

Part 18: Book 4, Chs. 5-7

Book 4, Ch. 5: The Tribunate

“When an exact proportion cannot be established between the constituent parts of the State, or when causes that cannot be removed continually alter the relation of one part to another, recourse is had to the institution of a peculiar magistracy that enters into no corporate unity with the rest.” The Tribunate is a way to bring relations between prince and people, or prince and Sovereign, into correctness.

Of course, the “exact proportion” Rousseau is talking about is an illusion, just like the Sovereign and the general will. Therefore, the more likely use of a tribunate is for some group to wrest power from some other group. Generally, this will result in an increase of the power of the government, just as the history of the American Supreme Court is a history of slouching toward totalitarianism, one precedent at a time.

The tribunate is “...the preserver of laws and of the legislative power.”

...If you’re extremely lucky, maybe for a little while. But how are we to distinguish a good tribunate from a bad one in such a way that isn’t simply an expression of personal preference?

Council of Ten at Venice or Ephors at Sparta.

I actually looked up the Council of Ten... just a quick glance at Wikipedia. They could punish nobles, were highly secretive, and effectively ruled Venice after they had been around for a bit. Rousseau is literally using a shadow cabal as an example of good government.

The tribunate has no legislative or executive power, but “can prevent anything from being done.”

One of the problems with States and with bodies of law as they become larger and more complex, is that various lines become very blurry. One of those lines is the line between the government “doing something” and “not doing something.” For example, is abolition of some particular welfare payment “doing something,” or refusing to “do something.”

Lawyers, of course, will make the argument either way with similar efficacy, depending on who is paying them. This is a problem that Rousseau completely ignores.

“The tribunate, wisely tempered, is the strongest support a good constitution can have; but if its strength is ever so little excessive, it upsets the whole State.”

So it’s great unless it gets just a little too much power, and then it’s horrible. Sounds like an excellent institution. Why Rousseau continuously relies on these special institutions with hopes that they “ought to” do good is beyond my understanding.

It can become tyrannical by taking over executive function, and “should” focus on restraining executive power. It can be tyrannical if it tries to “dispense with the laws, which it should confine itself to protecting.”

“Should,” but there’s nothing in the framework to enforce that. The more Rousseau I read, the more I stand in awe of the American Founders and their attempts (though failed) to create a system that pulls against itself in order to avoid growing out of control.

None of that wisdom is present here. Rousseau just throws out random ideas with horrible incentives and moves on to some other idea without so much as a justification.

The Ephors were “harmless as long as Sparta preserved its morality.” But their power “hastened corruption when once it had begun.” In Rome, excessive tribune power protected bad emperors.

But a good people needs no government. So by the point that the Ephors actually meant something, they were hastening corruption. Rousseau is not making a strong argument here, he’s saying that things sit on the edge of a knife and then he acts surprised when they fall off.

**“The tribunate, like the government, grows weak as the number of its members increases.”
Larger numbers of tribunes have a tendency to check each other.**

Taken to its logical conclusion, we would have a sort of anti-dictator that could veto any decision of the government. Again, the possibility of falsely identifying “doing something” versus “undoing something” makes this completely pointless, and only really a path to dictatorship, albeit a dictatorship flavored like the status quo.

Rousseau recommends giving tribunes power only for certain intervals, not “long enough to give abuses time to grow strong.” He claims nobody has tried this.

But if tribunes can veto things, can they not also veto their dissolution? Might it not be possible that some group that raises up a tribune to gain some kind of political victory, might not also argue to extend it indefinitely, so long as they continue to reap that benefit?

Tribunes are not part of the constitution and can therefore be abolished without affecting the constitution.

Rousseau said in [Book 2, Ch. 12](#) that “the real constitution of the State” is “graven... on the hearts of the citizens.” In other words, what goes into the “constitution” is extremely hazy and open to judgment by various parties in different ways. Therefore, saying that they can be added or removed easily because they “are not part of the constitution” is wishful thinking at best, and it’s worth noting that a smart tribune would simply veto any attempts to abolish it.

“...a newly restored magistrate starts not with the power his predecessor exercised, but with that which the law allows him.”

Rousseau hopes. But usually it isn’t this clear-cut. In fact, a new magistrate may easily cite precedent as to the limits of his powers, regardless of the actual wording of the law. You might try to help avoid this carry-over by giving the new magistrate’s position a novel title, but even that magistrate might still look for meaningful overlap between his new orders and some previous magistrate’s orders, and revive old precedent that way.

