Rousseau on Agenda-Setting and Majority Rule

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This essay examines the tension between agenda-setting and majority rule in the writings of one of the earliest and most original theorists of participatory democracy, Jean-Jacques Rousseau. Exploring Rousseau's views on lawmaking and the complexities associated with legislative initiation, specifically, this essay challenges the notion that representatives or legislative experts in a democracy inevitably reduce popular participation to acclamation. Contrary to authors who believe that Rousseau surreptitiously devolves political power to an elected elite who predecide a legislative agenda for a passive majority to vote upon later, I argue that the philosopher delegates authority to initiate the laws to representatives without undermining either the sovereignty or the robustness of citizen self-rule. This argument reveals, in part, why contemporary participatory democracy is not inherently "immobile" owing to the self-reinforcing benefits of democratic participation within a well-balanced constitution.

A central tenet of "strong democracy" and other contemporary theories of participatory democracy is the belief that the "more that individuals participate" in self-governance "the better able they become to do so" (Barber 1984, 167–73; Pateman 1970, 43; Wolfe 1985, 371). More valuable than expert guidance by an elected elite is the political education received from democratic participation under conditions of political equality. Knowledge of how to govern is "communal and consensual," and through the holding of televised debates, town hall meetings, referendums, plebiscites, open ballot initiatives, and other practical expressions of citizen self-rule, the people "deepen" the quality of democracy by expressing their will directly. Though the people may lack certain forms of specialized knowledge and technical skill, over time this void will be filled because "the pragmatic and self-regulating character of democratic politics" makes "political knowledge autonomous" (Barber 1984, 167).

Challenging this view, critics of participatory democracy routinely emphasize government's need for specialized competency and legislative expertise (Sartori 1987, 432; Schumpeter 1943, 261–62). They argue that it is impractical, if not utopian, to believe that a majority can or should legislate the laws without critical intervention by experts. Requisite for overcoming the logistical difficulties of size and numbers, agenda-setting by a professional body or class of legislators makes possible enlightened lawmaking. As Thomas Hobbes (1841, X:x, 136–37) wrote back in 1642, "Very few in a great Assembly of men understand" by "what goods the Country is nourished, and defended" or are able "to advise rightly of all things conducing to the preservation of a Common-weal."

Both of these contrary viewpoints allude to a dilemma unique to representative government in which those persons who are the most able to advance and benefit the aspirations of the people by way of their specialized knowledge are simultaneously those who are also the most capable and likely to undermine majority rule. This dilemma exists even in a participatory democracy because, as John Stuart Mill ([1861] 1975, 223) noted, the political value of participation mitigates but does not entirely diminish government's need for law-making professionals. Identifying the basis of this dilemma, Robert Michels (1915, 83–84) wrote a half-century later, "This special competence, this expert knowledge, which the leader acquires in matters inaccessible, or almost inaccessible, to the mass . . . conflicts with the essential principles of democracy." Similarly, Hanna F. Pitkin (1967, 135–36) explains in her classic study, "Whenever we seek professional help or services, we are asking to be represented" for "the presumption of a specialized knowledge or skill in the representative suggests that he need not take orders from his constituents." This suggestion that representatives "need not take orders from his constituents" is not illegitimate because it is "the presumption of a specialized knowledge or skill" in representatives that, in part, is the source of their authority (Manin 1997, 139). This said, democracy's dilemma remains in that experts elected to serve beneath the people may surreptitiously serve over them by applying this specialized knowledge in a manner designed to keep those who selected them in ignorance of their actual situation. As has often been the case in history, experts have even utilized their knowledge in a manner that violates the rights and freedoms that give democracy meaning. Considering this danger, it is meaningful to ask whether agenda-setting by experts and majority rule must *necessarily* conflict in the way that these theorists describe. Is it true that whenever democrats authorize experts to agenda-set the laws, they are indeed "asking to be represented?"

One answer to this question was voiced many years ago by the earliest and, perhaps, most radical proponent of participatory democracy ever, Jean-Jacques Rousseau. In his political writings, Rousseau argues that majority rule is indeed possible even in the presence of agenda-setting experts. By "majority rule," I mean, specifically, rule by the people in the broadest sense of the term as *active*, *influential*, and *practically meaningful* participation in lawmaking even when experts set the agenda. By this term I also mean, temporally, lawmaking after the foundational *législateur* of Rousseau's (1997b) *Du contrat social* (henceforth

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The author wishes to thank Mads Qvortrup, Benjamin Wong, and APSR's Reviewers.

https://doi.org/10.1017/S0003055403000807 Published online by Cambridge University Press

CS) voluntarily cedes its authority to the citizenry and to those persons among them who will assume its functions. This expansion of self-rule, dealt with parsimoniously in the vast literature on Rousseau, begins when citizens are mature enough morally and politically to be able to comprehend and institutionalize the *volonté générale* free of paternalistic interference by the *législateur*. Lasting for a number of years, presumably, before the inevitable decline of the republic owing to the debasement of public morals, this era of (at least formally) unmediated self-governance is a time when the laws appear to be most democratic.

It is also the moment when, according to Daniel Cullen (1993, 152–53), Richard Fralin (1978, 54), and Steven Johnson (1999, 87, 118),[1] among other authors, the representative features in Rousseau's complex system come most into play as the authority to initiate the laws devolves from the *législateur* to a select body of elected aristocrats whose job it is to predecide all legislation to be put before the people's vote (*CS*, III:v, 94/408).[2] According to these commentators, this crucial agenda-setting role undermines majority rule by elevating elected representatives into a locus of legislative authority in Rousseau's mature state. Johnson (1999, 87) writes, for example, that with the ratification of the laws "will masquerades as a property of the sovereign realm [as] government assumes responsibility for its actual formation and maintenance." In Rousseau's state "the subject-citizen" is a "contrivance of power" and an "artifice to be constructed more than an essence to be realized" (87). Less harshly, Daniel Cullen (1993, 152–53) explains that in Rousseau's polity the initiation of law by representatives reduces the people to "passivity" and "a punctuation of the political process."

This view is similar to that of Roger Masters and the late Judith N. Shklar, who, years earlier, argued that government exerts far more influence in Rousseau's state than is apparent from the philosopher's denunciations of representation. Each concurred with Giovanni Sartori's (later [1987, 314]) description of representatives as serving to mobilize an otherwise "immobile democracy." Owing to logistics, the generality of its vote, the infrequency of its meetings, and Rousseau's restriction upon "'legislation' to the general or fundamental laws that are the "conditions of the civil association" (Masters 1968, 339), Shklar ([1969] 1987, 181) concludes that "the sovereign does very little." Master's (1968, 402) writes that, in the past, the philosopher's "explicit preference for elective aristocracy has not been sufficiently considered . . . [as it is] merely another name for parliamentary or representative government." Johnson (1999, 82, 118) agrees that "if Rousseau's texts are read carefully, I would suggest, the prominence of law and politics recede somewhat and the importance of government surges" and he asks "Are such subjects really capable of sovereign responsibility? Of changing entrenched laws, whether the best or the worst?"

