

Autonomy and Happiness in Rousseau's Justification of the State

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Abstract: Recent interpretations of Rousseau suggest that autonomy is the master concept by which to understand his justification of the state. The Rousseauian state is legitimate insofar as it enables individuals to obey only their own wills and thus to be free. Autonomy-based interpretations cannot adequately account for Rousseau's remarks on the role of the state in securing a collective form of happiness through political community. These interpretations incorrectly construe collective happiness as pertaining only to how civic-minded citizens might be psychologically motivated to obey the state's dictates, rather than to what makes the state legitimate. By contrast, I offer a new interpretation according to which the Rousseauian state is justified because it enables a mutually constitutive relationship between the autonomy of individuals and the happiness that stems from participation in political community.

Contractarian approaches for justifying the legitimacy of the state appear to be grounded solely in a principle of freedom. The state exists in order to protect or express individual rights. Contractarians aim to show that the coercive power of the state does not represent arbitrary violence because such an institution would be chosen by rational individuals concerned to protect their basic interests. As is well known, Marxists, civic republicans, and communitarians have long criticized contractarians for neglecting the extent to which the state ought to secure a more substantive common good, which one might characterize as collective happiness or flourishing. These critics accuse contractarians of treating collective flourishing as, at best, an

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incidental byproduct rather than central goal of the state, and, at worst, a value the promotion of which threatens to unjustly dominate the individual.¹

In this paper, I claim that one of the central historical figures of rights-based contractarian political philosophy, Jean-Jacques Rousseau, did not feel the pull of the dichotomy between collective flourishing and individual autonomy. Because of this, his political thought offers a conceptually powerful and normatively appealing method for justifying the rights-protecting state. I suggest that Rousseau argues for a mutually constitutive relationship between the autonomy of individuals and the happiness or flourishing that stems from participation in a just political community. That is, in the ideal Rousseauian state citizens are only individually free if collectively flourishing, and yet a necessary criterion for collective flourishing is that each individual is granted the rights and entitlements that stem from his or her autonomy.²

¹For contemporary expressions of this idea, see Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1998), Charles Taylor, "Cross-Purposes: The Liberal-Communitarian Debate," in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge, MA: Harvard University Press, 1989), and Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge, MA: Harvard University Press, 1989), 11–14, 193–98. For historical antecedents, see G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991), ¶258, and Karl Marx, "On the Jewish Question," in *Early Writings*, trans. Livingstone, Benton, and Colletti (New York: Penguin Books, 1992).

²Here is a list of the works by Rousseau I will cite, along with the abbreviations I will use:

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| DAS | <i>Discourse on the Arts and Sciences</i> , in <i>The Discourses and Other Early Political Writings</i> , ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997). |
| DOI | <i>Discourse on the Origin of Inequality</i> , in <i>The Discourses and Other Early Political Writings</i> . |
| DPE | <i>Discourse on Political Economy</i> , in <i>The Social Contract and Other Later Political Writings</i> , ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997). |
| E | <i>Emile</i> , trans. Allan Bloom (New York: Basic Books, 1979). |
| J | <i>Julie</i> , trans. Philip Stewart and Jean Vaché (Hanover, NH: University Press of New England, 1997). |
| GM | <i>Geneva Manuscript</i> , in <i>On the Social Contract</i> , ed. Roger Masters, trans. Judith Masters (New York: St. Martin's, 1978). |
| LD | <i>Letter to d'Alembert</i> , in <i>Jean-Jacques Rousseau: Politics and the Arts</i> , trans. Allan Bloom (Ithaca, NY: Cornell University Press, 1960). |
| LM | <i>Letters Written from the Mountain</i> , in <i>The Collected Writings of Jean-Jacques Rousseau</i> , vol. 9, ed. Christopher Kelly and Eve Grace (Hanover, NH: University Press of New England, 2001). |

In order to appreciate the aspiration of Rousseau's theory of the state to reconcile individual autonomy and collective flourishing, we must challenge the most philosophically sophisticated autonomy-based interpretation of his political thought: the Social Autonomy reading of Joshua Cohen, Frederick Neuhouser, and John Rawls.³ According to Social Autonomy, Rousseau

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- ML *Moral Letters*, in *Rousseau on Philosophy, Morality, and Religion*, ed. Christopher Kelly (Hanover, NH: University Press of New England, 2007).
- OC *Œuvres Complètes*, ed. Bernard Gagnebin and Marcel Raymond, 4 vols. (Paris: Gallimard, , 1959–1969).
- PCC *Plan for a Constitution for Corsica*, in *The Collected Writings of Jean-Jacques Rousseau*, vol. 11, ed. Christopher Kelly and Roger Masters (Hanover, NH: University Press of New England, 2005).
- PF "Political Fragments," in *The Collected Writings of Jean-Jacques Rousseau*, vol. 4, ed. Kelly and Masters (Hanover, NH: University Press of New England, 1994).
- R *The Reveries of the Solitary Walker*, in *The Collected Writings of Jean-Jacques Rousseau*, vol. 8, ed. Kelly and Masters (Hanover, NH: University Press of New England, 2000).
- SC *Of the Social Contract*, in *The Social Contract and Other Later Political Writings*.
- SW *The State of War*, in *The Social Contract and Other Later Political Writings*.

³The characterization of the view I call the "social autonomy" interpretation stems from Joshua Cohen, "Reflections on Rousseau: Autonomy and Democracy," *Philosophy and Public Affairs* 15, no. 3 (1986): 279. Neither Neuhouser nor Rawls explicitly identifies himself with this label, but there are enough similarities between all three authors to make the categorization apt. I explore the nuances of Social Autonomy in greater detail in my "Rousseau on the Ground of Obligation: Reconsidering the Social Autonomy Interpretation," *European Journal of Political Theory* (forthcoming). The other principal works of Social Autonomy are Joshua Cohen, *Rousseau: A Free Community of Equals* (Oxford: Oxford University Press, 2010); Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge, MA: Harvard University Press, 2003); Frederick Neuhouser, *Rousseau's Theodicy of Self-Love: Evil, Rationality, and the Drive for Recognition* (Oxford: Oxford University Press, 2008); and John Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 2007). I also treat Nicholas Dent, *Rousseau: An Introduction to His Psychological, Social and Political Theory* (London: Blackwell, 1989) and Maurizio Viroli, *Jean-Jacques Rousseau and the "Well-Ordered Society,"* trans. Derek Hanson (Cambridge: Cambridge University Press, 2003) as anticipations of Social Autonomy, and Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton: Princeton University Press, 2009) as pursuing a contemporaneous parallel project. Ernst Cassirer is undoubtedly the pioneer behind all of these readings. See Ernst Cassirer, *The Question of Jean-Jacques Rousseau*, trans. Peter Gay (New Haven: Yale University Press, 1989) and Ernst Cassirer, *Rousseau, Kant and Goethe*, trans. J. Gutman, P. O. Kristeller, and J. H. Randall (Princeton: Princeton

justifies the rights-protecting state on the grounds that it secures individual autonomy, understood as the ability of an individual to live unhindered by the dictates of any will other than his own. Social Autonomy does not deny that Rousseau uses language invoking the good of collective flourishing, but it suggests that his deployment of this concept relates to the theme of political stability and not to legitimacy. That is, after individuals have entered into the state, the possibility of happiness motivates them to obey the laws and uphold the state; it is not what makes the laws rationally binding. Happiness refers to those psychological and sociological forces that enable citizens to bear the weight of their political obligations without a heavy, divided heart. The well-ordered society of the *Social Contract* is thus a “happy” one insofar as it fosters communitarian psychological dispositions that spur agents to uphold autonomy-based principles of liberal legitimacy.

