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ROUSSEAU'S THEORY OF SOVEREIGNTY

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INTRODUCTION

Modern political science is still lacking a classificatory study on the concept of sovereignty. Thus far, there are, all in all, a few serious books dealing exclusively with it: Merriam's *History of Theory of Sovereignty since Rousseau* (1900), Herman Heller's *Die Souveranität* (1929), Heydte's *Die Geburtsstunde des souveränen Staates* (1952), Jouvnel's *Sovereignty* (1957), Hinsley's *Sovereignty* (first published in 1963), Jürgen's *Ursprung und Begriff der Souveranität* (1964) and Bartelson's *Genealogy of Sovereignty* (1995).

Notwithstanding the fact that sovereignty is the subject-matter of these studies, all these books offer either a mere exposition of the various conceptions and theories of sovereignty, or point at the sociological or philosophical aspects of the idea. It often happens that in these studies one can find many descriptions and terms related to theories and concepts which are not relevant for the general trends of the development of the idea of sovereignty, that a study is dealing only with few theoreticians of sovereignty, that the story of sovereignty stops just there where it should have begun, or that the concept of sovereignty is criticized from the vantage point of a certain ideology.¹ On the other hand, there are many studies examining the concept of sovereignty from perspectives that are not closely related to the political philosophy in which the concept of sovereignty originated.²

By and large, none of these studies show any attempt to make a classification of the various theories of sovereignty. Precisely, none of them attempt to investigate how all different theories can be classified and placed under

¹ Jürgen's book, for example, deals exclusively with Bodin and Hobbes' theory of sovereignty. Heydte's study stops at Bodin's work where the concept of sovereignty was formulated for the first time. In other words, it stopped just there where it should have begun. Laski's *Grammar of Politics* criticizes the Classical theory of sovereignty, but from the vantage point of a pluralistic view on politics.

² Camilleri and Falk's *The End of Sovereignty* and Weber's *Contending Sovereignty* are examples of this kind. They examine the problem of sovereignty within the international context. None of them will be taken into consideration in this thesis.

the same headings. Are there any common features between Hobbes' and Rousseau's theory of sovereignty? Or between Locke's and Montesquieu's? If there are, what are they? What significant aspect distinguishes Locke's concept of sovereignty from that of Hobbes? Why is it that Kant and Rousseau, although both had the idea of general will, ended up with opposite concepts of sovereignty?

I do not want to say that in all the aforementioned studies none of these questions has been posed and answered, but it has been done in passing. These issues, and a classification that would arise as a necessary consequence, were not addressed by these authors in terms of attempting to classify different concepts of sovereignty.

If it turns out that there are some similarities regarding the concept of sovereignty between, say, Hobbes and Rousseau, on one hand, and Locke and Kant, on the other hand, would it be possible to name the first group with one single name, and the second one with the another? If this is a legitimate classification, why does political science still not have a study that would deal only with the problem of sovereignty viewed from this perspective?

* * *

“Sovereignty has many meanings in political theory.” (Stankiewicz, 1976: 141) Stankiewicz offers several dichotomies, such as political and legal sovereignty, internal and external sovereignty, sovereignty *de iure* and sovereignty *de facto*, influential, limited, relative sovereignty, etc.³ But there is another

³ One should bear in mind that the division I am using in the thesis does not mean that the notion of sovereignty cannot be divided from some other perspectives. For example, Heywood points out that one can distinguish between legal and political sovereignty, depending whether one assumes that the reason for following the sovereign's command lies in its legal origin or actual power. The second possible differentiation is on internal or external sovereignty, depending whether one is dealing with sovereignty from the framework of one state, or from the standpoint of international relation. (Heywood, 1994: 49-56)

possible division of the notion of sovereignty, which I seek to address, that amounts to the classification of the theories of sovereignty, not only the mere notions. The complete development of the idea of sovereignty since 1576 -- when the notion was introduced for the first time with Jean Bodin's book *Six Books on Commonweale* -- can be divided into two large and opposite theories: the Classical theory of sovereignty and the Constitutional theory of sovereignty. The main difference between these two theories is how the concept of sovereignty is related to the state authority.

In itself, sovereignty means an unlimited power. This is its main attribute. Nonetheless, the whole concept cannot be reduced solely to this aspect, as some lawyers believed. (Jovanovic, 1898: 9) As noted, the two opposite streams had a different solution as to how to relate unlimited power to the state authority. Whereas classical thinkers believed that the state authority was sovereign and thus unlimited, Constitutionalists held that, although final, it must have been limited and that sovereignty was vested in the constitution.

There are three main elements of the Classical theory of sovereignty. The first element is the unlimited power. The second is that the sovereign power is the source of all the rights in the state. The third is that the state authority is the bearer of sovereignty, not the people, some legal document (like a constitution), or any other actor. (Heywood, 1994: 49-52)⁴

All the same, these two differentiations, as well as some other which possibly might exist, will not be addressed in this thesis.

⁴ Heywood did not exactly formulate these three elements in this manner and with the same words. He also does not draw on the same title for it: instead of "classical", he uses name "traditional" doctrine of sovereignty. Nevertheless, almost all these elements can be found in his chapter on sovereignty in his book *Political Ideas and Concepts*. He formulates the "traditional" concepts of sovereignty as follows: "An internal sovereignty is therefore a political body that possesses ultimate, final and independent authority; one whose decisions are binding upon all citizens, groups and institutions in society. Much of political theory has been an attempt to decide precisely where such sovereignty should be located." (Heywood, 1994: 51) In a similar way, the Classical doctrine is formulated in Bogdanor's *Encyclopedia* saying that "This constant element may be referred to as the 'traditional doctrine' of sovereignty, one arguing for the concentration of power at a given center, power which must be absolute, total, illimitable, and indivisible." (Bogdanor, 1987: 494)

On the other hand, the main features of the Constitutional theory of sovereignty are that sovereignty can be divided, that it rests with the legal document -- Constitution -- “which apportions power to each level,” meaning that state authority infers its power from the constitution. (Heywood, 1994: 53) But the greater departure that the Constitutional theory achieved with reference to the Classical theory is that sovereignty is not vested in any will.⁵ This was something which was very conducive to the different approach to the problem of sovereignty from the constitutional point of view.

This division between the Classical and the Constitutional theory of sovereignty will be used as the point of reference throughout the whole thesis. All the other divisions will be neglected, not because they do not exist, but because they are of no use for the thesis.

* * *

As is clear from the title, this thesis does not endeavor to offer a complete classification of the development of the idea of sovereignty. This would be too comprehensive and hard a task for the small amount of time that the author of this thesis had at his disposal. This thesis focuses on Jean-Jacques Rousseau’s theory of sovereignty instead.

Rousseau’s theory of sovereignty is attractive for one simple reason: it has two opposite elements in it -- one that wholly belongs to the Classical theory of sovereignty (unlimited power) and the second that contradicts it (popular sovereignty). That I assume that placing Rousseau within the Constitutional theory

⁵ This was pointed out by Hannah Arendt (Arendt, 1973: 141-178), but this point will be addressed later in the thesis.

of sovereignty is impossible goes without saying.⁶ The problem remains, however, whether Rousseau can be subsumed completely under the Classical theory of sovereignty.

For example, Heywood thinks that the main feature of the traditional doctrine of sovereignty is that it should be unlimited and the source of all the laws and rights in the state. What traditional thinkers disagreed over was who or what the ultimate authority should have been. (Heywood, 1994: 52; Bogdanor, 1987: 494) In this regard, it does not matter who is the bearer of sovereignty. Whoever it is, with the unlimited power implied, it will be subsumed under the Classical theory.

By contrast, I claim that the matter of who bears sovereignty must provoke some doubts as to the classification of a particular theory. It is not the same whether the bearer of sovereignty is state or it is people. Hobbes, who ascribed sovereignty to the state, ended up with an unlimited state authority. Althusius, on the other hand, who believed that people should be sovereign, or Harold Laski, for example, who believed the social groups are sovereign, arrived at a significantly different conclusion concerning limit of state authority. They did not claim that sovereignty is limited in itself, but from their theories it followed that the state authority must have been limited. Therefore, to place, say, Hobbes' and Hegel's doctrine under one title with Rousseau's would be wrong.

Having accepted this distinction as critical, Rousseau's position concerning the limit of state power turns out to be problematic and interesting for an analysis seeing that, within his theory of sovereignty, he backed a concept of popular sovereignty. Assuming that Rousseau really had a coherent concept of popular sovereignty, it follows that it does not fit the third element of the Classical theory

⁶ Although, later in text it will be pointed out that Rousseau's theory can be related to the Constitutional theory of sovereignty in terms of "treadening" the path for it.

of sovereignty: the element by which the state authority is the sole bearer of sovereignty. Popular sovereignty, though unlimited itself, is capable of limiting state authority. Hence, my task in this thesis will be to try to ascertain whether Rousseau's theory of sovereignty really implies an exclusively popular sovereignty. My assertion is that in the elements of state sovereignty can be found in Rousseau's theory, and that, in this aspect, Rousseau's theory can be regarded as constituting part of the Classical theory of sovereignty.

Of course, my conclusion will not be a definite one, because Rousseau's contradictions do not allow that. Rousseau's theory, as those of many other modern thinkers and philosophers, is full of contradiction and often irreconcilable elements. For example, Hearnshaw thinks that Rousseau was an "[...] unsystematic thinker, untrained in formal logic." (Hearnshaw, 1930: 172) T. W. Jones said that Rousseau's style of writing "is confused and puzzling, ambiguous and contradictory, an almost hopeless maze of impassioned and violent assertions leading off in various directions, no one of which is pursued to its logical conclusion." (Jones, 1968: 253) Hence, I will not negate the existence of the idea of popular sovereignty in Rousseau's works. My aim is to demonstrate that concerning the dichotomy of popular-state sovereignty, one can speak of both in Rousseau's theory.

* * *

The most important original literature that I am going to use as the basis for Rousseau's theory of sovereignty is his *Social Contract*, published in 1762. However, there are several smaller works that Rousseau wrote that are of some use in defining his theory of sovereignty, among them: *The Discourse on the Origins*

and Foundation of the Inequality among Men (The Second Discourse),⁷ published originally in 1755, *Discourse on Political Economy (The Third Discourse)*, first published in Volume V of Didrot and D’Alambert’s *Encyclopedia* in 1755, but latter also as separate work in 1758, the *Geneva Manuscript* (the first version of the *Social Contract*) of which Rousseau discarded some parts, and *Project of the Constitution for Corsica* dating from 1765, but published after Rousseau’s death.

⁷ The *First Discourse* Rousseau titled *A Discourse on the Moral Effects of the Arts and Sciences*, originally published in 1751 after wining a prize from Dijon’s Academy of Science in 1750. This work I do not mention since I consider it not to be relevant for the topic of my thesis.

THE LEGAL FRAMEWORK OF ROUSSEAU'S THEORY OF SOVEREIGNTY

I. INTRODUCTORY REMARKS

This chapter will deal with the legal framework of Rousseau's theory of sovereignty, meaning that Rousseau's concept of sovereignty will be taken in its pure form and looked upon exclusively from the legal perspective. The legal framework of sovereignty amounts to the first two elements of the Classical theory of sovereignty: it being unlimited and sovereignty as the source of all the rights in the state. The idea of popular sovereignty, which Rousseau was a champion of, will be left aside and dealt with in the following chapter.

After establishing Rousseau's definition of sovereign power as an unlimited one, the chapter focuses on Rousseau's concept of the state of nature. It analyzes to what extent the elements of the state of nature can limit sovereign power. Rousseau's concept of freedom, natural right, law, morality and property will be examined in detail. As the relationship of these elements to the sovereign power will indicate, no elements which can be found in the state of nature can limit sovereign power. Hence, the whole concept of the state of nature, along with its elements, is not enough to base the limitation of sovereign power thereon.

The second section of the chapter analyzes Rousseau's concept of social contract. Rousseau defines social contract as the act by virtue of which people lay down all their natural rights. Thus, all the rights that individuals can have are these which are given by the sovereign power after concluding the social contract. This

idea implies that subjects can have rights only on the basis of the sovereign will, or, more precisely, that sovereignty is the origin of all their rights. This conception indicates the second attribute of the Classical understanding of sovereignty that can be found in Rousseau's political thought

II. UNLIMITED SOVEREIGNTY

1. Rousseau's Definition of Sovereignty

Rousseau conceived of the state as an organism. "As soon as this multitude [of people] is united in a body, one cannot harm one of the members without attacking the whole body. [...] Hence, the sovereign power has no need to offer a guarantee to its subjects, since it is impossible for a body to want to harm all of its members [...]" (Rousseau, 1993a: I: vii; 150) Further: "The principle of the political life is the sovereign authority. Legislative power is the heart of the state; the executive power is the brain, which gives movement to its parts. The brain can fall into paralysis and yet individual may still live. A man may remain an imbecile and live. But once the heart has ceased its function, the animal is dead." (Rousseau, 1993a: IV, xi)⁸

Among the modern philosophers, the state as an organism is the way of reasoning used by Hobbes (Hobbes, 1991: 9) and later by Hegel. (Hegel, 1990: §§263, 269) For Hobbes as well as for Rousseau, the state was an artificial

⁸ The concept of organism Rousseau used already in his *Third Discourse*, saying that: "The sovereign power represents the head; the laws and customs are the brain, the source of the nerves and seat of the understanding, will, and senses, industry and agriculture are the mouth and stomach which prepare the common subsistence; [...]" (Rousseau, 1993c: 131)

organism. It is in the nature of an organism that it cannot hurt itself. An organism cannot wish itself unhappiness or evil. Hobbes's thought also contained the idea that the sovereignty is the heart of the state. As soon as the heart stops working, the state dies. Hobbes says: "Lastly, when in a warre [...] the enemies get a final Victory; so as [...] there is no farther protection of Subjects in their Loyalty; then is the Common-wealth DISSOLVED, and every man at liberty to protect himselfe [...] For the Sovereign, is the publique Soule, giving Life and Motion to the Common-wealth; which expiring, the Members are governed by it no more, than the Carcasse of the man, by his departed (thought Immortall) Soule." (Hobbes, 1991: Ch. XXIX)

As shown, almost the same formulation was used by Rousseau. In both cases, the end of the state is caused by the end of sovereignty. Consequently, there is no need for an organism to impose any constraint upon its own will. Like a man who always wants all the best to himself and who does not constrain his own will, so too the state, along with its sovereign power, should be without any constraints. Sovereign power, being the intrinsic part of the state, cannot be limited for it is conceived of as part of an organism. I stress this definition, since in almost all the works that conceive of the state as an organism, there is a concept of sovereignty as an unlimited power.

When Rousseau does not speak of the state as an organism, he speaks directly about the infeasibility of confining sovereignty. "It must be further noted that the public deliberation that can obligate all the subjects to the sovereign [...] cannot, for the opposite reason, obligate sovereign to itself, and that consequently it is contrary to the nature of the body politic that the sovereign impose upon itself a law it could not break." (Rousseau, 1993a: I: vii; 149)

This definition needs no further explanation. It is crystal-clear that Rousseau's conception of sovereignty is an unlimited one. He is even more clear

than Hobbes in his explication. Rousseau's attempt to free sovereign power from any constraint is facilitated by his additional explanation of sovereignty. To his mind, sovereignty is inalienable, indivisible, and it cannot err. (Rousseau, 1993a: II: i-iii) All these traits of Rousseau's understanding of sovereign power fits the Classical theory of sovereignty entirely.

2. The State of Nature

In Rousseau's political philosophy, one can find all the elements that usually have served as the limits of sovereign power in the history of political ideas. He deals with notions such as the state of nature, natural law, natural rights, freedom, morality, equality, property, etc. However, Rousseau did not endeavor to associate these elements with sovereign power nor to show whether these elements can limit it. On account of that, it is necessary to display this relationship. If, in the end, it turns out that none of these elements can constrain sovereign power, the conclusion will follow that sovereign power is unlimited.

The state of nature school used its main elements for constraining the sovereign power. Whether natural law can limit sovereign power can be seen from the relationship between the state of nature and the political state. There are two possible relationships between the two. First, that the state of nature is transmitted into the political state (Locke, Kant), meaning that all the elements of the state of nature are to be found, more or less, *virgo in tacta* in the political state. Second, the state of nature is nullified by the political state (Hobbes). This means that the state of nature is negated and that all the elements in the political state are new ones. (Podunavac, 1988: 74-5)

How does Rousseau imagine the state of nature? Does he want to negate it or to transmit it into a political state? There are two main features that man possesses in the state of nature. First is sympathy for the sufferings of others of his kind, that is, compassion. (Rousseau, 1993b: 73)⁹ This trait produces no relationships among them. Since individuals are rarely in contact with each other in the state of nature (Rousseau, 1993b: 79-80), Rousseau arrived at the conclusion that they were equal by nature. If there are any differences in terms of strength, it does not matter, says Rousseau. Individuals come in contact only later when they are compelled to cooperate once the development of the civilization requires them to do so. Then these traits become important. (Rousseau, 1993b: 84-117) Power, honesty, authority, money, an unlimited desire for acquisition, distrust, envy cannot be found in the state of nature. These are the products of the society. And these elements, in effect, made people unequal. (Rousseau, 1993b: 117) Hence, "From man's natural state can be derived no right of one man to rule another." (Bloom, 1972: 537) Bloom further says that: "Civil society cannot be grounded on natural right; nature dictates only self-interests. Nature is too low to comprehend civil society; the study of nature leads to its rejection as the standard, at least for the society." (Bloom, 1972: 540)

In addition to human compassion, Rousseau's concept of the state of nature contains another critical element: freedom. (Rousseau, 1993b: 59) By his own account, Rousseau's main intention is to make the political state out of the state of nature. He seeks to: "Find 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 free as before." (Rousseau, 1993a: I: vi)

⁹Rousseau says that *amour-propre*, which corresponds Hobbes' principle of self-preservation, does not exist in the state of nature. (Rousseau, 1993b: 73)

Evidently, the last word in this sentence refers to the state of nature. Rousseau believes that people, when entering political society, lose their original freedom they once had in the state of nature. “Man is born free, and everywhere he is in chains,” he says. (Rousseau, 1993a: I: i) Hence, it might follow that Rousseau wants to establish a new type of political society which will maintain the same freedom that man had in the state of nature. Bloom offers a similar interpretation saying that “Only a civil society which is a reflection of that nature can hope to make men happy.” (Bloom, 1972: 534) If this is true, the main goal of sovereign power and its general will is to re-establish the individual’s original freedom; that which he lost when he entered civil society. When there are no differences between the freedom in the state of nature and the freedom in the political state, then the goal of sovereign power is attained.

