

ONE

ROUSSEAU AND THE RIGHT OF LIFE AND DEATH OVER THE BODY POLITIC

Men are not naturally kings, or lords, or courtiers, or rich men. All are born naked and poor; all are subject to the miseries of life, to sorrows, ills, needs, and pains of every kind. Finally, all are condemned to death. This is what truly belongs to man.

—Rousseau, *Emile*

It is always a danger for a writer on a particular figure to overemphasize his or her subject's importance, to make him or her exceptional to history, as if a given person changed not only the course of theoretical developments, but also, in some sense, the course of history, becoming a sovereign genius after whom all others suffer an anxiety of influence. There is no need for such worries here: much of the ground on which modern political philosophy stands is that which has been laid, if at times less than carefully, by Jean-Jacques Rousseau.¹ Whether one is considering legitimacy, the force of opinion and discourse, or genealogies of power and sovereignty, it is through Rousseau that the circuit of modern thinking turns.

At the center of Rousseau's thought is the basic question of the political: How and why are we to live together? What is an ensemble of people, and is each ensemble capable of being something other than an association of people who are alike (*semblable*, a term oft-used in Rousseau's vocabulary, from his first work to his last)? What forms of community are possible based upon this form of living, and what counts as living or not living when certain forms of togetherness, such as monarchical sovereignty, govern the space of the political? Rousseau's *Social Contract* is a thorough and tightly argued set of answers to each of these questions, and one misses the systematic machinery operative in this argumentation—a rigor all the more

remarkable given the sprawling nature of his other texts from this period—at the peril of leaving unthought what Rousseau has left to teach us regarding the state of sovereignty.

Rousseau's *Contract* pronounced a sovereignty of the people, first through a conjectural history of the rise of the tyranny of governmental sovereignty, and then through a programmatic sketch of the proper social contract under which each is in service to a sovereignty that would be nothing other than the enactment of freedom in equal commerce with others. This sovereignty is said to be a “national” or “popular” sovereignty, the vaunted sovereignty of the people: “a form of association which defends and protects with all common forces the person and goods of each associate and by means of which, each one, while *uniting with all*, nevertheless obeys only himself and remains as free as before.”² Many have called Rousseau to account for the supposed Rousseauism of the French Terror,³ with the moral that democratic change inexorably ends in the Terror and tyranny of the masses. Rousseauism has been long been another alibi for reactionaries using terror to keep the old sovereignty in play. But his thought is not wholly reducible to Rousseauism and there is a distinction to be made between “national” sovereignty and Rousseau's commitment to thinking another meaning to the question of living together. “If Rousseau's contract has a sense beyond the juridical and protective limits to which its now dated concept confines it,” Jean-Luc Nancy argues, “it is because it does not produce the principles of a common body that governs itself without also producing, first of all and more essentially, an intelligent being and a man, as his text literally puts it.”⁴ We will come to this latter point at the end of this chapter.

Nancy touches upon an ambivalence regarding Rousseau when, describing what he calls the “inoperative” or “unworkable” community (*la communauté désœuvrée*), a community divided by its self-displacement, he returns to Rousseau. Nancy writes:

The first task in understanding what is at stake here [in thinking the limits of community] is focusing on the horizon *behind* us [Nancy invariably depicts Rousseau as the past of thought]. This means questioning the breakdown in community that supposedly engendered the modern era. The consciousness of this ordeal belongs to Rousseau, who figured a *society* that experienced or acknowledged the loss or degradation of a communitarian (and communicative) intimacy—a society producing of necessity the solitary figure, but one whose desire and intention was to produce the citizen of a free sovereign community. Whereas theoreticians preceding him had thought mainly in terms of the institution of a State, or the regulation of a society, Rousseau, although he borrowed a great deal

from them, was perhaps the first thinker of community, or more exactly, the first to experience the question of society as an uneasiness directed toward the community, and as the consciousness of a (perhaps irreparable) rupture in this community.⁵

Rousseau does not simply critique sovereignty's self-glorification and the "garlands of flowers," as he put it in his second *Discourse*, thrown by court intellectuals over the chains of the masses. Rousseau offers an account of sovereignty, freedom, and equality that would haunt the thinking of the political ever since.

He does so while conceptualizing the political as at a distance, as we will highlight, from the state and even from theology, despite the supplemental chapter at the end of the *Social Contract* on civic religion, which should be thought less as a political theology (which it is) than as a brilliant reflection of the necessary political fictions of sovereignty. For Rousseau, the theological is always subservient to the political, which for him meant providing a place where the will of a people could be enacted to regularize freedom and equality. Having found themselves "living in chains" under illegitimate despotisms, the people and its activity—in a word, its sovereignty—is heterogeneous to the state form, and this in turn grounds the right of revolution that this sovereign people retains over any particular governmental form. As contemporary philosophers such as Alain Badiou and Simon Critchley⁶ call for a thinking of a "politics at a distance from the state," or, as in Nancy, argue for considerations of being-with not reducible to the political,⁷ it is on Rousseauistic ground that they stand. As such, writers following Schmitt in depicting Rousseau's work as a "secular theology" *tout court* should recognize that Schmitt's dictum offers little but a reductive truism concerning the trajectories of Rousseau and Rousseauism.

