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**Federalism and constitutional foundations of democracy  
in political philosophy of Jean-Jacques Rousseau**

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## **Introduction**

When one attempts to distinguish some common points in the many current interpretations of democracy as a normative political theory, one arrives at the following principles. Democracy implies a procedure of making legitimate collective decisions. The legitimacy of said decisions is based on the principle of equality and liberty.<sup>1</sup> The liberty is thought of as a citizen's capability to participate in making a decision that he or she intends to comply with. The equality implies that said capability does not correlate with the citizen's economic or social status.<sup>2</sup> In other words, the capability to make a collective decision has to be equal for everyone. Moreover, the normative understanding of democracy implies that the collective decisions aim to achieve the common good and the decision-making procedure is compliant with the ideals of reason.<sup>3</sup> The two latter principles allow counteracting the dominance of policies based solely on combining and competing private interests. There are many interpretations of the principle of reasonableness, as well as discussions on the circumstances in which it is appropriate to make collective decisions, not for the common good but to reconcile private interests. I would like to simply note the existence of those normative principles.

From this dissertation's perspective, it is important to recall these principles of the normative theory of democracy because of the tension between them (freedom and equality, most of all) and the idea of sovereignty. I am referring to the specific understanding of sovereignty which emerged in the seventeenth century and continues to define today's approaches to the description of the nation-state.<sup>4</sup> This is a centralist understanding of sovereignty as the supreme authority

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<sup>1</sup> Cohen, J., Sabel, C. Directly-Deliberative Polyarchy // *European Law Journal*. 1998. Vol. 3, № 4. P. 313-342.

<sup>2</sup> Cohen, J. *Deliberation and Democratic Legitimacy* // *Deliberative democracy : essays on reason and politics*. Cambridge, 1997. P. 67-69.

<sup>3</sup> Mansbridge J. "Deliberative Democracy" or "Democratic Deliberation"? // *Deliberation, Participation and Democracy Can the People Govern?* NY., 2007. P. 252-253.

<sup>4</sup> Skinner, Q. *The State* // *Political Innovation and Conceptual Change*. Cambridge. 1989. P. 90-132.

resting in one state organ that exercises legislative power. In English-language literature, it is referred to as “organ sovereignty.”<sup>5</sup>

This understanding of sovereignty poses a number of problems for democracy. First of all, it fails to describe the various forms of public participation in collective decision-making (forms of realization of liberty). It speaks very sparingly of the public as a political actor. The people are thought of as the original source of power; however, they forever surrender it to a specific state organ and reclaim it only on rare occasions of elections. It is difficult to imagine other centers of collective decision-making than parliament within such a concept.<sup>6</sup>

Moreover, the concept of organ sovereignty provides no theoretical resources for describing the intermediate authorities in the space between the state and the individual. The tradition of liberal democracy emphasizes the importance of such authorities for maintaining public control over state organs.<sup>7</sup> Otherwise, the state that is not accountable to the population may attempt to limit citizens’ freedom (understood primarily as negative liberty in the liberal tradition).

Also, by reducing all power to a single legislative organ, the idea of organ sovereignty ignores the demand for self-government originating from communities located within the same state and united by a specific collective identity.<sup>8</sup> These may be communities that previously had a separate polity but then became part of the existing state. Alternatively, communities that did not previously have their own polities but define themselves through a common language and a number of cultural institutions.

Finally, the principle of organ sovereignty makes it impossible to conceive of emerging international compound polities within the framework of democratic

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<sup>5</sup> Cohen, J.L. *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism*. Cambridge, 2012. P. 26-29; Smolenski, J. *Challenging the Sovereign: Three Types of Early Modern Federal Theory* // *Politik*. 2016. Vol. 19, № 3. P. 12.

<sup>6</sup> Fraser N. *Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy* // *Social Text*. 1990. Vo. 26, № 25. P. 74-76.

<sup>7</sup> Levy, J. T. *Federalism, Liberalism, and the Separation of Loyalties* // *The American Political Science Review*. 2007. Vol. 101, № 3. P. 459-477.

<sup>8</sup> Norman W. *Negotiating Nationalism*. NY., 2006.

theory.<sup>9</sup> This understanding of sovereignty leads to a dichotomy: either sovereignty belongs to a nation-state organ or an international organization. Within this framework, it is impossible to describe an international polity that is distinct from a state but has an independent existence that is not reducible to the operation of a multilateral international treaty. Moreover, it is impossible to define democratic standards of legitimacy for such an international polity within this dichotomy.

Today, theorists of democracy turn to the concepts of federalism in order to overcome the limitations mentioned above set by the concept of organ sovereignty. A number of authors see the idea of multiple decision-making centers in federalism, which allows for a detailed description of public participation in making collective decisions at different levels.<sup>10</sup> Other authors emphasize that the federalist tradition offers possibilities for describing the intermediate authorities through which citizens can exercise control over the central government.<sup>11</sup> The concept of federalism is often employed to describe the sphere of self-government of communities united by a collective identity and located on the territory of one state.<sup>12</sup> Finally, today the federalist tradition seeks theoretical resources to formulate the concept of federal unions, international compound polities and to define the legitimacy criteria for the decisions of such polities.<sup>13</sup>

Appealing to the ideas of federalism in addressing the problems discussed above is not a peculiarity of modern democratic theory alone. For several centuries, theorists of democracy have been turning to the principles of federalism, seeking to go beyond the concept of organ sovereignty. Note that during the eighteenth and nineteenth centuries, a variety of theoretical moves were proposed to go beyond the concept of organ sovereignty. Some of them were based on the

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<sup>9</sup> Cohen, J.L. *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism*. Cambridge, 2012. P. 26-29

<sup>10</sup> Amar, A.R. *Five Views of Federalism: Converse-1783 in Context* // *Vanderbilt Law Review*. 1994. Vol.47, P. 1229–1249.

<sup>11</sup> Elazar D.J. *Exploring Federalism*. Tuscaloosa, 1987. P. 99-104.

<sup>12</sup> Norman W. *Negotiating Nationalism*. NY., 2006.

<sup>13</sup> Beaud , O. *Théorie de la Fédération*. Paris, 2007; Cohen, J.L. *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism*. Cambridge, 2012; Forsyth M. *Unions of States*. NY, 1981

ideal of abstract state sovereignty,<sup>14</sup> and some were founded on the ideal of popular sovereignty.<sup>15</sup> Furthermore, authors who criticized organ sovereignty from a position of popular sovereignty often appealed to the principle of federalism.