At this point, it seems that the intention of Rousseau’s theory of sovereignty coincides with that of Locke and opposes that of Hobbes. Rousseau attempts to transmit the state of nature, along with its main element -- freedom, into the political state. As a result, the individual’s freedom would be the element that limits sovereign power.

In fact, it is possible to decipher Rousseau’s transition from state of nature to civil society as resembling that of Locke. Rousseau himself gave enough leeway for such a conclusion. In some parts of the *Social Contract* he speaks in the best tradition of Locke’s position. “Each man alienates, I admit, by the social compact, only such part of his powers, goods and liberty as it is important for the community to control; but it also must be granted the sovereign is sole judge of what is important. [...] But the sovereign, for its part, cannot impose upon its subjects any fetters that are useless to the community. [...] We can see that the sovereign power, absolute, sacred, and inviolable as it is, does not and cannot

exceed the limits of general conventions, and that every man dispose at will of such goods and liberty as these conventions leave him.” (Rousseau, 1993a: II, iv)

These sentences sound as if Locke himself had written them. Here is a couple of sentences from Locke’s *Second Treatise*: “But though Men when they enter into Society, give up the Equality, Liberty, and executive Power they had in the State of Nature, into the hands of Society, to be so far disposed of by the Legislative, as the good of the Society shall require; yet it being only with an attention in every one the better to preserve himself his Liberty and Property; [...] the Power of Society, or Legislative constituted by them, can never be suppos’d to extend farther than the common good; but is obliged to secure every ones Property by providing against those three defects above-mentioned, that made the State of Nature so unsafe and unease. [...] For no Body can transfer to another more power than he has in himself; and no Body has an absolute Arbitrary Power over himself, or over any other, to destroy his own Life, or taken away the Life or Property of another. [...] Hence it is a mistake to think, that the Supream or Legislative Power of any Commonwealth, can do what it will, and dispose of the Estates of the Subjects arbitrarily, or take any part of them at pleasure.” (Locke, 1988: §§ 131, 135, 138)

Sabine concludes that Rousseau, at the outset, must have been an advocate of individual rights and liberties and of the strong position of the individual over community. Moreover, it follows that Rousseau was prone to setting down the limitation upon the general will whenever he noticed that the individual rights and liberties might have been endangered. (Sabine, 1973: 542)

T. W. Jones is of the same opinion. He holds that the *Social Contract* begins with the two theses that were influenced by Locke’s *Second Treatise*, that is, “The proposition that there are certain absolute, moral rights possessed by all men; and the proposition that the government’s existence is conditioned upon its

willingness and ability to implement these rights.” (Jones, 1968: 252) Unfortunately, or fortunately, Rousseau did not progress with these ideas but, as Jones pointed out, ended up with the quite different conclusions. (Jones, 1968: 253)

This becomes evident as soon as one relates natural freedom to civil freedom in Rousseau’s political thought. What does freedom from the state of nature look like? Rousseau delineates his concept of freedom in his *Second Discourse*. He compares the freedom of animal to the freedom of man in the state of nature. Whereas the animal is forced to follow the laws of nature, man does not have to do so. Even if one follows the laws of nature, it is not because one is coerced into doing so, but because one willingly decides to do so. One can, as well, resist nature and act contrary to its laws. Only the individual has the possibility to follow his own will. This constitutes the substance of freedom in the state of nature. (Rousseau, 1993b: 59)

What is the character of civil freedom, according to Rousseau? At one point, Rousseau argues that our civil freedom should be different from our natural freedom. When man passes from the natural state to the political state, he undergoes an anthropological change. (Rousseau, 1993a: I: viii; 151) On account of this change, our freedom cannot stay at the same level as it used to be in state of nature. The society is a complex contrivance developing all the human capacities that have been at the level of potentiality in state of nature. It is not only a shift from the state of nature to the political state that requires a change in the type of freedom, but also the development of human mental faculties. “After [man’s] entry into a social community, he can no longer accept the natural freedom of his primitive forbears, not only because his situation has changed from the independent physical existence of the forest to the closely knit life of civil society, but also because the development of his own nature makes it impossible for him to

remain content with the merely instinctive satisfaction of his earlier condition.” (Grimsley, 1972: 17)

Aside from Rousseau’s understanding of natural freedom as one of lower potential, in the state of nature, freedom is also deprived of morality. In the state of nature, there are no notions of good and evil. Natural freedom is not related to these categories. In the political state, however, freedom becomes moral freedom. The morality should come out of the fact that man will no longer follow his own will, but the general will. Obedience of man to his more developed self is the final goal of Rousseau’s political philosophy. However, since in the state of nature there is no morality, no reason, no virtue, no distinguishing of good from bad, it follows that in the state of nature man, actually, surrenders to his passions. In the political state, this should be changed. Man is still to follow himself. This “obedience,” however, must now have a moral ground. Accordingly, freedom can no longer be the uncontrolled behavior of separated and independent individuals. It now requires man to participate in an all-encompassing body politic. This body politic has a superior moral reason whose main characteristic is the general will. It is the general will that now determines our action, not our personal will. All this Rousseau summarizes in these sentences: “For to be driven by appetite alone is slavery, and obedience to the law one prescribes for oneself is liberty. [...] Once these distinctions are granted, it is so false that there is, in the social contract, any genuine renunciation on the part of the private individuals that their situation, as a result of this contract, is really preferable to what it was beforehand; and, instead of an alienation, they have merely made an advantageous exchange on an uncertain and precarious mode of existence for another that is better and surer. Natural independence is exchanged for liberty [...]” (Rousseau, 1993a: I, viii; II, iv)

According to this analysis, freedom in the state of nature is not real freedom. Even more, one can conclude that the natural freedom is not freedom at all: it is more impulsive and instinct-driven, for the nature prescribes exclusively the pursuing of one's own appetites. In the state of nature, there is no personal contact among men. It is impossible to find any care for the others, save mere compassion. In the political state, however, an individual cares for the others. It is the general will which tells him not to care solely about himself. The general will is again our own will, but now this is a sophisticated will. It is a will ennobled with the morality.

It is striking here that the new freedom, which comes into being with the political state, is no longer the same as freedom from the state of nature. It is apparent how Rousseau was ambiguous here. His whole debate about freedom shows us that he tried to "smuggle" freedom from the state of nature to the political state without being noticed as changed. However, it was changed in that it is no longer the same freedom: it is the freedom put at a higher level of potency and dignified with morality. Hence, it would be false to conclude that Rousseau wanted to transmit the state of nature into the political state. Although he started with this intention, he ended up with a different one. If he really had wanted to preserve natural freedom and to transmit it unchanged to the political state, he would have done it in the same or similar way as Locke. But Rousseau changed his freedom on its way from the state of nature to the political state and, thereby, negated the state of nature in establishing political society.

In addition to this implicit negation of the state of nature, Rousseau explicitly negates it when comparing it with the political state. Rousseau is not as convinced as Aristotle, for example, that man is *zoon politicon*. Aristotle, who believed that man's political character is based on natural ground, inferred that the state is a natural community. (Aristotel, 1988: 1253a) But Rousseau argued just

the opposite. To him, state without political institutions is natural and the political state is artificial.¹⁰

To Rousseau, it is not only the state that is an artificial contrivance, but every component within the state is such. Everything that can be found in the political state is not proper to man because it does not correspond to his original nature. If in the preceding natural law theories there were some accounts according to which the state of nature corresponds to the political state, it was, Rousseau believes, only because scholars were wrong when accounting for the state of nature.¹¹

Hence, all human traits, which are held to be found in the state of nature, are not characteristic of the state of nature. Greed, envy, the desire to have property, the will to power, an inclination to struggle, together with institutions such as civil freedom, morality, law, right, authority and power cannot be found in it. All these human traits and institutions come into being only after the erection of the state, that is, society; hence, they are social institutions, not natural ones. Seeing that in the state of nature there is no morality and there is no law, and most of all, there is no freedom in the form it exists in civil society, it follows that there is no such thing as natural morality or natural law in Rousseau's theory of sovereignty. Since none of these elements were present, it follows that neither of these institutions could limit sovereign power. In this regard, Rousseau is closer to Hobbes than to Locke when defining the state of nature since Hobbes also held that in the state of nature there is no justice, no distinctions between good and bad, and no morality. (Hobbes, 1991: Ch. XIII, XV)

¹⁰ For broader comparison between Rousseau's and Aristotle's concept of natural community see Jones, 1968: 256.

¹¹ Rousseau takes as the example Hobbes and his account of state of nature. That Rousseau was right with regard to Hobbes, was demonstrated also John McPherson in his book *The Political Theory of Possessive Individualism*.

It is true that Rousseau wants to differ from Hobbes by saying that, by contracting with each other, people should not lose their freedom. In the beginning of the *Social Contract*, he underscores that people are searching for a form of association in which they will stay as free as before. (Rousseau, 1993a: I, vi) Hobbes, on the other hand, thinks that people have to lose everything they once had in the state of nature. But very soon afterwards, Rousseau abandons this goal, explaining that people, in fact, also lose, or more precisely, exchange their natural freedom for a civil one. Thus, it can be said that Rousseau does not intend to transmit the state of nature into the political state. He only wants the political state to correspond, to some extent, to the state of nature. As Leo Strauss pointed out, it is the aspect of humanity in which the state of nature and the political state should be the same. (Strauss, 1971: 243) This aspect is, however, not sufficient for the state of nature to be a measure of political state and sovereign power. (Bloom, 1972: 541) All things considered, the state of nature cannot limit sovereign power. Whether the freedom, which comes into being after the creation of the state, is able to limit it, will be demonstrated later when analyzing what place the social contract has in Rousseau's theory of sovereignty.

* * *

There is another element that is usually considered to be in the state of nature and that is capable of limiting sovereign power -- property. As an incontestable natural right and a strong limit on state authority, Locke was the first to introduce this concept. (Locke, §§129, 135) In the *Second Discourse* Rousseau is explicit that in the state of nature property does not exist. He says: "The first man who, having enclosed a piece of ground, bethought himself of saying 'This is mine', and found people simple enough to believe him, was the real founder of

civil society.” (Rousseau, 1993b: 84) As follows, property and state come into being simultaneously. Without property, the state cannot be erected and *vice versa*. In this regard, Rousseau is closer to Hobbes than to Locke.

Again, however, there is a contradiction in Rousseau’s theory. In the *Social Contract* he says: “Each member of the community gives himself to it at the instant of its constitution, just as he actually is, himself and all his forces, including all the goods in his possession.” (Rousseau, 1993a: I, ix) It is not quite clear how an individual can give up all his possession after the establishment of the state if in the state of the nature the possession did not exist. All the same, for my argument is significant to show that Rousseau conceives of the state as the only possessor of all the goods, including property that has been given over to it. Furthermore, he stresses it more vividly in the *Constitution for Corsica* where is said that the state should be the only owner of the property. “Far from wanting the state to be poor, I should like on the contrary, for it to own everything, and for each individual to share in the common property only in proportion to his services [...] [My idea] is not to destroy private property absolutely, since that is impossible, but to confine it within the narrowest possible limits. [...] In short, I want the property of the state to be as large and strong, that of the citizens as small and weak as possible [...]” (Rousseau, 1979: 273) In that sense, property in no way can limit sovereign power, because the state possesses it almost completely.

In Sabine’s opinion, these statements on property by Rousseau, however much they have resembled communist ideas, are not connected with it. “What Rousseau contributed to socialism, utopian or other, was the much more general idea that all rights, including those of property, are rights within community and not against it.” (Sabine, 1973: 536) Although Sabine’s intention was to relate Rousseau’s philosophy to the socialist ideology, he actually confirmed that

property could not be regarded as a natural right in Rousseau's political philosophy and thus could not limit sovereignty.

III. THE SOURCE OF LAWS

1. The Social Contract as the Source of Law

It is the social contract that indisputably bears out the whole of Rousseau's decisiveness to constructing unlimited sovereign power. Rousseau devised the social contract as the basis whereby individuals give up or lay down all their natural rights before the sovereign.¹² As if it were not enough for Rousseau to close any possibility for the state of nature to limit sovereign power, he did it once again by delineating the content of the social contract.

As Rousseau put it, by contracting, people alienate all their natural rights and give them to the sovereign. (Rousseau, 1993a: I: vi) There is, however, considerable inconsistency in this statement. First, Rousseau says that in the state of nature there are no any rights, he then says that by contracting, people alienate all their rights. If there are no rights in state of nature, how can people lay them down?

Despite this confusion, it should be noted that Rousseau wanted all our rights to be abandoned and to be given to the sovereign. This is an entirely Hobessian way of reasoning. Hobbes also wanted people to lay down all their rights before the sovereign by renouncing and transferring them. (Hobbes, 1991: Ch. XIV) The only "difference" between Hobbes and Rousseau is that the former was clear enough in his intention, whereas the latter was vague.

As soon as one escapes this initial confusion, one encounters another. Rousseau asserts that the main goal of sovereign power is to establish freedom. Even if people do not want to be free, the sovereign will force them to this.

¹² Ebenstein does not share this opinion, though. (Ebenstein, 1991: 498)

(Rousseau, 1993a: I, vii) If the sovereign ought to establish freedom, which should correspond to the natural freedom, it follows that the sovereign should be subjected to this goal, too. The sovereign can create morality, but he cannot usurp our freedom. Rousseau says: “[...] the sovereign power, absolute, wholly sacred and inviolable as it is, does not exceed the limits of general conventions, and that every man can completely dispose of such goods and freedom as has been *left* [italic added] to him by these conventions.” (Rousseau, 1993a: II: iv; 158)

This Rousseau’s statement apparently reverses the course of analysis again. Whereas Rousseau argued before that man laid down all his rights, it now turns out that he is allowed to keep some. The mere fact that the sovereign has the right to modify this freedom and to make moral freedom out of an amoral one, should not lead to the conclusion that we have to hand over our freedom to the sovereign. The advantage of political society is moral freedom, not freedom in general. Accordingly, all rights are not renounced. At least freedom from the state of nature, as modified as it may be, ought to remain with the people. Changed freedom is an unalienable natural right. Hence, it is a restraint on sovereign power.

However, Rousseau’s theory gives enough room for a contrary conclusion. One arrives at it by ascertaining the second difference between natural and political freedom. The first difference has already been commented upon. It refers to the different character of two types of freedom. The second difference refers to the different source of two types of freedom. Rousseau says that natural freedom is not given to us by anyone. It is freedom that is part of our nature. Freedom is proper to mankind. It is as much part of mankind as it is a part of the nature. Political freedom, by contrast, is not naturally proper to us. We were given this freedom from the sovereign power! This argument can easily be proven by analyzing the role of the social contract in Rousseau’s political philosophy.

Rousseau believed that the main goal of the sovereign was to secure the political state in which we would have complied with ourselves, as we had in the state of nature. If so, why did Rousseau need a social contract? Why, in order to get the same result, are we to travel the whole way from renouncing our rights only to regain them? If we agreed to renounce our rights in the first place, why we would need them again? Is it just because we have to meet the first difference between natural and political freedom and become moral beings? If this was what Rousseau had in mind, he did not have to compel us to travel this long road. Laying down rights has nothing to do with morality. Besides, Rousseau himself regarded morality as something what cannot be achieved overnight. “To form a citizen is not work of a day,” he wrote. (Rousseau, 1993c: 147) To his mind, morality can be built only by living together for a long period of time, and beginning to educate people when they are still children. Drawing up a social contract, however, is not a matter of time. It is a matter of moment. The fact that we signed the contract does not affect momentarily our morality at all. Hence, the social contract is not devised for producing morality. Rousseau devised it in order to produce something else.

The reason that Rousseau, by introducing the social contract, wants people to lay down their natural rights merely to get them again lies in his intention to give them back these rights from the sovereign power. The social contract is the act confirming that all the rights people have are these given to them by sovereign power. Thus, all the rights people have are still theirs. However, although their possessors remain the same, their source has been changed. People have them no longer from nature, but by the sovereign’s will, on the basis of sovereign’s concession. Upon contracting, all the rights people have are not natural, but derivative. Rousseau wants people’s freedom to be the holy right which would be

the basis for all the other rights, provided that this right no longer comes from nature, but from the social contract. (Grimsley, 1972: 18)

If Rousseau really had wanted our freedom to be the same in both natural and political states, he would have done the same as Locke. According to Locke, people did not lay down their freedom and a set of other rights. As a consequence, one can find in Locke's theory not only natural rights as limiting the sovereign power, but also the right to rebel. (Locke, 1988: §§222-242)

From here I conclude that, for Rousseau, people can have rights in political society. Sovereign power is not incompatible with the existence of rights. However, these rights originate from the sovereign because they are all the product of the sovereign will. Freedom exists in the political state, as it existed in the state of nature, but this new freedom now has a different origin. The sovereign does not have to recognize and confirm the existence of rights. If he did that, he would no longer be sovereign. Since he is the one distributing the rights, since he gave all the rights, he can take them away again.