In this vein, Joshua Cohen writes that Rousseau’s “strong assertions about the need for ... common happiness as an ingredient in individual happiness are offered ... as conditions of the stability of a legitimate order, *not as constitutive elements of the conception of legitimacy itself.*”⁴ Similarly, Frederick Neuhouser concludes that Rousseau’s arguments for the necessity of political community stem only from his perception of “the difficulty human beings naturally have, due to passions that distort their vision and pull them in the wrong direction, in keeping sight of and acting in accordance with their best interest.”⁵ Although I agree with Social Autonomy that a key aspect of

University Press, 1945). The relation between the Social Autonomy reading and Cassirer’s Kantian reading, as well as Kant’s own remarks on Rousseau, is a large question that cannot be addressed here. Suffice it to say that some of the commentators associated with Social Autonomy are closer to Cassirer’s Kantian reading (e.g., Cohen) than others (e.g., Neuhouser and Dent).

⁴Cohen, *Free Community*, 57 (emphasis mine).

⁵Neuhouser, *Foundations*, 191. Though Neuhouser concedes that “Rousseau ... posits affective, substantive attachments to particular others as necessary and desirable,” he argues that with respect to the foundations of the state, “Rousseau accords supreme normative weight to a perspective ... that recognizes only the interests of unattached individuals” (ibid., 196). For a similar bifurcation of a normative, freedom-based principle of legitimacy from a psychological, happiness-based account of motivation or stability see Rawls, *Lectures*, 193, 206–7, 214–15, 237–41; Viroli, *Well-Ordered Society*, 13, 212–13; Stilz, *Liberal Loyalty*, 130–35; and Matthew Simpson, *Rousseau’s Theory of Freedom* (New York: Continuum, 2006). For skepticism about separating legitimacy from stability see David James, *Rousseau and German Idealism: Freedom, Dependence, Necessity* (Cambridge: Cambridge University Press, 2013), 111; Joseph Reisert, *Jean-Jacques Rousseau: A Friend of Virtue* (Ithaca, NY: Cornell University Press, 2003), 124; Richard Velkley, *Freedom and the End of Reason: On the Moral Foundations of Kant’s Critical Philosophy* (Chicago: University of Chicago Press, 1989), 34; and John Scott, “Rousseau and the Melodious Language of Freedom,” *Journal of Politics* 59, no. 3 (1997): 818–27.

Rousseau's justification of the state is his claim that only such a coercive arrangement realizes individual autonomy, I argue against its dismissal of the justificatory role of collective happiness.

In offering a new interpretation of the normative foundations of the Rousseauian state, based on a more integrated understanding of the relation between individual autonomy and collective happiness, my argument proceeds as follows. In section 1 I provide textual support for the justificatory role of collective happiness. In section 2 I discuss the following interpretive puzzle: if the social contract answers to the interest of each contracting agent in maintaining his own life, why does Rousseau also think that the the institution of a political order requires subjective transformation from an essentially individualistic to a deeply communal mode of being? I criticize Social Autonomy's attempt to solve this puzzle by distinguishing questions of normative justification from questions of psychological stability. In section 3 I develop Rousseau's integrated understanding of autonomy and happiness as a more satisfactory solution to the puzzle. Here, I discuss the figure of the lawgiver, as well as an often unnoticed distinction between the social *compact* and the social *contract*, in order to show that the Rousseauian state countenances two distinct sets of obligations: the first enjoin us to respect the autonomy of others and the second to attach ourselves to the political community. In a brief concluding section I show how Rousseau's theory of the state follows from his substantive understanding of freedom as the central human good.

1. Individual Autonomy and Collective Flourishing

Articulating a central tenet of Social Autonomy, Neuhouser writes that for Rousseau "the justification of the rational state resides in the fact that such a state plays an indispensable role in constituting human beings as bearers of free wills and is therefore essential to the fulfillment of their true nature as free beings."⁶ Neuhouser is undoubtedly correct that freedom plays a central role in Rousseau's account of the legitimacy of the state. Rousseau signals the normative centrality of freedom with his description of the "fundamental problem" for which the contract is the solution: "To find a form of association that will defend and protect the person and goods of each associate with the full common force, and by means of which each, uniting with all, *nevertheless obey only himself and remain as free as before.*"⁷

⁶Neuhouser, *Foundations*, 56–57. Similarly, many decades earlier Ernst Cassirer remarked that the *Social Contract* opens the "path of freedom" for subsequent developments in the philosophy of the state (Cassirer, *Question*, 54, emphasis in original).

⁷SC, 1.6.4 (emphasis mine). Ultimately, this account of political freedom is undergirded by a philosophical anthropology in which freedom defines the nature of man: "every man being born free and master of himself, no one may on any pretext

Before turning to the problems with understanding freedom as autonomy as the sole normative basis of the Rousseauian state, let us better understand the role it plays within the conceptual economy of his thought. The social contract is an attempt to save the precarious freedom of the individual under circumstances in which the necessity of social cooperation has thrown everyone into relations of freedom-threatening dependence, that is, a condition in which “ties of servitude [have been] formed ... by the mutual dependence of men and the reciprocal needs that unite them.”⁸ Rousseau’s surprising suggestion is that the only way for everyone to remain free from such intolerable relations of dependence is for each to will a state whose supreme coercive powers are exercised through universally binding laws that protect the fundamental interests of each. But if each agent has actively willed such a state, Rousseau reasons, then the laws that govern him are the product of his own will. The methodological device of the contract thus reveals that the only way to be free from dependence on others is to be internally governed by one’s own rational will, and so to be autonomous. Or as Rousseau writes, “obedience to the law one has prescribed to oneself,” i.e., freedom as rational autonomy, is among the central “acquisitions [*acquis*] of the civil state.”⁹ Social Autonomy elegantly and perspicuously explains these aspects of Rousseau’s thought.¹⁰

Yet while ostensibly offering a freedom-based account of the state’s legitimacy, Rousseau continually interjects comments concerning the happiness of its citizens. For example, citizens of a well-ordered society governed by the general will “consistently will each one’s happiness” because “the common happiness contributes a greater share to each individual’s happiness.”¹¹ Public happiness is the “source” of “the happiness of private individuals” (*le bonheur des particuliers*).¹² Agents who are governed by a perfectly shared will are “the happiest people in the world.”¹³ Rousseau even

whatsoever subject him without his consent” (*SC*, 4.2.5; see also 1.4.6). And this anthropology is itself an expression of a metaphysical thesis according to which only the human will can consciously resist or question the bare deliverances of animal instinct (*DOI*, 140). For a helpful account of the forms or levels of freedom in Rousseau’s thought see Matthew Simpson, *Rousseau’s Theory of Freedom*.

⁸*DOI*, 159.

⁹*SC*, 1.8.3, and *OC*, 3:365 (translation modified). Rousseau also suggests that because obligations are grounded in autonomy they must be freely self-legislated. Obligation can have no “more certain foundation ... than the free engagement of the one who obliges himself” (*LM*, 231).

¹⁰See here Neuhaus’s justly influential “Freedom, Dependence, and the General Will,” reprinted in *Foundations*, 55–81, as well as *Foundations*, 184–88.

¹¹*SC*, 2.4.5 and 3.15.3.

¹²*GM*, 160, and *OC*, 3:284.

¹³*SC*, 4.1.1.

occasionally traces the impetus for political life not to the desire to be free but to the desire not to “remain eternally unhappy.”¹⁴ And in one moment he contrasts legitimate with illegitimate political societies not in terms of the expression of autonomy but rather in terms of the former’s “goal of *shared felicity* from which each individual would derive his own.”¹⁵

Rousseau not only argues that the ideal state will as a matter of fact make citizens happy, he also sometimes directly grounds the authority of the state in the happiness it enables. For example, Rousseau argues that rulers have an “obligation to make each [citizen] happy;”¹⁶ and that political “force is only a means; its end is the happiness of the people.”¹⁷ In his strongest statement on the normative priority of happiness to freedom he suggests that one must first “hypothesize the idea of a happy people,” and only then “establish *rules of right on the basis of this idea.*”¹⁸

Below, I will show in detail that in Rousseau’s moral and political writings the type of happiness at issue is not a matter of subjective feeling.¹⁹ Thus, we should not read the passages on happiness just cited above as claiming that the state is legitimate because it makes possible a sense of elation or pleasure that comes from being without a master. Rather, with these invocations of

¹⁴GM, 163.