As we proceed, we will emphasize Rousseau's claim that sovereignty is always "active" and is thus a performance and practice of the very living and breathing of the body politic.⁸ Indeed, this activity, based on a "convention" of this "body with each of its members"⁹ is "absolute, sacred, and inviolable,"¹⁰ and cannot give itself over to representation. The activity of sovereignty (it is either sovereign or it is not, since it cannot be shared, as Rousseau argues) is an explosive and revolutionary power held in abeyance whenever "several men united *consider themselves* a single body,"¹¹ even if they are in chains. The question that Rousseau struggles to answer through his use of the foreign legislator, the master teacher who is to provide the lessons of sovereignty to these people in chains, is how to motivate a populace in submission. This motivational force is what animates sovereignty's self-glorification, and the pure actuality of the sovereign, Rousseau demonstrates, necessitates a supplemental fiction uniting

the very people whose sovereign activity ought to be already underway. It is this conceptualization of an already-united people that is the necessary fiction—theological in provenance, perhaps, but not reducible to it—that takes hold of the logic of the *Social Contract*. The point will be to see, as we move through this book, if the changing modes of sovereignty in modernity have been supplemented by forms of fabulation and glorification more pertinent than the theological lineage often pointed out in genealogies of sovereignty.

THE STATE OF SOVEREIGNTY
AFTER THE *SOCIAL CONTRACT*

We will thus ask what happens to sovereignty once theology has lost its authority, as Hannah Arendt has claimed. Put another way, “When the old God leaves the world, what happens to all the unexpended faith?” This is the question asked in Don DeLillo’s *Mao II* as a father gazes out over the scene at Yankee Stadium as his daughter is married *en masse* in a Moonie celebration. The Reverend Sun Myung Moon looks down upon the crowd, ready to “lead them to the end of human history.” One would guess that the depiction here is not far off from the view many have of Rousseau’s *moi commun*, especially given his obsessions with the Greek and Roman cults as well as his depiction of a civic religion that was the recourse “to another order of authority, which can win over [*entraîner*] without violence and persuade without convincing.”¹² The “greatest enemy of freedom,” Isaiah Berlin called him, and to read Popper and others, one would think that the Rousseau of nonconformism, the Rousseau of the *Discourse on the Sciences and the Arts* and the *Confessions*, that is, Rousseau as Jean-Jacques, had died forever among the scenes of the National Assembly and guillotines of the French Revolution. His depictions of the general will and its sovereign activity, long after the masses of the imperial era and the mobs of the totalitarian twentieth century, to borrow the categories provided by Arendt’s *Origins of Totalitarianism*, are viewed less as the liberating possibilities of the political than the beginnings of the cult of leaders in an era when all notions of authority were withering away. If popular sovereignty held for the late eighteenth century the promise of an impossible “shared sovereignty” and a future literally to be dated anew during the Revolution from the past of tyranny and arbitrary government, then recent political theory has feared popular sovereignty as the rule of the mob, as a yet more pernicious form of arbitrary government.

Whatever our critiques of nationalism, we will not follow those who offer but a reactionary blend of republicanism along with fears of the people and their populism.¹³ Such fears are not new to modern era (Plato and

Aristotle viewed democracy as nothing but the rule of the mob, the rule of rogues), but nevertheless, despite the clichés and empires built around popular sovereignty and liberty—liberating others since they are unable to do it themselves, that is, forcing others to be free—it is significant that popular sovereignty is more apt to remind many of this scene at Yankee Stadium than of the caring statesman guiding a people to virtuous patriotism under Rousseau's social contract, or rather, the latter is depicted almost always as the former. DeLillo describes the scene:

[The father] looks at each sweet face, round face, long, wrong, darkish, plain. They are a nation, he supposes, founded on the principle of easy belief. A unity fueled by the credulous. They speak a half language, a set of ready-made terms and empty repetitions. All things, the sum of the knowable, everything true, it all comes to pass on. And here is the drama of mechanical routine played out with living figures. It knocks him back in awe, the loss of scale and intimacy, the way love and sex are multiplied out, the numbers and shaped crowd. . . . The terrible thing is they follow the man because he gives them what they need. He answers their yearning. . . . See how happy they look.¹⁴

For his part, Rousseau, from his first works to his last, emphasized the impossibility of government by the people since “civil society is always too populous to be capable of being governed by all of its members.”¹⁵ As he puts in the *Social Contract*, “taking the term in the *strict* sense, a true democracy has never existed and never will. It is contrary to the natural order. . . . It is unimaginable that the people would remain *constantly* assembled to handle public affairs; and it is readily apparent that it could not establish commissions for this purpose without changing the form of administration.”¹⁶ The problem for Rousseau is not just that a democracy would likely be ruled by a people led by private wills, but also that no grouping of men could be constantly present and thus accounted for in terms of democratic governance, providing both general laws applicable to all and also judgments in particular cases. Rousseau concludes, “Were there a people of gods [able to move from the general to the particular without thought for private advantage], it would *govern itself* democratically. So perfect a *government* is not suited to men.” But, importantly, Rousseau here refers only to the governmental form itself, not necessarily to that which gives force to any government in the *Social Contract*, namely, the general will and sovereignty of the people, which may be unrepresentable in the presence of the governmental apparatus. The state as he discusses it may indeed remain in thrall to this political theology of a democracy of gods, but how democratic is the

moment of sovereignty as such, aside from the governmental form? That's the key question for Rousseau.