2. What is Law?

Before the conclusion of this chapter, there is one more issue to be dealt with. This is Rousseau's understanding of law (*lex*). This understanding also confirms the hypothesis that Rousseau's concept of sovereignty fits the Classical theory.

Rousseau says: "Since law has been defined as an act of the general will, there is obviously no need of asking who has the right of making the laws; nor is there any need of asking whether the prince be above the law, since he is but a

member of the state [...] It follows, moreover, that, just laws issues from a general will, so it is directed to an object which is general.” (Rousseau, 1993a: II, vi)

Here the matter of the generality of laws will be set aside. Of significance is to point out that the law is always an expression of the general will. In his further considerations on law, Rousseau acknowledges the existence of natural law. That type of Law comes from God, but it cannot be taken as the valid type of law for a political community. What is wrong with natural law, asks Rousseau? The problem is that natural law lacks the natural sanction for it not being followed. As Rousseau put it: “Whatever is good and in conformity with order is such by the nature of things and independently of human conventions. All justice comes from God; he alone is its source. But if we knew how to receive it from so exalted a source, we would have no need for government or laws. Undoubtedly, there is a universal justice emanating from reason alone; but this justice, to be admitted among us, ought to be reciprocal. Considering things from a human standpoint, the lack of natural sanction causes the laws of justice to be without teeth among men. They do nothing but good to the wicked and the evil to the just [...]” (Rousseau, 1993a: II, vi) Hence, the natural laws are without any effect upon people because there is nobody who will enforce them and punish those who disobey them.

Furthermore, when Rousseau speaks about the act of sovereignty as the highest act in the state, he says that it presents a sort of convention and: “This convention is legitimate, because it has the social contract as the basis; equitable, because it is common to all; useful, because it can have only general good for its object; and solid because *it has the public force and the supreme power as a guarantee* [italic added].” (Rousseau, 1993a: II, iv)

Grimsley argues that from this moment on, for Rousseau, the most important problem in the *Social Contract* becomes the problem of power. “As

soon as the State has been brought into being by the social contract, the question of power becomes of primary importance, because it is from the establishment of the 'common force' that the civil association derives its stability and strength." (Grimsley, 1972: 23)

As Fetscher put it, these comparisons of natural with civil laws and Rousseau's definition that the basic law (social contract) obtains its strength and validity from the supreme power, strongly resembles the position Hobbes had taken. (Fetscher, 1968: 129) Hobbes supported the idea that the laws of nature could not be valid and could not oblige anyone insofar as they were not transferred into the civil laws and "blessed" by sovereign power. From his statement, it follows that state and government is something that guarantees the fulfilling of the natural norm. By saying that laws need public force and supreme power in order to be valid, Rousseau arrived at the very Hobbesian position: what makes laws is not the justice that they may contain, but state power.

Fetscher clearly shows that Rousseau deliberately refused to accept one of the functions of rational natural law, that of serving as the critical measure by virtue of which it was possible to judge to what extent the political order was in accordance with reason and justice. Rousseau acknowledges that these standards, which are embodied in natural law, can be determined only by positive or civil laws. (Fetscher, 1968: 134) The strength and enforcement of the laws do not come from their moral or ethical character, but from the fact that they are the product of civil, that is, sovereign power.

There is yet another statement by Rousseau referring to the Hobbesian tradition in treating the legal system. Rousseau says: "In order then that the social compact may not be an empty formula, it tacitly includes the undertaking [...] that whosoever refuses to obey the general will shall be compelled to do so by the whole body." (Rousseau, 1993a: I, vii) This sentence sounds as if it were

reformulated Hobbes' famous sentence "Covenant without swords are but words," because he held that the lack of the state power cannot provide the security of a man at all. "Therefore notwithstanding the Lawes of Nature [...] if there be no Power erected, or not great enough for our own security; every man will, and may lawfully rely on his own strength and art, for caution against all other men." (Hobbes, 1991: Ch. XVII) All this means that laws get their strength from the sovereign power. There is no other source which is allowed to make them valid. For Rousseau, as well as for Hobbes, law is the center of social life. "A society without laws is not, [for Rousseau,] in the last analysis, a true community." (Friedrich, 1958: 122)

However, there is a marked difference between the inference made by Hobbes and that made by Rousseau. Hobbes, having presumed that 'Covenant without the swords are but words,' ended up defining sovereignty in terms of power (might). He said that the sovereign would be sovereign insofar as it would be able to keep its power. As soon as another became more powerful than the sovereign, the other would have a legal basis for claiming sovereignty. (Hobbes, 1991: Ch. XXI) Hence, from the fact that the essence of sovereignty is power, Hobbes arrived at the conclusion that obedience to the sovereign power is based on its mere existence. The simple fact that the sovereign exists is a sufficient reason for its subjects to obey. Rousseau, however, did not arrive at such a conclusion. As argued by Cobban and Grimsley, Rousseau's notion of sovereignty differs radically from that of Hobbes on this point.

Rousseau says that "By the sole fact that it is, the sovereignty is always everything that it should be." (Rousseau, 1993a: II, iv) This formulation simply means that the sovereign cannot be arbitrary: "It is not sheer physical force, but the force aimed at the preservation of society through the pursuit of the general good." (Grimsley, 1972: 25) Of course, this does not mean that sovereign can do

no wrong. On the contrary, Rousseau says that sovereign will cannot err. However, “whereas for [Hobbes] this quality of the sovereign’s will arises from the very fact of its existence, for Rousseau, the existence of the sovereign itself depends on the quality of its will.” (Cobban, 1934: 132)

Rousseau’s concept of sovereignty was congruent with that of Hobbes regarding power as the basis of the sovereignty. Nevertheless, concerning the mere existence of the sovereign power as the sufficient basis for obedience to the sovereign, he strongly disagreed with him. With no regard to the fact that the mere existence of sovereignty does not present the element of the Classical theory of sovereignty, it is interesting to notice this distinction between Hobbes and Rousseau, since it points at the fact that Rousseau had an ethical understanding of the role of sovereignty, which was quite irrelevant for the Classical theory. This feature will be of significance later in the analysis of the relationship between sovereignty and the general will.

3. Conclusion

As this chapter has shown, Rousseau’s theory belongs to the Classical theory of sovereignty because it meets at least two conditions of this theory. First, the sovereign power is unlimited. Second, sovereign power is the origin of all the rights in the state.

Rousseau’s theory of sovereignty fulfills both conditions. As shown in the first section, he defines sovereignty as unlimited. In addition to this definition, my analysis showed that Rousseau excluded any possibility that the state of nature with its main element, freedom, could limit sovereign power. As shown in the

second section, Rousseau holds that sovereignty was the only source of all the rights and the creator of the complete legal order in the state. The freedom which we have, along with all other rights, is a concession of the sovereign. It does not recognize them; it creates them.

This chapter did not delineate the whole of Rousseau's theory of sovereignty. Popular sovereignty, which is an important idea presented in Rousseau's political philosophy, also should be taken into account since, by its nature, it has the capacity to affect and modify the classical idea of unlimited sovereignty which Rousseau is advocate of. The whole problem of popular sovereignty will be treated in the following chapter.

POPULAR SOVEREIGNTY

I. INTRODUCTORY REMARKS

As already indicated in the introduction, the most problematic issue in Rousseau's theory of sovereignty is to prove that his theory fits the Classical theory of sovereignty in its third element. The Classical theory of sovereignty assumes that the bearer of sovereignty is the state, or the government. This was the unanimous opinion of Bodin and Hobbes. (Merriam, 1900: 38) Neither of them ever advocated the idea that people, citizens or social groups could be sovereign. However, Rousseau explicitly claims that sovereignty can rest with no one but people. They, and nobody else, are the origin and the bearer of sovereignty.¹³

Explicitly enough, Rousseau assigned sovereignty to the people. In this chapter, I will not dispute that Rousseau held the idea of popular sovereignty. I will not dispute that this idea is able to limit state authority either. It certainly can do so. However, I will attempt to demonstrate that in Rousseau's political thought one can find the concept of state sovereignty as well. My basis for discussion will be that Rousseau's idea of popular sovereignty was not a coherent one. In this respect, one can speak about popular as well as state sovereignty in Rousseau's theory.

Before any attempt to corroborate this, two remarks should be emphasized. Firstly, I will not attempt to show the existence of state sovereignty in Rousseau

¹³ Rousseau's definition of popular sovereignty will be given later in the thesis.

by drawing on empirical or ideological argument. Rather, my analysis will be an inherent one.

What are the empirical and ideological arguments in general? An empirical argument consists in attempting to undermine a theory by referring to its empirical consequences. If these consequences are not in accordance with a theory, then the theory is defective and invalid. An ideological argument consists in attempting to undermine a theory from a certain ideological vantage point. If a theory is not in accordance with a certain ideology the argument is based on, then the theory is defective and invalid.

When Talmon criticized Rousseau's political ideas, he did it both from an empirical and a liberal point of view. Talmon denounced Rousseau's theory because it gave rise to totalitarian practice in the French revolution of 1789, and he condemned it for not being in accordance with liberal ideology.¹⁴ Talmon's first argument is merely empirical, whereas the second is ideological. They both sought to prove that popular sovereignty is impossible because it was impossible to fulfill after the French revolution and because it was not in accordance with liberal ideology, respectively. This was obviously true, but it cannot upset the theoretical basis of Rousseau's idea of popular sovereignty. In this chapter, I will describe Talmon's argumentation, indicating how weak it is when attempting to prove that popular sovereignty does not exist in Rousseau's political philosophy. It is not surprising that empirical arguments can be found within Rousseau's theory. So, I decided to use the method of analytical philosophy, by probing the coherence of Rousseau's theory. My argument, at all points, will be inherent to it. Consequently, I am not going to examine Rousseau's idea of popular sovereignty from the outside, but from the inside. By undertaking an inherent analysis of his

¹⁴ I will deal with Talmon's argument later in more detail.

theory, I will attempt to prove that Rousseau had an idea of state sovereignty in addition to a popular one.

Secondly, it should be noted that the way of arriving at my thesis will not be an explicit, but an implicit one. Apparently, no one can dispute that Rousseau upheld the idea of popular sovereignty. In like manner, no one can dispute the explicability of this statement set forth by Rousseau. However much Rousseau was contradictory and unclear, yet he was not contradictory that much so as to say that popular sovereignty and state sovereignty can exist at the same time in his theory. Therefore, the argument that state sovereignty does exist in his theory is to be deduced implicitly.

This chapter is organized in the following way. Firstly, I will outline the main ideas of the concept of popular sovereignty in general and its implications for the organization of the state. Secondly, I will set forth the idea of popular sovereignty as it was conceived by Rousseau. Thirdly, I will point at Talmon's arguments which corroborate that popular sovereignty does not exist in Rousseau, but only in order to discount them as improper ones. Fourthly, I will examine whether the general will can be sovereign according to Rousseau's theory. Finally, I will demonstrate how, within Rousseau's theory, the idea of state sovereignty can be found and disclosed by using an inherent analysis.

II. ROUSSEAU'S CONCEPT OF POPULAR SOVEREIGNTY

1. The Character of Popular Sovereignty in General

The idea of popular sovereignty, in general, does not pay much attention to the organization of the state. The conception of popular sovereignty is not the conception of the state, but that of the community. Bodin and Hobbes had in mind the state organization when writing their works. Rousseau, on the other hand, was dissatisfied with the state in general. His *First* and *Second Discourse*, on the whole, offered a negative picture of the state and society. Hence, he believed that people could be happy and felicitous only after having established a very community of people.

Rousseau assumed that sovereignty is the notion pertaining to the political community. He did not make any attempt to differentiate community from the state: they were the same thing. (Hinsley, 1986: 155) In this sense, people, as the community, are beyond the reach of the legal-state organization not only in the state of nature, but also after the creation of the state. (Lers, 1907: 54) And even if the state is once erected, established and organized, people are free to disobey to the state authority, and even to reorganize or to destroy the state organization itself. This is the final consequence of popular sovereignty taken in its most extreme form.

Since in practice of erecting the state, it was impossible to establish the state on the basis of popular sovereignty, the latter concept itself was to be changed if the state was to be erected. (Lers, 1907: 55) Therefore, in practice, Rousseau's principles of sovereignty have been constantly weakened "by accommodation to the facts of political organization; and this adjustment has constantly taken the form of compromise with the doctrine of Hobbes or the doctrine of Hobbes' constitutionalist and pre-Rousseau critics." (Hinsley, 1986: 155)

2. Rousseau's Concept of Popular Sovereignty

One of the first significant theories of popular sovereignty before Rousseau was articulated by Johannes Althusius in his work *Politica Methodicae Digesta* (1603). Grimsley supposes that Rousseau, when writing the *Social Contract*, might have had Althusius' theory of popular sovereignty in mind. However, in no way could Althusius' theory serve as the basis for Rousseau's, since there was a significant difference between the two. Whereas Rousseau regarded the social contract as a contract among individuals, Althusius regarded it as the one among the corporations. (Grimsley, 1972: 56) In this respect, Rousseau's theory of popular sovereignty is still individualistic and it cannot be regarded as a pre-modern theory completely, although, as it will be pointed out later, it has a plenty of pre-modern and ancient elements.

In the *Geneva Manuscript* already, Rousseau defines sovereignty as the notion that cannot belong to the individual: "From this it becomes clear that the sovereignty is, by its nature, only a corporate entity, that it has only an abstract and collective existence, and that the idea which is attached to this word cannot be united to that of a single individual." (Rousseau, 1993d: 313)

In the *Social Contract*, Rousseau is not so resolute, but he gives the following statement from which the popular sovereignty can be deduced: "Each of us places his person and all his power in common under the supreme direction of the general will; and as one we receive each member as an indivisible part of the whole. [...] This public person, formed, thus, by union of all others formerly took the name city, and at present takes the name republic or body politic, which is called state by its members when it is passive, sovereign when it is active, power when it is compared to others like itself. As to the associates they collectively take

the name people, they are called citizens insofar as *participants* [italics added] in the sovereign authority [...]" (Rousseau, 1993a: I, vi)

Rousseau even goes as far as to explicitly refute himself by implying that people, and not the social contract, are the origin of all the rights: "I am presupposing here what I believe I have demonstrated, namely that in the state there is no fundamental law that cannot be revoked, not even the social compact. For if all citizens were to assemble in order to break this compact by common agreement, no one could doubt that it was legitimately broken." (Rousseau, 1993a: III, xviii)

Definitions aside, Rousseau's concept of popular sovereignty is most visible in the part of the *Social Contract* where he speaks of the contract itself. Doubtless, Rousseau sets social contract as the basis of the popular sovereignty. He begins the fourth chapter of the first book with the following statement: "Since no man has a natural authority over his fellow man, and since force does not give rise to any right, conventions therefore remain the basis of all legitimate authority among men." (Rousseau, 1993a: I, iv)

In chapter one I described what was going on with the state of nature and natural right (human's freedom) when concluding the social contract. Unquestionably, people are to lose their natural freedom and lay it in the sovereign's hands. Now it has to be shown who is, in fact, the actor to whom all these rights will be given over. In order to create the political community, Rousseau says that people were to alienate all their rights to the whole or to the aggregate set of individuals. To Rousseau, people have to hand over their natural rights to themselves.

Totally the opposite was the case with Hobbes. He saw the social contract as the act whereby people lay down their natural rights before a single man or a group of people who, thereafter, become sovereign. In no way was Hobbes willing

to concede the sovereignty of the people since they become the people only after the creation of the sovereign, that is, the state. The sovereign power will make them people. Before the act of generation of the sovereign power, people are mere multitude. (Hobbes, 1991: Ch. XVII; 1949: Ch. VI, Sec. 14; Ch. XII, Sec. 7)

Actually, the greatest difference here between Hobbes and Rousseau amounts to the difference between a social and a political contract.¹⁵ In short, the main difference between these two contracts is this. When the state comes into being, it has to be based on two contracts: first is that of society, and the second that of government. As Barker points out, “The theory of a contract of government is a theory that the State, in the sense of government, is based on a contract ruler and subjects. [...] The theory of a contract of government really postulates, as a prior condition, the theory of a contract of society. There must already be something in the nature of an organized community [...] before there can be any contract between ruler and subjects. We must therefore hold [...] that besides the contract of government, and prior to the contract of government, there is also a contract of society, a social contract proper (in the strict sense of the word ‘social’).” (Barker, 1960: 90-1)

Accordingly, before Hobbes and Rousseau, two contracts were assumed: social and political. The problem was how to preserve the sovereignty of the people by establishing political power. (Gierke, 1880: 83) Althusius offered a solution by virtue of which people, organized in associations, would only transfer their sovereignty to the ruler conditionally, still keeping their original sovereignty. In that sense, there were not only two contracts but also two legal persons: ruler

¹⁵ This issue especially concerned Otto Gierke in his book *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien* and, to a lesser extent, Iring Fetscher in his book *Rousseaus Politische Philosophie*. They both distinguish *Herrschafts-* from *Gesellschaftsvertrag* (political and social contract), indicating it as the main means by virtue of which Rousseau’s concept of sovereignty can be regarded as the popular one. I will proceed the analysis in terms of these two contrasting types of contracts.

and people. (Gierke, 1880: 123) Since the sovereignty of the ruler is inferred from the sovereignty of the people, it follows that both sides have advantages from this “two-contract” situation. The problem was, however, that the state had a double personality. This “double-personality” situation was resolved with two radical solutions proposed by Hobbes and Rousseau. They destroyed this type of contracting. On one hand, as noted above, Hobbes implied only a *pactum subjectionis* (contract of submission), whereas, on the other hand, Rousseau implied only a pure social contract without the leeway to constitute political authority. (Gierke, 1880: 84)

In Hobbes’ theory the position of the people in relation to both the contract and the sovereignty was significantly different from that of Rousseau. “Hobbes destroyed the idea of two contracts.” (Podunavac, 1994: 117) Out of the political contract, he made a *pactum subjectionis*. Hobbes claimed that people had never existed before the creation of the state. In fact, the people come into being after the creation of sovereign, but merely as his subjects. In this sense, the personality of the people dies with its birth. (Hobbes, 1949: pp. 71, 84) Hobbes did not leave any leeway for the people to be the bearer of sovereignty. Before the creation of the sovereign, they do not exist. They are a mere multitude. After the creation, they are but the sovereign’s subjects, possessing no rights at all.