¹⁵GM, 158. Given that one of the purposes of this paper is to uncover a very abstract understanding of Rousseau’s theory of legitimacy, I necessarily put aside many specific differences between the major political writings, especially SC, GM, and DPE.

¹⁶DPE, 5 (emphasis mine).

¹⁷PF, 40. Cf. “it is only the state’s force that makes for its members’ freedom” (SC, 2.12.3).

¹⁸PF, 40 (emphasis mine). The French mentions only “rules” (*règles*) rather than “rules of right,” but the latter is warranted by the overall sense of the passage (see OC, 3:509).

¹⁹Many commentators understand Rousseau’s notion of happiness to be a largely formal, psychological sentiment with subjectively variable content. For example, see Arthur Melzer, *The Natural Goodness of Man: On the System of Rousseau’s Thought* (Chicago: University of Chicago Press, 1990), 38–46, 64–68; Laurence Cooper, *Rousseau, Nature, and the Problem of the Good Life* (University Park: Pennsylvania State University Press, 1999), 19–29; Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 291–93; and Joseph Reiser, *Friend of Virtue*, 114–15. Although such readings may have merits for Rousseau’s more autobiographical texts such as the *Reveries of the Solitary Walker* (though see footnote 53), I show below that the conception of happiness in *Emile* and *Social Contract* has an importantly objective component, on which happiness depends on the *proper* expression of our human nature and so is a moralized concept. In this sense my account is closer to Stephen Salkever, for whom Rousseau, like Plato, seeks to show the interrelation of happiness, virtue, and man’s natural constitution. See Stephen Salkever, “Rousseau and the Concept of Happiness,” *Polity* 11 (1978–1979): 27–45. Reading happiness in this way does not, however, preclude the possibility that for Rousseau there may be forms of happiness that are domestic, intimate, or solitary rather than political in any standard sense.

happiness Rousseau locates the authority of the state in the fact that it allows essentially social or collective capacities to flourish. Rousseau writes that the state makes possible “the development of our most excellent faculties,” paradigmatically the capacities for shared rational agency and identification with others on terms marked by mutuality and respect.²⁰ As such, it turns a human being from “a stupid and bounded animal” into an “intelligent being and a man.”²¹ According to this line of thought, the state is justified because it actualizes human nature, allowing man to express himself as what he most essentially is: a participant in a cooperative whole who realizes his primary good in the well-functioning of that whole.²² The obvious interpretive task is thus to understand how individual autonomy and collective flourishing function together in the justification of the state.

2.1 Happiness and Political Transformation: An Interpretive Puzzle

There are some initially plausible reasons to hold that the passages concerning happiness are out of sync with the conceptual aims of the contract itself. Social Autonomy’s distinction between Rousseau’s autonomy-based account of legitimacy and his happiness-based account of stability might thus be read as charitable reconstruction aimed at elucidating the underlying structure of Rousseau’s argument. In this section I consider this possibility and argue against it.

To better appreciate why there might *appear* to be a conflict between happiness and autonomy, we must examine in some detail Rousseau’s conception of political freedom and its relation to obligation. In the *Social Contract* Rousseau locates the source of political obligation in the free commitment of individual wills. He assumes that the parties to the contract have (a) an interest in independence and (b) the capacity for instrumental reason.²³ Condition (a) is an interest in not being subject to the will of another. During the precontractual stage this manifests itself as a desire for self-sufficiency, where self-sufficiency can be understood as a life that is

²⁰GM, 159.

²¹SC, 1.8.1.

²²For this reading see Sergio Cotta, “La position du problème de la politique chez Rousseau,” in *Études sur le Contrat Social de Jean-Jacques Rousseau* (Dijon: L’Université de Dijon, 1964); Robert Derathé, “L’homme selon Rousseau,” in *Études sur le Contrat Social de Jean-Jacques Rousseau*; and Emile Durkheim, *Montesquieu and Rousseau: Forerunners of Sociology* (Ann Arbor: University of Michigan Press, 1960).

²³One might add (c) an interest in maintaining their goods. But Rousseau’s views on property, or as he calls it *domaine Réel*, and its relation to the state are extraordinarily complex and need not detain us here. For our purposes the interest in holding on to one’s goods can be folded into an interest in independence.

essentially noncooperative (albeit also nonhostile). Condition (b) assumes that the precontractual parties can figure out what is required to meet their own basic needs in such a way as to minimize dependence on other wills.²⁴ As I suggested above, the essential claim of Rousseau's political philosophy is that under circumstances of necessary social cooperation or interdependence condition (a) must take the form of freedom as self-subjection to universal law. Let us call this condition (a₁). Rousseau often treats (a) as constituting man's essential *independence*,²⁵ and (a₁) as his *freedom*.²⁶

Rousseau argues that under circumstances of necessary social dependence, and the concomitant threat of the loss of independence, the contracting parties will agree to a form of political organization in which authority is based solely on the consent of each individual to be ruled by all. But if the danger is that social conditions have created a situation in which the capacity of each individual to remain master of his own forces is under threat, how can it be a solution for each to give them up entirely? Wouldn't it be better to retain the little one has left so as to fortify oneself in the war of all against all?

Rousseau's answer to these questions is as follows: since the goal is to retain the individual's nondependence on the will of another under circumstances of necessary (inter)dependence, the freedom-engendering dependence produced by the creation of a collective ruling body must be different in kind from the freedom-threatening dependence that set the need for political society in motion. By way of a first pass on an elusive concept, let us say that the capacity to govern oneself by a conception of rational, reciprocal, and freedom-engendering dependence is what it means for an individual to have or participate in the general will.

If it is conditions (a) and (b) that have led us to erect the power of the state, this power is legitimate only insofar as it does not express the arbitrary dependence of any individual will on the will of another (or group of others). As we have already seen, collective power can thus only take the form of law, a mode of authority which is nonarbitrary because impersonal.²⁷ In short, the way to remain independent under circumstances of necessary dependence is to be ruled by self-willed, universal laws: to move from independence to genuine freedom.

We now have the resources to see why, elegant as this argument may be, it gives rise to a textual and philosophical puzzle. Given all that has been said thus far, the institution of freedom as law seems to be nothing more than a

²⁴SC, 1.2.2. See also *DPE*, 9.

²⁵For example, see SC, 1.2.1, 1.4.7, 2.4.10, and *passim*.

²⁶For example, see SC, 1.8.3. This conceptual distinction does not track Rousseau's actual usage of *liberté* and *indépendance*. At times *liberté* simply characterizes the core idea of nonsubjection to the will of another, and so is neutral between freedom as self-sufficiency and freedom as autonomy (e.g., *Emile*, 84). Frederick Neuhausser's "Freedom, Dependence, and the General Will" in *Foundations*, 55–81, offers a helpful account of the distinction between independence and freedom.

²⁷For example, see SC, 1.7, 2.6; *DPE*, 9–10.

solution to a problem of aggregated individual self-interest.²⁸ That is, the general will looks like an instrument that enables each individual to satisfy his own interest in maintaining independence under unavoidable circumstances of cooperation. But as Rousseau notes in the *Discourse on Inequality*, even prepolitical man had a way to manage the problem of independence within situations of social dependence. He could join in coordinative tasks when needed (e.g., hunting in groups if the only available animals were hard to kill on one's own), while avoiding situations that render him enduringly dependent on others (e.g., organizing lasting hunting associations with relations of rank). In other words, natural man's bare capacity for instrumental or prudential reasoning (condition b) could have led him to appreciate the necessity of a minimal sociality.²⁹ One might then reason as follows: now that circumstances have changed, that is, now that meeting the material conditions of life is a task so complex that the only way to survive is to form durable forms of association, the very same capacity for instrumental reasoning could lead agents to realize that they have no choice but to be subject to the laws that are the premise of this association. But if this is all that grounds the social contract, then there is no order of collectively realized freedom, let alone a communal sense of happiness, only an aggregation of essentially self-interested reasons for signing on to the rule of law.