This seemingly narrow question about the locus of political authority in Rousseau's state is relevant to more contemporary theories of participatory democracy by reinforcing the Schumpeterian view that democracy is rule by elites. Rousseau's sovereign is "constructed" in the sense that Schumpeter (1943, 262, 263) believes that politicians "fashion and . . . create the will of the people" into a "manufactured will." His constructed sovereign is seen as incapable of either "self-imposed law" or of self-reinforcing government. If Rousseau is viewed as "theorist *par excellence* of participation" (Pateman 1970, 22), whose republican ideas are "the most radical, if not the most radical, ever developed," this is a particularly forceful and pointed criticism (Held 1996, 56). In a different vein, this criticism of Rousseau highlights a problem of legislative agenda-setting in general, that "citizens of Western democracies can vote for those who will govern them but rarely for the policies by which they are governed; more rarely are they provided the opportunity to create their own agendas through permanent public discourse" (Barber 1984, 267). Rousseau appears unable to reconcile democracy's dual needs of expert agenda-setting and majority rule in even a minimalist system in which "permanent public discourse" is not an issue.

Below, I address each of these questions by arguing that neither does Rousseau intend nor does his constitutional plan allow for representation in any strong sense. Rejecting Shklar's view that "the sovereign does very little," I argue that democracy in his mature state is more robust than appears owing to a number of institutional and other substantive checks designed to prevent sovereignty being reduced to a mere "punctuation of the political process." Conversely, I argue that the alternative overly democratic or populist reading of lawmaking in Rousseau's state (Ellenburg 1976, 159–60; Miller 1984, 64, 120) is also wanting to the extent that this interpretation fails to explain why Rousseau does not permit the people *both* to initiate and to ratify the laws. If men are as ripe for self-rule as Rousseau implies, then why is a separation of powers among lawmakers

[1] Johnson and Cullen echo Richard Fralin's once-controversial view that elected aristocrats are the decisive legislative figures in Rousseau's state. In *Rousseau and Representation* (1978), Fralin argues that Rousseau consolidates legislative power in the hands of an elected elite in much the same way that Geneva's *Petit conseil* predecided all legislation put before the ratifying *Conseil générale*. Fralin writes that "the model of the *CS* was . . . recognizably the same basic model as that of the *Dédicace*" [to the second *Discours*—where Rousseau extols the sagacity of Geneva's *Petit conseil* and warns of the dangers of majoritarian self-rule]. Within Geneva "The allegedly subordinate councils were superior in fact; not only was there not an identity of interests among citizens, but the city was in effect divided into separate bodies, each contending for power" (Fralin 1978, 54).

[2] Rousseau writes in *CS* that "sovereignty cannot be represented for the same reason that it cannot be alienated; it consists essentially in the *volonté générale*, and the will does not admit of being represented: Either it is the same or it is different; there is no middle ground. The deputies of the people therefore are not and cannot be its representatives, they are merely its agents [*commissaires*]; they cannot conclude anything definitively" (*CS*, III:xv, 114/429–30). In the only other section of the treatise where he discusses legislative initiation in the mature state, Rousseau states that "on the right of voicing opinions, proposing, dividing, discussing . . . the government takes great care to allow only to its own members" (IV:i, 122/439). All of the page numbers and citations from Rousseau's writings refer to (1) the English translations located in the references at the end of this essay and (2) the standard five-volume Gallimard edition of the *Œuvres Complètes* (1959, 1964, 1964, 1969, 1995).

https://doi.org/10.1017/S0003055403000807 Published online by Cambridge University Press

even necessary? My view is that both sets of authors fail to answer this question adequately.

DEBUNKING THE STRONG ARGUMENT FOR LEGISLATIVE REPRESENTATION IN ROUSSEAU'S MATURE STATE

In *CS*, Rousseau (1997b) describes the *législateur* as a transitional figure who edifies the *moeurs* of the people by way of the laws. Crafting legislation to inculcate Roman-style civic virtue and corporate unity, the *législateur* voluntarily retires, according to Rousseau, when the citizen body is morally and politically mature enough to legislate the laws by themselves. Though *every* ratified law is an expression of the *volonté générale* and Rousseau is unambiguous that laws are legitimate for this reason alone, he prescribes this transition believing that citizens will be cognizant of the *volonté générale* enough to be trusted with both ends of democratic lawmaking. Assuming total control over the laws, citizens are empowered to appoint a body from among themselves to initiate the laws that the community, as a whole, will ratify in person.

For some commentators this latter act of naming a second body to initiate the laws is of marginal importance, while for others it is evidence of Rousseau's distrust of majority rule. With respect to the former, in the widest sense "popular sovereignty is tenable because the citizens have been 'educated,' 'formed' [and] 'guided' "(Crocker 1973, 182). Having "borne the true yoke of laws" (*CS*, II:x, 77/390), citizens in his later state are no longer similar to the ancient Hebrews, "a swarm of wretched fugitives" and a "wandering and servile" horde in need of guidance (Rousseau, *Considérations sur le gouvernement de Pologne* [henceforth *CGP*], II, 180–81/956–57). This interpretation emphasizes how citizens practically "self-impose" legislation in the strong and intuitively satisfying sense of ratifying *and* initiating the laws that express their will. This notion is consonant with Rousseau's description of this body as agents or "*commissaires*" of the laws, rather than as "*representants*," to identify this body's bearing as an agent of the sovereign (*CS*, III:xv, 114/429–30).[3]

With respect to the second reading, the view is that Rousseau proposes the appointment of an elite body of aristocrats from among the citizenry because he has larger ambitions in mind. The true locus of political power in the republic, this body is responsible for the day-to-day functions of the government as well as for initiating and ratifying all of the civil and criminal laws. Together with ordinary legislation, the constitutional laws (*loix fondamentales*) are also initiated by representatives but voted upon by the community at large. Voting by the community at large is infrequent because the people are narrowly restricted to constitutional lawmaking alone or, as Shklar (1969, 181) describes, "not called upon to make or remake laws but to reassert the people's willingness to abide by the contract and to live in justice."

In a unique feature of Rousseau's system, this initiation of constitutional legislation by a body other than the community at large does not divide its sovereignty. According to the philosopher, expert agenda-setting in his ideal state does not constitute representation, alienation, or a division of the *volonté générale* in any way. This corporate will, made explicit only at the very moment of the ratifying vote, is entirely vested in the majority and its integrity is preserved by the absence of *commissaires* during the final vote. In *CS* it is this consistency that makes possible (and plausible) the strong argument for representation by Rousseau. Formally, at least, an elected elite can do most of the legislating in his state and the philosopher can still claim with consistency that "*la Souveraineté ne peut être réprésentée*" (*CS*, III:xv, 114/429).

