secure some of the personal liberties in question, by its natural constituency. State coercion can only be exercised through enforcement of general rules, laws. Individuals are left at liberty to conduct themselves in any way that is not specified by general rules.<sup>56</sup> Every genuine expression of general will has to be *appropriately* justified in regard to the common good of the society.<sup>57</sup>

This constraint explains an apparently ambiguous attitude towards toleration that Rousseau expresses in the Social Contract. On the one hand, Rousseau thinks that people ought to legislate and publicly profess the civil religion which holds principles useful to the society. But this seems like nothing more than a requirement that citizens must share certain beliefs if they are to be considered reliable citizens. Not being a matter of conscience, this simply appears to be a requirement of assurance. Consequently, every member of the society who rejects the dogmas of the civil religion ought to be excluded from the society<sup>58</sup>. If the problem of assurance can be amended in different manner, this is not a principled objection to Rousseau's account<sup>59</sup>.

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<sup>55</sup> as I argue throughout the next chapter

<sup>56</sup> Rousseau underscores that "private persons", who constitute a public person, "have a life and liberty naturally independent of it" (SC: 2.4.2)

<sup>57</sup> If such a justification is not sufficiently rational or inadequate, the decision in question is not legitimate. "The Sovereign for its part, cannot burden the subjects with any shackles that are useless to the community; it cannot even will to do so." (SC:2.4.4).

<sup>58</sup> He cannot be relied upon to comply with the laws : It is impossible to be either a good Citizen or a loyal subject "because he is "incapable of sincerely loving the laws, justice, and if need be sacrificing his life to his duty" (SC: 4.8.32)

<sup>59</sup> This reflection is similar to the one Locke provided in his Letter Concerning Toleration – in which he said that atheists are not to be tolerated simply because they are not to be trusted, since not believing in God they lack one of the strongest motives that make men trustworthy. (Locke: 1965)

On the other hand, discussing these matters of the civil religion, Rousseau suggests that “Subjects...only owe the Sovereign an account of their opinions insofar as those opinions matter to the community. (SC 4.8.31). Outside the public practice of the religion, which reaffirms the commitment to common good, “each may have such opinions as he pleases, without its being the business of the Sovereign to know them.” (SC: 4.8.32 – 252). In essence, the justification-constraint, which is internally related to the proper exercise of the sovereign power, which is dependant on the actual supremacy of the general will within the society, provides some protection for individual independence<sup>60</sup>.

What I would like to mention here is the possible conceptual clarification that substantive interpretation provides. The explanation of the procedure that makes people able to share a conception of the common good is understood as a being guided by self-interested considerations. The procedure that gives rise to the general will is understood as one in which people poll opinions on whether the proposal “conforms to the general will”, i.e. whether it advances the common good? In order to do so<sup>61</sup> they reason on whether the proposal in question conforms to the previously defined account of the common good. So what substantive interpretation indicates is that the conception of the common good is defined through collective choice procedure conducted in terms of manifest equality and guided by self interested considerations, while the procedure that leads to the “expressions of the general will” - polls judgments about how best to advance *that* common good, and is guided by giving priority to the considerations of that common interest.

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<sup>60</sup> An argument in favor of the shared interest in personal liberties is provided through an interesting observation made by Cohen. He questions why does the case for collective regulation, made by citizens, need to show that regulation is important to the community – important in advancing the common good rather than just that public regulation is of some public benefit, however minimal? (Cohen, 2010:48) often then indicates that a natural response would be that individual independence is an important political value, not to be burdened unless such burdening is important.

<sup>61</sup> According to substantive interpretation

### 3. *How do we know the “General Will”?*

Although the considerations we provided give some support to the plausibility of Rousseau’s project<sup>62</sup>, there are still important concerns about the nature of the procedure that gives rise to the general will.

Here, I start by discussing the four constraints that need to be met in order for the regulation of the popular assembly to be an expression of the general will. I argue that these constraints aim to guarantee that assembly deliberation is being held under conditions of substantive equality. I also argue that Rousseau’s understanding of the collective decision making seems to rest on some intuitive presuppositions about the epistemic character of popular deliberation.

After the constraints have been specified, I address the issue indicated in the previous chapter, namely, whether the decisions of the legislature, appropriately constrained, define the general will in the society, or whether the decisions of the legislative assembly give significant epistemic confidence that the enacted regulation presents the best way to advance the common good (defined independently of that procedure). I argue for the substantive account of the general will and I draw on the findings in Condorcet’s Jury Theorem as a best way to understand Rousseau’s optimism regarding the epistemic competence of the popular legislation.

However, I concede that there are some difficulties inherent to the Condorcetian interpretation and I identify possible criticisms as well as possible Rousseauian answers to those criticisms. In the end I present what seems to me to be the most compelling objection to Rousseau’s account of legitimacy, provided by David Estlund (1997)<sup>63</sup>.

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<sup>62</sup> Society regulated by a general will, that provides a solution to the fundamental problem, the only account of legitimate authority compatible with full political autonomy.

<sup>63</sup> I address this criticism in the *Conclusion*.