Yet this picture is not in keeping with what Rousseau says about the significance of the contract. He writes:

This transition [*passage*] from the state of nature to the civil state produces a most remarkable change in man by substituting justice for instinct in his conduct, and endowing his actions with the morality they previously lacked. Only then, when the voice of duty succeeds physical impulsion and right [*droit*] succeeds appetite, does man, who until then had looked only to himself, see himself forced to act on other principles, and to consult his reason before listening to his inclinations.³⁰

Importantly, it is only *after* describing this transformation that Rousseau begins to speak of the collective happiness of life in the just polity, whereby

public business takes precedence over private business in the minds of Citizens ... because, since the sum of the common happiness contributes a greater share to each individual's happiness, he needs to seek less of it in his personal pursuits.³¹

²⁸Cf. David Gauthier, "The Social Contract as Ideology," *Philosophy and Public Affairs* 6 (1977): 130–64. Gauthier argues that in principle this is all the social contract could possibly be. See also John Charvet, "Rousseau, the Problem of Sovereignty, and the Limits of Political Obligation," in *Rousseau and Liberty*, ed. Robert Wolker (New York: St. Martin's, 1995), 148–49.

²⁹*DOI*, 163.

³⁰*SC*, 1.8.1 and *OC*, 3:364.

³¹*SC*, 3.15.3.

Putting these two passages together, we are faced with two interrelated questions: (1) If the point of the contract is simply to preserve the individual's interest in remaining free from dependence on others, why should the possibility that the state realizes collective happiness bear any rational weight in the individual's decision to endorse its coercive power? (2) If the contract is merely an outcome of rational prudence, why do individuals require such a wholesale transformation in their motivational makeup in order to fully accept it?³² Why do we need to be *transformed* in order to conform to our own long-term prudential self-interest?

The following two interpretive commitments make it very hard to see how either of these questions could be coherently answered:

- (1) Qua rational, the parties to the contract seek to satisfy their fundamental interests.
- (2) The *only* purpose and result of the contract is to secure for each individual the protection of the fundamental interests that he had prior to the contract.

If we accept both 1 and 2, it would have been more perspicuous for Rousseau to discuss political life as a move from short- to long-term prudence (rather than to justice or duty), and from individual independence to shared security (rather than to self-legislative freedom and collective happiness). In sum, the puzzle concerns why Rousseau seems to think that an association aimed at protecting my own interest in independence demands that I become a being who wills the common good for its own sake and not simply for the protections it affords me as an individual.

2.2 Social Autonomy's Solution to the Puzzle

Of all the adherents of Social Autonomy, Neuhausser most clearly acknowledges the way in which, given the two interpretive commitments just outlined above, the coherence of Rousseau's suggestion that political life must be fundamentally transformative becomes deeply suspect. Neuhausser writes:

It is no minor distance that separates the inhabitants from the state of nature, who aim only at their own particular good, from beings who consistently will the common good because they recognize that their own fundamental interests are best served by doing so. ... Yet this subjective change, however substantial, falls short of the radical alteration Rousseau thinks is required if natural *men* ... are to be transformed into *citizens*. For the latter ... regard the good of the political community as

³²For the language of rational prudence see Viroli, *Well-Ordered Society*, 130.

logically prior to their own, willing it for its own sake and not merely as a means to satisfying interests they have as individuals.³³

An astute reader, Neuhausser notices the connection between Rousseau's discussions of transformation, whereby we come to understand reasons of the common good as overriding reasons of private interest, and the *Social Contract's* remarks on happiness, writing that the theme of transformation is "implied by Rousseau's talk of 'shared felicity.'"³⁴

Neuhausser and other adherents of Social Autonomy attempt to solve this interpretive puzzle by claiming that Rousseau's remarks on happiness elide the difference between two domains of inquiry that ought to be kept distinct. The first set of concerns pertains to the content and normative basis of the requirements enjoined by a society that protects the freedom of each contracting agent (i.e., legitimacy). The second set of concerns pertains to the psychological and educational measures needed to ensure that agents regulate their own behavior in light of these requirements (i.e., stability). By separating out "conditions of the stability of a legitimate order" from "the conception of legitimacy itself," Social Autonomy locates collective happiness on the side of the "affective bond" citizens must have toward one another and not on the side of the rational justification of political principles.³⁵

According to Social Autonomy, Rousseau's view is that although the general will exists simply to secure individual rights, individuals can only appreciate the general will as anything other than an alien imposition on their private wills if they attribute to other political agents intrinsic rather than instrumental value.³⁶ This is a complicated point and so should be stated with care. Both Neuhausser and Cohen adamantly deny that their interpretation reduces to one in which Rousseau thinks that the general will has only the instrumental value of securing one's rights.³⁷ By contrast, their claim is that through the general will individuals come to see that the only way for their own rights to be protected is to afford other political agents equal intrinsic value and thus to see the general will as itself expressive of freedom. The claim seems to be that there is an instrumental, individualistic reason to arrive at a noninstrumental conception of others. Nevertheless, any more robust sense of community, such as one in which I understand the civic project as intrinsically valuable precisely because it is pursued with others,

³³Neuhausser, *Foundations*, 190–91 (emphasis in original).

³⁴*Ibid.*, 320.

³⁵The first two quotations are from Cohen, *Free Community*, 57, the second from Neuhausser, *Foundations*, 192. Neuhausser goes on to argue that the constitution of a political community is a merely accidental good, because "a concern for the fundamental interests of individuals as such is itself *sufficient* to generate a complete account of the ends of the rational state." See Neuhausser, *Foundations*, 196 (emphasis in original).

³⁶See also Stilz, *Liberal Loyalty*, 132.

³⁷Neuhausser, *Foundations*, 189; Cohen, *Free Community*, 88–94.

merely functions as a reminder of our need to overcome psychological alienation from the state and its laws so as to motivate ourselves to obey it. Against Social Autonomy, in the next sections I argue that the role of happiness in Rousseau's political theory is not merely a reminder about stability, a simple concession to the realities of human nature. Rather, happiness is central rather than peripheral to the "conception of legitimacy itself."

2.3 The Justificatory Role of Happiness

To put pressure on Social Autonomy's claim that one can distinguish normative legitimacy from psychological motivation or stability, let us look to the opening paragraph of the *Social Contract*. Here, Rousseau indicates that the work will provide an account of the just polity that closely connects formal legitimacy with motivational possibility. In seeking to "combine [*allier*] what right permits with what interest prescribes,"³⁸ Rousseau suggests that no abstract political principle can be legitimate if it is impossible to imagine human beings with a psychological makeup roughly like our own obeying such a norm. Of course, to take "men as they are, and the laws as they can be"³⁹ implies neither that human nature is static nor that a practical norm can never enjoin us to alter some aspect of our nature. Rousseau clearly denies both claims. Against the first consider statements such as "we do not yet know what our nature permits us to be,"⁴⁰ which can be read as an extension of the *Second Discourse's* doctrine of man's "perfectibility." Against the second, recall Rousseau's claim, discussed above, that the demands of political life transform our nature from a "stupid and bounded animal" into "an intelligent being and a man."⁴¹ Nevertheless, "combining" right with interest does entail that political norms cannot float entirely free from human nature, however provisional or revisable our understanding of that nature may be. Thus, in ascertaining whether any set of fundamental political norms is worthy of our rational allegiance we must simultaneously engage two questions: (1) Do these norms solve the "fundamental problem" for which political life is needed (roughly: necessary cooperation without dependence on the will of another)? (2) Are the norms that claim to solve the fundamental problem consonant with human nature and motivational possibility?⁴²

³⁸SC, 1.1.1; OC, 3:351.

³⁹SC, 1.1.1.

⁴⁰E, 62.

⁴¹SC, 1.8.1.

⁴²Rousseau articulates an ethical aspiration as old as Plato, the possibility of what Rawls has called "congruence" between justice and the human good. See John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 567–77.

