

## **Part 6: Book 2, Chapters 6 & 7**

### Book 2, Chapter 6: Law

**Social compact gives the body politic existence and life; legislation gives it movement and will.**

Now the invisible thing gets movement and will. Just what it needed.

**All justice comes from God but we have no access to it. Natural rights may exist in reason but cannot themselves force the wicked from acting wickedly. Therefore conventions and laws are needed “to join rights to duties and refer justice to its object.”**

Rousseau actually making a decent point here—natural law is not self-enforcing, just like written constitutions are not self-enforcing. Even voluntary contracts are not self-enforcing; typically the parties agree to hire an arbitrator in the case of conflict. Rousseau is wrong that the overpowering force of a totalitarian state is necessary for the mitigation of all conflicts. In fact the assignment of power to people without the consent of the governed is a more dangerous alternative, and has a tendency to create sympathetic rebels.

Joining rights to duties is a common political slogan but doesn't really solve the problem if those combinations are not freely accepted by the people to whom they apply, and if those combinations are chosen arbitrarily to favor certain groups, at the expense of others.

**Under the state of nature, “I owe nothing to him whom I have promised nothing; I recognize as belonging to others only what is of no use to me.”**

Rousseau is half-right. First half is good, but second half is an overstatement. If it were true, then no peace between neighbors could ever be possible. The precise form of property rights is up to neighboring individuals, and is always vulnerable to encroachment from outsiders who aren't part of the agreement or thieves who try to violate property rights while keeping up appearances.

In a natural law society or a voluntary society, the people get to choose how vigorously to defend their property from outsiders and thieves and they are as free as can be to dedicate as much or as little of their resources to that endeavor as they agree.

Rousseau's system, by his own admission in the last part, aims at the end of protecting property while claiming the ability to expropriate whatever means it deems necessary. This is much more susceptible to internal corruption.

**The law consists of “when the whole people decrees for the whole people.” It “considers subjects *en masse* and actions in the abstract.” Anything that aims at the particular is not a law but a decree.**

Rousseau repeats his peculiar definition of law, which must always be converted into decree in order to apply to any individual or group of individuals. Since all applications of law become decrees, the line he is attempting to draw between the two is pretty pointless.

Insofar as he is trying to say that all legitimate laws are fully general, that can be accomplished in other systems if desirable, and he hasn't even proven that it is desirable.

**The law may set up a class structure or a hereditary monarchy, but it does not and cannot say who is in what class or which family shall be the line of kings.**

This seems to be Rousseau's source for distinguishing between "bad" and "good" governments, despite the fact that different peoples demand different structures (in the particulars). Rousseau's differentiation between good and bad seems to merely be a product of his preferences.

**"I therefore give the name 'Republic' to every State that is governed by laws, no matter what the form of its administration may be..." Only Republics are legitimate.**

Locke used the term "commonwealth" because it's a better word for what Rousseau is describing here. Pulling the existing word "Republic" into use this way is inaccurate and seems to me to be simple Plato-worship. It has no place in a theory of political structure.

**Laws are "the conditions of civil association," and ought to be written by the people. However, what gives law-writers "the foresight to formulate and announce its acts in advance?" "How can a blind multitude, which often does not know what it wills, because it so rarely knows what is good for it, carry out for itself so great and difficult an enterprise as a system of legislation?" This is why a legislator is needed.**

Obviously a legislator is needed, but the question is what incentives exist for a legislator based on the rules of a system, how are good legislators to be found, how to mitigate the self-serving incentives of being a legislator, etc.

Book 2, Chapter 7: The Legislator

**The ideal legislator has the ability to see and judge the passions of men but does not experience them. He must be concerned primarily with the happiness of others (the people), and must be farsighted.**

Once again, Rousseau neglects his "man as he is" idea and wanders off into idealism. This is one of the problems when your system has no checks and balances, but still has lots of power—you need angels to dance on the head of that pin.

**Legislator as inventor, contrasted with Prince as mechanic.**

This is all well and good but ignores the possibility and incentives for legislators and executives to team up and get fat at the expense of the people.

**"He who dares to undertake the making of a people's institutions out to feel himself capable, so to speak, of changing human nature, of transforming each individual, who is by himself a complete and solitary whole, into part of a greater whole from which he in a manner receives his life and being; of altering man's constitution for the purpose of strengthening it; and of substituting a partial and moral existence for the physical and independent existence nature has conferred on us all."**

The creepy transformative nature of Rousseau's ideal government—make everyone into a drone at the mercy of the few who actually hold power.

**“take away from man his own resources and give him instead new ones... incapable of being made use of without the help of other men.” “...if each citizen is nothing and can do nothing without the rest, and the resources acquired by the whole are equal or superior to the aggregate of the resources of all the individuals, it may be said that legislation is at the highest possible point of perfection.”**

Now Rousseau wants the State to materially overwhelm all of the citizens. Lots of public property, means lots of bureaucracy and therefore lots of public spending. It's a recipe for dependency and eventual tyranny, as the people have no right and also no means by which to leave a bad State.

Worth remembering that Kropotkin's system [does the same thing](#)—people kicked out of communes are kicked out naked, with practically no hope for survival.

**“he who holds command over men ought not to have command over the laws, he who has command over the laws ought not any more to have it over men; or else his laws would be the ministers of his passions and would often merely serve to perpetuate his injustices”**

Hints of separation of powers, which are surprisingly a bit more significant—and therefore also less general—than [Locke's conception](#), which encompasses a variety of possibilities. Also, Rousseau just said that monarchies can be what he calls “Republics” but this seems to oppose that possibility.

**Callback to historical examples—Lycurgus abdicates before creating laws; Greek towns, republics of Italy, Geneva hired foreigners to write laws. Decemvirs could write law but not pass them. Laws should be passed by “the free vote of the people.”**

Direct democracy again rears its ugly head with all of the negatives it can produce: no inherent limits on State action/power and the possibility and incentive for exploitation of small groups. Plus, it's just “might makes right” by proxy, with number as a substitute for force of arms.

**Wise men often misunderstood or fail to keep the attention of the masses. Legislators “must have recourse to an authority of a different order, capable of constraining without violence and persuading without convincing.” This is the reason for many national leaders to “credit the gods with their own wisdom, in order that the peoples... might obey freely, and bear with docility the yoke of the public happiness.”**

Yes, many States are built upon myths. That says very little about their structures, except that the leaders believed they needed to push the masses with fear, rather than achieve actual consent and limit themselves to voluntary association. Fraud is not a great way to start any long-term relationship.

**False legislators may fake this miracle but their empires will be bands of fools and not last.**

Implies that this initial fraud is necessary to the start of a State... in order to fake consent?

**“We should not, with Warburton, conclude from this that politics and religion have among us a common object, but that, in the first periods of nations, the one is used as an instrument for the other.”**

State co-opting of religious values and doctrine for its own aggrandizement. Very Plato, but not very good.

The Warburton referenced here is probably William Warburton of Gloucester, who wrote (among other things) *The Divine Legation of Moses Demonstrated*. See volume 1 of a collection of his works [here](#), which includes books 1-3 of *Divine Legation*.