### 3.1. *The Constraints on the Deliberation of the Popular Assembly*

Rousseau was aware that not every decision of the legislative assembly necessarily reflects the general will, since those deliberations may reflect insufficient information, or be dominated by private interests, subordinated to factional conflict, or addressed to issues on which there is no common interest. (SC. 2.3.). In order for the deliberation in the popular assembly to result in the expression of the general will, a set of *necessary* background conditions needs to be satisfied:

1) *The members of the sovereign body ought to deliberate and vote on the basis of the common good of the society.*

The first condition is stipulated in the distinction between the general will and the will of all.<sup>64</sup> Citizens involved in the process of legislation (including the process of public deliberation as well as voting) ought to give priority to considerations of common good over personal preferences, and thus reason whether the proposal in question is an instance of general will. Trivially, this implies that the outcome of the deliberation is an opinion rather than a preference.

2) *The members of the sovereign body ought to make their decisions as individual citizens and not as members of factions.*

Second condition, that Rousseau highlights, is in a sense, a qualification of the first condition. Although people ought not to vote on the basis of self-interested considerations, they also ought not to vote on the basis of factional interests. They ought to vote their independent opinion on the matter<sup>65</sup>.

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<sup>64</sup> Since the general will is inherently different (See 2.3) from the will of all (an aggregation of preferences), and since the general will is “revealed” through popular legislation, the members of the legislative assembly ought not to vote on the basis of self-interested considerations.

<sup>65</sup> This condition is commonly interpreted as Rousseau’s denial of the right to assemble, but this is misconstrued. The problem of factionalization as Rousseau sees it is somewhat different.



People who are organized within factions and united by the common interest particular to that faction, deliberate by taking into consideration the will of the faction which is “particular in relation to the State”(SC. 2.3.). By not taking into consideration the will of the community as a whole, they go against the 1<sup>st</sup> condition.<sup>66</sup>

3) *Every member of the sovereign body is guaranteed an economic minimum.*

The concern Rousseau expresses here is that considerable economic inequalities might threaten the political equality of the citizens: “with regard to equality, this word must not be understood to mean that degrees of power and wealth should be absolutely the same, but..., no citizen be so very rich that he can buy another, and none so poor that he is compelled to sell himself” (SC 2.11.2). In this sense<sup>67</sup> some level of economic equality of the citizens figures as a means to secure their independence – since it is closely related to their independence of judgment.

Rousseau, therefore, does introduce a distributive requirement in his ideal society, but this requirement is not inherent to citizen’s conception of the common good – it is issued as a necessary condition for the stability of that society.<sup>68</sup> There is a deep concern that a reality of large social inequalities might give rise to inflated amour-propre, which would by definition change the way assembly members regard each other.

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<sup>66</sup> But, let us suppose that the group in question is united by a particular interpretation of how the common good of the society as a whole - ought to be interpreted. That seems to be perfectly compatible with the 1<sup>st</sup> condition. However, Rousseau’s main concern was to prevent a possibility of intrigues and majority factions. In the circumstances where we have a majority faction, or a possibility of an “behind the doors” agreement of few factions to form a majority, there are strong reasons to doubt whether the legislation will advance common interests. It not only nullifies the significance of the deliberative process within the assembly and its potential epistemic value, but it blatantly disregards the arguments of minority. If the agreement has been made prior to deliberation, the deliberation itself seems redundant. Rousseau, however, embraces two possibilities: that there are no-factions and that there are numerous factions who are relatively equal in power (SC 2.3.4.).

<sup>67</sup> since (according to the 2<sup>nd</sup> condition) it is necessary that individuals vote on the basis of their own individual opinion

<sup>68</sup> It is obvious how considerable economic inequalities can prove to be devastating for a society of general will: Those considerably well-off will tend to use their influence to support their agendas, while at the same the influence of those less well-off will be reduced to marginal importance. This is the common problem in democratic societies and it reflects the genuine concern that a purely formal account of political equality might be an empty ideal. On the other hand, it is essential for the stability of the society of general will that its citizens sustain an appropriate motivational structure, which they deliberate, regarding each other as equally worthy of respect.

4) *Members of the sovereign body ought to deliberate on the basis of adequate information.*

This condition ought to emphasize the cognitive nature of the deliberative process preceding the poll, as well as an epistemic value of its outcome. While it might not be clear how demanding this informational constraint ought to be, it is nevertheless clear that Rousseau presupposes that the members of the sovereign body are competent enough to be able to deliberate on public matters.

These background constraints that Rousseau introduces seem to draw on few important points regarding public deliberation, points that are highlighted throughout the tradition of participatory politics. Baring in mind these four conditions we can make these assumptions about the character and the nature of deliberative process as Rousseau understands it:

The discussion in the public context requires that people provide justifications for particular proposals, that these justifications are *intelligible* to others<sup>69</sup> and that the justifications for policy proposals will be made by reference to the common good<sup>70</sup>.

As Cohen argues:” While I may take my preference to be a sufficient reason for advancing a proposal, public deliberation requires that I can find reasons that make the proposal acceptable to others” (Cohen:1997, 76)

Also, it is in the anticipated outcome of the process of public discourse that people’s subsequent voting is reason-responsive. By providing and listening to different justifications people tend to reflect on, and if necessary, transform their judgment, and

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<sup>69</sup> meaning that the public scrutiny of justifications ought, at least ideally to eliminate unreasonable considerations for supporting a particular proposals - “prejudice fares less well than reason in open debate” (Waldron 1989: 1327)

<sup>70</sup> Since it is commonly assumed that every citizen conducts his deliberation in order to convince others to accept his justification, it is not very likely that he will succeed to do so if he justifies his proposal by self-regarding considerations. He needs to present his justification as appropriately connected to the common good of the people.