For this reason, the measure of a people, the counting and accounting of a people, was an abiding theme in Rousseau's work as he sought to find a way for self-rule, for the self-sovereignty of each person of a people, without resorting to the governmental form of direct or representative democracy. Judith Shklar is right to argue that one dominant method in Rousseau is to cloak his politics in a negative assertion of what he is against: freedom is not slavery, sovereignty is not being ruled by a king, and equality means ridding ourselves of both *amour propre* (vanity) and the systematic degradation of the people by an elite to which *amour propre* gives rise.¹⁷ A people are those who are not the tyrants ruling over them. Rousseau writes:

It is the people who compose humankind. What is not the people is so slight a thing as not to be worth counting. Man is the same in all stations. If that is so, the stations having the most members merit the most respect. To the man who thinks, all the civil distinctions disappear. He sees the same passions, the same sentiments in the hodcarrier and the illustrious man. He discerns there only a difference in language, only a more or less affected tone; and if some essential difference distinguishes them, it is to the disadvantage of those who dissemble more. The people show themselves such as they are, and they are not lovable. But society people show themselves having to be disguised. If they were to show themselves such as they are, they would be disgusting. . . . If all the kings and all the philosophers were removed, they would scarcely be missed and things would go on none the worse.¹⁸

Rousseau often depicts the "people" as the opposition to the tyrant or the king, to the "sovereign" who would disrupt the proper counting and accounting of the people, in line with its uses in Spinoza, Hobbes, and an entire political tradition before him.¹⁹ Thus, the "people" would in this sense lack any meaning except as an oppositional menace to tyranny and the illegitimate and arbitrary use of force. Rousseau portrays the people as a multitude of sorts, performing sovereignty in a particular way such that the very grounds of sovereignty have shifted. The sovereign will be both the ruler and ruled of society through the intermediary of the government. It is the tyrant that is more and less than a man, either a god or monster as Aristotle would say, and if we worry that opponents to the regime would be attacked in the name of the safety of the people, it is also true that Rousseau is critiquing, from the vantage point of the people, those who would make themselves exceptional to the law put in place by the sovereign. In fact, this was Carl

Schmitt's critique of Rousseau, since his popular sovereignty seemed to leave aside the sovereign decisionism of the Schmittian *thèse royale*. When "the people became sovereign," Schmitt writes, "The decisionistic and personalistic element in the concept of sovereignty was thus lost."²⁰

When Rousseau writes the following, then, it is less clear that he means the "people" in a nationalist sense ("as people," "as one," "*en corps*" in the French) than as an oppositional figure to the ruling classes of various states: "Respect your species. Be aware that it is composed essentially of a collection of peoples; that if all the kings and all the philosophers were taken away, their absence would hardly be noticeable. . . . Man, do not dishonor man."²¹ Nevertheless, at the same time, Rousseau accepts Montesquieu's view that each country, with its particular climate and landscape, gives rise to a necessary set of laws, though Rousseau does not defend the "spirit of the laws" as they are: "The universal spirit of the laws of every country is to favor the strong against the weak," Rousseau remarks in *Emile*.²² However, Rousseau accepts that the only way for a political body to succeed, to find the civic spirit necessary to secure a particular society, is to pay heed to the "national institutions which shape the genius, character, and tastes and manners of a people, which give it an individuality of its own," as he later put it in *Considerations on the Government of Poland*.²³ Thus, if one worries that the general will is but a natalistic fetish that *wants* only that which is agreeable to a set of *semblables* (and thus is always already agreed upon), it is because Rousseau clearly argues at times that the single life of the sovereign in the *Social Contract* is born of the *natus* of nationalism. "When the Old God leaves the world, what happens to all the expended faith?" The short answer, if a certain Rousseauism is any guide, has been nationalism, one circling a sovereignty that founds and centers a political community.

CONTRACTING THE SOVEREIGN

With this in mind, let's move in closer to the *mise-en-scène* of the contract. Recalling the famous lines from the beginning of the *Social Contract*, Rousseau argues that the task is to instruct himself on the legitimacy of the political order. Consequently, he begins with a depiction of originary violence:

Were I to consider only force and the effect that flows from it, I would say that so long as *a people* is constrained to obey and does obey, it does well. As soon as it can shake off the yoke and does shake it off, it does even better. For by recovering its liberty, *by means of the same right* that stole it [*recouvrant sa liberté par le même droit qui la lui a ravie*], either the populace is justified in getting it back or else those who took it away were not justified in their actions.

But the social order is a *sacred right* [*un droit sacré*] which serves as a foundation for all other rights. Nevertheless this right [*droit*] does not come from nature. It is therefore founded upon convention.²⁴

Whatever the legitimacy of this act—the act itself will always be self-legitimizing, that is, also illegitimate—Rousseau depicts the violence that can and must found a state accountable to the sovereignty of the people. This legitimacy is not “natural,”²⁵ but is a convention, the social contract itself: “Conventions therefore remain the basis of *all legitimate authority* among men.”²⁶ Rousseau admits that it is difficult to see how the founding of another society can be anything but violent: the change from what he took to be one convention (the rule of force) to another (the convention of the social contract) is literally inexplicable and will remain unspoken:

The wise men who want to speak to the common masses in the former’s own language rather than in the common vernacular cannot be understood by the masses [*peuple*]. . . . Each individual, in having no appreciation for any other plan of government but the one that relates to his own private interest, finds it difficult to realize the advantages he ought to draw from the continual privations that good laws impose. For an emerging people [*peuple naissant*] to be capable of appreciating the sound maxims of politics and to follow the fundamental rules of statecraft [*les règles fondamentales de la raison d’État*], *the effect would have to become the cause*. The social spirit which ought to be the work of that institution, would have to preside over the institution itself. And men would be, prior to the advent of laws, what they ought to become by means of the laws.²⁷

We will turn to the capabilities of a *peuple naissant*, a people midwifing its own birth, before long. Much has been made of this paradoxical moment in Rousseau, one analogous to the problem of the declared “We” of the U.S. Declaration of Independence. For example, William Connolly in *The Ethos of Pluralization*, notes, “For a general will to be brought into being, effect (social spirit) would have to become cause, and cause (good laws) would have to become effect. The problem is how to establish either condition without the previous attainment upon which it depends. This is the paradox of political founding,” which is also, he writes, “the paradox of sovereignty.”²⁸ As we see above, Rousseau himself is well aware of this problem of the “advent of the laws.”