As congruous as the strong argument for representation is with Rousseau's unique definition of sovereignty (which I do not deny), it is also problematic on a number of levels that this congruousness veils. Of these difficulties, the most conspicuous, arguably, is the obvious irreconcilability of the strong argument for representation with the philosopher's frequent and vociferous protests against representation. One can argue that Rousseau expresses these protests repeatedly and forcefully enough to, at the very least, earn himself the benefit of the doubt that his intent really *is* to prevent representatives' from encroaching upon the legislative power of the majority. This can be witnessed in *CS* as he asserts that "sovereignty . . . consists essentially in the general will, and the will does not admit of being represented: either it is the same or it is different; there is no middle ground" (III:xv, 115/429–30). This "middle ground" appears to be not a purely theoretical space arising from the philosopher's idiosyncratic view of sovereignty, but something more concrete resulting from his knowledge of how political power is actually exercised and his fears about how it is expanded. This is also evident in his warning in *CS* not to let the polity grow large enough that "the Chiefs, scattered in order to govern it, can make decisions on behalf of the Sovereign" (III:v, 93–94/407). Although the Chiefs may be endowed with "probity, enlightenment and experience" it is the people who are "the voice of God," according to Rousseau. He laments elsewhere that "this sacred voice is always weak in human affairs beside the clamor of power; the complaint of oppressed innocence is breathed out in groans which tyranny treats with scorn" (Rousseau, *Lettres de la montagne*, VIII, 862).

Considering fear over the clamor of power, Rousseau's near-total silence on the specifics of legislative initiation in his mature state appears telling. It is surprising that, for an author who was rarely lost for words on anything politically germane, Rousseau offers just two brief cryptic comments on the positive features of legislative representation in his mature

[3] In her classic study, Hanna F. Pitkin distinguishes *representants* from *commissaires* according to the latter's subordination to the majority. Pitkin (1967, 134) writes that "... 'commissioner' (unlike 'deputy') suggest[s] that the representative is sent to the central government with explicit instructions, or to do a particular thing .... And it is suggested that those sending him are a unified and official body .... There is no doubt that ... commissioners ... are subordinates of those who send them."

https://doi.org/10.1017/S0003055403000807 Published online by Cambridge University Press

state—and both within the context of *rejecting* the sovereignty of representatives. The first is that the "deputies of the people therefore are not and cannot be its representatives, they are merely its agents [*commissaires*]; they cannot conclude anything definitively" (*CS*, III:xv, 114/429–30). The second is that "on the right of voicing opinions, proposing, dividing, discussing . . . the government takes great care to allow only to its own members" (IV:i, 122/439). One can speculate that each of these short passages was not further elaborated upon by Rousseau so as to diminish the significance of the agenda-setting functions of the government (or Prince). At least, this appears to have been the effect as the philosopher's parsimoniousness on this subject has produced confusion over the years among even his most able readers. In each of their respective early 20th-century translations of the philosopher's political writings, for example, both Earnest Barker and C. E. Vaughan glossed over these lines entirely to describe Rousseau's idealized polity as free of any type of legislative representation. Barker (1947, xxxviii) writes that "Rousseau himself is aware of the necessity for distillation; but he will not trust representatives to do this necessary work . . . ," neglecting to mention that this power *is* entrusted to representatives at a later date. Similarly, Vaughan (1915, 186) writes that "with one exception" (legislative representation), the theory of *CS* is also "the doctrine . . . of the *Lettres de la montagne*." This "exception" is, in actuality, a point of agreement between the two works that the Genevan obfuscates by omission.

If it is indeed true that Rousseau is deliberately silent on the role of representatives in this mature state, it would still be surprising considering the effusive praise that he lavishes upon Geneva's *Petit conseil* in his *Dédicace* to the *Discours sur l'origine et les fondemens de l'inegalité parmi les hommes* (*DI*) a few years earlier (Rousseau 1997a, *DI*, 119/116). Whether this silence "suggests that there are many possible arrangements regarding the right to propose and to debate laws compatible with his principles" (Gildin, 1983, 159) is unclear, but what is clear is that Rousseau's aside in *CS*, that "this important matter would require a separate treatise, and I cannot say everything in this one" (IV:i, 122/439), rings slightly hollow when situated beside his expansive comments on other matters of major political import—such as the negative aspects of representation. And it is for this reason that the philosopher's fawning over Geneva's *Petit conseil* in the *Dédicace* to the second *Discours* should not, at the very least, be understood as endorsing all that he lauds in this earlier work. In the *Dédicace*, he writes, for example, that "I should have wished that not everyone have the power to propose new Laws according to his fancy; that this right belong to the Magistrates alone" (*DI*, 116–17/114). Speaking of Geneva, he asks,

> Does anyone of you know anywhere in the universe of a more upright, more enlightened, or more respectable Body than your Magistrature? Do not all of its members offer you an example of moderation, of simplicity or morals, of respect for the laws, and of the most sincere reconciliation? Then grant without reservations to these wise Chiefs the salutary trust which reason owes to virtue . . . . (119/116).

Though often quoted, the *Dédicace* to the second *Discours* is an especially poor example of Rousseau's views on the merits of representative government. This can be seen, in part, from the motives for why Rousseau wrote the *Dédicace* in the first place. Specifically, like Machiavelli's own Dedicatory Letter to Lorenzo de' Medici in *Il Principe*, his flattery in the *Dédicace* appears to be influenced by political considerations distinct from the republican sentiments expressed in the writing itself. These considerations are not personal, as Helena Rosenblatt argues in *Rousseau and Geneva* (1997), but political and an expression of the philosopher's desire to secure official permission from Geneva's *Petit conseil* for the publication of the second *Discours*. Because any "formal permission granted by the Genevan government would . . . have implied their approval of the principles espoused in the Dedication, and even in the Discourse itself" (Rosenblatt 1997, 84–85). According to Rosenblatt (84–85), after returning to his place of birth, Rousseau eventually came to abandon all hope of receiving this official sanction believing "that the authorities would not approve of the political ideals the Dedication upheld." Too disillusioned even to request formal approval, in the end Rousseau actually did receive official endorsement by the Genevan authorities in June 1755—an act that would have been inconceivable if his true beliefs about the *Petit conseil* had been voiced in the *Dédicace*.

Rosenblatt (1997, 159) writes that the *Dédicace* should be read as a "sophisticated political manifesto" by which "through ostensible flattery Rousseau delivered an ingenious criticism of the values of Geneva's governing body." In her view, "Anyone acquainted with Genevan society and politics would have recognized not just a hint of sarcasm in Rousseau's flattery. Some of his characterizations of Genevans border on the farcical. For example, Rousseau . . . described the magistrates as being the very example of virtue and wisdom because of their moderation, their 'simplicity of manners,' their 'respect for the laws' and their desire to promote the 'most sincere reconciliation'" (160). The subversiveness of Rousseau's flattery of the *Petit conseil* would not have been lost on Genevan readers, according to Rosenblatt, even if, in the end, it bypassed the Genevan authorities. It is highly doubtful that the *Petit conseil's* endorsement would have come at all if the more overtly democratic descriptions of the sovereignty of the *Conseil general* were not couched in flattery for the lesser body.