vote on the basis of that judgment, rather than on the basis of their preference. (Peter, 2009)

However, a passage from the Social Contract caused some controversy regarding Rousseau's commitment to public deliberation: "If, when people, being furnished with adequate information, held its deliberation, the citizens had *no communication* with one another, the grand total of the small differences would always give the general will, and the decision would always be good" (SC.2.3.3 *emphasis added*)

In the famous article from 1988 Grofman and Feld have used this quote to claim that Rousseau was rather pessimistic regarding the effect of the popular deliberation. Instead, they claimed, a citizen vote should reflect his privately formed judgment about common interest, since the influence of widespread dialogue tends to be detrimental to his competence. "Each voter is polled about his independently reached choice, without any group deliberation" (Grofman and Feld 1988, 570)

This interpretation, however, does not account for some aspects of Rousseau's theory.

Firstly, it is at odds with the tradition of participatory democracy, which has placed great emphasis on dialogue among citizens, both as an intrinsic good and as a way of improving the likelihood that they will decide wisely on the issues that they are addressing.

Secondly, the condition of sufficient information (the 4<sup>th</sup> condition) seems to be in direct opposition with this claim: how, as a practical matter, could citizens be adequately informed in the absence of communication? (Cohen 2010: 76)

Thirdly, there are other possible explanations of the type of "communication" that Rousseau tries to exclude. In the sentence following this controversial claim, Rousseau himself contrasts deliberation without communication with intrigues and the formation of factions, more specifically the emergence of the majority faction. So rather than requiring

that there is no communication, it is more likely that he was trying to exclude manipulation and blind deferral to judgment of others - deferral of judgment which is not grounded on reason<sup>71</sup>.

But the biggest issue, that argument provided by Grofman and Feld cannot account for, is: why would Rousseau require that citizens come together in an assembly to make collective decisions, if the discussion among citizens is dangerous? Even Rousseau himself, in the very same book speaks about importance of public deliberation<sup>72</sup>.

### ***3.2. Procedural vs. Substantive interpretation of the General Will***

How does Rousseau account for his optimism, that the appropriately constrained (satisfying the four background conditions) decisions of that society, will in fact reflect the general will?

The interpretative problem of general will<sup>73</sup> becomes even more complex since Rousseau sometimes talks about the legislative procedure in a sense which might be interpreted as an instance of pure proceduralism: “If, when the people, being furnished with adequate information, held its deliberations...the general will would always result from the large number of small differences and the deliberation would always be good” (SC:2.3.2)

The distinction between “pure” and “perfect and imperfect” proceduralism was primarily introduced by Rawls in his “*Theory of Justice*”. (Rawls,1971:85)

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<sup>71</sup> It is with the satisfaction of the four constraints we mentioned that such influence is significantly undermined.

<sup>72</sup> Rousseau: “I could offer quite a few reflections here on the simple right to vote in every act of sovereignty; a right of which nothing can deprive Citizens; and on the right of voicing opinions, proposing, dividing, discussing [motions], which the Government always takes great care to allow only to its own members; but this important matter would require a separate treatise, and I cannot say everything in this one” (SC 4.1.7).

<sup>73</sup> The problem is that (as we discussed in section 2.4) Rousseau never provided a determinate account of his conception of the common good. We can grasp that there are some interests that members of the social compact do share (namely: the interests in security and the protection of goods) and that there are some indications of the shared interest in personal independence, but hardly anything else.

According to the conception of pure proceduralism - the outcomes of the democratic decision making procedure are legitimate if a procedure was appropriately constrained. In this sense, the legislative procedure would be understood as ‘backwards looking’ – as concerned with the values of the procedure.

The conceptions of perfect and imperfect proceduralism, on the other hand, make reference to a procedure independent criterion of correctness, upon which the decisions of the actual procedures are being evaluated. In section 2.5 we provided an account of substantive interpretation of general will – as focused on the common good of its members<sup>74</sup>. This account of common good then figures as an independent standard of correctness – and the decisions of the legislative assembly are understood as correct or incorrect in virtue of their relation to that standard.

If it is possible to design a procedure that guaranties that such an outcome will be reached, then it is a case of perfect proceduralism, if it is not possible to design such a procedure, we have a case of imperfect proceduralism.

### ***3.2.1. Purely Procedural Interpretation of the General Will***

According to the purely procedural account of the general will, general will is defined through voting procedure that satisfies the specified background conditions.<sup>75</sup>

There is no independent standard of correctness upon which the outcomes can be evaluated. This means that when the general will is ‘right’ – it is ‘right’ due to the properties inherent to the procedure that brought it about.

Usually, according to theoretical accounts that rest on pure proceduralism, the legitimacy of democratic decision-making is ensured as long as the process meets some demands of procedural fairness: “Whatever the results of discussion, deliberation, and decision

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<sup>74</sup> understood as a commitment to take the basic interests in security, freedom and possibly even personal independence - of every member into equal consideration

<sup>75</sup> We specified four such conditions that figure in Rousseau’s context of popular deliberation.

making ...they are legitimate. The results are made legitimate by being the result of the procedure. (Christiano,1996:35)

Purely procedural interpretations of the general will have been a common interpretative point, especially in the late 20<sup>th</sup> century, and were usually critical of Rousseau's account. (Riker:1982) (Plamenac:1965)

However, let us question the plausibility of the purely procedural interpretation of general will. First thing that comes to mind is that the outcomes of the democratic procedure, for Rousseau, are not considered 'fair' but 'correct'<sup>76</sup>. This point is even more obvious since the input in the voting procedure of the legislative assembly is an 'opinion'<sup>77</sup> – an opinion on whether the proposal conforms to the general will.