There is simply no place in Rousseau's political thought for a "pure ought" that binds independently of our motivational makeup. For further supporting evidence of this claim, consider Rousseau's argument that although one may be able to imagine "a universal justice emanating from reason alone," such justice is not binding because it is motivationally inert; without an account of the reasons for following such abstract norms that make reference to our psychological tendencies, universal justice cannot "be admitted among us."⁴³ Similarly, in the *Geneva Manuscript* Rousseau argues that it is rational to prefer the constraints of political society to the unhindered pursuit of self-interest only if political society secures "the sweet harmony of justice and happiness."⁴⁴

Moving from the political to the moral writings, Rousseau's *Emile* also tightly anchors what makes obligation legitimate to how obligation might answer to our natural motivational psychology. *Emile* is an extended meditation on what a morally free life *ought* to look like that proceeds by way of a painstaking attempt to show that such a life would be psychologically enriching and motivationally plausible for the individual living it.⁴⁵ This is why in order to vindicate the demands of duty the tutor must show Emile his "true interest in being good," an interest that is only secured when the young adult appreciates "the enjoyment of that durable happiness" brought about by the "repose of a good conscience."⁴⁶ If obligations are derived from freedom in the manner outlined in section 2.1, then surely Rousseau means to show the interdependence of freedom-based principles of legitimacy and happiness-based principles of motivation when he argues that the key to being free, i.e., to "remaining masters of ourselves," and thus to being genuinely obligated, is "to make ourselves happy in practicing our duties."⁴⁷

For a reading of Rousseau as advocating a Platonic picture of moral justification see Salkever, "Rousseau and the Concept of Happiness."

⁴³SC, 2.6.2.

⁴⁴GM, 162.

⁴⁵As St. Preux puts it in *Julie*, this is why in vindicating the virtuous life one ought to give "no other definition of virtues than a tableau of virtuous people" (*J*, 48). Judith Shklar is thus correct to foreground the centrality of Rousseau's moral psychology to his account of the foundations of moral authority. Shklar writes that Rousseau's moral arguments ground any possible constellation of duties in "generally shared psychic proclivities," or "psychic needs." See Shklar, *Men and Citizens: A Study of Rousseau's Social Theory* (Cambridge: Cambridge University Press, 1985), 58 and 5. Similarly, Timothy O'Hagan writes, "Rousseau, unlike Kant, is not concerned to keep ethical questions about our duties strictly quarantined from psychological questions about drives of the heart." See O'Hagan, *Rousseau* (New York: Routledge, 1999), 31.

⁴⁶E, 314.

⁴⁷E, 293.

From this brief comparison of *Emile* and the *Social Contract*, we can conclude that in both the moral and political cases, obligations are justified by demonstrating that for each agent it can be shown to the agent that adhering to one's obligations conforms to one's nature and so conduces to happiness. Although I do not have space here to enter into interpretive debate on the continuity between the moral and political writings, this at least suggests that there is no fundamental difference in these two texts' metaethical orientation. Whether or not the ideals of man and citizen are fully compatible or irreconcilably opposed, both ideals are articulated around the same ethical goal: securing a unity of freedom and happiness.⁴⁸

2.4 Happiness as a Moralized Concept

We have established that happiness plays a role in the justification of obligation. This should lead us to cast doubt on Social Autonomy's way of solving the puzzle by distinguishing freedom-based legitimacy from happiness-based motivation. But leaving Social Autonomy aside, in order to grasp the relation between these ideals we must understand better the nature of Rousseauian happiness. Specifically, we must ask whether Rousseau has a moralized conception of happiness as the expression and development of powers and relations *proper* to or fitting for man. Or is happiness a morally neutral psychological state having to do with pleasure or feelings of psychic harmony? Ascertaining which of these possibilities is correct is clearly crucial for comprehending how Rousseau justifies the state by showing a mutually constitutive relationship between autonomy and happiness. Although whether or not Rousseau has a unified conception of happiness across his major texts is clearly a subject for another paper, in this section I argue that in both *Emile* and the *Social Contract* there is a core notion of happiness that is clearly moral. Moreover, it is this moral conception of happiness that plays a role in the justification of moral and political obligation.

To make this case, consider first the following passage from the Savoyard Vicar's "Profession of Faith": "If moral goodness is in conformity with our nature, man could be healthy of spirit or well constituted only to the extent

⁴⁸It is worth noting that just as *Emile* must learn the doctrine of the social contract in order to become a subject who can be happy in practicing his duties, so also Rousseau complains that a leader who does not prepare the people to see the laws as an expression of their collective customs is like a French tutor who fails to properly raise his child (SC, 2.9.3). Hints like this make it no surprise that Rousseau suggests in his correspondence that *E* and *SC* "together make a single whole" (letter to Duschesne, May 23, 1762, cited in Roger Masters, *The Political Philosophy of Rousseau* [Princeton: Princeton University Press, 1968], xiii).

that he is good."⁴⁹ Although the Vicar does not use the specific term "happiness," here he clearly conceives of human flourishing as a concept involving objective assessments of moral goodness.⁵⁰ A few pages earlier the Vicar suggests that God writes the words "Be just and you will be happy" into the soul of all morally upstanding people.⁵¹ Or consider the following complex statement: "if man were made to do harm to his kind ... a humane man would be an animal as depraved as a pitying wolf, and only virtue would leave us with remorse."⁵² In other words, if "humane," i.e., virtuous, behavior with respect to others expresses a natural human potential, the callous, self-seeking man is as *unnatural* as the "pitying wolf." Thus, if I take my good to be a narrowly egoistic one, I have simply gotten wrong the kind of being that I am and so what it is for me to properly express my essential nature. Although the relation between the Vicar's views and *Emile* as a whole is unresolved, Rousseau puts forth very similar statements in his own voice in the *Moral Letters*. For example, Rousseau writes that he has no interest in promoting the "barbarous happiness that one feels only at the expense of others."⁵³ This clearly indicates

⁴⁹E, 287.

⁵⁰See Salkever, "Rousseau and the Concept of Happiness," 36. As a reviewer for this paper, John Scott remarks that I am insufficiently attentive to fact that the Vicar's statement is expressed in a conditional ("if moral goodness is in conformity with our nature..."). On his reading, Rousseau himself might not endorse congruence between morality and nature. In turn, such a negative reading of the passage might support a "more subjectivist and individualist" (correspondence) understanding of Rousseauian happiness. To this objection I reply that I need not deny that in *some* of his many moods Rousseau expresses despair over the possibility of a free and happy life lived in community with others. Thankfully, however, this is neither the only nor the most promising strand in his thought. Here, one should productively read Rousseau against Rousseau.

⁵¹E, 282. Rousseau also counts the "happiness of the just" among the dogmas of the civil religion that every citizen must affirm (SC, 4.8.33).

⁵²E, 287. Similarly, in *The State of War*, Rousseau writes that if we were not naturally attuned to our social good, "a sensitive and pitying human being would be a monster" (SW, 164).

⁵³ML, 79. See also ML, 91 and R, 49, where Rousseau writes, "I know and feel that to do good is the truest happiness the human heart can savor." For more on happiness or flourishing as encompassing moral relations see DOI, 187; LD, 16; E, 177, 288; J, 185, 433; ML, 79, 99; and PF, 40–42. One might think that the *Reveries* clearly supports a private conception of happiness, since in that text Rousseau is trying to understand how best to live in withdrawal from a corrupt and depraved society that has actively shunned him. Although I do not have the space here to enter into a discussion of this enigmatic text, I think it is quite clear that Rousseau portrays the highly individual form of happiness available to him as second best. For example, he writes, "As long as men were my brothers, I made plans of earthly felicity for myself. These plans always being relative to the whole, I could be happy only through public felicity; and the idea of private happiness never touched my heart until I saw my brothers seeking theirs only in my misery" (R, 61) (emphasis mine).

that he does not conceive of happiness in narrowly egoistic terms, or as mere pleasure through preference satisfaction.⁵⁴

My claim that happiness is a moral concept might appear to cut against certain passages from *Emile* which suggest instead that it is a formal concept having to do with felt harmony between one's desires and faculties. For example, Rousseau writes:

In what, then, consists ... the road of true happiness? It is not precisely in diminishing our desires, for if they were beneath our power, a part of our faculties would remain idle, and we would not enjoy [*jouirions*] our whole being. Neither is it in extending our faculties, for if, proportionate to them, our desires were more extended, we would as a result only become more miserable. But it is in diminishing the excess of the desires over the faculties and putting power and will in perfect equality. It is only then that, with all the powers in action, the soul will nevertheless remain peaceful and that man will be well ordered.⁵⁵

Taken out of the larger context of the work, the claim that what is at issue for happiness is the capacity to "enjoy" one's whole being might give the impression that happiness is to be located in the subject's feelings about himself. But interpreting Rousseau as suggesting that one will be happy just so long as one can achieve whatever it is that one wants and one wants only what one can achieve cuts against his concern for flourishing through moral goodness, as well as against his disgust at "barbarous happiness." It is therefore more consonant with the project of *Emile* as a whole to think that it is only problematic that our "faculties ... remain idle" if those are faculties which we *ought* to have, i.e., which properly express our nature. It would, for example, not be a problem if happiness failed to adequately express our capacity to aggrandize ourselves "at the expense of others,"⁵⁶ or to be "callous [and] self-seeking."⁵⁷

At the same time, this passage's discussion of desire and enjoyment clearly suggests that even though one is only truly happy when one is moral, happiness also has an importantly subjective component. For Rousseau human flourishing is not defined solely in terms of what befits a man as such, independently of his attitudes and feelings. Rather, happiness is dynamic accordance between what one *can* do and what one *wants* to do, where what one can do refers not to what one as a matter of fact tends to do, but to essential human faculties (i.e., to what is in one's nature to do), and where what one wants refers both to subjective states and to a normative conception of the

⁵⁴Salkever makes the helpful comment that "a central feature of Rousseau's moral analysis" is "to show that happiness and pleasure are separate psychic phenomena" ("*Rousseau and the Concept of Happiness*," 34).

⁵⁵*E*, 80; *OC*, 4:304 (translation modified).

⁵⁶*ML*, 79.

⁵⁷*E*, 387.

person (i.e., to what one ought to want). We cannot be happy if we set the bar of our aspirations so low that our projects and plans do not express all that we could be, but at the same time we cannot be happy if our aspirations are so high that struggling to live out our best nature is affectively unsatisfying. Expressing our natural faculties could not be happiness if we took no pleasure in doing so.

Even if one accepts my claim that both the moral and political writings share the same metaethical view, according to which a practical norm is justified only if it both expresses our freedom and conduces to our happiness, one might still think that the conception of happiness differs in the two cases. Perhaps a moralized conception of happiness pertains only to the moral life, with its universalistic demands to treat all people a certain way, whereas in political life individuals are fundamentally aiming at their own interests, and thus at what makes them happy independently of how this bears on other people? But even in the political writings a moralized conception of happiness is in play. For example, in the passage on the transformation of man into citizen discussed above, coming to stand in rights-based community with others is described as “the happy moment” which “wrested” man from the state of nature.⁵⁸

In this section I have shown that in both the moral and political domains Rousseau’s understanding of happiness represents human nature as a set of moral powers or capacities that can be properly enabled or improperly inhibited.⁵⁹ Rousseau is thus clearly operating with a picture of human flourishing quite far from modern subjectivist accounts of happiness as mere pleasure or preference satisfaction and closer to ancient accounts of *eudaimonia*.

Having gathered evidence from Rousseau’s texts to show why one should reject Social Autonomy’s bifurcation of normative legitimacy and psychological motivation, in the next section I return to the puzzle discussed in 2.1 and 2.2. My aim is to more adequately account for Rousseau’s remarks on the transformative character of the state and the justificatory role of collective happiness. My strategy is to give up what I called the second interpretive commitment: the claim that the *only* purpose and result of the contract is to secure for each individual the protection of his fundamental interests.

3.1 The Lawgiver: Taking Transformation Seriously

Rousseau’s discussion of the lawgiver is difficult to square with Social Autonomy’s basic interpretive vision. Explaining the necessity of this

⁵⁸SC, 1.8.1.

⁵⁹Cf. “Rousseau’s formal conception of happiness ... does not specify what one needs to do in order to be happy, it says that, whatever one chooses to do, it must be done with one’s whole body, heart, mind, and soul” (Reisert, *Friend of Virtue*, 115).

otherworldly figure who sets in motion the possibility of a just society, Rousseau writes:

Each individual, appreciating no other scheme of government than that which bears directly on his particular interest, has difficulty perceiving the advantages he is supposed to derive from the constant privations required by good laws. For a nascent people to be capable of appreciating sound maxims of politics and of following the fundamental rules of reason of State, the effect would have to become the cause, the social spirit which is the work of the institution would have to preside over the institution itself, and men would have to be prior to laws what they ought to become by means of them.⁶⁰

If the Rousseauian state aims only at the protection of individuals' fundamental interests, it is unclear why such individuals would need to be transformed to the extent suggested in this passage. In accounting for the role of the law-giver, all Social Autonomy can offer is that Rousseau means to indicate that the demands of regulating one's actions by the rule of law—even laws explicitly designed to protect one's own (and everyone else's) fundamental interests—are so at odds with our natural tendencies to self-interest that as a matter of descriptive fact legal authority can only function if individuals acquire strong civic attachments.

This reading sits uneasily with the fact that earlier in the text Rousseau had already discussed rule by the general will as grounded in each individual's concern for his own fundamental interests.⁶¹ Rule by the general will was said to provide "an admirable agreement between interest and justice."⁶² This indicates that if the general will is properly set up so as to display norms of reciprocity, individuals would not have much difficulty perceiving how the sacrifices of political life "bear directly on [their] particular interests."

Either Rousseau is conceptually confused, sometimes arguing that rational prudence is all that is needed to appreciate the requirements of political obligation, at other times arguing that we will be blind to those requirements without strong civic attachments, or in this passage he is referring to a set of "advantages" that demand of the individual a greater degree of civic engagement than the simple recognition that he can only satisfy his interest in freedom if he affords others equal standing. If one wishes for a consistent Rousseau—surely a wise interpretive orientation for a text as intricate as the *Social Contract*—it becomes highly doubtful that the text aims only at "the idea of according equal consideration to the individual members of the political society, each of whom is assumed to take an interest in advancing his/her own interests," and not *also* to any more "substantive idea of the common good."⁶³

⁶⁰SC, 2.7.9.

⁶¹SC, 2.4.5.

⁶²SC, 2.4.7.

⁶³Cohen, *Free Community*, 42.

In the next two sections I explore the possibility that the “constant privations required by good laws” entail a form of political organization that is aimed at something more than the protection of each individual’s fundamental interests.⁶⁴ This would explain why prior to their political transformation individuals would have such difficulty “appreciating” such a scheme. In a condition in which “public business takes precedence over private business in the minds of citizens,”⁶⁵ citizens are such that their happiness is deeply shared and communal, not merely expressed by the satisfaction of their own fundamental interests. The institution of an order of right that protects these fundamental interests is but a steppingstone to a more robustly solidaristic conception of civic life. Recall that in 2.1 we asked, if the contract is merely an outcome of rational prudence, why do individuals require such a wholesale transformation in their motivational makeup in order to fully accept it? The answer my interpretation provides is simple: we need a wholesale transformation to accept the contract because it demands more of us than rational prudence.⁶⁶

On this interpretation, what emerges from juxtaposing Rousseau’s account of the basic problem and solution of political life with his account of the lawgiver and political transformation are two distinct sets of obligations. First, there is the legally coercible obligation to respect the fundamental interests of one’s fellow citizens. Second, there is an obligation—most likely a weaker, noncoercible obligation—to become the sort of person who conceives of his happiness as located in the happiness of the whole.⁶⁷ As my formulation suggests, this obligation has a psychological and characterological component, but it also has an institutional one as well. It is an injunction not just to take an affirmative attitude towards the political community but also to participate in institutions and activities that express a common bond and so justify that affirmative attitude.