Whether this interpretation is an accurate assessment of the motives behind Rousseau's writing of the *Dédicace* is open to debate, but what is certain is that the philosopher's exaltation of Geneva's *Petit conseil* in the *Dédicace* is soft ground upon which to stake a claim that representatives are the locus for political

https://doi.org/10.1017/S0003055403000807 Published online by Cambridge University Press

authority in *CS*. How soft this ground really is can be seen in the paucity of contemporary commentators' arguments for why Rousseau believes it necessary to reduce sovereign members to a "contrivance of power." According to Richard Fralin (1978, 5, 8) the philosopher was "ambivalent about the value of direct citizen participation in the political process" and believed that the government ought to exert "a preponderant role in legislation" to "prevent the people from abusing their sovereignty." According to Johnson (1999, 87), government "assumes responsibility" for the sovereign's "actual formation and maintenance" to fashion suitable subjects who will allow for "for the republic to thrive, for the law to be truly respected." In light of these readings, it is meaningful to ask, though, whether such extreme measures truly are necessary to achieve these general aims. A powerful counterargument can be made for example, that virtually all of the supposed benefits resulting from elected aristocrats superior attributes exist elsewhere in Rousseau's polity: in particular, that whatever their natural or cultivated gifts, legislative *commissaires* are neither the primary nor even the secondary means of engendering good laws in his state. Rather than relying upon an enlightened elite to instill probity, virtue, and equity into the laws, what is more important to Rousseau are the institutionalized procedures that accompany voting that strengthen citizenship and, by extension, strengthen the laws. This can be seen after the *législateur* departs when, according to Rousseau, it is the "admirable agreement between interest and justice that confers upon common deliberations a character of equity" (*CS*, II:iv:7, 62/374), rather than the influence of a wise elite. When each votes for him- or herself by voting for all, reason rather than opinion guides individuals' private interests into conformity with the common good. This arrangement renders justice procedurally while substituting "justice for instinct" (I:xiii:1,2, 53/364) in citizens' conduct even after the *législateur* departs. Anticipating Tocqueville's praise of juries, Rousseau considers self-governance to be a politically educative mechanism for fostering corporate unity and civic virtue. The social contract's principle of equity compels each to consider all when considering his or her own interests in a manner that engenders civic responsibility and the virtues that promote obedience to law. This is very unlike what happens during the republic's founding, when citizens are easily confused and misguided about their own interests and a *législateur* is necessary. Later on, having "borne the true yoke of laws" (II:x, 77/390), this role is altered as the confluence of reason and self-interest make the "clear" and "luminous" *volonté générale* apparent. Any psychological "conditioning," so to speak, is unnecessary because the procedures that accompany self-governance serve to *self-condition* citizens to pass good laws. This self-conditioning is not permanent, of course, but it is less perilous than surreptitiously delegating political power to executives serving as an elected proxy for the *législateur*. In Rousseau's mature state representatives do initiate the laws but the *volonté générale* is evident enough and the citizenry virtuous enough to diminish the importance of their interference (discussed in the following section).

In a different vein, it should not be forgotten that, rather than instituting a latter-day *législateur*, Rousseau advocates his most infamous mechanism from the ancient world for upholding the laws, a Roman-style dictator. A temporary solution for preserving the republic and its constitution during a moment of crisis, he believes that this institution would appear often in the early years of the state and that it would suspend the "sacred power of the laws" (*CS*, IV:vi, 138–39/456). One can speculate that any need for a dictator in the early years of the republic would be frequent precisely *because* the people are permitted the discretion to make meaningful political decisions that might sometimes be in error. This would not be the case if the chief danger to liberty arose out of a problem in human psychology that could be addressed by a *législateur*. Conditions may be such that a more subtle expedient may sometimes prove to be more effective, but Rousseau's choice of a dictator is an indication of both the type and the degree of the difficulty to be solved.

With respect to the role of representatives in the constitution of C.S., a case can be made that Rousseau's belief that *commissaires* of the laws cannot and should not serve as latter-day *législateurs* illustrates a critical difference between his unique form of representation and those in which citizens allow themselves (or ask) "to be represented" (Pitkin 1967, 135). Unlike the constitutional democracies in existence in Western Europe and the United States or elsewhere, for example, there is no legislative separation or balance of powers anywhere in Rousseau's sovereignty in the sense that either of these terms (separation and balancing) mean within the parlance of modern constitutionalism. Any sharing of the sovereign power is a logical impossibility because the *volonté générale* cannot be limited or divided without destroying its generality. As famous as this idea is, it is sometimes lost in confusion over the meaning of Rousseau's divide between those who initiate the laws and those who ratify them and his avid belief that there must be a legislative–executive separation of powers. Rousseau believes in separating or balancing the powers *within* the executive and lauds the *gouvernement mixte* of the English constitution in the *Lettres de la montagne*, but nowhere in his writings does he propose a constitutional separation or balance of powers in the traditional sense of dividing or sharing sovereignty in order to *restrain* it. Only acts of government can be restrained, never sovereignty (Cobban 1934, 82). In his mature state, Rousseau empowers an elected elite to shape constitutional lawmaking but stops short of authorizing this body to serve as a final check. Instead, a single and undivided majority is the final arbiter over every law put before it, and those laws not put before it, such as acts of government, can be overturned by a simple majority vote.

Within a purely legislative context, this hybrid cameralist arrangement is different from both the ancient mixed constitution and Madison, Hamilton, and Jay's ([1788] 1977, 48 : 2,3) modern understanding of separation of powers in which the "powers belonging to

https://doi.org/10.1017/S0003055403000807 Published online by Cambridge University Press

one of the departments ought not . . . possess directly or indirectly, an overruling influence over the others in the administration of their respective powers." With regard to the former, Rousseau does not construe representatives who propose the laws to be "balancing" the majority who ratify them in the same way, for example, that Aristotle believes that oligarchs ought to balance democrats extreme view of justice and vice versa through a rotation of political offices (*Politics*, III:9) or collegial-style power-sharing arrangement. As Rousseau's description of the Roman republic's constitution in *CS* illustrates, such divisions can exist within the government but not within the sovereign. Rousseau does describe the Roman senators as temporarily holding "in check a proud and restless people" (*CS*, IV:iv, 132/449) and praises "a wisely tempered Tribunate" for being "the firmest bulwark of a good constitution" (IV:v, 137/454), but neither of these bodies in any way "balances" the majority by intermittently *substituting* their own will for that of the Comitia's or *restraining* the will of the majority by way of a final check. Rather, the will of one faction is *entirely* and *permanently* subject to the will of its opposite at the point of ratification. The will of the majority overrides and trumps the wills of everybody else—including that of the wise elite responsible for initiating the laws. For Aristotle, this would be tantamount to compelling oligarchs to govern according to a democratic principle of justice that gives equal weight to the many in the final outcome of legislation.