One particular federalist logic, which starts with Junius Brutus<sup>16</sup> and goes through Althusius<sup>17</sup> to Bakunin,<sup>18</sup> speaks of the constitutive power of the people while defending popular sovereignty and opposing organ sovereignty. Private unions create associations, which unite into provinces, which in turn unite into larger communities. Today this logic is continued by Olivier Beaud<sup>19</sup> and Jean Cohen,<sup>20</sup> who speak of states united in federal unions and of demos composed of *demos*. By this logic, popular sovereignty is primarily understood in terms of the establishment of unions by peoples (or communes, provinces in the works of earlier authors), or their joining and withdrawing from existing unions. In other words, popular sovereignty is primarily understood as the constitutive power of the people. On the one hand, this allows one to say that the constituent parts of the federal polity retain their independence: under certain circumstances, they can leave the federal polity and join another union. Of course, this state of affairs denies the absolutist principle of organ sovereignty. At the same time, this logic does not describe people's participation in collective decision-making in much detail. Jean Cohen seeks to step beyond these limitations. Popular sovereignty, according to Cohen, must be negatively defined, in the sense that "... no agent, institution, representative instance subject, or individual can embody it or put itself in the place of the people (the citizenry) or be identified with the people and that

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<sup>14</sup> Caldwell, Peter C. *Popular Sovereignty and the Crisis of German Constitutional Law*. Durham, 1997; Kelsen H. *General Theory of Law and the State*. Cambridge, MA, 1945; Carré de Malberg, R. *Contribution à La Théorie Générale de l'Etat* vol. 1. Paris. 2003.

<sup>15</sup> Schmitt C. *Constitutional Theory*. Durham, 2008; Hamilton A., Madison J., Jay J. *The Federalist Papers*. NY., 2008.

<sup>16</sup> Junius Brutus, the Celt, S. *Vindiciae, Contra Tyrannos: Or, Concerning the Legitimate Power of a Prince over the People, and of the People over a Prince*. Cambridge, 2003.

<sup>17</sup> Althusius, J. *Política*. Indianapolis, 1995.

<sup>18</sup> Bakunin M.A. *Izbrannie Filosofskie sochineniya i pisma*. M.,1987; Bakunin M.A. *Filosofiya. Sociologiya. Politika*. M., 1989.

<sup>19</sup> Beaud , O. *Théorie de la Fédération*. Paris, 2007

<sup>20</sup> Cohen, J.L. *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism*. Cambridge, 2012;

no foreign polity can determine the legal or political order of a sovereign state. Rather popular sovereignty remains an intact legitimating principle and is not usurped only if the citizenry can ‘act’ through a variety of representative bodies and processes on the constituted and on the constituent level...”<sup>21</sup> Nevertheless, Cohen’s solution applies primarily within a federal union. How does an appeal to the principles of federalism allow one to describe the participation of the people in collective decision-making beyond those forms of participation set by the idea of organ sovereignty? Is it possible to give such a description while remaining within the model of a single federal polity not constituent of sovereign states?

These questions are answered by another federalist logic, which can be found in *The Federalist Papers*<sup>22</sup> and the texts that inherit it (among which are the works of Daniel Elazar, one of the most famous federalist theorists of the twentieth century), as well as in the works of legal scholars concerned with the sociology of law, primarily in the works of Eugen Ehrlich.<sup>23</sup> The authors of *The Federalist Papers* defined the status of the constituent states of the USA by using the concept of divided sovereignty, according to which the people surrender some sovereignty to the central government and some to the state governments.<sup>24</sup> At the same time, it remained unclear which people were transferring sovereignty: the people of the United States or the peoples of each state. Subsequently, the concept of divided sovereignty (together with the described problem of the “transfer” of sovereignty) became commonplace for theorists of federalism in the twentieth century, including Elazar. Eugen Ehrlich spoke of three types of legal orders: the state legal order,<sup>25</sup> the legal order of lawyers,<sup>26</sup> and the “living law” of social unions<sup>27</sup> located within the state and coexisting in the same polity. He argues that law cannot have a single source (whether the will of the people or the will of the state as a legal

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<sup>21</sup> Cohen, J.L. *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism*. Cambridge, 2012. P. 155-156.

<sup>22</sup> Hamilton A., Madison J., Jay J. *The Federalist Papers*. NY., 2008.

<sup>23</sup> Erlich, O. *Osnovopolozhenie sociologii prava*. Spb., 2011.

<sup>24</sup> Hamilton A., Madison J., Jay J. *The Federalist Papers*. NY., 2008. P. 192.

<sup>25</sup> Erlich, O. *Osnovopolozhenie sociologii prava*. Spb., 2011. P. 179.

<sup>26</sup> *Ibid.* P. 414.

<sup>27</sup> *Ibid.* P. 96.

entity) and that the positive law of the state is often the normative consolidation of the norms of “living law” existing in social unions. Thus, on the one hand, this federalist logic denies the central government’s monopoly on lawmaking (both in the case of *The Federalist Papers* and the associated tradition, and in the case of Ehrlich) and subsequently removes the possibility of localizing sovereignty in a single organ. At the same time, it does not provide a definitive answer to the question of the status of centers of power that have their own legal order (be it the states or “social unions”).

From this dissertation’s perspective, Jean-Jacques Rousseau’s later concept of federalism provides a more consistent answer to the question of the forms of popular participation within the model of a single polity. He proposed this concept in *Considerations on the Government of Poland*.<sup>28</sup> Firstly, it shows how the principle of federalism can be realized in a single polity that does not include sovereign states. Secondly, this federalist model says almost nothing about the constitutive power of the people, but gives an understanding of how people’s participation in making collective decisions of a federal polity can be arranged. Finally, Rousseau’s later concept of federalism explains how the absolutist principle of organ sovereignty can be overcome.

In order to present an argument for my thesis, this dissertation takes the following steps. First of all, the first chapter takes a closer look at the absolutist principle of organ sovereignty and how political theorists have sought to overcome it by drawing on the concepts of state sovereignty and popular sovereignty. In the first section of this chapter, I examine the arguments of authors who criticized organ sovereignty from the perspective of sovereignty as a property of the state as a legal entity, and the arguments of theorists who opposed organ sovereignty from the perspective of popular sovereignty. In the second section, I analyze how authors who criticized the absolutist principle of organ sovereignty from the perspective of popular sovereignty have drawn on the principle of federalism. In

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<sup>28</sup> Rousseau J.-J. *Considerations on the Government of Poland // The plan for perpetual peace, On the government of Poland, and other writings on history and politics. The collected writings of Rousseau, Vol. II.* Hanover, 2005.



the third section, I elaborate on the problem of dual sovereignty, which one of the two federalist logics described in the second section encountered.

The second chapter describes the strategy for interpreting Rousseau's texts. This chapter consists of two sections. In the first section, I attempt to update and embellish on the interpretations of Rousseau's political philosophy offered by theorists of deliberative democracy. Nadia Urbinati rightly criticized Rousseau for giving the people a predominantly acclamatory function in his work *On the Social Contract*.<sup>29</sup> Richard Fralin has also written about that.<sup>30</sup> At the same time, theorists of deliberative democracy emphasize the importance of the ideal of moral liberty for Rousseau. Moral liberty requires that each citizen be the author of the law to which he is subject. It is because of this ideal that Rousseau's political philosophy is today a theoretical resource for normative theories of deliberative democracy, although the latter simultaneously advocate the principle of citizens discussing collective decisions together, to which Rousseau was generally indifferent. Thus, the first section of chapter two turns to the theorists of deliberative democracy to highlight the aspect of Rousseau's political philosophy that speaks to the importance of political participation of citizens in collective decision-making.

The second section of the second chapter elaborates on the distinction between the two political languages in Rousseau's writings. I demonstrate how Rousseau's *On the Social Contract* simultaneously contains idioms characteristic of the political language of civic republicanism and the political language of social contract theories. After reviewing these idioms, I elaborate on the two opposing approaches to the critique of political representation to be found in Rousseau's work.