So the question seems to be: what can we understand here as an opinion?

I claimed<sup>78</sup> that an input in the voting process of Rousseau's legislative assembly must not be understood as a preference.

In the common use of the concept, when we say that someone has an 'opinion', it is usually meant that such an opinion is about something, about independent state of affairs. If I get that state of affairs wrong, then my opinion on the matter was wrong. Therefore, in the common use of the word, "an opinion" is a judgment on an independent matter of fact.

But as we have seen, the purpose of purely procedural account isn't to fix an independent matter of fact. Whatever comes out of that procedure is 'fair' just by the virtue of appropriately constrained procedure.

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<sup>76</sup> unlike in the tradition of pure proceduralism

<sup>77</sup> 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 general will is not (SC 2.3.2)

<sup>78</sup> In the last chapter (2.3) as well as in one of the preceding sections (3.1)

So, how should we understand Rousseau's claim that everyone is "giving an opinion" if the general will is to be understood as a case of pure proceduralism? It cannot be understood as a preference, nor can it be understood as a judgment.

In that case, as Cohen argues, the most plausible interpretation would be that a person is giving a prediction about the result of the vote (Cohen: 2010, 75).

Since each member knows that whatever comes out of the (appropriately constrained) procedure will be correct – and since he is naturally inclined to get the 'correct' answer, each member votes his prediction regarding the outcome of the vote.<sup>79</sup>

Even though the purely procedural interpretation of general will can make sense of Rousseau's claim - that when a vote goes against me I am shown to be wrong, it is clearly a perverse view of voting (Cohen: 2010, 75). It is quite uncommon to think of individual votes on certain question - as predictions of the outcome of the collective vote.

Even more so, it is problematic to equate the output of the democratic voting procedure with the public good, since the persisting disagreements about "what to do" - would have no content. Also, there would be no basis on which one could require a revision of past decisions.

### ***3.2.2. Substantive Interpretation of the General Will***

The substantive account<sup>80</sup> of general will provides a more appropriate interpretation of a vote as an opinion. On the substantive account, there is a procedure independent, correct answer to the question posed in a legislative assembly: "Does this regulation advance the common good?"

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<sup>79</sup> So, if a citizen believes that a result of the vote will be negative – if he believes that a proposal in question will be rejected by the majority – he votes against it. Now, if the collective choice goes against his prediction, he can be shown to be mistaken. He thought that it would be negative, but it wasn't.

<sup>80</sup> As we said earlier, on the substantive account - general will is concerned with the shared understanding of common good. Common good of the members requires satisfaction of the shared interests in the way that gives each of them equal consideration.- and even though the members of the assembly share a conception of the common good, there are still disagreements on numerous interpretative issues, such as choosing the best policy to advance it. If these disagreements were not so deep and pervasive, Rousseau would probably require that each regulation ought to be decided by unanimous vote. However, he himself thought that that would be too strong of a constraint on a legislative body.

A vote reflects an opinion<sup>81</sup> of the citizen regarding that independent matter of fact. Even more so, this interpretation is compatible with cognitive requirements and expectations that Rousseau seems to attribute to the voting procedure. A collective choice then pools opinions about a question which has the right answer.

So when I vote my opinion, and the opinion contrary to mine prevails, then - that very fact gives me reasons to think that I was wrong. The judgment of the majority is regarded as epistemically superior to my own.

However, there are two issues that need to be resolved:

Firstly, whether Rousseau's account of general will is a conception of perfect proceduralism or of imperfect proceduralism?

Secondly, what is the basis of Rousseau's optimism regarding the epistemic character of a voting procedure?<sup>82</sup>

Let us address the first problem at this point.

*His claim "when an opinion contrary to mine prevails, it proves nothing more than that I made a mistake"* (SC:2.3.2) seems to suggest that Rousseau was defending an account of perfect proceduralism. If the procedure is appropriately constrained, the judgment of the majority is epistemically infallible – the voting procedure always gets the correct result.

I think there are significant problems with this interpretation nevertheless.

First, it seems like Rousseau was never certain that the actual democratic procedures are likely to yield correct outcomes on a consistent basis - "Of itself the people wills always the good, but of itself it by no means always sees it" (S.C:2.6.10).

Second, even under the assumption that the constraints are satisfied, Rousseau requires that the laws on important matters are to be endorsed, not by simple majorities, but qualified majorities, depending on the importance of the matter. (SC 4.2.12) It seems that Rousseau thought that votes of the majorities are more competent as the majority increases in size, and this surely doesn't make it a case of pure proceduralism.

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<sup>81</sup> a judgement

<sup>82</sup> We shall address this problem later, by drawing on findings of Rousseau's contemporary, Marquis de Condorcet in his "Jury Theorems" (Grofman, Feld : 1988)



Third, I think that the constraints Rousseau mentions are too vague and that they are not specifiable in principle. There is a genuine concern whether the definite specification of “sufficient information” can be provided.

Fourth, Rousseau must be able to account for his optimism regarding the infallibility of the voting procedure. As we shall see below, resting Rousseau’s argument (of the epistemic character of the assembly vote) on Condorcet’s Jury Theorems - makes it a case of imperfect proceduralism.