But the mere fact that this obligation has a psychological component does not thereby render it simply a matter of motivation or stability, external to the issue of the state’s legitimacy. As Rousseau makes abundantly clear

⁶⁴After all, the passage just cited does not say that individuals cannot appreciate that the institution of the state addresses their antecedent interests. Rather, it says exactly the opposite. What these individuals cannot see is the necessity to undergo the privation of the laws for the sake of some larger social spirit.

⁶⁵SC, 3.15.3.

⁶⁶Whether or not it answers the first question I raised in that section, how considerations of collective happiness can exert any *ex ante* motivational pull on the contracting parties, is a topic I cannot pursue here.

⁶⁷To appreciate that this second form of obligation is most likely noncoercible one needs to consider yet another figure not discussed by Social Autonomy: the censor. The job of the censorship is to police affective attachment to the law by regulating judgments of honor. While this certainly removes the Rousseauian state from traditional liberalism, Rousseau does not discuss the regulation of honor as coercible.

throughout his political writings, a political community in which individuals merely follow the laws without an emotional attachment to the social good is not truly legitimate. For example, he writes: “the mainspring of public authority is in the hearts of its citizens,”⁶⁸ and “when the social bond is broken in all hearts ... the general will grows mute.”⁶⁹ So the state is legitimate insofar as it satisfies both my rational considerations of its legitimacy and my affective attachment to it.⁷⁰

3.2 Compact and Contract

What exactly is the content and ground of this more robustly civic obligation? Some indication of Rousseau’s views can be gleaned by attending to the conceptual contrast between the social *compact*, what Rousseau calls “the social pact,”⁷¹ and a social *contract*. Although Rousseau does not always articulate this distinction with the requisite terminological or conceptual clarity, in this section I argue that it is key to understanding his account of the state’s legitimacy as well as the scope and basis of our civic obligations.

Here is a first pass at glossing this distinction: the *compact* elucidates minimal norms of noninterference for a plurality of rational wills. It does so by establishing the freedom and equality of each, and so also the protection of fundamental liberties. The *contract*, however, is aimed at incorporating these boundary-setting or regulatory norms into a broader framework of a flourishing community. Through the contract the individual constitutes himself as a being who can only realize himself when viewed as a partner in the cooperative enterprise of determining the common good.⁷²

⁶⁸DPE, 13.

⁶⁹SC, 4.1.5.

⁷⁰For the role that both considerations play in the state’s legitimacy see Michael Sonenscher, “Sociability, Perfectibility, and the Intellectual Legacy of Jean-Jacques Rousseau,” *History of European Ideas* 41, no. 5 (2015): 1–16, as well as Arash Abizadeh, “Banishing the Particular: Rousseau on Rhetoric, *Patrie*, and the Passions,” *Political Theory* 29, no. 4 (2001): 556–82.

⁷¹SC, 4.2.5.

⁷²For other versions of this distinction see Andrew Levine, *The Politics of Autonomy: A Kantian Reading of the Social Contract* (Amherst: University of Massachusetts Press, 1976), 35; Hilail Gildin, *Rousseau’s “Social Contract”: The Design of the Argument* (Chicago: University of Chicago Press, 1983), 28; Samuel Freeman, “Reason and Agreement in Social Contract Views,” in *Justice and the Social Contract* (Oxford: Oxford University Press, 2009), 33; Neuhouser, *Rousseau’s Theodicy*, 206–8; Anthony Laden, *Reasonably Radical: Deliberative Liberalism and the Politics of Identity* (Ithaca, NY: Cornell University Press, 2001), 34–35; Louis Althusser, *Politics and History: Montesquieu, Rousseau, Marx*, trans. Ben Brewster (New York: Verso, 2007), 131; Rawls, *Lectures*, 216; and Melissa Schwartzberg, “Voting the General Will: Rousseau on Decision Rules,” *Political Theory* 36, no. 3 (2008): 406–9.

Before discussing the distinction in more detail, we must first establish why Rousseau needs it. Consider the following conceptual problem that Rousseau's theory must address: why should the minority be bound by the decisions of the majority? Clearly, to answer that majority rule should decide on the legitimacy of majority rule is question begging. Similarly, when there is disagreement as to what the community should do, what determines that those who disagree with the majority are still part of the community? What is the difference between citizens who disagree and those who are excluded from the community by that very disagreement? The key to answering these questions is to distinguish a fundamental basic agreement, one that constitutes any political community as a community, from specific agreements made by that community. This foundational agreement is conceptually prior to decision to be bound by majority rule, and it ensures that all who adhere to the conceptually prior agreement are still part of the community, even if they subsequently dissent regarding its particular decisions.

The social compact is the name for the prior, unanimous agreement to be bound by majority rule. As Rousseau writes, "there is only one law which by its nature requires unanimous consent. That is the social pact."⁷³ The compact assumes rational individuals with an interest in protecting their own freedom. And what it establishes is a transcendental presupposition—"never ... formally stated, [but] everywhere the same, everywhere tacitly admitted and recognized"⁷⁴—about what must be the case for such individuals to live together in a way that preserves the independence of each: namely, that each must agree to rule by law. But this amounts only to a formal principle of legitimacy. It shows that *if* there is to be legitimate authority, it must express itself in a form that applies to all and is from all.⁷⁵ As Rousseau puts it, as "the most primitive act of confederation," the compact establishes the "formal unity" of the political body;⁷⁶ it makes clear that the equality presupposed by any order of right is dependent on the consent of all as the basis for legitimacy.⁷⁷ The compact is thus the foundational act that institutes the very idea of a "people" as a collective agent that can subsequently be instantiated or expressed in particular legal decisions,⁷⁸ and it also ensures that the collective figure of the "people" does not efface each individual voice. It does so by establishing basic protections that cannot be revoked through democratic decision-making.

Since each individual is contracting (or, more accurately, "compacting") in order to meet his essentially self-interested needs under conditions of extreme instability, uncertainty, and generalized precariousness regarding how his

⁷³SC, 4.2.5.

⁷⁴SC, 1.6.5.

⁷⁵SC, 2.6, 4.2.5; DOI, 180.

⁷⁶GM, 163–64; see also SC, 2.6.1.

⁷⁷For example, see SC, 2.4.8, 4.2.5.

⁷⁸For example, see SC, 1.5.2.

natural strength stacks up against others, it is rational for him to compact into the cooperative scheme only if the terms of such association are not based on knowledge of strength differentials. As Rousseau writes, the general will “substitutes a moral and legitimate equality for whatever physical inequality nature may have placed between men.”⁷⁹ In introducing the idea of the rationality of binding oneself to norms of cooperation constructed in ignorance of one’s antecedent bargaining advantage, the compact lays the groundwork for what will eventually become the concern for living in a community of shared ends. But by itself it simply enjoins an individual to respect the basic rights of others. Under the compact an individual is represented simply as having an essential interest in not being dominated, an interest which can only be secured by affording to all others equal standing.

We have certainly moved some distance from the *Second Discourse’s* discussion of natural man’s quasi-“obligation” to his hunting association, in that what is demanded of the compacting individual is that he reason about what he ought to do not knowing whether he is physically weak on his own (and so has little reason to defect), or if he is strong and agile and so likely to be dragged down by the group. A hypothetical hunting association made up of compactors would govern itself by norms of protection, coordination, and desert that make no reference to the particularity of each member. Yet while a member of such an association might come to regard other members of the group as equal, and so see his own defection as in some sense wronging those others, it is not the group per se that is valuable. Rather, the value of the group can be analytically decomposed into the value of the goods that it confers on each individual (in this case, food). Moving from these primitive forms of association back to the concerns of the *Social Contract*, the compactor sees norms of equality as the expression of his own freedom, but he does not yet understand membership in a political community of free equals to be an intrinsically valuable good.

This is why, in accounting for Rousseau’s complete picture of the state, the social compact needs to be completed by the social contract.⁸⁰ While the compact models the kind of reasoning that secures the basic, formal principle of legitimacy, the contract models the forms of reason-governed commitment to one’s fellow man that follow from the instantiation of this formal principle into the actual life of the political community. Through the contract we both make determinate decisions and come to see the collective nature of that decision making as in itself valuable. In the first moment the “social pact” (i.e., the compact) institutes the bare form of the “body politic,” which has

⁷⁹SC, 1.9.8. See here the helpful discussion of this point in Jon Mandle, “Rousseauian Constructivism,” *Journal of the History of Philosophy* 35, no. 4 (1997): 553.