The third chapter, building on the interpretation strategy formulated in chapter two, describes Rousseau's late model of federalism, which offers a solution to the problem of organ sovereignty (described in chapter one). The first

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<sup>29</sup> Urbinati N. Rousseau on the Risks of Representing the Sovereign» // Politische Vierteljahresschrift. 2012. Vol. 53, №. 4. P. 655-656.

<sup>30</sup> Fralin, R. The Evolution of Rousseau's View of Representative Government // Political Theory. 1978. Vol. 6, №. 4. P. 530-531.

section of the third chapter says a few words about the political crisis that shaped the context for forming of Rousseau's early model of federalism, and outlines the features of the political structure of the Polish-Lithuanian Commonwealth that influenced Rousseau's late model of federalism described in *Considerations on the Government of Poland*. The second section turns to the later model of federalism and discusses the peculiarities of the status of the structural parts of the federal polity (the voivodeships of the Polish-Lithuanian Commonwealth). The third section demonstrates that the language of the civic republicanism theories is most prominent in the *Considerations on the Government of Poland*. Firstly, it leads to a reformulation of the basic problems that Rousseau writes about. The problem of the corruption of the republic becomes the central one for him. Secondly, it leads to a shift in emphasis from the constitutive function of the people to the function of the administration of power. This allows Rousseau to better spell out the schemes for the realization of moral liberty, which he referred to only as a principle in *On the Social Contract*. Finally, Rousseau associates the overcoming of corruption and the realization of moral liberty with the work of the institutions of federalism.

These are the propositions for defence.

1. It is possible to distinguish two federalist logics, which are used by the authors who defended popular sovereignty while criticizing the principle of organ sovereignty. One of these logics speaks primarily of the constituent power of the people. The other speaks of a plurality of legal orders within a single polity. The extreme federalist logic faces a number of problems when describing the status of centers of power that have their own legal order. Rousseau's later theory of federalism does not have this drawback. Not only does it provide a consistent description of the status of the centers of power within a single federal polity, but it also explains in detail how collective decision-making by the people in such a polity is possible. Thus it is possible to find in Rousseau's works a theoretical resource for democrats who rely on the principles of federalism today in seeking to

describe various forms of popular participation (realization of liberty) that go beyond the limitations set by the concept of organ sovereignty

2. Two Rousseau's theories of federalism can be distinguished. In his early theory of federalism, Rousseau refers to an association of sovereign states as confederation. In his later theory of federalism, Rousseau no longer calls a union of states a federation, but a special compound polity

3. Rousseau's later theory of federalism preserved the ideal of popular sovereignty and overcame the absolutist principle of organ sovereignty

4. Although popular participation in *On the Social Contract* is essentially reduced to acclamation, Rousseau proposes the principle of moral liberty in the same work, which allows for justifying the active participation of citizens in collective decision-making

5. Rousseau's later theory of federalism served three functions: it described how the principle of moral liberty could be realized in a federal polity; it described the status of decision-making centers in a federal polity; and it was supposed to help overcome the corruption of members of the representative organ.

## Historiographical Review

I would start with an outline of the critical literature used in working on this dissertation. Of course, I would name only a number of key texts here; a full review of the literature would have been too extensive. First of all, I would like to mention a few critical works, which today are considered the essentials for researchers of Rousseau's political philosophy: Robert Derathé's book *Jean-Jacques Rousseau et la Science Politique de Son Temps* (an extensive and meticulous analysis of Rousseau's texts in the context of the works of natural law theorists, Grotius, Pufendorf, Burlamaqui and others),<sup>31</sup> Roger Masters' book *The Political Philosophy of Rousseau* (a coherent analysis of Rousseau's political writings in the order recommended by Rousseau himself),<sup>32</sup> Judith Shklar's book *Man and Citizens: A Study of Rousseau's Social Theory* (on the incompatibility of Rousseau's moral and political projects of reform),<sup>33</sup> Ernst Cassirer's essay *Kant and Rousseau* (a reading of Rousseau as a precursor to Kant's work).<sup>34</sup>

Naturally, each of these works addresses the question of general will (crucial for our study as well). However, there are a number of critical works devoted entirely to this concept. First and foremost, these are the articles and the book by Patrick Riley.<sup>35</sup> Riley places the concept of general will in the context of late seventeenth-century theological debates and explains how Rousseau deliberately turned to theological discourse and "secularized" the concept by placing it in the context of social contract theories. Bernard Grofman and Scott Feld suggest looking at general will as an anticipation of Condorcet's idea of the rationality of collective decision-making.<sup>36</sup> Christopher Bertram points out that Rousseau speaks

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<sup>31</sup> Derathé, R. *Jean-Jacques Rousseau et la science politique de son temps*. Paris, 1950.

<sup>32</sup> Masters, R. D. *The Political Philosophy of Rousseau*. Princeton, 1968.

<sup>33</sup> Shklar, J. N. *Man and Citizens*. London, 1969.

<sup>34</sup> Cassirer, E. *Rousseau, Kant, Goethe. Two Essays*. Princeton, 1970.

<sup>35</sup> Riley, P. A Possible Explanation of Rousseau's General Will // *The American Political Science Review*. 1970. Vol. 64, №. 1. P. 86-97.; Riley, P. Rousseau as a Theorist of National and International Federalism // *Publius: The Journal of Federalism*. 1973. Vol. 3.; Riley, P. *The General Will before Rousseau. The Transformation of the Divine into the Civic*. Princeton, 1986.

<sup>36</sup> Grofman, B. & Feld, S. Rousseau's General Will: A Condorcetian Perspective // *The American Political Science Review*. 1989. Vol. 82, №. 6. P. 567-576.

of general will in different ways: as a product of collective decision-making and as a property of a political community.<sup>37</sup> Frederick Neuhouser notes that for Rousseau, general will is both the objective conditions of freedom and the realization of it.<sup>38</sup>

Isaiah Berlin's famous work *Two Concepts of Liberty* established Rousseau's reputation as an opponent of negative liberty for a time.<sup>39</sup> If we turn to Benjamin Constant's famous lecture, we see that he interprets Rousseau's liberty as "exercising collectively, but directly, several parts of the complete sovereignty; in deliberating, in the public square, over war and peace; in forming alliances with foreign governments; in voting laws, in pronouncing judgments; in examining the accounts, the acts, the stewardship of the magistrates; in calling them to appear in front of the assembled people, in accusing, condemning or absolving them."<sup>40</sup> This is the interpretation Berlin relies on. Moreover, according to Berlin, this "positive" liberty does not simply destroy negative liberty, but brings to life the dictatorship of the majority. Today, however, many researchers believe that Rousseau offered a concept of positive liberty that has little to do with the oppressive images of the Jacobin dictatorship and terror, but fills political life with long forgotten meanings.<sup>41</sup> In addition, some scholars are convinced that Rousseau also defended negative liberty.<sup>42</sup>

Two other closely related topics that are important for us are the critique of political representation and the distinction between sovereign and government. Frank Marini points out that Rousseau, in distinguishing between sovereign and

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<sup>37</sup> Bertram, C. Rousseau's Legacy in Two Conceptions of the General Will: Democratic and Transcendent // *The Review of Politics*. 2012. Vol. 74, P. 403-419.