### ***3.3. Condorcet’s Jury Theorems***

So how does Rousseau account for the optimism that the appropriately constrained process of public deliberation, reflected in the votes of the members of the popular assembly, will provide good evidence about whether the proposal in question is in fact an account of general will?

One reason for this optimism in “judgmental competence” of the collective bodies is given by Condorcet’s Jury Theorem’s. (Grofman and Feld: 1988)

If the members of the collective satisfied these (necessary and sufficient) conditions:

- a) Vote their opinion on an issue that has a determinate “yes or no” answer<sup>83</sup>
- b) Do so by reaching an independent judgment<sup>84</sup>
- c) And each of them has better than random chances of getting the right answer,

Then their collective decision, brought by a majority rule, will have a greater chance of being right and it will have a progressively greater chance of being right as the size of the group increases.

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<sup>83</sup> like the question posed in Rousseau’s legislative assembly does have

<sup>84</sup> they might form their opinions on the basis of dialogue with others, but none should vote in a way that is blindly deferential toward others

Competence is defined simply as the probability (that given a dichotomous choice) a person will choose the right alternative. In that sense a theorem simply asserts a mathematical relation between individual competence and group competence: if the average competence of a group is greater than 0.5, then the competence of a group, deciding by simple majority, approaches 1 as the number of members increases.

The conclusion drawn from Jury Theorem's suggests that a member of an assembly, whose opinion did not receive a majority vote, has (epistemically justified) reasons to suppose that he was wrong, and, as the previous passage suggests, that if his particular opinion had prevailed, he wouldn't in fact be free. The apparent absurdity of this conclusion is resolved once we remember what in fact Rousseau understood as a full political autonomy of the assembly members.<sup>85</sup>

And this is how Rousseau accounted for the fact that not every member of the community did literally give law to himself, but still stayed as free as before. This is not a majoritarian ideal – the outcome of the voting is not legitimate simply because a member in a minority also participated in the process or because his argumentation was taken into consideration. It is because the judgment of majorities has much more chance of advancing a regulation that takes each member of the community in equal consideration, than his own judgment, that the decisions of the legislative assembly have legitimacy<sup>86</sup>, and that the society of general will fulfills its purpose. It is also important to note here that, for Rousseau<sup>87</sup>, epistemic character of the voting procedure renders the decisions of

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<sup>85</sup> Each member is free if he acts according to his constant will (the general will in him) and his reasons for action that he shares with others (directed to advancement of his fundamental interests). What each member essentially wills is that every legal regulation does in fact advance common interests of the community, and although a member might have thought prior to voting that he was right and he reasoned an deliberated from that perspective, by getting the result of the vote he now considers this new evidence as an adequate, epistemically justified reason for deferring to judgment of the majority.

<sup>86</sup> Since I take Rousseau's account of general will as a conception of imperfect proceduralism, and since then by definition the voting procedure cannot guarantee that every regulation of the popular assembly will meet the general will - I take Rousseau to be endorsing an account in which legitimacy is weaker than correctness. Namely that the procedure of the legislative assembly can secure legitimacy for the general run of laws, since it presents a reasonably reliable procedure of getting the correct result.

<sup>87</sup> Under the assumption that four background conditions are nominally satisfied (or at least that we cannot provide a strong enough argument for why this isn't so)

legislative assembly legitimate in general, even though it is not to be expected that every instance of vote will get it right<sup>88</sup>.

Baring in mind that Rousseau himself admitted the possibility of the incorrect outcome of the voting procedure, members of the assembly need to have a possibility of criticizing and revising past decisions of the legislature, upon subsequent evidence.

The more important problem however, looms in the background. Provided that all the constraints that we listed are satisfied, and that the procedure was conducted appropriately, is it plausible to expect the members of the social compact to surrender their judgment to the judgment of the majority, rather than merely obey it?<sup>89</sup> It is not only necessary that I follow the right way of conduct, but that I endorse it (on the basis of reason, not on the basis of blind deferral) as a right way of conduct.<sup>90</sup>

### ***3.3.1 The Problems with Condorcetian argument***

There are few obvious difficulties with Condorcetian interpretation.

#### *a) the issue of competence*

First of all, the competence of the members cannot simply be assumed.<sup>91</sup> The problem here is not the lack of proper motivation<sup>92</sup>, but genuine doubt in the epistemic competence.

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<sup>88</sup> The decisions made by majorities provide good, but not infallible reasons that the outcome of the vote is correct. This is essential to Condorcetian probabilistic interpretation of a voting procedure. To reiterate the point, Condorcetian interpretation of Rousseau's popular legislative procedure makes it a case of imperfect-proceduralism.

<sup>89</sup> To specify this concern – in order for a citizen to be self-determinate, according to Rousseau, he needs the adopt this judgment of the majority as a right way of conduct, and conduct himself accordingly. For if he didn't do so he would merely obey the will of the majority, and would not be free.