If Hobbes destroyed the social contract, Rousseau did the same, but from the opposite side. According to Gierke, what Rousseau did was the complete destruction of the political contract. After Hobbes’ arrival, and destruction of the social contract, Rousseau came, and simply crossed out political contract from the contract school! (Gierke, 1880: 91) What was left, was a contract on government. However, to Rousseau, this is not a contract at all, since government is but “commission” of the sovereign people. “The establishment of government is, to Rousseau, no *pactum subjectionis*, but the mere ‘commission’.” (Landmann, 1896:

132) Or as Barker put it: “There is thus no contract of government for Rousseau; he will only recognize the contract of society.” (Barker, 1960: 93) Or, finally, as Rousseau himself explained: “[...] there is only one contract in the State, that of association, and it excludes all others.” (Rousseau, 1993a: III, xvi) Hence, Gierke concludes that the destruction of the political contract destroyed, at the same time, any notion of state law and, consequently, gave rise to permanent revolution. (Gierke, 1880: 92)

Rousseau’s concept of a social contract that confirms popular sovereignty can be also found in his rebutting of Grotius. “A people, says Grotius, can give itself to a king. This gift itself is a civil act; it presupposes a public deliberation. Thus, before examining the act whereby people chooses a king, it 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. [...] These clauses, properly understood, are all reducible to a single one, namely the total alienation of each associate, together with all of his rights, to the entire community.” (Rousseau, 1993a: I, v, vi)

The first thing that is to be noted here is that in Rousseau’s case there is a total surrender of the individual to the sole sovereign. However, “In Rousseau’s social contract a man does not surrender completely to a sovereign ruler, but each man gives himself to all, and therefore gives himself to nobody in particular.” (Ebenstein, 1991: 498) Ebenstein goes on to say that “Rousseau’s conception of sovereignty differs from both Hobbes’ and Locke’s. In Hobbes’ the people set up a sovereign and transfer all power to him. In Locke’s social contract the people set up a limited government for limited purposes, but Locke shuns the conception of sovereignty [...] as a symbol of political absolutism.” (Ebenstein, 1991: 499)

What it all boils down to, is that before any idea of establishing political authority, a previous contract is needed, by virtue of which people become people.

This is what is known as a real social contract, and, as Rousseau put it, it was the real foundation of civil society. According to Monk, Rousseau holds that by signing the social contract, people and sovereign simultaneously come into being, but, at the same time, the people are sovereign. They do not submit themselves to someone else. They submit themselves to themselves. (*Ibid.*) Rousseau plainly shows that people who would unconditionally subjugate themselves to the rule of one or a few, would be crazy. Even if people were mad enough to do so, it would be highly illegitimate, since such a contract is no contract at all. The same holds for the case in which a conqueror would make out of people his subject. It would make a community, but, to Rousseau, it would not be a political community. (Rousseau, 1993a: I, iv; III, xvi)

According to Fetscher and Grimsley, Rousseau thereby differentiated “aggregation” from “association.” (Fetscher, 1968: 94; Grimsley, 1972: 23) That what comes to fruition as an aggregation is nothing but what Hobbes called “multitude.” To Hobbes, people as the multitude cannot create the state, let alone to be an origin of sovereign power. The same is true of Rousseau. Yet when people form an “association,” they become a people and one can speak of them as the bearer of sovereign power. Rousseau’s insistence on the mere social contract is a crucial indicator of the existence of popular sovereignty in his theory.

* * *

The further elements of Rousseau’s popular sovereignty are as follows. Popular sovereignty is inalienable. “I say that sovereignty, being merely the exercise of the general will, can never be alienated; and that sovereign, since it is only a collective being, can be represented only by itself [...]” (Rousseau, 1993a:

II, i) This statement says plainly that sovereignty rests with the people and that no other actor in the state can be sovereign.

From the inalienability of sovereignty, it follows that the sovereignty cannot be represented. “Sovereignty cannot be represented for the same reason that it cannot be alienated. It consists essentially of the general will, and the will does not allow of being represented. It is either itself or something else; there is nothing in between.” (Rousseau, 1993a: III, xv) Hence, government is nothing but the “commissaires” of the sovereign people. The popular assembly, not the assembly of the representatives, is sovereign. (Rousseau, 1993a: III, xv) Note that this unrepresentation is to be understood in terms of will. Rousseau says: “Power can perfectly be transmitted, but not the will.” (Rousseau, 1993a: II, i)

From these traits, it follows that, for Rousseau, only one form of state is possible: one in which the people possess the ultimate sovereignty. (Landmann, 1896: 126) All the other forms of the state are not forms of states, but forms of governments. (Rousseau, 1993a: III, i) In this regard, Rousseau differed from Bodin who claimed that there were as many forms of the states as there were different bearers of sovereignty. (*Ibid.*) For example, if people are sovereign, this is democracy. If only one is sovereign, then this is monarchy and so on. In contrast, for Rousseau only one form of the state was conceivable: the state in which people are sovereign. (Rousseau, 1993a: III, i)

Having all this in mind, it is not surprising what role Rousseau assigned to government in his state. The government is only the “commissionair” of the sovereign people. If government in any way tried to encroach on the right of the sovereign or became sovereign itself, it would, according to Rousseau, break the social contract and everybody would return to the state of nature. (Rousseau, 1993a: III, x) Once again Rousseau reiterates what is the crux of popular sovereignty in relationship to the government: “He who frames the laws, therefore,

does not or should not have any legislative right. And the populace itself cannot, even if it wanted to, deprive itself, of this incommunicable right, because according to the fundamental compact, only the general will obligates private individuals [...]" (Rousseau, 1993a: II, vii)

Whenever people find it necessary to revoke the commission that has been given to government, they have the right to do so. Whenever people gather, they have all the right to dissolve the government and to resume all its functions and prerogatives. "Once the populace is legitimately assembled as a sovereign body, all jurisdiction of the government ceases; the executive power is suspended, and the person of the humblest citizen is as sacred and inviolable as that of first magistrate [...]" (Rousseau, 1993a: III, xiv)

However much it follows from these properties that sovereignty in the state rests with people, Max Landmann, referring to Janet, notices a contradiction in Rousseau's conception. (Landmann, 1896: 130) Rousseau says that the government is to deal only with particular acts, not with general ones. (Rousseau, 1993a: II, iv) Dealing with general ones is reserved for the legislative body, that is, to the sovereign people. If people are, by their very nature, separated from government and if they are disallowed to act as the executive, where does their right to dismiss government come from? The dismissal of government is, by its nature, an executing act. It has nothing to do with the legislative activities. How, asks Landmann, can the mere getting together of the sovereign people give them the right by virtue of which they are permitted to dismiss the government without becoming government themselves, which, for Rousseau, is entirely impermissible? (*Ibid.*)

There is another contradiction, similar to the previous one. Namely, Rousseau says that the sovereign body has the right to appoint the government. It happens through two acts: Firstly, legislative body passes the act of establishing

the government; secondly, it establishes the government itself. (Rousseau, 1993a: III, xvii) This act is no longer a legislative act, but an executive one, too. The appointment and nomination of the concrete persons who will occupy minister positions is an administrative act. Rousseau says: “Were it possible for the sovereign, considered as such, to have an executive power, right and fact would be so completely confounded that we would no longer know what is law and what is not. And the body politic, thus denatured, would soon fall prey to the violence against which was instituted.” (Rousseau, 1993a: III, xvi)

Hence, the problem follows: how can one speak of an administrative act before the government comes into being at all? (Landmann, 1896: 132-3) As Landmann points out, Rousseau believed it was possible by a fortuitous event in which a sovereign people became a democratic government. People, as a legislative body, cannot exercise particular acts, but when it is about to establish a government, people become the executive body and deal with the particular acts such as the appointing the ministers of the new government. (Rousseau, 1993a: III, xvii)

Obviously, these points, to a great extent, upset the coherence of Rousseau’s argument. Namely, it follows that the people are not exclusively a legislative body, but also an executive one. It apparently makes a mess out of Rousseau’s theory. However, before I answer whether these arguments can really testify the state sovereignty in Rousseau’s theory, I would like to analyze Rousseau’s idea of the great Legislator and the concept of civil religion.

The contradictory role of the great Legislator prompts us towards the conclusion that he or she might be the one who is really sovereign in the state, whereas all the previous definitions regarding popular sovereignty are but empty stories. The role of the legislator in Rousseau’s *Social Contract* is elaborated like this: “The people, on the other hand, aim at the good, without always knowing

what it is. All are equally in need of direction. [...] With this knowledge there results a union of the reason and will of the social body; from that, in its turn, the harmonious association of all elements; and, finally, the greatest possible amounts of power. This explains why a legislator is needed. To find what rules are best suited to political societies would require an intelligence which could understand all human passions without experiencing them [...]" (Rousseau, 1993a: II, vi-vii) Apparently, the role of the legislator is to enlighten and educate the people. Since people are not capable of establishing a just political order, his role consists in helping them to do so.

Another striking statement is that the legislator is in an extra-constitutional position: "From every point of view, the legislator is an extraordinary man in a state [...] Though he institutes the government, he has no place in the constitution which he instituted." (Rousseau, 1993a: II, vii). In modern constitutionalist thought, every state organ whose prerogatives are not regulated by constitution, finds itself with virtually unlimited power. Does this mean that the great Legislator is sovereign?

No, because Rousseau is more than clear what prerogatives are assigned to him. "Thus, we find together in the work of [legislator] two things that seem incompatible: an undertaking that transcends human force, and, to execute it, an authority that is nil. [...] Since, therefore, the legislator is incapable of using either force of reasoning, he must of necessity have recourse to an authority of a different order, which can compel without violence and persuade without convincing." (Rousseau, 1993a: II, vii) As Filonenko notices, Rousseau's legislator does not command or ordain as Hobbes' does. (Filonenko, 1993: 877)

It follows that the great legislator is not so great at all. He does not issue the laws which everybody are obliged to follow as in the case of Hobbes. Referring to Lycurgus, Rousseau depicts the role of Legislator in which he has the right only to

propose or to prefigure the laws before the people. It is true that the Legislator has an extra-constitutional position. Nevertheless, his authority is based more on his charisma than on the laws and constitution. Consequently, the Legislator can only try to persuade people, but not to ordain a law. As Monk put it, the Legislator must be like Emile's teacher, abstaining from using any coercion to implement his ideas. (Monk, 1992: 191) McDonald concludes the same. He says that however much Rousseau's Legislator resembled Plato's philosopher-king, he still is forbidden to command and to issue laws as if they were his commands. (McDonald, 1968: 395)

However, McDonald sees another problem in Rousseau's thought. This is the problem of civil religion. Civil religion, to a great extent, enables the great legislator to determine the behavior of the people, i.e., their general will. (McDonald, 1968: 396) Rousseau introduced the concept of civil religion in order to help the great Legislator. Rousseau is resolute when speaking about the role of legislator and his convincing prerogatives, as I sketched above. However, his confirming capabilities are not sufficient to provide for the state unity. The state needs something more: civil religion.

The role of civil religion is to stir up the necessary patriotism amongst the people. Rousseau believed that religion, as the highest moral power, depending exclusively upon the church, was making a mess in the state. (Rousseau, 1993a: IV, viii) Thus, Rousseau glorified Hobbes as the first among Christian writers who "saw the evil and the remedy, who dared to propose the reunification of the two heads of the eagle and the complete restoration of political unity, without which no state or government will ever be well constituted." (*Ibid.*)

Hence, Rousseau divides religion in three parts: that of the man, that of the citizen, and a third one that is rather bizarre, so Rousseau does not pay much attention to it. Although Rousseau was prone to finding the faults in every religion

he mentioned, Monk thinks that Rousseau took the pattern of the second one for his civil religion and appreciated it the most, that which “paganism is exemplary and consists of a set of gods and cult peculiar to a single nation or people.” (Monk, 1992: 192-3) Rousseau says that, “The second [religion of the citizen] is good in that it unites the divine cult with love of the laws, and that, in making the homeland the object of its citizens’ admiration, it teaches them that all service to the state is the service to the tutelary god. [...] To die for one’s country is then to become a martyr; to violate its laws is to be impious.” (Rousseau, 1993a: IV, viii) The religion of the citizen is the closest to the definition of civil religion and it goes as follows: “For it is of great importance to the state that each citizen have a religion that causes him to love his duties. [...] There is, therefore, a purely civil profession of faith, the articles of which it belongs to the sovereign to establish, not exactly as dogmas of religion, but as sentiments of sociability, without which it is impossible to be a good citizen or a faithful subject.” (*Ibid.*)

Civil religion is, therefore, the most efficacious thing which can hold the people in unity. Whenever the legislator fails in convincing people what the just laws are and how the well-ordered state is to be arranged, he is allowed to resort to civil religion as the means for securing political obedience. The main reason that forced Rousseau to resort to the idea of civil religion was probably his realization that it had not been enough to enlighten people in the sense that they saw the common good that they ought to have willed: “By itself the populace always wants the good, but by itself it does not always see it. The general will is always right, but the judgment that guides it is not always enlightened.” (Rousseau, 1993a: II, vi) Hence, Grimsley concludes that “[People] might see the good and yet still refuse to will it.” (Grimsley, 1972: 50)

The problem that emerges with civil religion is the following. As indicated, no atheism in Rousseau’s state would be tolerated. No free change of religion

would be tolerated, either. The principles of civil religion were allowed to regulate only the behavior of the individual in public affairs and were not intended to prescribe any kind of conduct for the private life or beliefs. However, “While not having the ability to obligate anyone to believe them, the sovereign can banish from the state anyone who does not believe them. It can banish him not for being impious but for being unsociable, for being incapable of sincerely loving laws and justice [...] If, after having publicly acknowledged these same dogmas, a person acts as if he does not believe them, he should be put to death; he has committed the greatest of the crimes; he has lied before the laws.” (Rousseau, 1993a: IV, viii) As Grimsley pointed out, the punishment for breaking with civil religion were horrible and to a great extent shocked later generations. (Grimsley, 1972: 52)

These horrible sentences written by Rousseau can be interpreted as the element undermining popular sovereignty. Firstly, Rousseau gives the task to the sovereign (Legislator? Government?) to establish civil religion. (McDonald, 1968: 396) But, apparently, this establishment is no longer related only to conviction and persuasion; it is now a real command. Whoever does not believe in civil religion will be executed at once. There is no pardon for him.

It is striking that the tone of the last chapter of the *Social Contract* dealing with civil religion is much closer to the tone that Hobbes used. Hobbes’, as well as Bodin’s, only interest was to secure the stability of the state and state unity. Hence, the sovereignty in his usage was the conception of the state. For thinkers who came after them (Locke, Rousseau), the more substantial point was the problem of how to limit state sovereignty, because the state became too powerful. (Jones, 1968: 253) The concept of popular sovereignty with Rousseau is the product of such a standpoint. Notwithstanding this general inclination of Rousseau, when it comes to civil religion, his language almost becomes statist. As Grimsley notices, at this point Rousseau speaks constantly of the unity of the state.

(Grimsley, 1972: 51) Rousseau is no longer concerned with the morality of men, or how to make people virtuous beings. The unity of the state is all what he cares about. Rousseau also reveals this by mentioning the Censor in the state who will prevent baneful opinions from circulating through the state and to deprave virtuous citizens: “The censorship maintains mores by preventing opinions from becoming corrupt, by preserving their rectitude through wise applications, and sometimes even by making determination on them when they are still uncertain.” (Rousseau, 1993a: IV, vii) The change in tone in language makes the whole chapter viii of book IV of the *Social Contract* the chapter which would perfectly fit the Classical theory of sovereignty according to which the state is the bearer of sovereignty.

Considering the two aforementioned contradictions regarding dismissal and appointment of government, as well as that of civil religion, one can already at this point seek to prove the existence of state sovereignty within Rousseau’s theory. On the one hand, the problem of two contradictions gives a firm basis for state sovereignty since it unites legislative and executive power in one hand, and, at the same time, by turning the legislative body into government, thereby making the state sovereign.

On the other hand, the problem of civil religion in Rousseau’s theory opens up the same problem that will be considered in one of the following sections -- the problem of the general will. Namely, popular sovereignty is not possible without letting people freely speak their mind. This is noticed by McDonald, who, by criticizing Rousseau’s imposition of civil religion, sees the ground for destroying popular sovereignty. (McDonald, 1968: 396) He says that the relationship created on the basis of civil religion is more akin to that of “oppressor-oppressed” than a “teacher-pupil” relationship as Rousseau wanted us to believe. Hence, McDonald concludes, citing Chapman, that “the purpose of the civil religion may be to

preserve man's political freedom, but it is a means which destroy his moral freedom and dignity." (Chapman, 1956: 86) If Rousseau's sovereign must have any particular feature, it should be morality. Here it has been proven that people cannot have this trait because their morality had been destroyed by being compelled to obey the civil religion. As in the case when they are forced to be free, they are not free to express their opinion, but are precluded from doing so. If they cannot do this, they cannot be sovereign. And if they are not sovereign, then somebody else must be. Someone near them. Within the community, not outside it. Legislator? Government? State?