<sup>38</sup> Neuhouser, F. Freedom, Dependence, and the General Will // *The Philosophical Review*. 1993. Vol. 102, №. 7.

<sup>39</sup> Berlin, I. *Two Concepts of Liberty* // *Liberty*. Oxford, 2002.

<sup>40</sup> Constant, B. *The Liberty of Ancients Compared with that of Moderns* // *Constant: Political Writings*. NY., 2003.

<sup>41</sup> Cohen, J. *Rousseau. A Free Community of Equals*. New York, 2010.; Wokler, R. *Rousseau, the Age of Enlightenment, and Their Legacies*. Princeton, 2012.; Plamenatz, J. *Machiavelli, Hobbes, and Rousseau*. Oxford, 2012.

<sup>42</sup> Neuhouser, F. Freedom, Dependence, and the General Will // *The Philosophical Review*. 1993. Vol. 102, №. 7.; Wokler, R. *Rousseau, the Age of Enlightenment, and Their Legacies*. Princeton, 2012.

government, essentially accepts representative government when it comes to the representation of the executive authority (Marini, 1967).<sup>43</sup> Bryan Garsten elaborates on this reasoning by noting that Rousseau was an opponent of direct democracy, where the people not only make decisions, but also execute them (Garsten, 2009).<sup>44</sup> Turning to the question of legislative power, Richard Fralin writes that Rousseau eventually agreed with representation even in this case for pragmatic reasons.<sup>45</sup> Robin Douglas argues with this, stating that, according to Rousseau, a representative legislative organ meant the loss of people's collective liberty and the end of their existence as a people.<sup>46</sup> Nadia Urbinati also adheres to the view that for Rousseau, the critique of representation was a matter of principle.<sup>47</sup> However, she attributes this to the similarity between Rousseau's concept of the popular sovereign and Bodin's concept of the sovereign. Robert Wokler also agrees with the fundamental nature of Rousseau's critique, but he tends to distinguish between Rousseau's sovereign and Bodin's sovereign nevertheless.<sup>48</sup>

Let me address the concept of federation now. Unfortunately, current approaches to the interpretation of Rousseau's political works often do not allow one to see the difference between the texts in which he develops the ideas of the Abbé de Saint-Pierre and the work *Considerations on the Government of Poland*.<sup>49</sup>

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<sup>43</sup> Marini, F. Popular Sovereignty but Representative Government: the Other Rousseau // Political Science. 1967. Vol. 11. №. 4. P. 451-470.

<sup>44</sup> Garsten, B. Representative government and popular sovereignty // Political Representation. Cambridge, 2009.

<sup>45</sup> Fralin, R. The Evolution of Rousseau's View of Representative Government // Political Theory. 1978. Vol. 6, №. 4. P. 517-536.

<sup>46</sup> Douglass, R. Rousseau's Critique of Representative Sovereignty: Principled or Pragmatic? // American Journal of Political Science. 2013. Vol. 57. P. 735-747.

<sup>47</sup> Urbinati, N. Rousseau on the Risks of Representing the Sovereign // Politische Vierteljahresschrift. 2012. Vol. 53, №. 4. P. 646-667.

<sup>48</sup> Wokler, R. Rousseau, the Age of Enlightenment, and Their Legacies. Princeton, 2012

<sup>49</sup> Roosevelt, G. G. Reconstruction of Rousseau's Fragments on the State of War // History of Political Thought. 1987. Vol. 8, №. 2. P. 225-244.; Hassner, P. Rousseau and the Theory and Practice of International Relations // The Legacy of Rousseau. Chicago, 1997.; Pattner M.F. Rousseau and the Origins of Nationalism // The Legacy of Rousseau. Chicago, 1997.; Cullen, D. E. Jean-Jacques Rousseau and the Case against (and for) Federalism // The Ashgate Research Companion to Federalism. Farnham, 2009.

At the same time, it is the understanding of these differences that would allow one to see in Rousseau's work on the structure of Poland the model of a federal state, which, from this dissertation's perspective, represents an alternative to the concept of dual sovereignty. Thus, I would like to first analyze the existing approaches to the interpretation of Rousseau's concepts of federations and then propose my own interpretation, which focuses on the difference between the concept of federation proposed in *Considerations on the Government of Poland* and the concept based on Rousseau's criticism and development of the ideas of Abbé de Saint-Pierre.

According to Pierre Hassner, who in turn follows Stanley Hofmann and Joseph Windenberger, Rousseau sees federalism as a tool for overcoming the problem of the "mixed state."<sup>50</sup> Hassner draws on Rousseau's *Emile* and *The State of War* to explain that this problem is a consequence of the state of nature in which political communities exist. On the one hand, an individual acquires civil liberty by entering the civil state. On the other hand, by becoming a member of a state, the individual, as a member of the sovereign, finds himself in the state of nature in relation to the citizens of other states. So the state of war of all against all continues between states. The citizen thus risks losing all the advantages of the liberty acquired in the civil state at any moment. It is this situation that Rousseau calls the "mixed state." According to Hassner, this is the problem that the theory of federalism had to solve. Following Abbé de Saint-Pierre, Rousseau argued for a European federation capable of ensuring the total absence of wars on the territory of Europe. Hassner, interpreting a fragment from *Emile*, further adds that Rousseau spoke not only of a single European federation, but of a multitude of federations serving as "islands of security."

The issue, however, is that by focusing only on the problem of the "mixed state," one would only be able to speak of Rousseau's federalism exclusively as a theory of international relations. Hassner mentions the Polish federation only in passing, discussing the fundamental problem of Rousseau's concept of federation: the incompatibility of Rousseau's theory of citizenship with the idea of "dual

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<sup>50</sup> Hassner, P. Rousseau and the Theory and Practice of International Relations. P. 204.

loyalty” inherent in a federation. The Polish federation, according to Hassner, is much more like a nation-state with a unified system of citizenship and patriotic education, while federations founded as defensive unions, on the contrary, cannot offer a unified citizenship and a “unified bond” based on common laws. Hassner thus observes, on the one hand, the incompatibility of the patriotism of small republics with the idea of a federation as an interstate union. On the other hand, he does not explain the specifics of the concept behind the Polish federation, noting only that unlike federations that provide military security, Poland is essentially a nation-state.

Following Hassner, Daniel Cullen retraces how Rousseau addresses the problem of the “mixed state,” in which the civic community, instead of protecting its citizens, who have previously renounced their natural freedom, offers them to become parties to endless wars with other civic communities.<sup>51</sup> Like Hassner, Cullen argues that Rousseau formulated the concept of federation primarily in response to this issue. However, arguing with Hassner, Cullen develops the following argument: the patriotism that Rousseau discusses in several of his works is not an obstacle to federalism. “Cultural nationalism” takes a back seat to political nationalism. The latter is based not on a “pre-political” identity, but on following the general will. It is political nationalism that Rousseau proposes to strengthen in Poland. Political nationalism allows to overcome cultural nationalism, which has its basis in the identification of citizens with their voivodeships. In other words, the diversity of voivodeships will not be an obstacle to the establishment of pan-Polish citizenship, regional organs will be able to follow federal law, and the identification of citizens with voivodeships will ultimately yield to their identification with the nation.