Rousseau’s reactionary critics seize on this moment to argue that only a political foundation led by a true sovereign, such as Clovis, could escape

this paradox: the law of conquest, as such, is self-legitimizing, and doesn't face the paradox of a people proclaiming itself as such all at once, though no doubt these arguments themselves simply recycle the vicious circle of violent supposition. Joseph De Maistre argued:

The first man was king as father of his children; each isolated family was governed in the same way. However as soon as families came in contact, they needed a sovereign, and this *sovereign* made them a *people* by giving them laws,²⁹ since a society only exists through a sovereign . . . [T]he idea of a *people* is a relative term that has no meaning separated from the idea of sovereignty, for the idea of a *people* evokes that of an aggregation *around a common center*, and without sovereignty a people cannot come together or have political unity.³⁰

De Maistre, strangely, doesn't have enough faith in the political theology and naturalization of the political ("the first man was king as father of his children"), which would provide another common "center" for the sovereignties of the people; he simply provides the *coup de force* of the vicious circle of sovereign supposition: "A human association," he concludes, "cannot exist without some kind of domination."³¹ Connolly, for his part, bases his analysis in part on Paul Ricoeur: "It is of the nature of political consent," Ricoeur writes, "which gives rise to the unity of the human community organized and oriented by the state, to be able to be recovered only in an act which has not taken place, in a contract which has not been contracted, in an implicit and tacit pact which appears as such only in political awareness, in retrospect, and in reflection."³² Ricoeur's thinking here is too general to fit the founding of the body politic in Rousseau's *Social Contract*; there is no moment of "consent" in Rousseau's *Social Contract*, which would presuppose a "communication" that would be the mark not of a general will but of an assemblage of private wills.

[I]t would be well to examine the *act* whereby a people is a people. For since this act is necessarily prior to the other, it is the true foundation of society. In fact, if there were *no prior convention* [to the naming of a magistrate], then, unless the vote were unanimous, what would become of the minority's obligation to submit to the majority's choice, and where do one hundred who want a master get the right to vote for ten who do not? The law of majority rule is itself an established convention, and *presupposes unanimity on a least one occasion*.³³

It follows, then, that the mark of the general will is not “so much the number of votes” (*voix*) or voices (*voix*) as the

common interest that unites them [*le nombre des voix que l'intérêt commun qui les unit*], for in this institution each person necessarily *submits himself* to the conditions he imposes on others, an admirable accord between interest and justice which bestows on common deliberations [*délibérations communes*] a quality of equity that disappears when any particular matter is discussed, for lack of a common interest uniting and identifying the role of the judge with that of the party [*faute d'un intérêt commun qui unisse et identifie la règle du juge avec celle de la partie*] . . . The sovereign knows only the *nation* [that is, itself, *le peuple naissant*] as a body and does not draw distinctions between any of those members that make it up.³⁴

Carl Schmitt summarizes what he takes to be the point of this passage:

[T]he general will demonstrates that a true *state*, according to Rousseau, only exists where the people is homogeneous, that there is essentially unanimity. According to the *Contrat social*, there can be no parties in the state, no religious differences, nothing that can divide persons, not even a public financial concern. . . . According to Rousseau, this unanimity must go so far that the laws come into existence *sans discussion*. Even judges and parties in a suit must want the same, whereby it is never even asked which of the two parties, accuser or accused, wants the same. In short, homogeneity elevated into an identity understands itself completely from itself. . . . The general will as Rousseau constructs it is in truth homogeneity. That is a really consequential democracy. According to the *Contrat social*, the state therefore rests not on a contract but essentially on homogeneity, in spite of its title and in spite of the dominant contract theory.³⁵

Schmitt's strategy is to show that the populist tradition represented by Rousseau trades on an implicit friend-enemy distinction between one homogeneous association and its others, which for him is the concept of the political. We need not follow Schmitt's reading as a whole, though he is right to underline the homogeneity that is presumed and reinforced through the contract of the title. Of course, the question of the single voice, of the one voice that would speak for all, is spoken for whenever democracy, the rule (*kratos*) by the people (*dēmos*), is theorized. As Aristotle noted in the *Politics*, if each citizen is to be given an equal share, it's also the case that

one decision must be final, and this decision would be the task of the person who puts an end to endless democratic discussion.³⁶ Rousseau, for his part, argues that sovereignty as such always already speaks with one voice, which means it need not speak at all, “*sans discussion*.”

On these points, it's helpful to turn to Louis Althusser's reading of Rousseau. The sovereign moment of Rousseau is exceptional to the laws of the contract, but also the system of his text: in the social contract, as he puts it in *Emile*, the “people only contracts with itself.”³⁷ This last passage is cited in Althusser's “*The Social Contract (The Discrepancies)*.” Althusser's reading is thorough and important, noting as he does the “essential play [jeu]” of the text. It is also important because it assumes what we could call an individualistic reading of the contract, namely as providing for *each* person to contract to become an element of the *moi commun*. Althusser's main thesis is that, at decisive moments, Rousseau comes upon a certain paradox or “discrepancy” that can only be resolved by a further discrepancy, until finally Rousseau's text must deal with itself as an ideology in connection to real-world relations of economic power, that is, its total alienation qua text from that which it describes (the political as such). The first discrepancy revolves around the moment of the contract itself, that is, what Althusser cites as the contract between the first “recipient party” (dubbed inelegantly by Althusser “RP₁”), the individual, who alienates all of his powers and goods to an as yet unformed “community” or “people,” recipient part number two (“RP₂”). Reading the famous lines of the contract of association from Book I, Althusser assumes that the contract is between an individual and the whole of which it will become a part. This does seem to be the thrust of the contract's essential terms: “Each of us places in common [*chacun de nous met en commun*] our person and our power under the supreme direction of the general will, and we receive [*nous recevons*] as one [*en corps*] each member as an indivisible part of the whole.”³⁸ Althusser writes:

Here is the difficulty: in every contract, the two Recipient Parties exist *prior to and externally* to the act of the contract. In Rousseau's social contract, only the RP₁ conforms to these conditions. The RP₂, on the contrary, escapes them. It does not exist before the contract for a very good reason: it is the *product* of the contract. Hence the paradox of the social contract is to bring together two RPs, one of which exists both prior to and externally to the contract, while the other does not, since it is the product of the contract itself, or better: its object, its end.³⁹

Althusser argues that when Rousseau writes in *Emile*, “the people only contracts with itself,” it is a “denegation” of the problematic nature of the second

recipient party to the contract. That is, for Althusser, Rousseau “mask[s]” the paradox of the contract by presupposing that the people preexists it.⁴⁰

The “peculiarity” of the social contract is that it is an exchange agreement concluded between two RPs (like any other contract), but one in which the second RP does not preexist the contract since it is the product. The very “solution” represented by the contract is thus preinscribed as one of the very conditions of the contract, the RP₂, since this RP₂ is not preexistent to the contract.⁴¹

However, the full sentence from *Emile*, not cited by Althusser, suggests that far from “denegating” the problem of the individual, Rousseau draws attention to the very play under discussion and exactly reverses the usual order we think of the contracting parties (“RP₁” and “RP₂”): “The people only contracts with itself—that is to say, *the people as sovereign body* [now “RP₁”] contracts with the individuals as subjects [now “RP₂,” since each only becomes a *subject*, as Rousseau makes clear in the *Social Contract*, after the contract] [*le peuple ne contracte qu’avec lui-même, c’est-à-dire le peuple en corps comme souverain, avec les particuliers comme sujets*]. This condition constitutes the whole artifice of the political machine and sets it in motion [*l’artifice et le jeu de la machine politique*].”⁴² Rousseau is never naïve about the stakes (*les jeux*) at play.

There is much to say, in fact, about the play of this political machine as well as how it is set to work and unworks itself, as we will note in the next section. There is also much to say, as Althusser comments upon well, about the figures of translation and fictionalization of the “*c’est-à-dire*” and the “*pour ainsi dire*,” the “as it were,” “as” and “as if”s of Rousseau’s contract, which serve to disrupt it while at the same time putting it in play, for example, “This formula shows that . . . each individual, contracting, so to speak [*pour ainsi dire*], with himself . . .”⁴³ These are crucial moments of a marked fiction in Rousseau’s text, with the “as it were” having the force of moving the argument forward where the argument must continue “as if” x, y, or z is the case. For this reason alone, Althusser’s text is itself a master lesson in the reading of texts and the play that unworks their self-mastery.

Following the argument further, Rousseau’s contract plays on a movement between the individual and the people, and passes in the relevant sections of *Emile* and *Social Contract* from “RP₁” to “RP₂,” from individual to people (as above) and back again: “These clauses are all reducible to one, namely the total alienation of each associate [of course, the alienation is that which would make one an associate], together with all of his rights, to the entire community. . . . Since each person gives himself whole and entire, the condition is equal for everyone [*tous*].”⁴⁴ For the moment, it

is critical to point out, to take on one strand of a tradition of reading Rousseau, that “*chaque particulier*,” “each one,” is already thought in relation to what is “general.” That is to say, “each of us [*chacun de nous*] places in common [*met en commun*]”—that is, the *moi commun*⁴⁵—all of our goods, such that we receive as one (“*nous recevons en corps*”) back in the contract what we have given, but this time as an association. This “we” precedes and is a party (RP₁) to the contract. This still marks a discrepancy. The *moi commun* as “RP₂” is still an as-yet-unformed party, since it is another, “perfectly united” “we” that comes onto the scene: the *nous*, the “we,” of “*nous recevons en corps*.”

Accordingly, Rousseau’s dictum that the “people contracts only with itself” has embedded within it, Althusser is right, a displacement of the paradoxical nature of the contract, even if this paradox is the very change of the *itself*. But what contract does not assume such a change in the contracting parties? What contract is not performative in this crucial respect? In addition, we must recall that Rousseau is not assuming an *ex nihilo* founding from the state of nature (as in the moment of the formation of property in the *Discourse on Inequality*, which itself is not an event, but an unfolding of a certain story leading to this inexorable moment), but rather its *re-founding*: “all men are born free, but *are* in chains.” The chains exist in societies already in formation, for a *peuple naissant*. The nation is already born; to right its political structure requires preserving the people already born as a nation, but now adding virtue to private interest through the contracting of the people with itself, providing the *highest* pleasure, the sovereign pleasure⁴⁶ associated with what Rousseau will call in *Considerations on the Government of Poland* “the nation’s second birth.”⁴⁷ Born again, the people is able to save itself through its civic mythology: a veritable political theology supplementing a reborn nationalism.