The statement that civil religion undermines popular sovereignty is accurate, but only when taken from the empirical point of view. Already Grimsley has noted that the whole chapter on civil religion does not fit the general structure and tone of the *Social Contract*. (Grimsley, 1972: 49) This aberration, actually, amounts to different levels of Rousseau's theory. According to Fetscher, civil religion, in fact, deals not with metaphysical matters, but with practical ones. "The *Social Contract* contains, on one hand, the answer to the question what the just law (Natural law) is, and, on the other hand, the instruction for the pragmatic shaping of the institutions under certain circumstances, that is, the solution for the political problems in a narrower sense." (Fetscher, 1968: 184)

Civil religion belongs to this other set of problems. The matter of civil religion is a matter which has nothing to do with Rousseau's philosophical principles pertaining to popular sovereignty. The same can be said about the two contradictions as to dismissal and appointment of government. This is but the operationalization of Rousseau's theory. In that regard, even if one can prove that the concept of civil religion and the prerogatives of dismissal and appointment of government damage the concept of popular sovereignty, it can be proven only from the empirical point of view. True, this point of view comes from Rousseau

himself. Nevertheless, it can be a mere empirical argument and not an inherent one.

* * *

To sum up this whole section, it is more than obvious that Rousseau had developed the idea of popular sovereignty, but had not developed the idea of state sovereignty. Issues such as dismissal and appointment of government, on one the hand, and civil religion, on the other, only go to show that whenever Rousseau speaks about the state and its organization, he in fact speaks about empirical matters in that they are primarily the operationalization of his principles. But the problem of popular sovereignty, to Rousseau, is a philosophical problem and not one of the operationalization. Hence, even if Rousseau himself undermined his own concept, it was only from an empirical or an operational position. The reason for this, as already indicated in the beginning of this chapter, can be found in the fact that the concept of popular sovereignty in itself precludes the resolution of the question of state organization.

True, Rousseau backed the same understanding of sovereignty as Bodin or Hobbes. Yet, he changed the bearer of sovereignty and ascribed sovereignty to the people. "Like Hobbes, [Rousseau] insisted that the sovereignty of the state was illimitable in scope: it could do everything and it could do nothing that was wrong. But unlike Hobbes he equated the state with the body politic of the people that was formed by the social contract between associated individuals, reducing government, the rulership, to a mere commission."(Hinsley, 1986: 153)

In the case of Locke who also favored the idea of popular sovereignty (Locke, 1988: §149), the difference from Rousseau consisted in the conditions

that had to be fulfilled if people wanted to dismiss government. The people did not have the right to dismiss government as they please. First, it had to be proven that government violated the trust, or impinged upon their natural rights -- in a word, broke the social contract. Only then people would have the right to dispose of it. (Locke, 1988: §243) In the case of Rousseau, there were no conditions for the dismissal of government: “For Rousseau the power to dismiss government [...] was *permanently* [italics added] exercised by community, which automatically suspended the government’s commission whenever it assembled, because the unlimited sovereignty of the people could be bound by no law or constitution and could not be transferred even as to its exercise.” (Hinsley, 1986: 154) Hence, Hinsley concludes that Rousseau allowed community to swallow up the state and thereby left the community without the organ capable of exercising the power and executing the law. (Hinsley, 1986: 155)

Charles Merriam reached almost the same conclusion. In his concluding remarks about the classical concepts of sovereignty, he emphasizes that the only great difference among classical authors was that concerning the bearer of sovereignty. “The state was absorbed either in people or in government. With Hobbes, the Government swallowed up the state, and became the sole representation of its personality. [...] Or with Rousseau, the people became government, and the government was lost in the state. Hobbes saw a particular organ, the special bearer of power, but not the organism. Rousseau saw the organism as a whole, the general bearer, without organs capable of exercising sovereign power.” (Merriam, 1900: 38)

Landmann is the most explicit in his conclusion that, with Rousseau, the notion of state sovereignty cannot be discerned. Landmann starts out from the observation that Rousseau’s theory of sovereignty does not contain the concept of state personality. (Landmann, 1896: 135) Although, Rousseau speaks of “personne

publique”, this is not identical to the state personality because, to Rousseau, the public person is nothing but the sum of all the individuals. True, Rousseau distinguished the general will from the will of all, but he made no difference concerning the composition of the public person. As Landmann points out, the composition is the same: a bunch of individuals. What makes the difference is the object at which the general will of this bunch is directed. If it is directed at the common good, it is the general will; if at a particular one, it is the will of all. (*Ibid.*) Accordingly, Landmann concludes that this example attests once again to the argument that Rousseau conceived of the public person as the mere sum of the individuals making the totality of the people. Rousseau’s theory of popular sovereignty thus precludes any possibility for establishment of state sovereignty. (Landmann, 1896: 136)

III. THE CRITIQUES OF ROUSSEAU’S POPULAR SOVEREIGNTY

An examination of Rousseau’s concept of popular sovereignty could be made from different positions. I have mentioned that my argument would be exclusively an inherent one. However, in order to accentuate this type of argument, it is necessary to enumerate the ideological and empirical arguments that seek to undermine Rousseau’s position of popular sovereignty. The reason for doing this is to differentiate amongst these three types of arguments so that the one I favor will be more visible and clear. In addition, these interpretations will help to clarify what Rousseau’s theory of popular sovereignty is and what it is not.

This section focuses on Talmon's critique of Rousseau's popular sovereignty. Talmon's critique attempts to corroborate the argument that popular sovereignty in Rousseau's political philosophy does not exist. Talmon set forth his argument in *The Origins of Totalitarian Democracy*, which presents not only one of the most serious and powerful critiques of Rousseau's concept of popular sovereignty, but also of the whole enlightenment, especially the French revolutionaries. Basically, Talmon has two sets of arguments he uses in order to obliterate Rousseau's popular sovereignty. The first is empirical, the second ideological.

His main empirical argument is that the concrete order of totalitarian democracy has its roots not outside the Western political tradition, but inside it. The era of enlightenment brought forth two schools of thought: a liberal and a totalitarian one. Both these schools held liberty of the individual as their main value. "But whereas one finds the essence of freedom in spontaneity and the absence of coercion, the other believes it to be realized only in the pursuit and attainment of an absolute collective purpose." (Talmon, 1952: 2) Thus, the product of the second school was something Talmon calls "Totalitarian Messianism." (Talmon, 1952: 5)

Now, Talmon does not, actually, argue that these two schools were schools of thought. Rather, he affirms that the two schools were ones of practice. In the set of ideas of the French enlightenment that Talmon examined, he says that liberal and totalitarian elements were mixed in the thoughts of 18th Century French thinkers. While they were the ardent champions of the idea of liberty, they were ardent champions of virtue and reason, too. (Talmon, 1952: 4-5) Soon, these two irreconcilable lines of ideas came into conflict: "When the eighteenth-century secular religion came face to face with this conflict, the result was the great schism. Liberal democracy flinched from the spectre of force and fell back upon

the trial-and-error philosophy. Totalitarian Messianism hardened into an exclusive doctrine represented by a vanguard of the enlightened, who justified themselves in the use of coercion against those who refused to be free and virtuous.” (*Ibid.*)

Here, one can notice a shift in the object of Talmon’s analysis. At first he speaks of the enlightened thinkers who mixed two opposite sets of ideas, but when speaking about Totalitarian Messianism, he points at practice, that is, at the revolutionaries and politicians. And when he says that “Modern totalitarian democracy is a dictatorship resting on popular enthusiasm” which is, furthermore, nothing but “a synthesis between the eighteenth-century idea of the natural order and the Rousseauian idea of popular fulfillment and self-expression” (Talmon, 1952: 6), Talmon confirms nothing but the fact that the parts or the elements of *philosophes* and Rousseau were conducive to the concrete political order that emerged after the French revolution. Hence, when analyzing Rousseau’s political ideas, Talmon does not make any inherent analysis. Rather, what he does is point at those elements of the thought of *philosophes* and Rousseau that were used by French revolutionaries. In effect, he analyzes revolutionary practice, not Rousseau’s theory. Hence, Talmon’s conclusions concerning the negation of popular will and the superiority of the state are true, but only within an empirical context. For instance, he says that “The [Rousseauian] state takes the place of the absolute point of reference embodied in the universal principle.” (Talmon, 1952: 19)

In my opinion, such a conclusion cannot be inferred from Rousseau’s theory. Talmon instead inferred it from the post-revolutionary practice. In a long discussion, Talmon explicitly demonstrates how French revolutionaries interpreted the thoughts of *philosophes* and Rousseau. (Talmon, 1952: 20) All things considered, Talmon’s observation about the supremacy of the state over its citizens is accurate at the post-revolutionary and empirical level. However, it

cannot inherently verify the conjecture that Rousseau's theory implied state sovereignty in lieu of popular sovereignty.

Talmon's second argument is an ideological one. He disputes Rousseau's idea of popular sovereignty because it was not in accordance with the sovereignty of the individual. Talmon says: "As in the case of the materialists, [in the case of Rousseau] it is not the self-expression of the individual, the deployment of his particular faculties and the realization of his own and unique mode of existence, that is the final aim, but the loss of the individual in the collective entity by taking its color and principle of existence." (Talmon, 1952: 42) Thereafter, he proceeds: "Exercise of sovereignty is not conceived here as the interplay of interests, the balancing of views, all equally deserving a hearing, the weighing of various interests." (Talmon, 1952: 44) Finally, he concludes: "On closer examination the idea of natural order reaches the antithesis of its original individualism." (Talmon, 1952: 37) According to Talmon, popular sovereignty can only exist if the individual is sovereign. Since Rousseau negated the individual's right to self-expression, there can be no popular sovereignty

Talmon's argument is persuasive only if we accept the liberal and individualistic points of view as the measure for what is morally and politically good. Doubtless, from these ideologies it follows that the individual always comes first when formulating his or her own interests. As Leo Strauss demonstrated, the founders of modern liberalism started out from the self-preservation of the individual. (Strauss, 1971: 145-216)

Now, it is not quite clear why anybody would *a priori* accept liberal ideology as the only valid measure for judging other theories, unless one is pushed by the political reality of 20th Century. It is true that the liberal ideology is the most influential theory in the whole Western world. One can see, for example, the influence of socialist or conservative thought on the West, but surely, nothing

compares to liberalism and liberal ideas. All the same, it will inevitably turn out that liberal ideology, however influential it is in practice, is not a useful analytical tool for dissecting the incoherence of Rousseau's idea of popular sovereignty.

Here I only want to show that Rousseau's idea of popular sovereignty cannot be disputed when attacked from the empirical or ideological point of view. The problem with Talmon, as well as with many other critiques of Rousseau and his concept of popular sovereignty (Laski, 1934; Duguit, 1929) is that they were constantly mixing the empirical and ideological point of view. The reasons that led Talmon to discredit Rousseau's idea of popular sovereignty were specific to him. Talmon was a champion of liberal ideology. Not in terms of its creator, but of its advocate. Hence, Talmon's entire critique of Rousseau was nothing but an examination from a liberal vantage point. He believed that there was only one ideology from which perspective every particular theory should have been investigated and criticized. This is maybe acceptable and recommendable if viewed from a pragmatic angle directing our attention towards avoiding the consequences of totalitarian orders in which popular sovereignty is negated. Despite such pragmatic value implicit in Talmon's critiques, Rousseau's concept of popular sovereignty still remains undamaged.

IV. POPULAR SOVEREIGNTY: AN INHERENT ANALYSIS

1. "Forcing Men to be Free"

Let me begin with my major argument that will prove the existence of the concept of state sovereignty within Rousseau's political theory. The basis for this argument will be the famous formulation that men have to be free, i. e., that if they do not want this, they "will be forced to be free." (Rousseau, 1993a: I, vii) This notorious formulation served as the basis for many critiques describing Rousseau's theory as totalitarian. (Talmon, Laski) My intention is not of this kind. Here I will only draw on this formulation in order to demonstrate to what extent it gives a firm basis for the claim that Rousseau had an implicit idea of state sovereignty. What I will address is what the statement "people will be forced to be free" implies and what are the consequences of this statement. While there are many, I will focus my attention on only one of them: that which negates the existence of popular sovereignty in Rousseau political theory.

The reason why Rousseau's statement "people who will be forced to be free" undermines and, actually, destroys Rousseau's concept of popular sovereignty is the following. For the notion of sovereignty, the crucial characteristic is that whoever is sovereign can decide whatever he or she wills. This is the very basis of the concept of sovereignty defined by Bodin, Hobbes and Rousseau.

It was Hobbes who first formulated sovereignty in such a way, by relating sovereignty with natural laws. The most problematic thing for Hobbes at the time he was writing *Leviathan* was to discard the natural laws as the basis of sovereignty. Before Hobbes it was accepted that immortal natural laws presented the origin of the civil authority. Hobbes destroyed this state of affairs. He argued that the state sovereignty ought not to and cannot be subjugated to the natural laws. For example, he says: "For the Lawes of Nature, which consist in Equity, Justice, Gratitude, and other Moral Vertues [...] are not properly Lawes, but qualities that dispose men to peace, and to obedience. When a Common-wealth is

once settled, then are they actually Lawes, and no before. [...] For it is Sovereign Power that obliges men to obey them.” (Hobbes, 1991: Ch. XXVI)

Hobbes did not claim that natural laws cannot be present in the content of civil laws. However, they can only occur provided the sovereign power allows them to do so. In this regard, as Plamenatz and Jones explained, Hobbes reduced natural laws to a series of prescriptions or recipes for a good and decent life. (Plamenatz, 1963: 124; Jones, 1968: 114) Natural laws cannot affect the decision of the sovereign power. So if the sovereign, by any chance, is mad and decides to send a horse into the Senate in order to help Senators to make better laws, it will be the Senators who will have to live with the sovereign’s decision, whether they like it or not. All in all, for Hobbes, there were no *a priori* values, moral or political, to which the sovereign needs to adjust his or her legal decision. The sovereign power can adjust and follow moral requirements and rules at the level of opinion, but at the level of legal decision-making, the sovereign is not bound to follow them at all.¹⁶

So it was, according to Hobbes. So it was not, according to Rousseau. While Hobbes, by ascribing sovereignty to a monarch, aristocracy or assembly, argued that this sovereign body can do as it pleases, Rousseau, by ascribing sovereignty to the people, did not end up with the same, logical consequence. If Rousseau’s people were really sovereignty, they could do as they please. However, from the statement that “People will be forced to be free,” one reaches the conclusion that people cannot be sovereign. Suppose, for instance, that people decide not to be free and to give over their freedom unconditionally to a despot. According to Hobbes, it would be an act of sovereignty. The only thing changed

¹⁶ Note that this freedom of the sovereign is to be understood exclusively in legal sense. In respect to factual limitation, one can speak of the constrained sovereignty in Hobbes’ theory. For the more detailed discussion of Hobbes concept of Sovereignty and especially the relationship between natural and civil laws see the article “Hobbes’ Concept of Sovereignty as Unlimited Power.” (Pavlovic, 1994: 177-193)

afterward would be the bearer of sovereignty. At first, the people were sovereign, but they made a sovereign decision to renounce their sovereignty and to give it to one man. Now he is sovereign, not they.

Rousseau assigned the attribute of sovereignty to the people. From this statement, it should follow that any decision of the people has to be unconstrained. They cannot be bound to another's will when making decisions, or by any higher law when passing their own. This is the consequence resulting from the logic of sovereignty. But, what does Rousseau say? By saying that people will be forced to be free, he actually sets a constraint on people's decision-making capacity. He implicitly forbids people to issue a law renouncing their own right to be free. They are forbidden to be unfree and forbidden to subjugate themselves to one man. And if they are forbidden in their action, if their will is limited in any way, they thus cannot really be sovereign. Sovereignty means acting as one pleases. Rousseau's people are disallowed to do so. Therefore, they cannot be sovereign. The very constraint of their freedom makes them non-sovereign. It does not mean that sovereignty does not exist. It only means that the sovereign must be somebody else.

Consequently, I arrive at the implicitly inferred conclusion regarding state sovereignty. If, from the aforementioned, it is clear that people are not sovereign, then who else could it be? In my opinion, there is only one actor that remains as the candidate for the bearer of sovereignty: the government, public authority, or, in a word -- the state. Although Rousseau does not say this explicitly, it can, nonetheless, be inferred implicitly.

2. Plamenatz's Defense of Rousseau's Popular Sovereignty

Before any further step, let me examine the argument that was set forth by John Plamenatz in his book *A Man and Society*. He offers an explanation of Rousseau's understanding of general will and its right to force men to be free, which, to a great extent, makes the whole concept acceptable in terms of popular sovereignty. In a word, Plamenatz believes that he is able to reconcile Rousseau's statement about "forcing men to be free" with popular sovereignty.

Plamenatz's main idea, when interpreting Rousseau's general will, is that the whole process of law-making is directed much more at the stimulating the feelings of equality and justice in people when taking part in the law-making process. Plamenatz believes that Rousseau was not so much eager to show that people should always participate and unanimously make every decision which was of significance for the whole community. What Rousseau had in mind was the state of affairs in which everybody would be satisfied with the fair process of decision-making, even if a particular decision would not be in accordance with the preferences of each individual who was the part of body politic.