In seeking to show the compatibility of federalism and patriotism, both Cullen and Hassner overlook a feature of the concept of federation behind Rousseau’s Polish project. Indeed, Rousseau intended for patriotic education to serve as a link between Polish voivodeships, a common civic virtue. But why was

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<sup>51</sup> Cullen , D. E. Jean-Jacques Rousseau and the Case against (and for) Federalism. P. 139.



it necessary to create the problem with multiple voivodeships in the first place to then solve it with a common patriotic education? Put in another way, the question is: why simply not propose a system of common patriotic education without the dubious “federalization” for Poland?

In addition, as Patrick Riley notes, Rousseau insisted for nationwide legislation to ensure that the voivodeships were subordinate to the republic as a whole.<sup>52</sup> In other words, the observed relationship between the Polish Republic and the voivodeships was one of subordination, not equality. How can this be reconciled with the idea of confederation as a contract of equal subjects, sovereign states, stated by Rousseau in earlier works?

Thus, existing approaches to explaining Rousseau’s concept of federation focus on the problem of the “mixed state,” which the Citizen of Geneva sought to solve, guided by the scheme of the Abbé de Saint-Pierre.<sup>53</sup> Of course, Rousseau disagreed with the abbot on a number of fundamental points. In particular, he accused Saint-Pierre of naivety, since the latter believed in the willingness of European rulers to create a pan-European confederation to protect common interests. However, the very idea of confederation, implying a voluntary alliance of sovereign states, based on a treaty, and designed to preserve common security, was one that Rousseau not only accepted but began to incorporate into his own political writings. At the same time, focusing only on this side of Rousseau’s concept of federation, on the problem of the “mixed state,” one cannot discover and explain the peculiarities of the scheme proposed by Rousseau for Poland.

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<sup>52</sup> Riley, P. Rousseau as a Theorist of National and International Federalism. P. 11

<sup>53</sup> Rousseau, J.-J. Extrait du Projet de Paix Perpétuelle de Monsieur L’Abbé de Saint-Pierre // Collection Complète Des Œuvres De J.-J. Rousseau. Geneve, 1782.

## **Research Methodology**

1. Following Sheldon Wolin's argument, this dissertation takes into account the context of the political crisis in which Rousseau's early model of federalism was created.<sup>54</sup>

By the middle of the 17th century, theories of external sovereignty and international relations had strengthened the position of nation-states in competition with other political entities from the Middle Ages. By the French Revolution, a large number of the corporate structures of the Middle Ages had been seriously weakened or forcibly divided into a multitude of "real" subjects of international law holding sovereignty. The medieval idea of a "community consisting of small communities" was discredited.

The nation-state became the model against which any other community was compared. The latter could be then categorized either as a nation-state or as a union of nation-states. For a long time, some communities stubbornly defied this classification. Among those were the Holy Roman Empire, the United Provinces (the Netherlands), Switzerland, the Polish-Lithuanian Commonwealth, a number of free cities, and other polities. According to Riley, the problem was that these communities began to be described by political theorists in the language of national sovereignty, which was beneficial to England and France, but did not allow the special nature of these polities to be explained.<sup>55</sup>

This tendency was reinforced by the members of these communities themselves: provinces, cantons, and cities that sought to establish their independence from the Spanish King, the Emperor, etc., through the notion of sovereignty. It is important to note, however, that the idea of sovereignty did not imply the possibility of sharing the supreme power territorially between the center

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<sup>54</sup> Wolin, S. S. *Political Theory as a Vocation* // *The American Political Science Review*. 1969. Vol. 63.

<sup>55</sup> Riley, P. *The Origins of Federal Theory in International Relations Ideas* // *Polity*. 1973. Vol. 6, №. 1. P. 87-121.;

and the provinces. So, the central government in such complex polities began to be perceived as a collection of ambassadors of sovereign states. It was at this point, according to Riley, that the idea of “internal” federal government was born.<sup>56</sup> The Latin term *foedus*, which was used to describe international treaties, also came to be used to describe communities that, on the one hand, could not be described as centralized states, where power was de facto territorially divided; and that, on the other hand, could not be described through the concept of territorial separation of power. The latter was impossible because of the aforementioned tendency in political theory to describe polities only using the language of sovereignty, and also because of the desire of the constituent parts of complex polities to defend their autonomy through the same language of sovereignty.

As a result, political theorists no longer distinguished between the federal governments of Switzerland, the Netherlands, the Holy Roman Empire and the associations of states based on international treaties (also called *foedus*), including projects of “federal” Europe, confederations whose purpose was to establish and maintain peace between sovereign states. In other words, both terminological and conceptual boundaries between national federal governments and confederations as associations of independent states were erased.

2. In interpreting Rousseau’s texts, this dissertation distinguishes between the language of social contract theories and that of classical republicanism, which often overlap in his arguments.

In his article *Meaning and Understanding in the History of Ideas*, Quentin Skinner writes that to understand the author’s action, the statement he makes with his text, one needs to refer to the author’s intention.<sup>57</sup> According to Skinner, there are two kinds of authorial intentions: “intention to do something” and “intention in

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<sup>56</sup> Riley, P. *The Origins of Federal Theory in International Relations Ideas* P. 106.

<sup>57</sup> Skinner Q. *Meaning and Understanding in the History of Ideas // History and Theory*. 1969. Vol. 8, № 1. P. 45.

doing something.”<sup>58</sup> Skinner emphasizes the latter kind. Using John Austin’s theory, Skinner sees the author’s text as an utterance that has illocutionary force, that is, the ability to perform a certain action.<sup>59</sup> It is the “intention in doing something” that he associates with the illocutionary force of the author’s utterance. Thus, Skinner pays particular attention to the polemical context (or linguistic context) in which the author performs a certain action through the text in the course of a dialogue with other authors.

In addition, I would like to draw on the methodology described by John Pocock in *The State of the Art*. Pocock talks about the political languages used by authors to engage in dialogue with other authors.<sup>60</sup> By political language he understands a set of concepts (idioms) connected in a structure and implying a certain type of argumentation. A single language may be used within a single text, or several networks of categories may be interwoven in it at once. While creating a certain text, the author can follow the conventions of a particular system of concepts, or he can break some of its conventions and introduce changes into the language itself. Finding such changes, according to Pocock, helps answer the question of “what was the author’s intention” in creating the text.<sup>61</sup>

Maurizio Viroli and Keith Baker note that Rousseau used two different political languages in *On the Social Contract* to address two different concerns. Firstly, Rousseau used the language of social contract theories to justify the legitimacy of the republican system. Secondly, Rousseau turned to the language of the theories of classical republicanism to answer the question of how political unity could be maintained. On the one hand, Rousseau was drawing on the concept of On the Social Contract to speak of the general will as an abstract entity arising from the voluntary entry of individuals into On the Social Contract. This concept of an “abstract” general will, based on an analogy with the will of the individual,

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid. P.46.

<sup>60</sup> Pocock G. A. J. *The state of the art // Virtue, Commerce, and History. Essays on Political Thought and History, Chiefly in the Eighteenth Century.* Cambridge, 1985. P. 1.