LESSONS FROM “*L’ARTIFICE ET LE JEU*” OF SOVEREIGNTY

Rousseau attempts to bypass the problem of political foundation through the legislator, who supplements sovereignty with his political pedagogy for the people on the lessons of sovereignty. He thus seeks to replace the vicious and violent circle of previous theories of sovereignty with a virtuous circle in which a Lycurgus-like figure would have recourse to an “authority” different from either violence or persuasion: the legislator, Rousseau writes, is “incapable of using either force or reasoning” with the people, and “must of necessity have recourse to an authority of another order, which can compel *without violence and persuade without convincing* [*le législateur ne pouvant employer ni la force ni le raisonnement, c’est une nécessité qu’il recoure à une autorité d’un autre ordre, qui puisse entraîner sans violence et persuader*”

sans convaincre].”⁴⁸ Neither the “magistrate nor the sovereign,”⁴⁹ readers of Rousseau are used to such a cast of characters, for instance, the Tutor in *Emile*, Wolmar in *La Nouvelle Héloïse*, and Rousseau himself in the *Letters on Corsica* and *Considerations on the Government of Poland*. The recourse to this other “order,” which Plato called the “*pharmakon*” of his myth of metals, the so-called noble lie of the *Republic*, is nothing new to political philosophy, which is addicted to such cures for political foundations, with the lesson that where there is political pedagogy, there sovereignty lies.

This, no doubt, is among the reasons that people read the contracting of political sovereignty not just as outdated as Nancy suggests, but as a *pharmakon* akin to contracting a form of political disease. The problem is how to find such a “genius,” as Rousseau calls him, a person who will be exceptional to both the government and to the people as sovereign.⁵⁰

The legislator is in every respect an extraordinary man in the state. If he ought to be so by his genius [*génie*], he is less so by his office, which is neither magistracy nor sovereignty. This office, which constitutes the republic, *does not enter into its constitution*. It is a particular and superior function having nothing in common with the dominion over men.⁵¹

This legislator will have no authority over the law, since this would present the danger that his “private opinions” could alter “the sanctity of his work”; the “foreigner,” for this reason, will be merely a man, not a citizen.⁵² The “genius” of the legislator will be to introduce, as with Plato’s myth of metals, a civic religion that would prepare a people to accept the noble maxims of the social contract. This, as we have seen, is the problem of the foundation of political authority, which even in the case of popular sovereignty in Rousseau will be surrounded by a Pascalian “mystical foundation” whose “voice is the voice of God on earth.”⁵³

This pedagogy is but another way of “forcing” a people to be free, or rather, is on another order of authority (“*une autorité d’un autre ordre*”) that would lead (“*entraîner*”) a people to be free, to “compel by divine authority those whom human prudence could not move.”⁵⁴ Is this not the *raison d’être* of all pedagogical mastery? As Rousseau makes clear, only a few peoples have the “social spirit” and docility to accept the maxims of the social contract to such an extent that no discussion would be necessary.⁵⁵ In Rousseau’s words, a nation is “bound by some union of origin, interest, or convention . . . one that has no custom or superstitions that are deeply rooted.”⁵⁶

Rousseau aims to occlude the event (of the founding), since it is the event that threatens to undo the very people in question. As such, the decisive moment—that which creates and maintains a people—is always

anterior to its “sovereignty” in Rousseau, to the unitary and homogeneous moment of the social contract, that is, prior to the homogeneity continued through and guaranteed by the social contract. It is the necessary fiction for the sovereignty of the *Social Contract*. As Rousseau notes in the *Discourse on the Origin of Inequality*, prior to reason, human beings have an interest in their well-being and self-preservation along with a “natural repugnance to seeing any sentient being, and especially any being like ourselves [nos *semblables*], perish or suffer.”⁵⁷ At such an early stage, who is this “we” and how does one distinguish the *semblable* and the non-*semblable*?

Rousseau’s discourses present the degeneration from this semblance into the dissemblance and dissembling of *amour propre*, which sunders the relation among *semblables* through mendacity.⁵⁸ The task of the *Social Contract* is to ensure that an unnatural mastery over one’s *semblable* is discontinued.⁵⁹ A more proper denaturing must occur, even if this means trying to locate a legislator who both has the appropriate level of mendacity and yet does not have *amour propre* and thus would dissemble for the sake of his private will. Sovereignty lies, and perhaps lies exactly where this distinction between these two levels of deception must be assumed, between proper pedagogy and improper mastery.

This pedagogical “denaturing” is predicated on a naturalization of politics. One way to read Rousseau is as a thinker who, contrary to Hobbes, Spinoza, Locke, and others before him, attempted to *minimize* nature (leaving for it no rational dictates, no ethics, no decisions as such), while being clear that *all* that matters politically is *a posteriori* to the violence of politics and cultural “conventions.” Nevertheless, let us recall that for Rousseau, a people is a whole “from which the individual receives his life and his being,”⁶⁰ and one is only free and equal as a simulacrum of these *semblables*. Despite all the talk of freedom and equality in Rousseau, the social contract is always already founded on a homogeneity already in force: “Each people has within itself some *cause* that organizes them in a *particular way* and renders its legislation *proper to it alone*.”⁶¹ Rousseau must thus always already have distinguished between that which belongs to a people and not to the people, between the *semblable* and the non-*semblable*, for example, the children, women, and foreigners whose “rights” are foreclosed from the beginning of the *Social Contract*: a sovereign *fiat a priori* to the Contract, and yet, *a posteriori* as well, given the *Social Contract*’s attention to *le public salut*, to preserving the people such as it is, to what he’ll call the “effect that must become the cause.” “The social treaty,” recall, “has as its purpose the *conservation* of the contracting parties,” which means “*fostering a natural revulsion to mingling with foreigners*,”⁶² which, as natural, is supposed to have been felt to begin with and thus needs no fostering. In other words, where Rousseau’s state of nature leaves room for no imagination and leaves

man in but a pitiable and pitying state, the nature of the state necessitates him recalling what is natural at every turn in the argument.