First of all, Plamenatz holds that Rousseau had in mind the idea according to which mere participation in public affairs created virtuous persons out of citizens: "Equal and active participation in public business makes for virtue, which is the love of justice, and justice is the common good; so that the virtuous man, even though he sometimes has desires incompatible with justice, wants justice to prevail over all such desires." (Plamenatz, 1963: 408) Hence, Plamenatz concludes that Rousseau "very probably meant" that justice and equality were achieved as soon as people were equal in partaking in the decision-making process. (Plamenatz, 1963: 409) If it happens, people will regard every law as just, since it is the product of their equal participation in making it. This interpretation implies that it does not matter whether or not every single law is in accordance with each

particular person's will. What is important is that it is produced under circumstances that are just because people are completely equal. In sum, Plamenatz holds that equality to Rousseau's mind meant nothing but people's equal position when making law.

Plamenatz moves on to a final remark saying that it is now easy to understand and justify Rousseau's statement about being "forced to be free." It must be taken and interpreted in a larger context, that is, in the light of whole doctrine of the general will. Plamenatz thus says: "The general will is the will to justice, the will to treat the good of the others as equally important with our own good." (*Ibid.*) Accordingly, it does not matter that sometimes my particular will does not comply with or does not fit the general will. "If, however, I freely take a part in the deliberation and the voting, if no combination is formed to impose its will on me, if I have the right to re-open the question provided I do so in the proper way, then I shall probably want the law to be enforced. I shall want this, not merely because the enforcement of law makes my security, but because I want justice done. I shall acquire greater confidence in the wisdom and justice of community than in my own, and when I find myself differing from the community, I shall think it probable that I am wrong. I shall not think this because the community is more powerful than I am, but because it allows me and everyone else a free and equal part in the making of the laws [...]" (Plamenatz, 1963: 410)

If Plamenatz's interpretation is accepted, it is quite easy to explain Rousseau's claim that the general will can force men to be free. It is acceptable because the mere fact that one's opinion differs from the opinion of the majority does not matter. What matters is the fact that the previous decision to force men to be free was made under conditions that were just since all men were equal. The content of the decision is of less importance in this interpretation.

As a whole, Plamenatz's argument is acceptable, but as confirming something else, not popular sovereignty. Namely, it is not quite clear why the mere equality of people, when making laws, should be equated with sovereignty. Equality and sovereignty are not necessarily the same. It is possible to imagine a state in which the authority is sovereign and which, at the same time, might be considered by the people to be a just state. Plamenatz only proved that Rousseau's state was a just state. That people are sovereign does not follow from this argument.

Secondly, Plamenatz's explanation greatly resembles the concept of "original position" used by Rawls in his *A Theory of Justice*, and it suffers from the same drawbacks that Rawls' theory of justice does.¹⁷ Briefly, Rawls' believed that the just society can be erected on the set of just procedures leading to it. In addition to these just procedures, Rawls believes that people are equal in a Kantian sense when going through these procedures. (Rawls, 1971: 118-183) Hence, everybody should accept the final result of these procedures, only because the procedures and circumstances themselves were just and people were equal in them. However, critiques of Rawls prove that people in the original position are not equal because the whole concept of the original position is teleologically conceived. Teleology presented in the original position simply undermines the equality of people.¹⁸

The same can be said of Rousseau. Although Rousseau has no concept similar to Rawls' original position and the equality of people in it, Plamenatz's interpretation seems to equate Rousseau's argument with that of Rawls'. The

¹⁷ Plamenatz published his book 1963, Rawls in 1971. Regardless, since Rawls had been continuously publishing short articles since 1951 that were later used to create *A Theory of Justice*, Plamenatz might have known of Rawls' concept of original position, and might have used it when defending popular sovereignty with Rousseau.

¹⁸ A survey of these critiques of Rawls can be found in Tatjana Glintic's book *Pravda, sloboda, jednakost*. (Glintic, 1995)

equality Plamenatz is talking about, in fact, has nothing to do with equality in a Kantian sense because the whole “original position” with Rousseau is teleologically conceived. The concept of general will and the concept of sovereignty both aim at turning simple people into virtuous beings. As Mason put it: “[Rousseau] not only asked: what form of society would allow men to live in peace and justice? But he also asked: what sort of men could produce such a society?” (Mason, 1979: 8) This intention undermines the initial equality of people. It also undermines Plamenatz’s interpretation and his defense of Rousseau’s concept of popular sovereignty.

3. The Sovereignty of the General Will

Having refuted Plamenatz’s argument, I can progress with my own. From the above examination, it follows that in Rousseau people are not sovereign, meaning that Rousseau himself, within his own theory, gave enough leeway for a conclusion that confirms the negation of popular sovereignty. Yet, can one conclude confidently that if people are not sovereign, it inevitably follows that the state is sovereign? In order to indisputably authenticate that, a new argument should be introduced.

If the people and the state were the only actors to whom it was possible to assign the attribute of sovereignty, the problem I set forth in this thesis would be resolved. It would be logical to conclude that the state must be sovereign, since people are not. However, in Rousseau’s theory there is another element to which the attribute of sovereignty could be assigned -- the general will.

If Rousseau had been asked why he did not approve of an option for people to revoke their own freedom, he would have probably answered that this would prevent them from being virtuous citizens. They would become slaves, unhappy and unblessed. And if Rousseau had been asked why he thought so, he would have most probably answered that it was so because this decision of the people would not have been in accordance with the general will.

From general lines of Rousseau's story, it follows that the criterion for ascertaining of these moral standards must be found outside the human mind. In this sense, Talmon is right when saying that Rousseau "harked back to antiquity," because it was the case in the ancient Greece that the political order was based on the nature of things, and this was apparently something that exceeded human mind and human will.¹⁹

Hinsley's explanation of why ancient political philosophy did not have the concept of sovereignty is very helpful on this point. He says that the appearance of the concept of sovereignty in ancient times had insuperable obstacles. (Hinsley, 1986: 28) For example, when Aristotle classified government types, he did it in accordance with moral standards, (Aristotel, 1988: Bk. IV) not in accordance with the fact of who possesses sovereignty, as Hobbes did. (Hobbes, 1991: Ch. XXVI) Hinsley says that "[...] the polis was conceived of as a community that was rightly ruled by the law and not by men. [...] The institutions and codes of the community could be changed by deliberation and legislation, though the most frequent device was to call in a single lawgiver to give a new code of law after a period of change

¹⁹ Talmon argues that for all the *philosophes* it was typical to maintain the principle of natural order. For instance, Morelly claimed to discover the objective pattern of a social mechanism, a marvelous automatic machine. Helvetius also propounded natural order of things. Condorcet believed to be possible to detect "general principles which are the necessary and immutable laws of justice." (Talmon, 1952: 17-18, 28-29) Finally, Rousseau, who wanted to examine the nature of things, believed that all moral and political standards are embodied in the social contract from which people receive their complete personality. (Talmon, 1952: 19)

or stress. [...] But after giving the laws the lawgiver could only retain power by becoming a tyrant; and this was not only because of the prevailing opposition to monarchy, but also because his laws themselves, embodying the dictates of the gods or of universal reason and thus conforming to the law, remained superior to the community [...] There was no modern conception of law as positive lawmaking without restraint. The political community was the highest form of *human* association; but it was still subject to the law enshrining the rational principle which the gods handed down to men.” (Hinsley, 1986: 29-30)

Therefore, sovereignty could not rest with the people because the ancient political philosophy deduced the principles of political order from the nature of things, the order in which, for instance, the universe was arranged, or from the immortal natural laws that only human reason is capable of comprehending, not of making. Consequently, these laws, which were the basis for positive laws, could not be in any way created by human reason. The whole process of law-making was the matter of cognition, not of free and creative will.

Evidently, Rousseau was impressed with these ideas. He believed that it was possible in the modern world to again erect a state which would be ordered according to the nature of things and in which only virtuous and upright people would live.²⁰ Basically, his notion of sovereignty was not directed at maintaining the state order, as it was case with Bodin and Hobbes. It was much more directed towards the creation of moral and virtuous beings in accordance with the natural order. Therefore, when attempting to ascertain what type of sovereignty Rousseau’s political theory contained, his anthropology should be taken into

²⁰ McDonald points out that Rousseau’s concept of virtue was closer to the ancient one. Rousseau’s concept of freedom did not lead to pleasure and satisfying of selfish needs as it was the case with Locke. The liberty Rousseau is speaking of is to lead to the virtue in the classical sense of this word - “mainly strength, excellence, and self-control.” (McDonald, 1968: 389) If Rousseau in any way wanted to connect his theory to the ancient one, then this occurred exclusively within the field of the virtue, as Grimsley pointed out. (Grimsley, 1972: 55)

consideration. It explains that people cannot be sovereign if they are not virtuous. In Rousseau's view, "Man is the product of education." (Talmon, 1952: 30) People are not allowed to decide freely if they are not yet fully morally developed. They are forbidden to choose if they are still not educated in a proper way or if they are in a pre-adult period. Hence, only within a state, in which all the people are educated and virtuous, is it possible to expect popular sovereignty in its ideal form. In this respect, Rousseau's "forcing men to be free" can be understood as their compliance with the highest moral standard of nature or of some higher reason which will make them virtuous men. This, apparently, undermines Rousseau's idea of popular sovereignty, but it does not necessarily support the thesis that the concept of state sovereignty existed in his theory. Rather, if anyone or anything is sovereign, then it is the general will with its principles and "sovereign" people are to adjust themselves to this "necessary order of things." (Talmon, 1952: 32)

To ascribe sovereignty to some non-living matter such as general will is nothing strange. As I mentioned in the introduction, the whole Constitutional theory of sovereignty assumes that there is a formal principle expressed in the constitution which makes the constitution sovereign. In this sense, no living actor is sovereign, but an abstract norm.

It is quite obvious that Rousseau was contradictory in the sense that he himself negated the idea of popular sovereignty. However, taking his concept of general will, it still cannot be indisputably said that the state is sovereign. The presence of the general will in Rousseau's theory precludes such a conclusion. Hence, in order to see whether in Rousseau's theory the concept of state sovereignty can be found, the analysis of the general will is to be undertaken in terms of ascertaining whether or not the general will can be sovereign.

4. Two Types of Interpretations

It was Alfred Cobban who first said Rousseau had regarded the general will as sovereign. (Cobban, 1934: 120)²¹ However, in order to find out whether Rousseau's general will can really be sovereign, we first have to see the difference between the two types of interpretations of the general will in order to realize what the general will really is. There are, all in all, two streams of interpretations what Rousseau's general will is. One could be subsumed under the "natural law" interpretation, and the second under the "reason" interpretation.²² The first one refers to the natural law and natural order, the concepts that were used in the ancient political philosophy. This set of argument looks upon the general will as the expression of natural law or natural right. The second one refers to the understanding of the role of the reason in organizing the modern state. In this case, Rousseau's general will is the expression of reason. In this section, I will outline the main interpretations of both and relate them to the concepts of popular and state sovereignty.

a. "Natural Law" Interpretation

The advocate of the opinion that the general will is the expression of natural law was Friedrich Copleston. His analysis starts out from the *Discourse on Political Economy*. In this article Rousseau defines the concept unambiguously: "The general will is the source of the laws, constitutes for all members of the

²¹ Although he, to the great extent, relied on the formulation set forth by T. H. Green. (Green, 1885)

²² These terms are fully my invention and cannot be found elsewhere.

State, in their relations to one another and to it, the rule of what is just or unjust [...]” (Rousseau, 1993c: 132)

In Copleston’s opinion, in *The Discourse on Political Economy*, Rousseau was already far away from accepting the standpoint that there was no external criterion defining what the general will is. (Copleston, 1994: 73) “[Rousseau] explicitly says, for instance, that an actual decision of the sovereign legislature may fail to be a true expression of the general will. It may be the expression of private interests which for some reason or other have wrongly prevailed.” (Copleston, 1994: 72-3) According to Copleston, laws issued by sovereign power are not always the expression of the general will. Thus, “as far as the *Discourse on Political Economy* is concerned, Rousseau evidently assumes that there is something higher than the State.” (*Ibid.*)

In general, Copleston is inclined to accept an interpretation by which Rousseau assumed a “traditional concept of a natural moral law, engraven on men’s hearts, obedience to which necessarily conduces to human happiness and welfare.” (*Ibid.*) This is the content of the general will and the role of the sovereign is only to ensure that each law conforms with the content of the general will.²³ Thus, Copleston’s general conclusion is that this part of Rousseau’s philosophy put forward in *Discourse on Political Economy* “[...] owes much to the traditional conception of natural law [...]” (Copleston, 1994: 79)

Copleston continues with the same reasoning when analyzing the *Social Contract*. Again, he holds that Rousseau’s general will presents something that exceeds the framework of community, saying that each law passed by the sovereign is the true expression of the general will. “[...] the statement that the general will is infallible does not commit us to the statement that every law which

²³ Copleston arrived at the same conclusion once again when explaining Rousseau’s concept of self-love and the problem of innate idea of good. (Copleston, 1994: 78-9)

is passed by the popular assembly is necessarily the law which is most conducive to the public advantage in the given circumstances. There is still room for possibly justified criticism.” (Copleston, 1994: 87) Thus, Copleston deems that the general will presents the standard by which each and every law is to be adjusted to and inferred from, while the role of the great Legislator is but to make the concrete law conform to the general will. As he puts it: “And one of Rousseau’s problems as a political theorist was to suggest means of ensuring, so far as this can be done, that the infallible general will attains concrete expression in law.” (Copleston, 1994: 88)²⁴

* * *

That Rousseau cannot be regarded as an advocate of the traditional natural right school, and that the concept of general will cannot be an expression of natural law or natural order, is argued in Leo Strauss’ book *Natural Right and History*. First of all, Leo Strauss differentiates between traditional and modern natural right. The champions of the traditional natural right were Plato, Aristotle, the Stoics and Thomas Aquinas. Traditional natural right takes human nature as

²⁴ However, even the great Copleston admits in the end, that Rousseau was not so coherent regarding the traditional conception of natural law. He arrived at this conclusion when dealing with Rousseau’s concept of morality. (Copleston, 1994: 98-9) Copleston thinks that Rousseau believed natural law was written in the hearts of every men. “[...] This natural law would certainly find articulate expression in the declared will of the sovereignty people [...]” (Copleston, 1994: 99) If this were true, then the conformity of the sovereign people to the general will, in the way Copleston interprets Rousseau, would be child’s play. However, Copleston admits that Rousseau’s theory smacks of the ethical positivism according to which the whole ethical and moral system is not derived from some higher moral standard (as natural law for instance) but from the state and its power. “In other words, [Rousseau’s] theory, taken as a whole, is ambiguous. Man always wills the good, but he can be mistaken as to its nature. Who is to interpret the moral law? The answer is ambiguous. Sometimes we are told that it is conscience, sometimes that it is legislative. On the other hand, the voice of the legislative is not necessarily infallible; it may be influenced by selfish interests, and then it does not express the general will.” (*Ibid.*) Although Copleston found his own conclusion problematic, I think that the whole problem can be resolved by positioning Rousseau’s “ethical positivism” on the empirical level. In that sense, the problem Copleston considered to be significant, does not exist.

the pattern of man's behavior. Traditionalists differentiate body and soul, and claim that the human constitution is embodied in the human soul. (Strauss, 1971: 112) Therefore, reason as the feature of the soul should prevail over passion, which is the feature of body. "A good life is one developed in accordance with the natural order of human being, a life that is in accordance with a blessed and healthy soul." (Strauss, 1971: 113)

With Hobbes, who was the first champion of modern natural right, the essence of natural right became the mere urge for self-preservation. (Strauss, 1971: 157) For Locke, who came right after Hobbes, the center of natural right was egoism embodied in his teaching on property. (Strauss, 1971: 203-216) In that sense, the essence of modern natural right became the human body. Soul and reason were neglected.

In his chapter on Rousseau, Strauss says that Rousseau's political philosophy presents the crisis in the modern natural right school that had been launched with Hobbes and Locke. (Strauss, 1971: 217) In effect, Rousseau was at first much more prone to get back to the traditional conception of natural right. However, his departure from this tradition can be revealed by referring to the outcomes of the traditional natural right school that Rousseau discarded.

First of these concepts was the polis. Already at the point of the organization of the state, Rousseau did not take the traditional Greek polis as the pattern which modern state should be based on. Rousseau took nature instead. The Greek polis was an outcome of the traditional concept of natural right but Rousseau discarded this outcome. Thereby, he discarded natural right as a possible basis for the general will. (Strauss, 1971: 219)

Another problematic point in Rousseau's theory, according to Strauss, is the concept of reason. The concept of reason is the consequence of the traditional natural right conception. Here also, Rousseau was closer to nature than to the

philosophy, polis and virtue. “By ceasing to conceive of the law of reason as a law of nature, Rousseau could have made his Socratic wisdom radically independent of natural science. Yet he did not make this step.” (Strauss, 1971: 227) In that sense, Rousseau discounted the most significant idea of the traditional natural right school that a man, by his nature, is endowed with reason. Note that Rousseau did not discard the idea of reason in general. As will be pointed out in the following sub-sections, Rousseau’s concept of the general will amounts to the expression of reason. The idea here is that Rousseau discarded the concept by which man is endowed with reason by nature. In the *First Discourse*, Rousseau already said that the existence of language was not an attribute of man. If he has no language, he cannot have reason. Hence, Strauss claims that Rousseau replaced the traditional definition of natural man with a new one. “In addition, as man is not reasonable by nature, he cannot have any knowledge about the law of the nature [...]” (Strauss, 1971: 233)

As noted in chapter one, by discarding the traditional concept of natural law, Rousseau could not have the idea of returning to the state of nature. In fact, he went back to the nature only in one certain aspect -- that of humanity. As Strauss pointed out, for Rousseau, “[...] the good life consists of the greatest possible approach to the state of nature that is possible on the level of humanity.” (Strauss, 1971: 243) Humanity for Rousseau could be tantamount to this self-love and compassion that people had had in the state of nature. And, to Rousseau, this type of love could be accomplished not in the concept of natural right, but in the concept of family, specifically the bourgeois family.