This absence of a final legislative check does not mean that the majority cannot, on occasion, be *temporarily* impeded by magistrates who deliberately fail to convoke the assembly (*CS*, III:xiii, 111/426; IV:iv, 132/449) or employ various (perhaps surreptitious) methods to prevent the *volonté générale* from forming but, rather, that any imposition can eventually be overturned. Assuming that Rousseau does indeed take republican Rome to be "the model of all free peoples," as he claims, it is possible to speculate that the philosopher's trepidation over the risks to liberty posed by the zealousness of "a proud and restless people" would be assuaged by the existence of well-chosen magisterial body capable of temporarily impeding the immediate expression of the majority will. Though such Madisonian-type tempering of the *volonté générale* is contrary to the spirit of Rousseauian political liberty as "obedience to self-imposed law," the presence of such checks is consistent with many of the other republican features of *CS*'s ideal polity.

In a different vein, Rousseau's legislative system can be shown to differ from most modern types of representative government that permit legislation to be initiated and decided by officials chosen for their distinctiveness from the people. The "mature judgment," "enlightened conscience," and other qualitative differences that Edmund Burke praises before the electors of Bristol in 1774, for example, are the same attributes that Rousseau venerates among the elected elite who would initiate the laws in his own state, but unlike the former, the philosopher believes that these and other differences from the people are what disqualify representatives from legislating "decisively." Laws proposed by *commissaires* are illegitimate and the expression of an alien will *unless* and *until* each is met with the express approval of the majority. At this moment, any differences between those who initiate the laws and those who ratify them can be said to collapse and elites to "represent" not by their differences but by their *similarities.* At no time are elites permitted a final say over the laws and their distinctiveness from the people is material only if, in the end, the people openly embrace (and level) this distinctiveness by voting the propositions of this elite into law. This notion is contrary to legislative arrangements in Britain and the United States, where, at least prior to the advent of universal suffrage, laws and even certain elective offices could be decided by elites "decisively" or with minimal interference by a qualified constituency of electors.

Built into Rousseau's legislative design are incentives and disincentives that protect against this similitude between those who initiate the laws and those who ratify them from being manipulated. Chief among these is the disincentive for elites to try to "manufacture" consent for their legislative initiatives. This disincentive is coercive because, according to Rousseau, any proposal that is rejected by the majority is said to not reflect *la volonté générale* and, by implication, the body that proposed it is seen as unaware of the *volonté générale* (*CS*, VI:ii, 124/441). As great as the desire would be for an elected elite to try to foist their won special interests on to the majority or to try to manufacture consent by grandiosely reviving the *législateur's* efforts at psychological and social engineering, the enormous costs associated with failure as well as the enormous difficulty of literally having to persuade an entire voting public to support such measures would be equally weighty. Those who fail at such efforts must accept the political consequences that come with legislating without knowing the *volonté générale* and these costs may be exacting and brutal, according to Rousseau. One indication of his thinking in this regard is his remark in *CS* that "Cromwell would have been condemned to hard labor by the people of Berne, and Duc de Beaufort to reformatory by the Genevans" (IV:i, 121/438). Those *commissaires* who err repeatedly will, at best, be discharged and, at worst, suffer a terrible fate on the order of what Rousseau thought Cromwell deserved.

This risk may not be especially great, of course, if the philosopher's intent really is to forge an "immobile democracy" (Sartori 1987, 314; Shklar 1969, 181). The belief that owing to the sovereign's size, the generality of its vote, the infrequency of its meetings, and the limited nature of the its mandate to "form and authorize the fundamental laws," an "immobile democracy" results is, perhaps, the *most* convincing argument for strong representation by Rousseau. As I mention earlier, a number of passages in *CS* give substance to this reading by implying that sovereign responsibility is restricted to constitutional lawmaking (*loix fondamentales*) exclusively. All civil and criminal law appears to be the sole prerogative of the government even though this can only be inferred from Rousseau's statement that "political laws, which

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constitute the form of Government, are the only class relevant to my subject" (*CS*, II:xii, 81/394). In *CS*, he also writes that "it is not enough for the people assembled to have once settled the constitution of the State by giving sanction to a body of laws" (III:xiii, 111/426), suggesting that "*settling* the constitution" is the sovereign's main responsibility. Likewise, he asserts that the first vote within every assembly is to ask whether or not to preserve the constitution as it is by retaining "the present form of government" (III:xviii, 120/436).

This limited view of the sovereign's legislative role can be brought into question by an even greater number statements that the philosopher makes in *CS* and *Considérations sur le gouvernement de Pologne* that appear to contradict these passages and, significantly, assign a far wider range of legislative power. He writes, for example, that "any law which the People has not ratified in person is null; it is not a law" and if the "sovereign wants to govern, or the magistrate to give laws . . . [the result is that] disorder replaces rule" (*CS*, III:xv, 114/430, III:I, 83/397). This passage might be read as referring to the constitutional laws exclusively, but this view appears to be somewhat skewed in light of his other comment that "the Government receives from the Sovereign the *orders* which it gives the people . . . " (III:i, 83/396; my italics). Elsewhere, Rousseau also remarks that laws passed by the sovereign, on occasion, can "punish" [*punissent*] subjects. Seeming to imply that the people exert jurisdiction over criminal law, he writes that each "citizen consents to all the laws . . . even to those that punish him when he dares violate any one of them" (IV:ii, 124/440). Such an outcome is inconsistent with even a highly liberal interpretation of constitutional lawmaking that, by definition, would still be limited to articulating the terms for those acts of ordinary legislation that do punish citizens.

Similarly, the models and ancient examples that Rousseau cites from Rome, Sparta, and Athens illustrate a heightened level of popular participation in politics that is far beyond what would be necessary or possible if the people were restricted to constitutional lawmaking alone. It is his view that in a well-ordered polity the people would be politically concerned enough with "public business" to want to "fl[y] to the assemblies" (*CS*, III:xv, 113/429). Asking readers to "let us consider what can be done in light of what has been done," Rousseau recounts that the Greeks were "constantly assembled in the public square" and it was rare that "a few weeks went by" when Rome's 400,000 citizens were "not assembled" (III:xv, 115/430, III:xii, 110/425). Though the Romans, on occasion, "usurped the most important functions of government," it was only because "the Laws and the election of the chiefs were not the *only* matters submitted to the judgment of the Comitia" (IV:iv, 132/449–50; my italics). Rousseau appears to imply that had the Roman Comitia stuck to the jurisdiction of "the Laws and the election of the chiefs" exclusively, there would have been no usurpation.