<sup>90</sup> We will leave this issue for later, when we'll discuss it through Estlund's criticism of correctness theories of democratic legitimacy. (Estlund: 1997)

<sup>91</sup> What is interesting is that throughout the Social Contract Rousseau expressed skepticism regarding the average competence of the members of the popular assembly: "How can a blind multitude, which often does not know what it wills, because it rarely knows what is good for it, carry out for itself so great and difficult an enterprise as a system of legislation? Of itself the people wills always the good, but of itself it by no means always sees it." (S.C. 2.6)

<sup>92</sup> "Of itself the people wills always the good" (S.C. 2.6)

As much as Condorcet's argument provides optimism about majoritarian decisions, under the assumptions that voters on average are more likely to get a right solution than not, it also provides reasons for pessimism if on average they are more likely to get it wrong. And the reasons why citizens can have low competence on average, does not necessarily come down to the lack of information or voting random. "When a probability of a truth of a voter's opinion falls below 0.5 there must be a reason for why he decides less well than one would at random. The reason can only be found in prejudices to which this voter is subject<sup>93</sup>."

It is therefore, a necessary attribute of the society of general will, that its institutions appropriately foster and enhance the competence of the members of the legislative assembly, and that they create atmosphere conducive to independence of judgment. Partially, this is presupposed by the constraints on the legislative procedure. It is presupposed that voters are aware of the necessity of the close scrutiny of the information relevant for the proposals that they deliberate on. It is also presupposed that it is in the nature of the appropriately constrained public deliberation, that it has an effect of raising competence.

*b) the requirement of underlying unanimity (Cohen's objection)*

A further difficulty for Condorcetian interpretation seems to be that it considerably reduces the scope of possible disagreements that members of the assembly might have, and by doing so it seems to pose too much of a restriction on a democratic character of Rousseau's society. (Cohen, 2010: 80)

Suppose that an assembly, deliberating on a particular issue, reflects the differing judgments not only on the question whether the policy proposal is the best way to advance the common good, but the disagreements about the interpretation of the common good. Supposing the decision that has been enacted does indeed represent the best way to

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<sup>93</sup> (Found in: Waldron: 1989)

advance a certain aspect of common good – security. Majority is the best judge in the case of advancing security. However, supposing someone within the minority objects that the policy proposal, although being the best way to advance security, still unnecessarily constrains the common good of prosperity. Now, although the member might respect that the current majority is competent regarding the issue at stake, he nevertheless has a substantive disagreement regarding the interpretation of the common good. He objects that they don't consider the shared interest in prosperity as much as they should.

Therefore, he cannot defer to majority judgment and “follow his own will”, to use Rousseau's terminology, since the decision of the majority doesn't pertain to settle his concern at all.

Rousseau's answer would probably be that this kind of disagreement<sup>94</sup> must not arise with the society, since it's incompatible with political autonomy. Citizens can only follow their own will in the relevant sense if they follow their own view of the common good.

For that to be possible, citizens need to share a strong account of community, with agreed and specified understanding of the common good. And in this sense, Rousseau doesn't seem to be able to account for the reasonable political disagreement. Self-legislation which is internal to legitimacy, presupposes a strong account of underlying unanimity.

Of course, this criticism is not necessarily devastating for Rousseau. He might think that the disagreement is not necessarily very 'deep'. He might argue that the citizens of the society of the general will can transcend this reasonable disagreement through the process of socialization. And even though the disagreement might be expected at the moment of enactment of social contract, it still doesn't mean that it cannot be resolved through active popular deliberation. This line of argument might not be entirely plausible, and in some conflict with actual democratic experiences, but it is not unfounded.

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<sup>94</sup> disagreement regarding the content of common good

### ***3.4. The Problem of Deferral – Estlund’s Criticism***

By defending a substantive account of general will, we tried to make sense of Rousseau’s famous paragraph that when the opinion of the majority is contrary to mine, it proves that I was in error and that I should defer to their judgment<sup>95</sup>. (SC 2.3.2)

The rationale behind this claim is seemingly straightforward: in order to exercise self-determination I ought to act according to the regulations of general will, of an appropriately constrained legislative procedure<sup>96</sup>.

I defer to the judgment of the majority simply because it is an account of general will, because the voting procedure is epistemically superior to my individual judgment<sup>97</sup>.

So, even though the voting of the assembly might sometimes yield decisions that do not reflect the general will, that procedure is sufficiently accurate as such to confer legitimacy to the laws and policies it enacts.

By requiring that the decisions of legislative assembly be correct (by a procedure independent standard) in order for them to be legitimately imposed upon the members of the social compact, Rousseau endorses what Estlund calls a correctness theory of legitimacy (Estlund: 1997)

Condorcetian interpretation of Rousseau<sup>98</sup> has its own flaws, as we previously suggested. But provided those flaws can be amended, that still lives us with difficulties inherent to correctness account of legitimacy.

This is a slightly altered version of Estlund’s objection to Rousseau:

- (1) Regulations of the society of general will (outcomes of the assembly vote) are legitimate (by definition) only when they reflect the general will, i.e. only when they are correct, and because they reflect the general will

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<sup>95</sup> I take that as a sufficient epistemic reason to accept that judgment and act upon it, even if I voted against it.

<sup>96</sup> “Appropriately constrained” means nothing other than that Rousseau’s conditions have been satisfied and that the members of the assembly have a mean competence above 0.5

<sup>97</sup> and therefore more likely to get the correct answer

<sup>98</sup> the proclaimed epistemic assurance in the decisions of majorities

- (2) Regulations of the society of general will are not legitimate on the basis of any procedural reason – on the basis that they issue from a fair process of collective decision making that treats everyone as equals by considering everyone's arguments in the process of deliberation
- (3) The content of the constraints on the appropriately conducted democratic procedure (i.e. the specification of adequate motivation, availability of information, competence) is not only actually undetermined, but inherently undeterminable.
- (4) It is never unreasonable<sup>99</sup> to suspect whether the legislative procedure in question produced a correct collective judgment, and this is akin to moral judgments.
- (5) The members of the assembly cannot be expected to defer to judgments of majorities when they don't think that their judgment is correct.
- (6) The legitimacy of the regulations of the society of general will is never beyond reasonable doubt.