⁸⁰This need not entail that a well-ordered society mandate an actual contract whereby individuals swear their allegiance to the state. Although in certain cases this is exactly what Rousseau recommends (e.g., PCC, 138).

“absolute power over all of its members.”⁸¹ In the second moment this abstract power is channeled through the contract, materializing as a concrete figure of sovereignty directed by the community’s general will.⁸²

By attending to the compact/contract distinction, we can now better appreciate the *Social Contract’s* way of fleshing out the interdependence of the ideals of autonomy and flourishing. The first component of obligation, instituted by the social compact, simply follows from consideration of a plurality of rational wills, free qua independent and interacting under conditions of interdependence. And what it establishes is largely negative: that everyone ought to abide by laws that mandate equal treatment because doing so is the only way to preserve one’s own civil freedom. But, in turn, the contract brings about a more robust, positive attachment to one’s fellow citizens. Here one’s duty is not simply to obey the laws. Rather, it is to foster the polity as a shared end. The specific content of this obligation will involve a variety of solidaristic projects undertaken with one’s fellow citizens. Rousseau gives the example of taking part in communal assemblies, but one might broaden this to include any project aimed at uniting the citizenry and overcoming the forces of political fragmentation. As a contractor and not a compactor, the citizen ought to obey the laws not just because it protects his own liberty, but also because it realizes irreducibly social goods.

Understanding Rousseau’s account of the state’s legitimacy through the compact/contract distinction leads to very different results from Social Autonomy. Recall that Social Autonomy argues that for Rousseau the state is legitimate because it renders it rational for each individual to grant that all other individuals are equal, independent sources of value and are thus owed the same legal rights-protections. Any more robust forms of political attachment pertain only to the affective bonds needed to sustain that appreciation. By contrast, on my account, the results of the compact refer to benefits that devolve only on the individual. The appreciation of the independent value of community emerges through the contract and its formation of solidaristic bonds. This is why for Rousseau abstract principles of political right must always be expressed through patriotic attachment to a determinate community. It is thus no accident that Rousseau’s writings on how to institute a legitimate political community are filled with advice like the following: “Every people has, or ought to have, a national character, and if it lacks one it would be necessary to begin by giving it one.”⁸³

⁸¹For example, see *SC*, 2.4.1.

⁸²These two stages should not be understood temporally but rather as two distinct conceptual moments of one and the same historical act. However, I do not have space here to argue for this point.

⁸³*PCC*, 133.

3.3 Autonomy and Happiness: Internal Not External

The account of the state's legitimacy that I have attributed to Rousseau raises familiar worries about Rousseau's antiliberalism. For Rousseau, being coerced (or at least heavily incentivized) by the state to act in ways that foster the expression of our shared ends—e.g., being compelled to take part in civic activities—does not count as a threat to freedom but rather as its ultimate realization. So allowing collective happiness into the normative foundations of the state seems to license some well-known and ominous Rousseauian ideas, such as the claim that one can be “forced to be free.”⁸⁴ Although I do not have space to consider whether a more liberal version of Rousseauianism is either possible or desirable, we can at least see how the formal model of justification I have outlined in the preceding sections attempts to address this criticism.

It has turned out from our discussion of the relation between compact and contract that the state must protect individual rights for the sake of the collective flourishing they enable. In this sense, happiness looks primary. But genuine flourishing depends on the protection of the rights of individuals secured through the compact. In this sense, no conception of collective happiness that does not already protect individual rights can be a legitimate end of the state.

If the relation between autonomy and happiness is mutually constitutive rather than instrumental, then the rights of autonomy are not aimed at securing the end of happiness defined in nonmoral terms. Rather, one component of a collectively happy life includes the protection of rights for their own sake. This is very different from a Millian, utilitarian reading of Rousseau, according to which freedom is important because it furthers “the pursuit of truth about how to live well and be happy.”⁸⁵ Such a view treats autonomy as a means to happiness, rather than as an irreducible component in any legitimate conception of happiness.⁸⁶ On Rousseau's ultimate view of the state's legitimacy, the rights it protects have *overriding* (i.e., noninstrumental) value, but this value stems from the way they enable a human life lived in accordance with our collective, political nature.

⁸⁴SC, 1.7.8.

⁸⁵Simpson, *Rousseau's Theory of Freedom*, 56.

⁸⁶Other commentators interested in the connection between freedom and happiness also treat freedom as a means and happiness as the end. See Reisert, *Friend of Virtue*, 121 and Salkever, “Rousseau and the Concept of Happiness,” 28, 37–38. Cooper also misses the difference between valuing morality or rights as a part of happiness and valuing it as a means to happiness. See Cooper, *Rousseau, Nature and the Problem of the Good Life*, 19–29.

4. Conclusion: Freedom as the Human Good

I have shown that Rousseau has a moralized conception of happiness, according to which to flourish is to properly express one's true human nature. As Rousseau writes, one cannot "conceive of ... true happiness ... for any being outside of its constitution."⁸⁷ But throughout his corpus Rousseau also claims that the essence of human nature is freedom. Freedom is sometimes even said to be the primary goal of human happiness (e.g., "the happiness of ... men ... consists in the use of their freedom"),⁸⁸ the central human good (e.g., freedom is the "first of all goods"),⁸⁹ and "that which alone can give life value."⁹⁰ But what exactly is the notion of freedom on offer? As the Savoyard Vicar puts it, to be free is not only to be without "anything external to me determining me," but also to be "able to will only what is suitable to me."⁹¹ To be free is thus to experience a harmony between one's capacities and those desires appropriate to one's nature.

Given such a capacious conception of freedom, the connection I have insisted on between freedom and flourishing might also be described as the unity of freedom viewed under two aspects: as the formal feature of rational self-legislation, that is, obeying no will other than my own, and as the substantive good that informs all valuable components of a flourishing human life. On this broad understanding of freedom, Rousseau's aspiration is to show how we might experience every essential aspect of our human nature in a manner that is free. Rousseau might thus be read as a systematic thinker who tries to show how freedom can come to be expressed in what initially appear to be two distinct values, individual autonomy and collective happiness. In this sense, Rousseau's theory of the state prefigures one of the basic claims of Hegel's freedom-based philosophy of ethical life (*Sittlichkeit*): the universal freedom of the rule of law is empty—a merely formal version of freedom unworthy of serious attachment—unless it generates substantive shared ends around which a collective sense of civic belonging might form.⁹²

Although Rousseau's theory is of great philosophical promise, some urgent questions remain. (1) If Rousseau's claim is that political participation is not merely instrumentally valuable but constitutive of flourishing, aren't we owed a more robust theory of the human good—if not an explicitly teleological account, then at least one that provides a more determinate specification of the essential spheres in which freedom must realize itself, such as Hegel

⁸⁷E, 87.

⁸⁸E, 85.

⁸⁹E, 84.

⁹⁰GM, 172.

⁹¹E, 280.

⁹²Showing this is arguably the central task of the sections of the *Philosophy of Right* devoted to morality and ethical life.

provides? Shouldn't Rousseau show us how ends, activities, and forms of interaction that we think of as valuable are valuable precisely because they realize our essence as free? (2) In order to guarantee the interdependence of freedom and happiness, does the Rousseauian state necessitate that citizens of a well-ordered society adhere to the same "comprehensive doctrine," understood in Rawls's sense as a shared understanding of ultimate values?⁹³ Must all citizens think of political participation as the highest form of the good life, or is it only required that the state provides and protects substate spheres in which citizens can foster various solidaristic relationships?

These are important questions, answers to which await another occasion. What I have sought to do in this paper is to make room for them by unpacking Rousseau's account of the state's legitimacy.

⁹³John Rawls, *Political Liberalism*, expanded ed. (Columbia: Columbia University Press, 2005), 13.