This political order is both sacred—"the social order is a sacred right that serves as a foundation for all other rights"⁶³—and nevertheless artificial, marking the line between nature and the law, between man as he once was and the citizen he can now be. And this pact is also the most reasonable. For Rousseau, the political order is such that a people would be "mad" if it were to give itself gratuitously.⁶⁴ The "people" under discussion preexist the contract, since from the opening paragraphs of the *Social Contract* it is a "people" that must "shake off its yoke."⁶⁵ The fundamental tension in Rousseau is between the force of his thought (to put reason and force on the side of the powerless, the people who are in opposition to the kings and tyrants) and the very homogenizing force of this reasoning, which begins and ends with a people without difference and differentiation, a multitude in the classical sense. For this reason, Rousseauian freedom is always in service to the saving and conservation of this people, this set of *semblables*, which must protect its own propriety "proper to it alone" given its own immanent "cause" or origin:

If [si] the state or the city is merely a moral person whose life consists in the union of its members, and if [si] the most important of its concerns [soins] is that of its own conservation, it ought to have a universal compulsory force [*il lui faut une force universelle et compulsive*] to move and arrange each part in the manner best suited to the whole. Just as nature gives each man an absolute power [*un pouvoir absolu*] over all his members, the social compact gives the body politic an absolute power over all its members, and it is the same power which . . . is directed by the general will and bears the *name* sovereignty.⁶⁶

This shift from the "if" (*si*), the hypothetical, to the affirmation of a "yes" (*si*) needed for the argument is crucial. For Rousseau, it is necessary that the body politic has the compulsory force for its saving and conservation. As such, when Rousseau argues that the prince (or government in general) exists only through the sovereign, that is, at its whim, he writes,

[T]he dominant will of the prince is not and should not be anything other than the general will or the law [provided by the sovereign people]. His force is merely the public force concentrated in him. As soon as he wants to derive *from himself* some absolute and independent act, the bond that links everything together begins to come loose. If it should finally happen that the prince had a private will more active than that of the sovereign, and that he had made use

of some of the public force that is available to him in order to obey this private will, so that there would be, so to speak [again, *pour ainsi dire*], two sovereigns—one *de jure* and that other *de facto*. At that moment, the social union would vanish and the body politic would be dissolved. However, for the body of the government to have an existence, a *real life* that distinguishes it from the body of the state, and for all its members to be able to act in concert and to fulfill the purpose for which it is instituted, there must be a particular *self*, a sensibility common to all its members, a force or will of its own that tends towards its preservation.⁶⁷

Everything in the *Social Contract* follows the vertiginous movements of force, legitimate and otherwise, within and outside the body politic, between that which is *de jure* and *de facto*, and that which is natural and that which is sacred. The gift of the social contract, its very giving (*donnant*) is the force of its own *self*-production, which produces a vigilance over the private wills of the polity's members in order to save the common sensibility necessary for its survival: "So long as several men together consider themselves to be a single body, they have but a single will, which is concerned with their common preservation and the general well-being."⁶⁸ As in the state of nature, which he makes clear in the *Discourse on the Origin of Inequality*, man's first and foremost concern is self-preservation; so too in civil society.⁶⁹

MEN AND CITIZENS. LIFE AND DEATH

We now arrive, then, at "the right of life or death" announced in the *Social Contract*:

The social treaty has as its purpose the conservation of the contracting parties. Whoever wills the end also wills the means, and these means are inseparable from some risks, even from some losses. Whoever wishes to preserve his life at the expense of others should also give it up for them when necessary. For the citizen is no longer judge of the peril to which the law wishes him to be exposed, and when the prince [that is, the government, executor of the sovereign people's laws] has said to him, "it is expedient for the state that you should die," he should die. Because it is under this condition *alone* that he has lived in security up to then, and because his life is not only a kindness of nature, but a *conditional gift* of the state.⁷⁰

Can we get a clearer definition of the sovereign's hold over life and death? Rousseau's *Social Contract* is but a long treatise on the problems of "arbitrary government," of the rule of a certain sovereignty. Yet, here we find nothing

other than what would seem to be the classical right of the king, namely, the classical right to kill, which inversely means the right to let live since the subject's life is also taken to be at the mercy and grace of the sovereign. As Rousseau puts it succinctly, the life of the citizen is a "conditional gift of the state." Neither in Hobbes nor in Schmitt is the ultimate power of the state put so concisely. Two problems, *at least*, arise:

1. Rousseau, while attempting to annul the sovereign exception, the arbitrary violence of kings, imports, it seems, the political problem Agamben identifies throughout the history of the West, namely, the sovereign decision regarding the distinction between bare life and political life: "Every malefactor who attacks the social right becomes through his transgression a rebel and a traitor to the homeland; in violating its laws, *he ceases to be member* [a citizen, a member of the sovereign], and he even wages war with it. . . . The guilty party is put to death . . . *less as a citizen* than as an enemy. . . . For such an enemy is *not a moral person, but a man.*"⁷¹ Thus, the social contract meant to end the war of private interests has only instituted another state of war in which there are internal and external enemies whose life is simply "conditional," with the stipulation that under this state "alone" has "he has lived in security up to then."