In line with these observations about Rome, Rousseau's own constitution for Poland proposes instructions for a wide array of functions within the Diet that would ordinarily fall under the jurisdiction of the government if the sovereign were restricted to constitutional lawmaking. He proposes, for example, that "the Deputies' instructions should be drawn up with great care, with respect to the topics announced on the agenda, as well as to the other current needs of the State and the Province" (*CGP*, VII, 201/979). Transferring agenda-setting power away from the Diet and to the people, Rousseau is explicit that it is not simply those laws pertaining to the structure and reform of Poland's constitution that the people are to adjudicate over but, rather, also the various "topics announced on the agenda" of the Diet's mandate. Though this list is to be drawn up by a commission presided over by the Marshal of the Dietine and "the rest made up of members chosen by majority vote," deputies are compelled to "render a strict account of their conduct in the Diet to their constituents" (VII, 201–2/979–80). Rousseau is emphatic that each deputy do "nothing contrary to the express will of his constituents," for

> the Deputy must, with every word he speaks in the Diet, with every action he takes, anticipate himself under the scrutiny of his constituents, and sense the influence their judgment will have on his projects for advancement as well as on the esteem of his fellow citizens . . . for after all the Nation sends Deputies to the Diet not in order to have them state their private sentiment but to declare the wills of the Nation. (VII, 202/980).

Even if it is indeed true that Rousseau restricts the sovereign's responsibilities to constitutional lawmaking alone in *CS* (a viewpoint that I hope to have shown to be strained by now), it is evident that by 1770–71 his position had broadened considerably to include popular interference in civil and criminal lawmaking in Poland. It may be, of course, that Rousseau simply modifies the constitutional framework of *CS*'s idealized polity to correspond to the geographic, demographic, and political reality of late eighteenth-century Poland. But if this were the case, it would represent a strikingly acute rejection of a supposedly systematically articulated view that citizens ought to decide nothing but the structure and reform of their constitution. If anything, Poland's size and social heterogeneity would be an argument in *favor* of transferring power upward, rather than downward, in an effort to prevent unruly Poles from punishing or rewarding deputies according to how well each did or did not adhere to their constituents' will.

Whichever is the accurate (or *most* accurate) understanding of the sovereign's proper legislative domain, the view of Shklar and other authors that constitutional lawmaking results in an "immobile democracy" can be faulted for other reasons too. In all of his political writings, for example, Rousseau asserts that it is passivity, more than anything else, that is the death knell to the body politic (*CS*, III:xv *passim*) and he proposes that citizens remain actively engaged in lawmaking to avoid exactly the kind of dangers that befell Great Britain's representative system (III:xv, 114/430). Elaborating upon this phenomenon, in a persuasive essay, Stephen G. Affeldt (1999) describes Rousseauian

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lawmaking as an expression of "continuous willing" or "continuous contracting" by the sovereign that precludes any kind of a "settled" or established body of laws. The sovereign's role, among other things, is to "force men to be free" by compelling them continuously to will together a *volonté générale* so that "genuine society among them" can exist (Affeldt 1999, 306). The Genevan's command that the "whoever refuses to obey the general will shall be constrained to do so by the entire body" (*CS*, I:vii, 53/364) is, according to Affeldt, meant to be taken literally and requires individual sovereign members to constrain others "to turn against the private will and toward participation in the continuous constitution of a general will" (Affeldt, 1999, 314). More than any kind of coercive strictures, forcing of men to be free entails day-to-day "philosophical instruction, critique, and self-presentation" by sovereign members to attract others to "the currently unrealized state of ourselves" (318, 323).

From Rousseau's constitution for Poland and his proposals for *CS*, it is possible to speculate about what the legislative functions of the sovereign *would actually be* beyond will formation. Though the philosopher is parsimonious in his discussion of the minutiae of sovereign rule in *CS*, his suggestions for reforming the Diet in *Considérations sur le gouvernment de Pologne* make possible some speculation in this direction. As Rousseau describes, the sole function of the sovereign assembly is lawmaking, and any activity that is not lawmaking, specifically, is beyond its jurisdiction. This said, the single criterion that he uses to define a law—that it be general in its object and general in its source (*CS*, II:vi: 66/378, 67/379)—confers upon the assembly broad authority to pass legislation that affects all of the people directly.

According to Rousseau, the assembly can "specify the qualifications that entitle membership" to "classes of citizens" (*CS*, 67/379) so it could, presumably, pass a graduated tax code, for example, that specifies the earnings "qualifications" that "entitle membership" to different economic classes of citizens. Similarly, it could decide the general criteria to be used to draw up a slate of candidates before an election or determine the criteria that would decide how funds would be allocated in the state's annual budget even if it could not draft the figures for the budget itself. Presumably, the legislative assembly could also draw up a criminal code that, in exacting detail, specifies the "qualifications that entitle membership" by criminals to prison terms or greater or lesser penalties for different classes of crimes. Requiring "a bare majority" for "simple administrative matters" or "other business of routine and immediate interest," "a three-quarters majority" for more significant legislation, and "tow-thirds in matters of state" (*CGP*, IX, 218/997), the assembly's level of activity would be a variable of the importance of the issues before it and the level of activity by government that the assembly might need to counter (*CS*, III:xiii, 111/426; *CGP*, VII, 197/975). With respect to the latter, if the government is strong, the assembly could meet frequently for terms of no more than 6 weeks, which, according to Rousseau, would be "sufficient for the ordinary needs of the State" (*CGP*, VII, 203/981). Presumably, the terms for constitutional or other types of extraordinary legislation could last much longer. The assembly could also decide in a very general fashion, perhaps, "the topics announced on the agenda" in the same manner that Rousseau prescribes Poles be permitted to instruct and decide the agenda of the Diet (VII, 201/979).

Whether or not this somewhat speculative view of the sovereign is overstated, what is accurate is that the majority in Rousseau's state is neither overtly nor surreptitiously reduced to inertia by having its role diminished to an exclusively acclamatory body for the government. More meaningful than what the sovereign actually *does* is the influence that it *wields* by way of the institutional checks that the philosopher sees as obligatory. At no moment in the lawmaking process do representatives substitute their will for that of the sovereign's or restrain its will for any elongated period of time. Unlike Sparta's "static constitution by autonomasia" that Sartori (1987, 331n) describes Rousseau taking as his model, the lawmaking process and overall political program of *CS* are designed to ward off passivity, inertia, and autonomasia in any form. And none of the proposals above, although undeniably cumbersome for even a small citizen body, is by itself incredible enough to dismiss outright. One can argue that sometimes it really is the case that citizens will want to "fly to the assemblies" to "maintain the social treaty" (*CS*, III:xv, 113/429). As the frequent mass political rallies that have taken place in various Eastern and Western European cities over the past two decades over such issues as democratization, arms control, globalization, immigration, crime reduction, and other issues of public concern, this is what actually occurred. The continous appeal of such issues to garner mass support illustrates, at least theoretically, the possibility of citizens remaining intimately engaged with and by public issues over long periods of time.

Considering everything said above, it is significant that Rousseau does choose, in the end, to subdivide legislative power between representatives and the majority in a nontraditional way in *CS*. He does advocate a unique arrangement of separation of powers that gives voice to the few among the many most adroit at framing the *volonté générale.* The flip side of the argument above asks "What is the legislative role of representatives in Rousseau's mature state"?