<sup>61</sup> Ibid, P. 6.

allowed Rousseau to justify the right of the people to participate in the making of laws directly, as discussed in the previous section. On the other hand, in dealing with the problem of the preservation of political unity, Rousseau spoke of the legislator, of civil religion. In this case he viewed the general will as the result of a process of self-identification of citizens with political unity. Moreover, as Dan Edelstein has shown, the concept of civic virtue is actually merged with that of the general will in *On the Social Contract*.<sup>62</sup>

Thus, I believe that several political languages can be found in Rousseau's texts: the language of social contract theories and the language of civic republicanism. The presence of several political languages in his works leads to the fact that the basic problems of Rousseau's political philosophy can be formulated in two of these languages at once.

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<sup>62</sup> Shablinskii A.I. On Trust in Representatives Why Jean-Jacques Rousseau Accepts Political Representation, or How the General Will Gave Way to Federalism // The Journal of Political Theory, Political Philosophy and Sociology of Politics Politeia. – 2020. – Vol.98, № 3. – P. 82-98.

## Brief review of main arguments

### *Moral liberty*

While consistently reconstructing one of the logics of *On the Social Contract*,<sup>63</sup> Richard Fralin and Nadia Urbinati overlook another equally important line of Rousseau's argument. The one that justifies not the status of the people as a collective individual, but the status of a citizen of the republic. This status is based on the idea of moral liberty. According to Rousseau, a citizen possesses moral liberty when he obeys the law which he has established for himself.<sup>64</sup> Moreover, Fralin's reasoning about the lack of theoretical grounds for criticizing representation in Rousseau's political philosophy would not seem so unequivocal if one takes into account the principle of moral liberty proposed by Rousseau.

Joshua Cohen writes about the importance of the substantive aspect of moral liberty, that is, the conformity of the law passed in the general assembly with the general will, which is a special personal structure that belongs to each citizen.<sup>65</sup> I would like to show that this conformity is not sufficient for the exercise of moral liberty: without a certain procedure — the direct participation of all citizens — it is impossible to consider that the law originates from a collective individual, the sovereign, and reflects the general will. Consequently, in obeying the law without direct democracy, the citizen may fall into a situation of domination in which he is not at all subject to the general will, but to the will of a private group.

I formulate my position with reference to Frederick Neuhouser's argument. Neuhouser holds that moral liberty is an element of liberty understood as the absence of domination.<sup>66</sup> When Neuhouser speaks of liberty as the absence of domination, he is referring to the ideal of the subjection of the individual only to

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<sup>63</sup> Fralin, R. *The Evolution of Rousseau's View of Representative Government // Political Theory*. 1978. Vol. 6, №. 4. P. 530-531; Urbinati N. *Rousseau on the Risks of Representing the Sovereign» // Politische Vierteljahresschrift*. 2012. Vol. 53, №. 4. P. 655-656.

<sup>64</sup> Rousseau, J.-J. *Of the Social Contract // The Social Contract and other later political writings*. NY., 1997. P. 54

<sup>65</sup> Cohen, J. *Rousseau: A Free Community of Equals*. NY, 2010. P. 23.

<sup>66</sup> Neuhouser, F. *Rousseau's Critique of Inequality: Reconstructing the Second Discourse*. Cambridge, 2014. P. 125

his individual will. Moral liberty, then, consists in the direct participation of each individual in the making of the law: only this can enable the ideal of submission to one's individual to be realized thereafter. I agree with Neuhausser that liberty as the absence of domination requires the citizen to submit only to his will. I disagree, however, that it is only a question of the individual will of the citizen. Recall that in assemblies, according to Rousseau, citizens do not vote according to their individual will, but according to the general will, which is as inherent in them as the individual will. We show that the ideal of non-domination is also respected when the individual is subject to "his" general will. Moreover, in order to observe this ideal, it is necessary, as in the case of the individual will, that the general will originate personally from each citizen. Thus, the requirement that the citizen personally participate in the making of the law, that the order of the will come personally from the citizen, is maintained.

Thus, one can find two lines of argumentation justifying popular participation in collective decision-making in *On the Social Contract*. The first line, rightly criticized by Richard Fralin and Nadia Urbinati, reduces popular participation to acclamation. Indeed, the procedure of voting in the assembly does not imply a collective discussion of the issues put to a vote. Moreover, the issues themselves are selected by the magistrates. The people are deprived of the right of legislative initiative. Rousseau justifies the necessity of the popular vote, as is demonstrated in the second section of chapter two, by relying on the idea of the collective liberty of the people. The problem is that this collective liberty does not at all imply active forms of citizen participation in lawmaking beyond acclamation.

At the same time, there is a second line of argumentation in *On the Social Contract* that justifies the need for popular participation in collective decision-making. It has its origins in the principle of moral liberty, which "makes a man truly master of himself; for ... obedience to a law that we prescribe to ourselves is liberty." This normative ideal points to the need for personal participation of the citizen in collective decision-making. It is incompatible with representative government. At the same time, moral liberty does not necessarily require such a

form of participation as acclamation. This is the principle that appeals to today's theorists of deliberative democracy.<sup>67</sup> For the same reason, moral liberty is also important for the research purposes of this dissertation. As it is demonstrated further on, the various forms of popular participation in Rousseau's later model of federalism are linked to the attempt of the Citizen of Geneva to propose various forms of realization of moral liberty.

### *The overlapping of political languages in On the Social Contract*

The second chapter also shows that one can find several political languages in Rousseau's writings: the language of social contract theories, the language of civic republicanism. Keith Baker and Maurizio Viroli point out that Rousseau used two different political languages in *On the Social Contract* in order to solve two different problems. Firstly, Rousseau used the language of social contract theories to justify the legitimacy of the republican system. Secondly, Rousseau utilized the language of the theories of civic republicanism to answer the question of how it is possible to maintain political unity.<sup>68</sup> On the one hand, drawing on the concept of *On the Social Contract*, Rousseau spoke of the general will as an abstract entity that emerges after the voluntary entry of individuals into *On the Social Contract*. This concept of the abstract general will allowed Rousseau to justify the right of the people to participate directly in the making of laws. On the other hand, in dealing with the problem of the preservation of political unity, Rousseau spoke of a legislator, a civil religion. In this case, he viewed the general will as the result of a process of self-identification of citizens with political unity.<sup>69</sup>

One cannot say that the concept of "general will" comes from the language of civic republicanism. However, one can assume that in some cases it is close in meaning to the notion of civic virtue. As Dan Edelstein writes, in the *Discourse on*

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<sup>67</sup> Still, it is important to admit that the principle of moral freedom itself does not contain the idea of rational deliberative procedure.

<sup>68</sup> Viroli, M., Jean-Jacques Rousseau and the 'well-ordered society'. P. 13.; Baker, K. M. Transformations of Classical Republicanism in Eighteenth-Century France. P. 41-42.

<sup>69</sup> Baker, K. M. Transformations of Classical Republicanism in Eighteenth-Century France. P. 42.