Rousseau supposed that man’s natural development led to the establishment of the first social communities. This was a rather primitive way of life: it was neither industrial society nor the state of nature. The main features of these primal communities was that they were organized in families. It was the happiest period

of human existence because the sweetest feelings known to men such as conjugal and paternal love were its main characteristics. (Rousseau, 1993b: 88) Later, when metallurgy and agriculture came into play, everything was destroyed. What Rousseau is most nostalgic for is not the state of nature, but that period when people lived in families and loved themselves deprived of any *amour-propre*. In this type of family Rousseau saw the pattern of behavior for civil society: “Love is nearer to the natural state, than it is to civil society, duty or virtue. [...] From the classical polis, Rousseau comes back to family and a couple that are head over heels in love. Using his dictionary, we can say that he stops dealing with the citizen and starts dealing with the bourgeois.” (Strauss, 1971: 250)

To sum up, traditional natural right cannot be the essence of Rousseau’s general will, since Rousseau’s concept of nature runs contrary to the traditional conception. While it is true that Rousseau, to a great extent, drew on the elements of the school of natural law, Barker points out that “We may attach Rousseau to the School of Natural Law [but] we must also disassociate him from it.” (Barker, 1960: 105-6) The traditional natural right school assumed a good life of the individual in accord with nature. Since nature is perfect, a man also has to be perfect. This is a virtuous life and it can be reached only through contemplation. But Rousseau, in the end, did not accept this kind of life. He discounted a premise according to which man is by his nature rational and socialized. Rather, the highest good for Rousseau was the love of the small bourgeois family that he imagined as the bulwark against the depraving tendencies of civil society.

b. “Reason” Interpretations

Whereas in the case of “natural law” interpretation of the general will I managed to find only Copleston’s interpretation, in the case of “reason” interpretation I managed to find three. These of Alfred Cobban, William Ebenstein and Iain Hampsher-Monk. Let me begin with the first one.

According to Cobban, the main feature of Rousseau’s political philosophy is not the social contract, but the notion of the general will. (Cobban, 1934: 123) It is the essence of the state that explains Rousseau’s political philosophy. Cobban also claims that Rousseau’s understanding of sovereignty differs in one important point from all previous concepts of sovereignty. (Cobban, 1934: 122) Although Rousseau defines sovereignty as unlimited, the claim that sovereign power, whoever it might be, can do as it pleases, is to Cobban but a misinterpretation. He says that from Rousseau’s definition of sovereignty, which I discussed in chapter one, it does not follow that sovereign can do no wrong: “The whole constituted authorities and every individual member of the state may be agreed on a certain line of action, but he will not accept it as a valid expression of the general will unless it fulfills the conditions he has laid down, unless, that is, it is general not only in origin but also scope, and unless it is inspired by the general and permanent interests of the community.” (Cobban, 1934: 124) He proceeds: “Thus the state is sovereign [...] only so far as it is the embodiment of social justice, and to the extent to which the sovereignty of the General Will can be predicated of any particular state depends on the degree of closeness with which it approximates to this ideal. [...] We would rather say that the effect is certainly to enlarge the authority of the state, but only by allying politics once more with ethics, and so making the state something more than a mere collection of individuals under one government.” (Cobban, 1934: 124-5)

From this, Cobban goes on with the “reason” argument. He asserts, referring to Green, that Rousseau’s solution for the coercion of the people differs

from the supreme coercive power that had been proposed by Hobbes and his contemporaries. It is not the supreme and final power that will compel men to obey the general will, but the “auguster thing.” (Cobban, 1934: 127) Borrowing a quotation from Green, Cobban argues that: “What [Rousseau] says of [auguster thing] is what Plato or Aristotle might have said of the *telos nous*, which is the source of the laws and discipline of the ideal polity, and what a follower of Kant might say of the ‘pure practical reason,’ which renders the individual obedient to a law of which he regards himself, in virtue of his reason, as the author, and causes him to treat humanity equally in the person of others and in his own always as an end, never merely as a means.” (Green, 1885: §68)

In the end, Cobban concludes that: “According to Rousseau the claim to rightful sovereignty is necessarily determined by the nature of the particular majority will, which can only be sovereign if it possesses all the attributes which we have seen to be necessary by definition to the General Will.” (Cobban, 1934: 129) In saying this, Cobban refers to chapter ii, book IV, of the *Social Contract*, where Rousseau speaks of ascertaining what the general will is, and how it is to be achieved. This chapter, at great length, explains how the general will is to be ascertained by voting.

In this chapter Rousseau says that the general will is always the will of the majority. Taken out of the context, it undermines the argument that the substance of the general will is the “auguster thing.” Rather, it means that its substance is the will of the majority in the popular assembly. However, the unanimous stance of the scholars is that it cannot be an argument for undermining the sovereignty of the general will. The argument of voting cannot be used as the appropriate argument for voluntarizing the general will for the following reason. Rousseau does not say that the pure will of the majority should define what the general will is. (Copleston, 1994: 90) He states certain conditions for that. Rousseau wants the

influence of all the parties and groups fighting for particular interests to be excluded. “For the distinction is meant to allow the possibility of private interests, especially the interest of partial groups and associations determining the decision of the people in assembly. And when this abuse takes place, the result of voting does not represent the general will.” (Copleston, 1994: 90)²⁵

When such state of affairs is achieved, such an assembly, deprived of any particular influence, can make any decision. And whatever decision is made, it ought to oblige the rest because it is fair and just, seeing that it has the common good as its object. Once the parties and particular interests are removed from the game, it does not matter whether the assembly issued law by the general consensus or only with the majority. It matters only that decision was reached from a body deprived of particular interest. Thus, Cobban says: “If, therefore, the influence of group interests is avoided, the expressed will of the assembly is infallibly conducive to the public good.” (Cobban, 1934: 129)²⁶

Cobban’s interpretation looks upon the general will as the external standard of what is good and what is evil. For, if we have to determine which particular interests are not conducive to the general will and which are, we must have a ready-made yardstick for that. Allowing only certain interests to enter the assembly discussion and forbidding others requires an external standard. Hence, Cobban’s argumentation, in a formal sense, says nothing more than what Copleston’s argument already set forth. However, Cobban does not accept that this external standard, which the general will is based upon, is natural law. On the

²⁵ The similar explanation is offered by T. W. Jones (Jones, 1968: 270-80) and by Fetscher. (Fetscher, 1968: 121-2)

²⁶ In the end, as Cobban pointed out, it is not Rousseau, but Locke who is a real champion of majority voting. (Cobban, 1934: 130) According to Locke, people have nothing to do with the decision-making process going on in the assembly. The act of majority is the act of the whole, says Locke. (Locke, 1988: §95) People’s representatives can decide whatever they want without consulting them, and every decision will be compulsory for people, regardless of their personal opinion.

contrary, Cobban strongly discounts the existence of the natural order and natural law as the criterion for arrangement of the political community: “By acknowledging the human origin of the laws Rousseau automatically puts society in charge of its own destiny, and in this sense it was really he who restored to the human race its titles. [...] Rousseau - and this was his greatest crime - submits the state to no *a priori* laws of any kind; the only limits he recognizes are those imposed by the very stuff of human nature itself and the positive circumstances of the state.” (Cobban, 1934: 149)

In sum, Cobban does not say that the basis of the general will is reason, but he says vividly that it is not natural law. Seeing that the “auguster” thing is the substance of the general will, it might be said that he is more likely to be described as the advocate of the “reason” argument, that is, the argument saying that the general will is sovereign as far as it is the expression of reason.

With Cobban, the “reason” interpretation is not fully developed. There is only a vague picture of it. In Ebenstein and Monk’s interpretation, a more grounded explanation can be found. Ebenstein also argues that the concept of general will in Rousseau does not necessarily lead to state sovereignty. Firstly, Ebenstein distinguishes amongst three different types of liberty in Rousseau’s theory: natural liberty, civil liberty and moral liberty. (Ebenstein, 1991: 499) Whereas natural liberty is possessed by man in the state, the second and the third type are possessed in the political state. However, there is a difference between civil and moral liberty. Whereas the first one is merely determined by the laws of political community in terms of what a member of the community is forbidden or allowed to do concerning other members, moral liberty arises when these laws are created by each individual who is the member of the community, “for in obeying laws we ourselves have made, we remain free.” (*Ibid.*)

Thus, in order to understand Rousseau's statement that the general will is going to force men to be free, we must not take the words "free" and "liberty" in the same sense we use them today. We have to understand, says Ebenstein, that Rousseau discerned between civil and moral liberty, and that, by saying that "man will be forced to be free," he had in mind a moral liberty which the general will was supposed to provide. (Ebenstein, 1991: 501) Civil liberty, which usually comes to one's mind when hearing the statement, remains *virgo in tacta* -- it is not infringed upon. The general will has the task to achieve moral liberty. In that regard, the general will is supposed to meet two requirements: empirical, on one hand, and moral, or rational, on the other. (Ebenstein, 1991: 502) The empirical requirement is that the general will is formulated by the wholeness of citizens. The moral requirement is that it aims at the common good of all the people. These two requirements met, "[...] liberty -- in Rousseau's (and latter, Kant's) sense of moral liberty -- means no more, but also not less, than obeying the laws one has participated in creating." (*Ibid.*) All in all, Ebenstein holds, and this is substantial for his argument, that Rousseau wanted to express the general idea of the era of the enlightenment that gave the major role to reason and attempted to destroy man's animal and passion-driven instinct. By saying that the general will shall force man to be free, Rousseau said nothing but that man is to obey reason if he wants to live in a well-ordered community and enjoys good government.

David Muschamp offers a similar formulation. He says: "In obeying the dictates of the general will a person is obeying himself, and because obedience to one's true will, rather than obedience to one's own mere instincts and desires, is what moral liberty, the distinctive mark of humanness, consists in [...]" (Muschamp, 1986: 131) In this respect, both authors emphasize Rousseau's intention to cut human self-interest and selfish driving forces and to establish political order on the basis of reason.

Although Ebenstein's interpretation is quite acceptable, it is necessary to outline the last one, that of Iain Hampshire-Monk. Thereafter, we will get the most comprehensive relationship between the notion of the general will, reason and sovereignty.

Monk exemplified the problem of the general will through the paradox of democracy. He asks: "Does democracy have the right to abrogate itself and grant sovereignty to a tyrant?" (Monk, 1992: 179) This is exactly the same question which lies at the core of the problem of Rousseau's popular sovereignty for which I seek to find the solution. Monk progresses: "Either answer seems to limit the sovereign *freedom of action* of democracy. But to place coercive limits on the *free actions* of the democratic sovereign to resign its sovereignty in this way might well be described as coercing or restraining it in order to sustain democratic *freedom as a state of being*." (*Ibid.*) Monk concludes that Rousseau's reasoning must have presumed a sort of *a priori* set standard of the free and democratic state which people are forbidden to change and to destroy. If taken in this sense, says Monk, the problem of totalitarian general will becomes immediately less problematic. (Monk, 1992: 180)

Monk's interpretation might be accurate and acceptable: it is possible that Rousseau wanted to preserve democracy by forbidding people to dissolve its basic nature. This is a notion that is legitimate in most contemporary Western democracies. The destructive actions of the Fascist or Nazi parties, which had the intention of dissolving democracy, would be precluded and severely punished by democratic government in every Western democracy. I believe that Rousseau's concept of general will implies precisely this type of situation. If Rousseau had been asked what to do should a Nazi party emerge, he would have probably offered his concept of general will. Provided that only a minority joins the Nazi party, this concept of general will, taken as the expression of the reason, would not

negate popular sovereignty. If a minority joins the Nazi party, it would be obvious that they are unreasonable, that their act does not fit the principle of reason and that of the general will. The sovereign -- the majority of the people -- would have unrestricted right to punish them and to “force them to be free”, that is, to behave reasonably because their act not only demolishes the principles of reason upon which the political community is based, but also the principle of the popular sovereignty.

Now, this argument would hold insofar as the trend of joining the Nazi party were insignificant and harmless to democracy and popular sovereignty. But what if this trend takes on an unstoppable tendency, such as Germany experienced in 1930s? The followers of Nazi party were no longer a handful of people. On the contrary, the overwhelming majority of people joined and supported Hitler. He did not impose his power against the people’s will: he was accepted as the paradigm of everything that was German. What now? The Nazi ideology was apparently contrary to the principles of reason, that is, the general will, but the German people were still sovereign! And if Germany in the 1930s could have had a person or a force that would have been able to stop Hitler and his Nazi ideology and to impose upon the Germans a different political order that would have been more in accordance with the principles of reason, it would have apparently been in accordance with the general will as conceived by Rousseau, but this act would have been in accordance with the principle of popular sovereignty no longer.

At this point, the entirety of the problem that the idea of popular sovereignty, and the Classical concept of sovereignty, carries with it can be seen. Namely, taken in its most extreme form, it is necessarily unreasonable, as a rule, undemocratic, and very often negates itself in the end. That is why it turned out to be impossible to establish it in practice. Evidently, Rousseau himself realized that the purest form of popular sovereignty might have not been in accordance with

reason, and had he lived in Germany in the 1930s, he would have certainly witnessed himself that he was right. He would have realized that the principle of popular sovereignty must be limited by reason.

I agree that, taken in this way, Rousseau's concept of the general will attests to the sovereignty of reason and negates the popular sovereignty. However, this brings us back to the original question of this thesis how can state sovereignty be found in Rousseau's political theory? If the concept of general will attests to the sovereignty of reason, the state authority is not sovereign because the will and action of state authority as well as these of the people are to be limited by the general will. Nonetheless, I believe that the existence of state sovereignty still can be proven within Rousseau's theory by comparing it with the main principle of the Constitutional theory of sovereignty: vesting the sovereignty out of anybody's will. This shall be the task of the following sub-sections.

5. Sovereignty as the Matter of Will

Before I proceed, a previous clarification related to the general idea of sovereignty is to be made. The appearance of the notion of sovereignty makes the break with an ancient tradition in political thought that had been stretching throughout the Middle Ages. With the exception of Bodin, who still partly belonged to the pre-modern tradition, already in Hobbes, one can find the voluntarily concept of the state. The state has been created by virtue of contract, meaning that people have voluntarily agreed to erect the state. State organization was the matter of their will. The bulk of modern, and even pre-modern, thinkers embraced the concept of a social contract. The social contract had to confirm that

the state, along with the complete political arrangement, whatever it might look like, is the product of the human will. More precisely, it is the product of earthly forces, that is, people. As Ernest Barker put it, the idea of social contract had to express that will, not the force, is the basis of government. (Barker, 1960: 87) Moreover, not only the social contract, but also the idea of sovereignty had to confirm that. It can be further emphasized that it always has to be free and unconstrained will. Before the modern age, the origin of the state and its power had to be discovered in some source of heavenly, or unearthly origin. After Machiavelli and Hobbes, this was no longer case. The origin of the state was of this world, that is, to be found within the state.

These lines of thought were acknowledged by Rousseau. His theory of sovereignty assert that, in the process of the constructing of state, the primary role is to be ascribed to the will. By and large, it is very hard to imagine political theory which would imply the concept of sovereignty and, at the same time, be in accordance with the ancient concept of polis or concept of *regnum* from the Middle Ages. This is impossible. The same impossibility goes for Rousseau. It is impossible that Rousseau's theory ascribed sovereignty to anything but someone's will. That is why his theory inevitably assumes somebody's will to be sovereign.

There is a relationship, however, between Rousseau and natural law put forth by Ernest Barker. Although it refers to Rousseau's relationship to the natural law, it is of significance to cite it here, since it explains what Rousseau might have thought the external source of the law might be. Barker says: "On one hand, he needed it-for how could there be a legal thing like a contract of society unless there were natural law in terms and under the sanction of which a contract could be made?-and he also found in it his authorities. On the other hand he disliked it; and he felt in his bones that the nation made law, and not law the nation." (Barker, 1960: 106) This quotation says that Rousseau vested the power of decision to the

nation, i.e., the people. This confirms, further, the role of the will in his theory of sovereignty which is in no way different from that Hobbes had.

The fact that Rousseau did not part sovereignty from the community can again be found in Talmon's book. Talmon argues that the organization of the state for Rousseau was the matter of free will. "The social harmonious pattern of Helvetius, Morelly and Holbach was a matter of cognition. It was there to be discerned and applied. In the case of Rousseau and Mably it was a categorical imperative, a matter of will." (Talmon, 1952: 24) At first, it seemed that Rousseau was eager to renew the concept of the state as it was known to the ancient Greeks. If Rousseau had been soundly consistent in this attempt, it would not have been possible to conclude anything but that his theory of sovereignty assumes sovereignty of nature. If this were true, furthermore, Rousseau would be rightly named the exterminator of the idea of sovereignty.