ROUSSEAU'S *OTHER* CRITICISM OF DEMOCRACY: A SINGLE BODY THAT INITIATES AND RATIFIES THE LAWS

Rousseau's rejection of democracy for its mixing of legislative and executive functions is well known. What is less well known is why he forbids mixing within the assembly and bars the majority from both framing and ratifying the laws. Surprisingly, some commentators say little or nothing about this legislative divide. Stephen Ellenberg (1976, 159–60) writes, for example,

> Popular sovereignty, the only "authority" Rousseau permitted, means direct legislative action by all citizens ....

https://doi.org/10.1017/S0003055403000807 Published online by Cambridge University Press

> Liberty is permanent and unmediated participation in legislation. Liberty is literal self-government. Each day among self-governing citizens is a celebration of the social bond of their fellowship, a renewal of the common life which establishes and preserves their equality .... Rousseau's hostility to the very idea of representative government is a final, direct insistence of his anarchistic imperative ....

Like Ellenburg, James Miller considers Rousseau to be a direct democrat. In *Rousseau, Dreamer of Democracy*, Miller (1984, 120) writes that for the philosopher "the primacy of an indivisible and inalienable sovereign meant, in practice, that every legitimate republic must, at base, be simple: a pure democracy." This was true even in Rousseau's mature state:

> According to Greek tradition, the truly great legislator leaves the scene once his work is done ... [leaving the] sovereign people, thus suitably illuminated, [to] continue to act together through legislation .... To insist, as Rousseau does, that sovereignty ought to be "inalienable" and "indivisible" is not, then, to abridge the freedom of the individuals, it is rather to protect it, by impugning the adequacy of "representative government" as a surrogate for direct self-rule. (Miller 1984, 64).

These interpretations underestimate the legislative role that representatives play in Rousseau's just state. Each ignore the philosopher's rejection of democracy and—critically—his most antidemocratic stipulation that lawmaking be divided. As brief as Rousseau is on this point, he is consistent that a body *other* than the sovereign must initiate the laws. The reasons for this divide are opaque in *CS*, and an unclouded understanding of representatives' legislative role in his ideal state reveals both (1) why it is necessary to transfer agenda-setting authority away from the foundational *législateur* to the community at large and (2) why and *how* the community at large can, in turn, transfer this same agenda-setting power to a lesser body of *commissaires* of the laws without itself being reduced to a "punctuation of the political process."

As I discussed earlier, the reasoning behind Rousseau's retiring of the foundational *législateur* in *CS* is not entirely self-evident. Considering that every ratified law is an expression of the *volonté générale* and that this corporate will remains legitimate before and after the *législateur* departs, the rationale for transferring agenda-setting authority to the people might appear curious. Why not simply choose another *législateur*? The first section of this essay attempted to answer this question by demonstrating, in part, that it is Rousseau's intent that the role of *commissaires* of the laws be unlike that of the foundational *législateur* who, like Moses, was confronted with a "wandering and servile" horde or, like Lycurgus, encountered a "people degraded by slavery" (*CGP*, II, 180–81/956–57). The question that Rousseau sets out in Book II:vi of *CS*, "How will a blind multitude, which often does not know what it wills because it rarely knows what is good for it, carry out a system of legislation?" is *not* the problem to be solved by *commissaires* in his later state. By the time the *législateur* departs to his "distant glory in the progress of times" (*CS*, II:vii, 68/381), it is no longer the case that the people have "not yet borne the true yoke of laws" (II:x, 77/390). Rather, a cohesive legislative system has long been in force and what is necessary now is for *commissaires* merely to "follow the model which the other propose[d]" and "operate" the "machine" in order to save the sovereign from inadvertently undermining the body of laws erected by the *législateur* (II:vii, 69/381). Rousseau's metaphor of a "workman who assembles and operates" a machine but does not build it reveals a salient distinction between his two definitions of *commissaire* and *representant* that elsewhere in *CS* is less apparent. Unlike "the complex process of remaking the individual, the Lawgiver's principal task" (Crocker 1973, 181), *commissaires* of the laws are solely responsible for maintaining the legislative machine (to stick with Rousseau's metaphor) that guides and upholds the sovereign will. Ideally, this prelegislated will is already "at the highest pitch of perfection it can reach" (*CS*, II:vii, 69/381) and is self-reinforcing owing to the procedural incentives within Rousseau's lawmaking process. For this reason, *commissaires* need not *remake* individuals or "feel themselves capable of changing human nature" but, rather, serve the sovereign in a more minor capacity: what Rousseau describes elsewhere in *CS* as "extend[ing] and strengthen[ing]" (Emile, I, 39/248) men's natural dispositions to give their passions" order and regularity" (Emile, IV, 219/500) by way of initiatives conducive to "wise applications" (IV:vii, 141/459) of the laws, such as censorship. Toward this end, this agenda-setting elite is composed not of extraordinary figures from without—such as the foundational *législateur*—but of fellow citizens from within who display "probity, enlightenment and experience" (III:v, 94/408), among other virtues, that are potentially within reach of all community members.

Critically, this expert body's criteria for selection differs radically from both the ancient democratic and the modern republican criteria used to judge legislators' qualifications in the past. Seeking to avoid any kind of pure identification between the people and the *commissaires* of the laws, Rousseau rejects any Athenian-style reliance upon lot, sortition, or any other random method of selection designed to produce "descriptive representation." A perfect "correspondence ... resemblance and reflection" between electors and elected, with the latter "standing for" (Pitkin 1967, 61) the people, is not his goal. Similarly, unlike the franchise restrictions in use in Whig England or in the United States before 1846, Rousseau rejects any constraints upon the franchise that might facilitate the election of elites whose notable qualitative differences of wealth, status, privilege, rank, etc., would distinguish them from the general character of the people. Instead, he proposes something closer to the original natural aristocracy that he dismisses as appropriate only to simple peoples (*CS*, III:v, 92/406; Gildin 1984, 107–8, 110).

In *CS*, he argues that the best system is one where the whole of the people elect only those endowed with qualities natural to all. Rousseau lauds Rome, where "no law was sanctioned, no magistrate elected except

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in the Comitia" (*CS*, IV:iv, 132/449; see Gildin 1984, 110) and believes that those elected should be chosen for their "probity, enlightenment and experience" (*CS*, III:v, 94/408). The wealthy have more time to participate in politics but "merit offers more important reasons for preference than do riches" (III:v, 94/408). Calling it "Aristocracy properly so called," Rousseau's *commissaires* of the laws are aristocratic only in the sense that they are endowed with a larger *degree* of natural qualities common to all. Requiring that the government as a whole be chosen from among the people, the use of elections capitalizes upon the natural differences among men but—critically—not any differences resulting from wealth, privilege, title, status, or any other social basis. This emphasis upon the differences in degree of citizens' natural attributes is a source of commonality between the government and the sovereign that is designed to guarantee that those delegates responsible for initiating the laws do not do so according to an alien will. Citizens' natural differences do not pose a threat to liberty because "our natural passions . . . are the instruments of our freedom; they tend to preserve us. All those which subject us and destroy us come from elsewhere" (Rousseau 1979, 212).