*the Arts and Sciences* and in the *Discourse on Inequality*, Rousseau uses the term *vertu[s]* 35 and 31 times respectively. In *On the Social Contract*, this term appears only 6 times, including an idiomatic expression *en vertu de* and a quote from Montesquieu. Edelstein suggests that in the later work, the concept of “general will” actually incorporates the notion of civic virtue.<sup>70</sup> The third chapter develops and strengthens Baker, Edelstein and Viroli’s argument. It clarifies exactly what theoretical roles the notion of general will plays in *On the Social Contract* when it appears in the context of the idioms of civic republicanism, on the one hand, and in the context of the idioms of social contract theories, on the other.

The general will as an abstract entity is an attribute of the people, the collective person. In this context, Rousseau’s use of the language of social contract theories is most obvious. The general will, together with the collective person, the people, is born out of *On the Social Contract*. The people is a collective person, and the general will is its attribute, “a universal force to move and place each part in the way that is most advantageous to the whole.” At the same time, Rousseau also writes about the general will as a personal structure of the individual. In this context, Rousseau poses the problem of the “enlightenment” of the general will, and also seeks to convince the individual to follow the general will. These two tasks, as well as the ways in which they are addressed in the text, are formulated in the language of civic republicanism.

### *Rousseau’s federalisms*

The third chapter discusses the fact that Rousseau offers several concepts of federalism. In earlier works, *Emile* and *The Plan for Perpetual Peace*, Rousseau spoke of confederation as a union of independent states. The main task of this union was to prevent wars between its members and thus ensure the freedom of the citizens of these states. I have shown that this concept of federalism by Rousseau

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<sup>70</sup> Edelstein, D. *The Terror of Natural Right. Republicanism, the Cult of Nature, and the French Revolution*. Chicago, 2009. P. 80-81.

should be considered in the context of the theories of international relations that were gaining ground at the time. Let me briefly outline it here.

The concept of sovereignty, gaining strength by the seventeenth century, was the basis of an entirely new conglomerate of ideas gathered under the term “international relations.” In the sixteenth century, Jean Bodin would not only deny the existence of *Res publica Christiana*, not only challenge the Roman *jus gentium*, but also begin to formulate a theory of international relations based on treaties between independent parties (nation-states).<sup>71</sup> Thomas Hobbes would go in the same theoretical direction, stating that justice can only take place within an individual state. At the same time, the relationship between individual states is analogous to the relationship between human beings in the state of nature.<sup>72</sup> They are not bound by the *jus gentium* and are not subject to *Res publica Christiana*. Only the will of a particular state, like that of a particular individual, can bind it.

So the doctrine of international relations of the modern age was laid down. Its ideological foundations: a nation-state as the only legitimate political unit; the relations between these states based on treaties. The will, not reason, was assumed to be the basis of political obligation. Consequently, the state could only be constrained in the same way as the individual in the process of making a social contract: through its own consent. Finally, the idea of the equal legal status of all states was added to this.

Theories of external sovereignty and international relations strengthened the position of nation-states in competition with other political entities of the Middle Ages. By the time of the French Revolution, a large number of corporate structures of the Middle Ages had been seriously weakened or forcibly divided into a multitude of “real” subjects of international law holding sovereignty. The medieval idea of a “community consisting of small communities” was discredited.<sup>73</sup>

The nation-state became the model against which any other community was compared. The latter could be then categorized either as a nation-state or as a

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<sup>71</sup> Riley, P. *The Origins of Federal Theory in International Relations Ideas* P. 104-105.

<sup>72</sup> *Ibid.* P. 103-104.

<sup>73</sup> *Ibid.* P. 105.

union of nation-states. For a long time, some communities stubbornly defied this classification. Among those were the Holy Roman Empire, the United Provinces (the Netherlands), Switzerland, the Polish-Lithuanian Commonwealth, a number of free cities, and other polities. According to Patrick Riley, the problem was that these communities began to be described by political theorists in the language of national sovereignty, which was beneficial to England and France, but did not allow the special nature of these polities to be explained.<sup>74</sup>

As a result, political theorists no longer distinguished between the federal governments of Switzerland, the Netherlands, the Holy Roman Empire and the associations of states based on international treaties (also called *foedus*), including projects of “federal” Europe, the confederations whose purpose was to establish and maintain peace between sovereign states. In other words, both terminological and conceptual boundaries between national federal governments and confederations as associations of independent states were erased.

This context allows us to better understand why Rousseau used the same terms to describe the concept of perpetual peace based on the ideas of the Abbé Saint-Pierre and the compound polity, the Polish-Lithuanian Commonwealth: federation, confederation, federative form. Rousseau was in fact following the prevailing trend of usage, in which models of perpetual peace were referred to as “confederacies” in the same way as models of compound polities.

One may notice how Rousseau proposes to the peoples of Europe an interstate union, a confederation, as a solution to the problem of wars in *The Plan for Perpetual Peace*, but immediately adds that similar unions can already be found in Europe. He includes the United Provinces (“The States General”), the Holy Roman Empire (the “communities of Germanic states”) and Switzerland (“The Helvetic League”).<sup>75</sup> Therefore, this text illustrates quite well the logic outlined above: political theorists of the 17th-18th centuries actually ceased to draw not only terminological, but also conceptual boundaries between “internal”

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<sup>74</sup> Ibid. P. 105-106.

<sup>75</sup> Rousseau, J.-J. Extrait du Projet de Paix Perpétuelle de Monsieur L’Abbé de Saint-Pierre // Collection Complète Des Œuvres De J.-J. Rousseau. Geneve, 1782. P. 5-6.

federal governments and confederations as associations of independent states. The same logic can be found in *Emile*, where Rousseau sketches out an outline of the never-written *Political Institutions*.<sup>76</sup>

In *Considerations on the Government of Poland*, Rousseau still uses the term federation, but no longer considers the parts of a compound polity sovereign states. This distinguishes his position from the then existing approaches in the theory of international relations. In the text on Poland, one encounters a different concept of federalism, inspired not by the theory of international relations, but by a special division of power between the Polish-Lithuanian *sejm* and the voivodeships' *sejmiki*. The main peculiarity of this later concept of federalism by Rousseau is that it does not recognize sovereignty of the constituent parts of the federal polity. At the same time, it provides theoretical resources for a non-contradictory description of the self-government of these constituent parts.

*The division of power in the Polish-Lithuanian Commonwealth and “wills of the Nation”*

Chapter three retraces how Rousseau described this system of power division in the language of his own political theory. First of all, we note that Rousseau proposed to organize in each voivodeship of Poland its own governmental institution and to transform the existing *sejmiki* (assemblies of the nobility) so that each voivodeship would have one *sejmik*. The latter was to be the legislative body of the voivodeship. Rousseau proposes to form the *sejm*, a federal parliament, from the representatives of the voivodeships. And every representative from a voivodeship (*nuntius*) was to be supplied by the *sejmik* with instructions that would reflect the will of the inhabitants of the voivodeship. The *nuntius* was obliged to follow these instructions.<sup>77</sup>

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<sup>76</sup> Rousseau, J.-J. *Émile ou De l'éducation* // Collection Complète Des Œuvres De J.-J. Rousseau. Geneve, 1782. P. 420.

<sup>77</sup> Rousseau J.-J. *Considerations on the Government of Poland* // The plan for perpetual peace, On the government of Poland, and other writings on history and politics. The collected writings of Rousseau, Vol. II. Hanover, 2005. P. 190.