However, Rousseau was not consequent in his attempt to renew this ancient concept of polis. For him, the matter of sovereignty was neither a matter of the nature nor of immutable and everlasting laws. It was, as for all classical thinkers of sovereignty, a matter of will. Even Hegel exalted Rousseau because of his ascribing the feature of will to the state. (Hegel, 1990: §258) If already proven that Rousseau regarded sovereign as the source of law and that law could be nothing but the expression of will -- since sovereignty was "nothing less than the exercise of the general will" (Rousseau, 1993a: II, i) -- it follows that the general will knows no bounds: "The sovereign may well say, 'Right now I want what a certain man wants or at least what he says he wants.' But it cannot say, 'What this man will want tomorrow I too will want,' since it is absurd for the will to tie its hands for the future and since it does not depend upon any will's connecting to anything contrary to the good of the being that wills." (*Ibid.*) It can be thus concluded that Rousseau does not consider there to be any possible constraint on an actor's

willing. The attribute of will cannot be ascribed to reason, since the principles of reason are always the same, unchangeable and fixed. It is the actor having free will who can change his opinion and adjust it to the circumstances. Therefore, I conclude that sovereignty must be found within Rousseau's state, ascribed to an actor. If this is not people, it must be government or state.

That general will has to be found within the community, that is, within the people who are capable of producing it, is confirmed by Ebenstein. He says that "The character of General will is determined by two elements: first, it aims at the general good, and, second, it must come from all and apply to all. The first refers to the object of the will; the second, to its origin." (Ebenstein, 1991: 500) Therefore, the origin of the general will is not outside the community. It cannot be legislated and commanded to the people from the external source. It is rather "a moral attitude in the heart of citizens [...]." (*Ibid.*)

Carl Joachim Friedrich in his book *The Philosophy of law in Historical Perspective* also offers an interpretation of Rousseau's general will. He starts out by interpreting it as the ancient idea because it is a rational will. (Friedrich, 1958: 124) But in its older forms, progresses Friedrich, a rational will was not attributed to each individual, but it was only active in men in terms of having influence on men's behavior as an external force. However, "In Rousseau, as a result of the his radically egalitarian view of man, we encounter the Copernican turning point. All men are said to possess a rational will, and the general will is then seen as the expression of these willing individuals when they come together to legislate." (*Ibid.*) Hence, the general will is now the inherent characteristic of human mind. It is something internal to it.

According to Bloom, Rousseau's notion of the general will has all the necessary characteristics of the will. It can will independently of what is willed. "Therefore, the general will contain no specific direction; it can determinate itself

to do whatsoever occurs to it; it is in itself empty; it is pure will. [...] The general will is formal, and the only thing which distinguishes it from the particular will is that it can only will what all could conceivably will.” (Bloom, 1972: 542) Bloom adds that human freedom became the only source of morality for Rousseau: “With this discovery, Rousseau completes the break with the political teaching of classical antiquity begun by Machiavelli and Hobbes.” (*Ibid.*) McDonald is one of a few confirming the origin of the general will in Rousseau’s political philosophy, and hence of sovereignty that cannot be found outside community, but within it. He concludes that Rousseau’s ethical position is definitely relativistic because “[Rousseau] appealed to no fixed metaphysical standard. But this lack of absolutes merely strengthened the logic of his call for community. For without a metaphysical base from which to challenge the norms of a given society, Rousseau’s individual found his salvation in community or nowhere.” (McDonald, 1968: 390)

The most precise clarification of this problem was given by Peter Graf Kielmansegg in his book *Volkssouveranität*. He addresses the irreconcilableness of the concept of the general will, taken as the expression of reason, and the principle of sovereignty. Actually, Kielmansegg addresses the problem of personality of the people in Rousseau’s theory of sovereignty and thereby proves the existence of the will within it.

Kielmansegg reiterates that Rousseau’s sovereign cannot be but the wholeness of all the citizens. Embodied in a sovereign body, they become a new person. It is true, Kielmansegg says, that this new personality is different from how the body of the people was conceived of in the Middle Ages. Moreover, in Rousseau, it is not clear how the bunch of individual constitutes themselves in the sovereign body. “But just this abstruseness of the individuals’ transformation makes clear that, for Rousseau, the concept of the people has to be understood as

the concept of the person. Only when the totality of the citizens as a person with its own will and its own existence is presumed, it is possible that all the individuals taking part in this body express their opinions freely [...]” (Kielmansegg, 1977: 150) As pointed out above, Rousseau’s state is a separate organism. It has its own reality and its own will.

Now, for Kielmansegg, the relationship of the sovereign body to the general will is problematic. At first, it seems that the sovereign body is constructed, and, thereafter, the general will is ascribed to it. However, it turns out that Rousseau starts off from the common good that the general will aims at, and, thereafter, introduces the actor who will be the bearer of that will. In the end, Rousseau arrives at a contradiction, since he insists on both: “On the sovereignty of a will [of a person] and the sovereignty of the common good [the general will aims at], and thereby leave the contradiction unresolved.” (Kielmansegg, 1977: 153)

How can the common good, which the general will aims at, be reconciled with the sovereign majority who is to decide what that will is, asks Kielmansegg? “How can one imagine the domination of the general will against the sovereignty of the majority will? Sovereignty of the whole means, as Rousseau pointed out, legal and unlimited power. If the citizens wanted to limit its own power, by drawing a limiting line [...] it would be a political community no longer. That is a consequence and very interpretation of the principle of sovereignty.” (Kielmansegg, 1977: 154)

It should be pointed out here that in Kielmansegg’s interpretation the emphasis is not to be put on “will of the majority,” but on the word “sovereignty.” If everything would be explained by referring to the will of the majority, the analysis came in the cul-de-sac. It would again be an interpretation from the empirical standpoint. The emphasis is on the word “sovereignty,” meaning that its

free-will and subjective essence stands in disagreement with the objective character of the general will.

All things considered, the conclusion is that the matter of sovereignty is the matter of will, thus it cannot follow that reason is sovereign. As soon as sovereignty is ascribed to some will, it should follow that the bearer of sovereignty is the living person or a set of persons. In all possible combinations, it can be either people or government, that is, the state. Since it is already more than clear that people are not sovereign in Rousseau's theory, it follows that state or government must be. Reason cannot be the "bearer" of sovereignty, since it is incompatible with the concept of free will that Rousseau introduced in his theory by introducing the notion of sovereignty.

6. The Role of Reason in the Constitutional Theory of Sovereignty

In the introduction of this thesis I mentioned that the state sovereignty is characteristic only for the Classical theory of sovereignty. For the Constitutional theory of sovereignty, however, it is characteristic the sovereignty of the constitution, meaning that government finds its limit in the principles ingrained in the constitution. These principles can be principles of reason. However, if the principles of reason are to be sovereign, they have to be "frozen" as soon as they are achieved. Such methodology was used by American Founding-Fathers and Immanuel Kant. They have accomplished the state of affairs in which the sovereignty of people and the principles of reason are combined at the same time.

How did the constitutionalists reconcile the sovereignty of people with the sovereignty of reason, that is, "the general will?" This line of argumentation can

be found in Hannah Arendt's book *On Revolution*. She argued that the main difference between American and French revolution and their aftermaths was the solution as to where to place the sovereignty after the end of revolution. (Arendt, 1973: 141-178) The Frenchmen took Rousseau's principle of *volonte generale* as the guiding principle in revolutionary activities. This principle takes for granted that the source of every law lies in the popular will. The Frenchmen argued that the nation should be sovereign and that the nation, as such, should be above any law. Moreover, the difference between American and French revolutionaries does not come down exclusively to the difference as to different subject of sovereignty, argues Arendt. The main difference is that Americans did not vest the sovereignty in any actor at all. Americans, in fact, vested sovereignty out of any will. If one of the main features of sovereignty is that it is the source of law, than Americans solved the whole problem by placing the sovereignty into the constitution, not in any particular will. The power remained with the people, but the source of law became the constitution. The constitution was seen as something objective that was not subjected ephemeral changes in will and moods. Thus, the constitution became sovereign, not people.

Although Americans placed sovereignty in the constitution, they did not dispute the idea of popular sovereignty. The final decision is always up to the people. But once the decision is made, the sovereignty is immediately out of the game. No political subject and no will can claim to issue the law by avoiding the constitution. In a word, one can say that Constitutionalists confirmed the sovereignty of the reason and sovereignty of the people at the same time, by taking the sovereign decision of the people at one certain point in history when it was reasonable, and "freezing" it by vesting it in the constitution. Thereby the Constitutional theory of sovereignty reconciled the unlimitedness of the

sovereignty with the limited state power which for the classical thinkers was unimaginable and impossible.

Revolutionary Frenchmen, on the other hand, followed the Classical theory of sovereignty. As soon as they overthrew the King, the relationship between sovereignty and actor's will remained the same. The bearer of sovereignty was changed, but the principle that it should be possessed by the will remained. The Frenchmen were changing the constitutions and laws even if these constitutions and laws had not started functioning. In post-revolutionary France "constitution-making was never again understood as the foremost and the noblest of all revolutionary deeds, and constitutional government, if it came into existence at all, had a tendency to be swept away by the revolutionary movement which had brought it into power." (Arendt, 1973: 158)

A similar conception is offered by Kant, who also had the idea of popular sovereignty (Kant, 1996: §46: 91), but, at the same time, negated people right to rebel. (Kant, 1996: A-D: 95-104; esp. footnote 1 on p.97; 1992: 81) This can be said because Kant's theory of sovereignty resembled the concept of sovereignty that had been applied in the case of American constitution. By denying the right to rebel, Kant did not mean to deny the right to have freedom, equality and self-dependence. He did not deny his principle of autonomous action of a person as his or her own law-giver. But once a person gives him or herself a law, the sovereign right to change this law should depend upon procedures, not upon any free will. Consequently, by denying the right to rebel, Kant thought to deny the right to arbitrarily enforcement of the laws, as it was the case in post-revolutionary France. The enforcement of laws should depend upon written constitution, not upon any will. If the people were given the right to rebel, it would mean that they were above the constitution, that is, above the law.

Kant's theory of sovereignty implies that people are sovereign, provided that this sovereignty is implemented in the constitution. (Kant, 1996: §52: 113) The constitution then becomes sovereign, not the people. Insofar as the constitution is valid, people do not have right to rebel. This idea was first expressed by Locke, (Locke, 1988: §243) and later was accepted by the American Founding-Fathers. It is quite possible that by placing sovereignty in the constitution, America was saved from the bloody events that France experienced throughout the 19th century.

In addition to this methodology that made possible the sovereignty of reason, the Constitutional theory modified the correlation between reason and sovereignty itself. The reason was taken no longer as the free will that should pursue a moral and virtuous goal. It became the set of principles and procedures that secure stable and, hence, right political order. Take as the example American 1787 constitution that is but a set of procedures. It defines no certain content. It only makes the political games possible and feasible. Kant backed the same idea by his concept of right. He asserts that the "Right is therefore the sum of the conditions under which the choice of one can be united with the choice of another in accordance with the universal law of freedom. [...] Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law." (Kant, 1996: §§B, C: p.24) This obviously means that the content of right is not dependent upon anybody's will. It is a mere principle. This principle ought to determine our actions, not one's will. Right is, thus, the principle directing people to find a social arrangement irrespective of their concrete and particular preferences, desires and propensities. It is a mere formal rule, fully deprived of any content. All things considered, constitutionalists related sovereignty to the principles that secure stable political order.

It is possible now to realize to what extent Rousseau's theory of sovereignty differs from those of Founding-Fathers' and Kant's. Rousseau vested sovereignty in will, and called it "general" in order to prevent the events such as these that came about in Nazi Germany. But with his conception of sovereignty, Rousseau would be completely helpless to solve this problem, considering that his concept would, at the same time, support and negate the sovereignty of the German people. This is because his theory implied, at the same time, sovereignty of the state, people and reason. Hence, if Rousseau had wanted reason to be the "bearer" of sovereignty, he must have had the similar options as they were offered by Kant or American Founding-Fathers. However, Rousseau was only the first who discovered the idea that the political community is to be based on the principles of reason, or it would be broken down into pieces. Kant glorified him because of this discovery. But this was the idea that can be found already in Hobbes. To him, laws of nature are also principles of reason. Nonetheless, Hobbes ended up with the conception which gives to the sovereign the final decision on whether or not the state ought to be based on the principles of reason. In other words, the force of reason to impose itself was in Hobbes only recommendable not obligatory. Unfortunately, Rousseau could not do more in this regard; his theory leads in the same direction. In effect, the only difference between Hobbes and Rousseau is that the former overtly stated that sovereign power was to decide on whether principles of reason would be the basis of the state, whereas the latter did not provide any means for securing the certitude of the sovereignty of reason.

Rousseau was not able to go step further from Hobbes and to offer the theory by which this reason-formula would remain independent of any particular content and thereby of any particular interpretation. To Kant, as well as for the Founding-Fathers, sovereign power meant the means whereby is possible to secure stable political order. This was what the reasonableness was all about. The content

of this order was not the subject-matter of sovereignty. To Rousseau, sovereignty meant the will to action in terms of achieving and pursuing a specific goal. This is why Rousseau's theory enables the principles of reason to be abolished by government as soon as they are established by people.

CONCLUSION

Rousseau's theory of sovereignty fits the Classical theory of sovereignty. It is a part of it. However, this conclusion is of partial validity. Rousseau's theory, actually, fits the Classical theory of sovereignty entirely only with respect to its first two elements. As I demonstrated in chapter one, Rousseau believed that sovereignty was unlimited and that it had to be the origin of the whole legal system and rights in a state. In that sense, Rousseau's theory of sovereignty is a legal theory as much as these of Bodin's, Hobbes', Bentham's and Schmitt's, meaning that impossibility of limiting sovereignty is expressed primarily in the legal terms. This is the common feature of the Classical theory of sovereignty, seeing that it is primarily a legal theory.

As for the third element of the Classical theory, Rousseau's theory is not so cut-clear. The Classical theory takes the state authority as the bearer of sovereignty. One can speak only about sovereign power of state, not about sovereign people or sovereign social groups. Rousseau's main intention was to build a theory which would vest sovereignty in the people. Since it was clear that people cannot perform the function of state authority, it followed that state power always had to be limited by the sovereignty of the people. Hence, although Rousseau believed both that sovereignty should have been unlimited and origin of all the rights in the state, by radically changing the bearer of sovereignty, he, in effect, destroyed not only the possibility to base the state on the Classical theory of sovereignty, but the possibility to establish a state in general.

However, Rousseau was not completely coherent in this intention of his. He believed that sovereignty ought to achieve certain goal. This goal was to make people virtuous beings, by affecting the mind of the individual. The notion of the general will had to fulfill the framework of the sovereignty and to establish the

political community on the principles of reason. This intention is unknown to the Classical theory of sovereignty. In that regard, Rousseau sought to depart from the Classical theory of sovereignty. By seeking to do this, Rousseau, in fact, ended up in a paradox. The paradox lies exactly there where he wanted to make departure from the Classical theory. With his theory of sovereignty Rousseau wanted to make people better than they are and thereby provide them real freedom. In seeking to do this, he, unfortunately, ended up with negating people's freedom.

Rousseau was not able to complete task of his because he could not see that the way he believed it would be possible leads directly to the negation of the popular sovereignty. By postulating that "people will be forced to be free," Rousseau, actually, undermined his own intention. The terms "force" and "freedom" are not compatible, because they exclude each other. Therefore, Rousseau's principle of "forcing men to be free" is *contradictio in adjecto*. This principle, as I attempted to prove in this thesis, confirms the existence of state of sovereignty in Rousseau's political theory. Therefore, although Rousseau's theory is not able to ground the popular sovereignty, it is able to ground state.

Whilst Rousseau's theory partly does belong to the Classical theory of sovereignty, it, on the other hand, trodden the path for the Constitutional theory of sovereignty. Its correlation to the Constitutional theory consists of its aspiring to ground the political community on the principles of reason. Two centuries after the first appearance of the concept of sovereignty in Bodin's *Six Books*, Rousseau was the first who ascribed to the sovereignty principles of reason. To him, sovereignty should be based on reason, or it would not exist. This is the point at which his complete political thought is at odds with the Classical theory of sovereignty. The Classical theory, taken in its most extreme form formulated by

Carl Schmitt, paid attention only to the locus of sovereignty.²⁷ It should be with the living actor (state, government, ruler, aristocratic body, democratic assembly etc.), or nowhere. The abstract principles do not count. That is why the Classical theory is not able to distinguish democratic from the despotic type of government.

If the Classical theory potentially always leads to the despotic system, Rousseau's theory leads in that direction as well. It also gives leeway to the despotic regime which would be completely in accordance with the Rousseau's theory. The problem that Rousseau did not solve with his theory is the relationship between the principles of reason and the notion of sovereignty. It is this unresolved problem on account of which post-revolutionary France could not extricate itself from the years of terror, although revolutionaries claimed that they respected the popular will and sovereignty of the people. As a matter of fact, Rousseau's theory is capable only of ascertaining what the reasonable political order is not. As in the case of 1930's Nazi Germany, Rousseau's theory would be able to mark it as the unreasonable political system which negated the sovereignty of the people. However, Rousseau's theory would not be able to resolve the problem of Nazi despotism. As a result, it has mainly negative character: it is able to tell us what it is not, but not able to tell what it is.

Finally, all this only goes to show that it is impossible to arrive at any definite conclusion as regards the place of Rousseau's theory of sovereignty. It is obvious that Rousseau had at least three possible solutions respecting the bearer of sovereignty: people, reason and state. All three elements are presented in his theory, and if anyone wanted to argue that any of them made the basis of his theory of sovereignty, he or she would be right. The contradictions and

²⁷ Schmitt's famous study *Politische Theologie* begins with the statement: "The sovereignty belongs to the one announcing the state of emergency." (Schmitt, 1922: 1) This statement reveals how much attention is paid to the locus of sovereignty by the Classical theory.

irreconcilablenesses in Rousseau's political thought preclude any definite conclusion as to whether his theory fits Classical theory of sovereignty. Nonetheless, I believe that even the partial solution that is provided here will serve in finding Rousseau's place within the Classical theory of sovereignty as well as in composing a comprehensive study on it which political science still needs.

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