As Alexander Kaufman (1997, 39) explains in his reconstruction of Rousseau's understanding of the relationship between reason and passion in the ideal state, man's "original dispositions" are the root source of wisdom and enlightenment, and for Rousseau, judging well is a matter of "extend[ing] and strengthen[ing]" (Emile, I, 39/248) these natural dispositions and "put[ing] order and regularity into the passions." (Emile, IV, 219/500). It is this emphasis upon *commissaires*' role of extending and strengthening men's natural dispositions that reveals how it is possible for Rousseau to entrust a body other than the majority to initiate the laws while consistently maintaining that sovereignty resides in the majority. Though this body is different from the people, it is chosen *by* them and from *among* them for attributes *common* to all. These attributes exist simply in unequal measure. This view of *commissaires* in Rousseau's mature state is also dissimilar to his description of the foundational *législateur* as a being who "saw all of men's passions and experienced none of them, who had no relation to our nature and yet knew it thoroughly" (*CS*, II:vii, 68/381). The elite who inherit the office—but not the function—of this extraordinary being do "experience" passion and are of "our nature" and, because of this, can be said to *represent* the *volonté générale*, but only as long as the majority retains an inviolable final check to guard itself against these natural attributes ever becoming vulnerabilities that imperil liberty.

CONCLUSION: ROUSSEAU AND THE TENSION BETWEEN AGENDA-SETTING AND MAJORITY RULE

This essay has sought to illuminate an underexamined aspect of Rousseau's political theory: the complexities associated with legislative initiation in his mature state. In explaining these complexities, I have attempted to show how one of the earliest and most original theorists of participatory democracy strove to reconcile the tension between democracy's dual needs of agenda-setting expertise and majority rule. This essay demonstrated that, unlike twentieth-century theorists such as Benjamin R. Barber, Rousseau believes that legislative experts can serve a vital function within a strong democracy if appropriately checked. These constraints include, among other things, persuasive disincentives to prevent any "manufacturing" of popular consent by a legislative elite. Ideally, in a participatory democracy expert agenda-setters would enhance and facilitate citizen participation rather than foster passivity or, worse yet, "immobility" among the majority. Toward this end, *commissaires* or, more conventionally, representatives do play a role in Rousseau's bifurcated legislative system but one that is functionally dissimilar to that of the foundational *législateur*. More important than outside guidance by experts are the politically educative and self-reinforcing benefits of democratic participation. For this and other reasons, few recent interpretations are more at odds with the word and the spirit of *CS* than those that elevate representatives into the locus of power in Rousseau's ideal state.

REFERENCES

Affeldt, Stephen G. 1999. "The Force of Freedom: Rousseau on Forcing to Be Free." *Political Theory* 27 (3): 299–333.

Barber, Benjamin R. 1984. *Strong Democracy: Participatory Politics for a New Age*. Berkeley: University of California Press.

Barker, Ernest. 1947. *The Social Contract: Essays by Locke, Hume, Rousseau*. London: Oxford University Press.

Cobban, Alfred. 1934. *Rousseau and the Modern State*. London: Allen and Unwin.

Crocker, Lester, G. 1973. *Jean Jacques Rousseau: The Prophetic Voice (1758–1778), II*. New York: Collier–Macmillan.

Cullen, D. E. 1993. *Freedom in Rousseau's Political Philosophy*. De Kalb: Northern Illinois University Press.

Ellenburg, Stephen. 1976. *Rousseau's Political Philosophy: An Interpretation from Within*. Ithica, NY: Cornell University Press.

Fralin, Richard. 1978. *Rousseau and Representation: A Study of the Development of His Concept of Political Institutions*. New York: Columbia University Press.

Gildin, Hilail. 1983. *Rousseau's Social Contract: The Design of the Argument*. Chicago: University of Chicago Press.

Held, David. 1996. *Models of Democracy*, Cambridge: Polity Press.

Hobbes, Thomas. 1841. "*De Cive.*" In *The English Works of Thomas Hobbes of Malmesbury*, ed. Sir W. Molesworth. London: John Bohn, Vol. II.

Johnson, Steven, L. 1999. *Encountering Tragedy: Rousseau and the Project of Democratic Order*. Ithica, NY: Cornell University Press.

Kaufman, Alexander. 1997. "Reason, Self-Legislation and Legitimacy: Conceptions of Freedom in the Political Thought of Rousseau and Kant." *Review of Politics* 59 (1): 25–52.

Madison, J., A. Hamilton, and J. Jay. [1788] 1977. *The Federalist*. Philadelphia: The Franklin Library.

Manin, Bernard. 1997. *The Principles of Representative Government*. Cambridge: Cambridge University Press.

Masters, Roger D. 1968. *The Political Philosophy of Rousseau*. Princeton, NJ: Princeton University Press.

Michels, Robert. 1915. *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy*. Glencoe, IL: Free Press.

https://doi.org/10.1017/S0003055403000807 Published online by Cambridge University Press

Mill, John Stuart. [1861] 1975. "Considerations on Representative Government." In *Three Essays*. Oxford: Oxford University Press.
Miller, J. 1984. *Rousseau, Dreamer of Democracy*. New Haven, CT: Yale University Press.
Pateman, Carole. 1970. *Participation and Democratic Theory*. Cambridge: Cambridge University Press.
Pitkin, Hanna Fenichel. 1967. *The Concept of Representation*. Berkeley: University of California Press.
Rosenblatt, Helena. 1997. *Rousseau and Geneva: From the First Discourse to the Social Contract, 1749–1762*. Cambridge: Cambridge University Press.
Rousseau, Jean Jacques. 1959–95. *Œuvres Complètes*, 5 vols., ed. B. Gagnebin and M. Raymond. Paris: Gallimard, Bibliotheque de la Pléiade.
Rousseau, Jean Jacques. 1979. *Emile: Or on Education*, trans. Allan Bloom. New York: Basic Books.
Rousseau, Jean Jacques. 1997a. *The Discourses and Other Early Political Writings*, ed. and trans. Victor Gourevitch. Cambridge: Cambridge University Press.
Rousseau, Jean Jacques 1997b. *The Social Contract and Other Later Political Writings*, ed. and trans. Victor Gourevitch. Cambridge: Cambridge University Press.
Sartori, Giovanni. 1987. *The Theory of Democracy Revisited, Part II*. Chatham, NJ: Chatham House.
Schumpeter, Joseph A. 1943. *Capitalism, Socialism and Democracy*. London: Allen and Unwin.
Shklar, Judith. N. [1969] 1987. *Men and Citizens: A Study of Rousseau's Social Theory*. Cambridge, New York: Cambridge University Press.
Vaughan, C. E. 1915. *The Political Writings of Jean-Jacques Rousseau, Vol. II*. Cambridge: Cambridge University Press.
Wolfe, Joel D. 1985. "A Defense of Participatory Democracy." *Review of Politics* 47 (3): 370–89.

https://doi.org/10.1017/S0003055403000807 Published online by Cambridge University Press