The underlying idea behind Estlund's argument is that<sup>100</sup>, it is unreasonable to expect or require that an individual unconditionally submits his or hers judgment to any moral authority. Even if we suppose that there is a moral truth and that a voting procedure has a better chance of attaining it than ourselves, it is still not unreasonable not to submit our judgment to it.

The explanation of epistemic quality of majority vote provided by Jury Theorems seems even more prone to this skepticism. If we take into consideration issue of judgmental competence of the voters and the necessity for sufficient information (premise 3), we can see that there is almost no certain way to determine, neither their exact content, nor whether they have ever actually been satisfied. Consequently, it is doubtful that the Jury Theorems can in principle provide us with a sufficient reason to accept the judgment of majorities.

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<sup>99</sup> Estlund introduces a distinctively Rawlsian requirement (criterion) of legitimacy that holds that : the legitimacy of laws is not adequately established unless it can be defended on grounds it would be unreasonable to object to. (Legitimacy requires the possibility of reasons that are not objectionable to any reasonable citizens) (Estlund: 1997, 175)

<sup>100</sup> at least in important matters of morality

But regardless of the basis of the correctness theories (whether they rest on jury theorem or not) it seems that they all presuppose a highly contentious underlying premise. Suppose that a certain procedure is highly likely to produce the correct outcome. Since the correctness theories found legitimacy on the proclaimed epistemic quality of the legislative decisions, it appears that they are committed to requiring obedience from the minority voter (who denies its epistemic quality) on the basis of high probability that the outcome was correct. So in order to require minority voter to accept the legitimacy of the decisions of the majorities, correctness theories are committed to the following premise:

“One who accepts that all things considered the correctness of a given moral judgment is extremely probable - has good reason to accept moral judgment” (Estlund 1997: 186)

Obviously this is a highly disputable premise. The very possibility of it being false, no matter how small that possibility actually is, seems to provide a confidence that not all citizens will in fact adopt it. Again, this is simply because of the nature of moral judgment. In order to back this claim Estlund offers a thought experiment. Supposing that there are 1000 cards and each one has a moral statement written on it, a moral statement on which we are uncertain, and supposing that it is beyond a doubt that 999 of the cards contain true statements. And suppose a person draws a card on which it states that “physician assisted suicide is sometimes morally permissible”. Does this appear like a good enough reason to accept that judgment? Even if it almost certainly correct, it is still not unreasonable to dismiss the high probability of any card in the deck being true, as a sufficient reason to share the moral judgment written on it.

So even if we suppose that the outcomes of the voting within the popular assembly have a high probability of getting the right answer, on discovering whether the proposal in question is an instance of general will or not, it seems that the correctness of those outcomes will not be shared by at least some portion of the minority voters. In consequence, the letter of Social Contract appears broken for them.



## *Conclusion*

It seems that even though general will has been given various interpretations throughout history, there has been little understanding of its nature and even less understanding of the procedure that brings it about.

I defended a substantive account of the general will, focused on the common good of its citizens<sup>101</sup>, and I argued that the procedure of the legislative assembly provides the most reliable evidence for ascertaining that good.

I argued that the existence of the general will requires that citizens share an understanding of that common good and that they give priority to the considerations of that good.

For both of these conditions Rousseau tried to provide sufficient arguments, and intuitive considerations:

- That people come to share an understanding of the common good is understood by the analysis of the context of the contractual procedure that brings it about<sup>102</sup>.
- That people come to give priority to these reasons is somewhat more problematic question for Rousseau, and yet he did provide wide range of intuitive considerations that ought to make that problem less devastating<sup>103</sup>.

I concluded that Rousseau was aware of the persistence of private interests, and that he didn't thought it necessary<sup>104</sup> that such interests should be abandoned. I also tried to argue that there seems to be a significant role for personal independence in the society of general will and that this is strangely at odds with totalitarian interpretations of Rousseau. Personal liberties are not only compatible with the justification-structure internal to the

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<sup>101</sup> namely their shared fundamental interests in protection of their person, their goods and autonomy

<sup>102</sup> Context in which people debate on the principles of their cooperation from a position of manifest equality, from self-interested considerations and with ability to differentiate just from unjust arrangements.

<sup>103</sup> Direct democracy has a considerable part in the acquisition of the general will, and in fostering the appropriate motivations – in the continuous experience of being treated as an equal and in continuous reciprocation the shared commitment is more likely to appear. Even more so since the popular decision making is restricted to voting rather than on implementation of laws in particular cases – the impact of laws might be thought to be sufficiently indirect and uncertain that citizens can put their preferences aside in their deliberations.

<sup>104</sup> for the internal consistency of the society of general will

concept of general will, but more importantly, they have to be presupposed<sup>105</sup>, because of the high epistemic standards that a procedure leading to the general wills has to satisfy. And it is in the core of Rousseau's political project that the decisions of the legislative assembly do in fact reflect the general will – that they do in fact advance the common good. Because if they don't, the strong requirement of political autonomy cannot be met. Since the judgments about what advances the common good are the judgments about what is right<sup>106</sup>, I exercise moral freedom by taking the regulations that advance the common good as a supreme guide in my conduct.