Rousseau sets out to invert the traditional relationship of the rights of sovereignty ascribed to the kings—indivisibility of their supreme power, the right over life and death, etc.—to argue that all such powers belong to the people. It is not the people, Rousseau wants to argue, who live at the pleasure of the king, but vice-versa; the enemy Rousseau envisions in "On the Right of Life or Death" is a would-be tyrant threatening the sovereign people by way of the governing power. As such, the tyrant lives at the leisure of the people; the *moi* of the traditional *tel est mon plaisir* is in the *Social Contract* the *moi commun*. For that matter, it is the state itself that lives and dies at the pleasure of the people. This is the ultimate right of the sovereign in Rousseau's sense: the right of revolution so identified with the *Social Contract*. Nevertheless, this inversion continues the state of sovereignty found in Hobbes and Bodin, with its fearsome right over life and death.

2. However, one could rightly note that the sovereign does not hold the right over life and death in the *Social Contract*, since punishment is left to the executive power, the state. Nevertheless, in the movement from the general to the particular, from the laws provided by the sovereign to the executive or prince, does Rousseau provide enough measures such that the prince does not become exceptional to the laws that the sovereign provides? "The sacred power of the laws," he writes, can be suspended "when it is a question of the safety of the homeland," that is, when it is presumed that the "first intention of the people is that the *state* should not perish,"⁷² which

his earlier arguments had explicitly said was *not* the first intention of the people, whose will only ever wants itself, not a particular state, a conflation that modern states have eagerly exploited. Additionally, Rousseau in his *Letters from the Mountain* warns that the executive or government will, over time, trespass on the zone of legislation: “[S]ince sovereignty [of the people] tends *always* to loosen, the government *always* tends to increase its power. Thus the executive body *must always* in the long run prevail over the legislative body; and when the law is *finally* subordinate to men, nothing but slaves and masters remain, and the republic [that is, the rule of law] is destroyed.”⁷³ Why the necessity of this *must*? What is in the nature of laws or, more to the point, the laws of nature that makes this so?

In any event, this is the central problem of governments *declaring* themselves democracies, giving the “name of sovereignty” to the people. For Rousseau, the executive, those who govern over the particulars, can in a state of emergency suspend the laws in the name of protecting them, that is, suspend the very sovereignty of the people that it is meant to relay. Here Rousseau lays out clearly what will become the permanent state of emergency.

If in order to counteract [a given danger], it suffices to increase the activity of the government, then it gets concentrated in one or two of its members; this way it is not the authority of the laws that is disturbed, but only the form of their administration. If however, the peril is such that the laws as an instrumentality are an obstacle to guarding against it, then a *supreme chief* is named who *silences* all the laws and *provisionally suspends the Sovereign authority*; in such a case the general will is not in doubt, it is obvious that the people’s foremost intention is that the State not perish. This way, the suspension of the legislative authority does not abolish it; the magistrate who *silences it cannot make it speak*, he *dominates* it without being able to *represent* it; he can do *everything*, except make laws.⁷⁴

We will connect this soon to a point we already broached in the introduction: the veritable silence of the people *as* sovereign, even when it is silenced for the sake of giving voice to its safety. But, first, note that Rousseau here must *provisionally* stand by a state that at every other point certainly *can* perish in the name of the sovereignty of the people. Moreover, there is little doubt that even in political systems founded upon the rule of law, justice as fairness, as well as the protection of either a people or a nation, this “sovereign” exceptionalism is potentially held within the system: this is one of the central lessons of the state of sovereignty in political modernity. It acts, as Rousseau notes, in silence even as it dominates the people. In

any politics where judgments need to be made between the unconditional and universal and the conditioned and the particular, sovereign exceptionalism is always a risk. All legislative systems serve at the pleasure of this exceptionalism since it is held in reserve as an ever-present possibility. The latter-day security and police apparatuses that usurp vast expanses of government budgets nevertheless operate in silence, while political theorists tinker around the edges of parliamentary procedures and proper placement of district lines; there is an ever-present mismatch between the “*name of [popular] sovereignty*” and the vast police forces and secret agencies mocking the pretensions of those never silent about spreading democracy and forcing others to be free. Here the magistrate will always decide when and where the laws “are an obstacle” and when the people must be “silence[d].” The exception is the rule, even where it is (temporarily) held in abeyance. Rousseau’s prince, it seems, can engage in a teleological suspension of the political in the name of an absolute—the very force of law—that is meant to save that which it gives up, the laws that provide for the security and freedoms of a citizenry. (The social contract itself operates within a similar economy of sacrifice: each man via the people gives up his freedom only to get it back as a citizen; the sacrifice of women to this order is sovereignly passed over in silence.)⁷⁵

And this is exactly what is performed by Rousseau’s legislator, who suspends the political as such in the pedagogical process of training a people to be capable of contracting with itself freely and equally. As all sovereigns have done, the executive can wrap up this law of force in narratives of authority, of sacred power and rights, of safety and security, all while reducing a populace to insecurity and discipline and suspending the universal claims of equality by the force of a singularity outside any law. All sovereign force is thus *onto-theological in nature* (with emphasis on both terms here); it will save you even as it sacrifices you to a higher order, whether it is to the greater good of religion or nationalism, or even to the sacred nature of sacrifice itself: “Whoever wishes,” as Rousseau put it, “to preserve his life at the expense of others should also give it up for them when necessary.” Are there resources within Rousseau for thinking something other than the fear and trembling of the political?

This has been the *raison d’être* of the *raison d’État*, and the only “authority” that can make explicable the “*il faut*” of the previously cited passage—“If the state or the city is merely a moral person whose life consists in the union of its members, and if the most important of its concerns [*soins*] is that of its own conservation, it ought to have a universal compulsory force [*il lui faut une force universelle et compulsive*] to move and arrange each part in the manner best suited to the whole”—is the force of reason. Despite the supposed irrationalism of Rousseau in his own time, this