[Book 4, Chapter 6: The Dictatorship](#)

Bad laws can have dire consequences for the State, and it takes time to fix bad laws. Therefore it may be necessary to suspend the operation of the law. This should only be done to deal with existential threats.

Everything is an existential threat to a thief who calls himself a magistrate.

Furthermore, Rousseau has already created a system in which it should be relatively easy to eliminate bad laws: simply assemble the Sovereign and the general will is made clear (in Rousseau's estimation). It seems like suspension of the legal system is something that goes much further than necessary to achieve the desired ends, even by Rousseau's earlier arguments.

While laws are suspended, the “public security” should be entrusted to the “most worthy.”

Anyone reading Rousseau today and feeling drawn toward this kind of nonsense needs to read [Hayek's “Why the Worst Get on Top”](#) a few times, until that feeling is completely eradicated.

Why would a country suffering from an abundance of bad law choose a good dictator? Already they have shown themselves to be irredeemably corrupt. What good does one more majority vote do?

This dictator can either change the form of administration of the laws, or silence the laws and “suspend for a moment the sovereign authority.”

In short, he may interpret the laws in novel ways. And the dangerous incentives of this idea are not seen by Rousseau.

The general will must always intend for the State to not perish.

Again, Rousseau attributes the Law of Self-Preservation/The First Law of Nature to a being that does not actually exist, in order to justify any sort of abominable tyranny to keep it alive.

This, after he has already said that some States deserve to perish with all haste, since they are irretrievably broken.

When are we to draw the line?

Commonly used in Rome.

Ah, now it makes sense. Rousseau's inexplicable adoration for a State that breaks most of his rules appears again.

The highly moral people of Rome didn't fear abuse of power, but rather the extra power “appeared to be burdensome to him who was clothed with it.”

Maybe sometimes, but it seems more likely that many of the dictators were simply good actors, and pretended that it was so painful [to be thrown into that briar patch](#).

The decline of the Roman Republic was marked not by overuse of the dictator, but under-use.

Rousseau gives an example, of the Catilinarian conspiracy, but he ignores the fact that the simple calling of a dictator does not guarantee that the dictator's agenda is the same as Rousseau's.

The length of dictatorship should be strictly limited by law. Rome used a six month period. Longer terms permit the dictator to become "either tyrannical or idle."

But the dictator can freely re-interpret the laws. One of the big problems with giving unlimited power to one man is that you'd better be sure he's the right one, not just for you, but for everyone.

Does such a man even exist?

Book 4, Ch. 7: The Censorship

"...the censorship is the declaration of the public judgment... The censorial tribunal, so far from being the arbiter of the people's opinion, only declares it, and, as soon as the two part company, its decisions are null and void."

This seems like wishful thinking. As if some body could be convened to say "this is a good opinion" or "this is a bad opinion," and not expect that judgment to be used to further someone's political career or agenda, and damage someone else's.

"Men always love what is good or what they find good; it is in judging what is good that they go wrong."

That's why they need enlightened rulers to tell them what is right, and, conversely, trust their rulers because they're clearly enlightened.

The censorship cannot help when morality has already degenerated, but only to preserve morality before it degenerates.

Censor hard, censor early, censor often. This is of course an attempt to re-educate minorities upon whom the State is acting as a parasite. Convince them that their subjugation and exploitation is correct.

Nothing could possibly go wrong.

"The censorship upholds morality by preventing opinion from growing corrupt, by preserving its rectitude by means of wise applications, and sometimes even by fixing it when it is still uncertain."

"Corrupt," according to whom?

"A man of bad morals having made a good proposal in the Spartan Council, the Ephors neglected it, and caused the same proposal to be made by a virtuous citizen. What an honor for the one, and what a disgrace for the other, without praise or blame of either! Certain drunkards from Samos polluted the tribunal of the Ephors: the next day, a public edict gave Samians permission to be filthy. An actual punishment would not have been so severe as such an impunity."

This is finally some kind of an example, and seems akin to public shaming by passive-aggressive decree. Is this supposed to be some kind of panacea, and if so, for what? Rousseau doesn't explain, he just notes it as a fun fact. When would this kind of shaming work? When would it not? In what situations is it appropriate to try? How do we avoid provoking some kind of violent response?

Rousseau, as usual, gives us no answers.