I argued that, although the conception of the common good is asserted, the differing views about the most appropriate way of advancing it<sup>107</sup>, account for the persisting disagreements in the assembly. And because of these disagreements, much of the regulations has been brought by a majority vote. But even so, the principle concern - that the general will somehow conflates with the will of all – does not have much basis.

I addressed this problem in two ways:

- 1) As a matter of principle - by arguing that<sup>108</sup> the appropriately constrained voting procedure does not aggregate preferences, but polls judgments. Although the problem of temptations still persists, and even Rousseau asserts that the result of the vote can on an occasion yield the 'will of all', this is less likely to happen on consistent basis for it to undermine the continuous supremacy of the general will.
- 2) As a matter of epistemic reliability – by arguing that the findings in Condorcet<sup>109</sup>'s jury theorems suggest that appropriately conducted voting procedure gives evidence about the best way to advance the common good. I argued that there are legitimate concerns about the voters competence, but that they might be amended by the proclaimed

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<sup>105</sup> Since they are internally related to the possibility of the independence of judgment

<sup>106</sup> Since the basic standard of political right is given by the common good

<sup>107</sup> A problem of translating a set of generally recognized (moral) principles into concrete regulations.

<sup>108</sup> Because of their being conceptually different

<sup>109</sup> I take Condorcet's findings to give the most solid background to the epistemic nature of Rousseau's legislative procedure. It can also explain, how Rousseau himself thought that individuals can err in judgment (SC 2.6.) (Rather than just lack appropriate motivation), and why the more important decisions have to be enacted by qualified majorities (SC 4.2.). On important matters, we wish to have higher level of confidence that the group vote is an accurate expression of the general will, and Condorcetian probability framework shows that the more votes there are on the majority side, more likely the outcome of the vote will be correct.

educative effects of political participation – and that a concern about the prejudices, also can be addressed in similar way. This is not a conclusive argument in favor of voters competence, nevertheless, it provides some intuitive considerations for why we should accept it.

In the end, we are faced with what I recognized as the two most compelling objections to the plausibility of Rousseau's political project.

Cohen's objection emphasizes the inadequacy of Rousseau's conceptual framework – its inability to account for reasonable disagreement. This might not be a devastating objection for Rousseau, however. He might argue that the disagreement is not untranscendable through socialization, and even though not entirely plausible it is still not devastating for Rousseau.

Estlund's objection, on the other hand, questions the plausibility of Rousseau's answer to the fundamental problem, by providing some intuitive considerations regarding the nature of the moral judgment. Since we have to accept the judgment of majorities in order to be autonomous<sup>110</sup>, and since the problem cannot be resolved by a blind deferral<sup>111</sup>, we need to account for the fact that at least some citizens in the minority will be skeptical about the correctness of such regulations. This is a conceptual difficulty, for if the possibility persists, Rousseau's solution to the fundamental problem has a serious flaw.

It seems that we have only two available strategies to refute this argument. We can either question the apparent intuitive appeal of Estlund's premise<sup>112</sup>, or introduce a necessary requirement that every decision of the legislative assembly needs to satisfy – namely, that it has to be enacted by a unanimous vote.

The 2<sup>nd</sup> strategy seems implausible. Rousseau was largely pessimistic about such prospect, and for a very good reason. It seems that such a constraint would either make it impossible for a legislature to function properly, or if satisfied, generate significant concern about the epistemic character of such decisions. There is no doubt that the

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<sup>110</sup> In case we vote against, of course.

<sup>111</sup> It is necessary that I accept the decision on reasoned reflection, for in any other case I would not be obeying 'my' share in general will, I would be subordinating my will to it.

<sup>112</sup> "One who accepts that all things considered the correctness of a given moral judgment is extremely probable - has good reason to accept moral judgment" (Estlund 1997: 186)

members of the legislature can reach unanimous vote on some matters, but if they manage to do so on every occasion we would seriously doubt that (at least some portion of) citizens are voting on the basis of reason.

So it seems that we are left with the 1<sup>st</sup> strategy. As we already argued it seems that the plausibility of Estlunds premise rests on our general reservations regarding the status of moral truth. However, it might seem as worthy of attempting to address this problem as an issue in the sphere of moral epistemology. Rather than conceding that the apparent ‘weak’ status of moral truth makes us accept Estlund’s premise, it may be worthwhile to try to pursue Rousseau’s moral theory as an instance of strong moral realism. Even though the prospect of such an inquiry is beyond the scope of this paper we might argue that in such a case, the issue can be addressed, at least in principle. If, as moral realism presupposes, every moral disagreement has a determinate yes/no answer, and if such an answer can be achieved at least on some matters<sup>113</sup>, then it might not be reasonable for a citizen to object to legitimacy of the general run of laws. If he can be adequately proven to be wrong then this problem is not as devastating for Rousseau.

This strategy, although not entirely plausible, does provide us with a standpoint for defending Rousseau’s theory at the level of principle.

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<sup>113</sup> The requirement of legitimacy, that I introduced, asserts only that the voting procedure is considered to be an epistemically reliable means to achieving the truth on the question. It is not to be expected (nor required) that every decision ‘gets’ the truth, so to speak. So the concern that we are addressing is that voters can in principle, reasonably question the correctness of all the decisions of the popular assembly.

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