Since Rousseau proposes that each voivodeship organize a *sejmik*, it can be concluded that Rousseau endows each *sejmik* with its own will. In other words, as the bearer of its own will, the voivodeship can pass its own laws. At the same time, though Rousseau implies that a voivodeship has a will, he makes it quite clear that it has no sovereignty. First of all, this is reflected in the fact that voivodeships' *sejmiki* are forbidden to protest against the law passed in the all-Polish *sejm*. At the same time, I believe that the voivodeships are not merely a collection of private organizations within the state in Rousseau's eyes. Although they do not share sovereignty with the Polish-Lithuanian Commonwealth, I believe that they are the bearers of the general will of the Polish-Lithuanian Commonwealth as well as of their own will.

In key places of the text (speaking of the law and the status of the deputies of the voivodeships), Rousseau uses the concept of the "wills of the Nation" (*les volontés de la nation*).<sup>78</sup> Allow me to explain how this notion helps one to grasp the peculiarity of the status of the voivodeships. The "wills of the Nation" is a paradoxical expression. Recall that in *On the Social Contract*, Rousseau did not say that a collective person can have many wills. On the contrary, the sovereign possesses a single general will. The community within the state can have its general will, private in relation to the general will of the state. This private will, however, remains the will of a community, unrelated to the state itself. It cannot be called one of the wills of the state. Therefore, the "wills of the Nation" cannot be the sum of the private wills of individual communities within the state, since, strictly speaking, those wills are irrelevant to the nation. What, then, is the status of the "wills of the Nation?" From this dissertation's perspective, the "wills of the Nation" are the voivodeships' opinions on the general will of the Polish-Lithuanian Commonwealth.

This hypothesis is supported by several arguments. First of all, there were — and we show that Rousseau knew this — several kinds of legislative procedures in

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<sup>78</sup> Rousseau, J.-J. *Considérations sur le gouvernement de Pologne*. Geneve, 1782. P. 455-456; P. 454-455.

voivodeships' *sejmiki*. In one of these procedures, the laws of the voivodeships were passed. In the other procedure (the *sejmik* held in preparation for the *sejm*), instructions were prepared for the deputies, which were sent from the *sejmik* to the all-Polish *sejm*.<sup>79</sup> The first procedure presupposes that the voivodeship has a will of its own. The second procedure indicates that the voivodeship has a different type of will. The peculiarity of this procedure was that the instructions were drawn up on matters concerning the entire Polish-Lithuanian Commonwealth, and not a specific voivodeship.<sup>80</sup>

Furthermore, describing the legislative procedure in the all-Polish *sejm*, Rousseau draws an analogy between the voting of deputies in the *sejm* in accordance with instructions and between the voting of citizens in the assembly in accordance with their opinions on the general will.<sup>81</sup> This detail may indicate that for Rousseau the deputies were not simply representatives of the “private” wills of the voivodeships, but clarified the opinions of the voivodeships on the general will of the Polish-Lithuanian Commonwealth. This hypothesis is confirmed by another peculiarity of the legislative procedure described by Rousseau. In an attempt to guarantee the voting of deputies in accordance with the “general interest” and to protect the *sejm* from corruption, Rousseau suggests strengthening the dependence of deputies on instructions.<sup>82</sup> It is evident from this proposal that Rousseau did not see the problem of local interests in parliament and relied on the assumption that it was voting in accordance with instructions that revealed the general will of the Polish-Lithuanian Commonwealth.

In the context of this study, the idea that the voivodeship possesses two wills is, firstly, Rousseau's alternative to the idea of divided sovereignty underlying *The Federalist Papers*. Instead of the contradictory argument about the people transferring a part of sovereignty to the states and another part to the national

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<sup>79</sup> Rousseau J.-J. Considerations on the Government of Poland // The plan for perpetual peace, On the government of Poland, and other writings on history and politics. The collected writings of Rousseau, Vol. II. Hanover, 2005. P. 190.

<sup>80</sup> Ibid, P. 190-191.

<sup>81</sup> Ibid, P. 196-197.

<sup>82</sup> Ibid.

government, Rousseau offers a scheme that allows us to describe both the autonomy of the parts of a compound polity and their accessory to that polity. Secondly, this scheme allows Rousseau to speak of the preservation of moral liberty in a vast nation-state.

*Moral liberty and the political language of civic republicanism in Considerations on the Government of Poland*

What is striking when one turns to the *Considerations on the Government of Poland* is that Rousseau uses the idioms of the language of social contract theories less frequently. The third chapter demonstrates that in the text on Poland he no longer uses the concept of *On the Social Contract*. Rousseau is no longer concerned with the question of the origin of the legal order. He is practically silent about the nature of the sovereign. The transition from the state of nature to the civil state also does not concern Rousseau. Moreover, throughout the text, Rousseau uses the term “general will” only once. In fact, the general will as a property of an abstract collective person, the political community, hardly appears on the pages of *Considerations on the Government of Poland*.

The sense of patriotism, which, as Leo Strauss and Willmoore Kendall have shown, Rousseau equates with civic virtue, comes to the fore in *Considerations on the Government of Poland*.<sup>83</sup> In *On the Social Contract*, the concept of “general will” referred not only to an abstract collective person, the bearer of sovereignty, but also to the sense of community arising in each individual. Later work again uses the terms “virtue” and “patriotism” to describe this feeling. These changes lead one to assume that in *Considerations on the Government of Poland*, Rousseau is largely using the language of civic republicanism.

Indeed, the basic question that Rousseau formulates is how can Poland maintain a republic, that is, increase the influence of laws, without losing its

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<sup>83</sup> Strauss, L. *On the Intention of Rousseau* // *Social Research*. 1947. Vol. 14. P. 458.; Kendall, W. *How to read Rousseau's Government of Poland* // *The Government of Poland*. Indianapolis, 1972. P. XXX.

liberty?<sup>84</sup> Rousseau does not intend to justify the republican system as just. The main issue of the text has to do with the preservation of the republic. As was noted above, according to Viroli and Baker, Rousseau used the language of the theories of classical republicanism to address the problem of preserving and maintaining a political unity. In the text under consideration, Rousseau assumes that Poland already has the basic elements of a republican order, among which the most important is love of fatherland, or civic virtue. Now Rousseau wants the patriotism of the Polish nobility to be shared by all Polish citizens.<sup>85</sup> This would be the solution to the problem of preserving the republic. The main obstacle to the preservation of the republic, according to Rousseau, is corruption.<sup>86</sup> The opposition of republic and civic virtue to corruption is a basic idiom of the language of civic republicanism.<sup>87</sup> Thus, in *Considerations on the Government of Poland*, Rousseau uses mainly the language of civic republicanism. In turn, the choice of this language was largely determined by the main question of the text: how to preserve political unity?

In the context of this study, it is important that due to the change in idiomatic language, Rousseau ceases to speak of the collective liberty of the people in the meaning that was characteristic of *On the Social Contract*. In the text on Poland, Rousseau speaks little about liberty as a property of the collective person, the people; a property analogous to freedom of the will in the case of the individual. Of course, Rousseau also uses the notion of liberty in different senses in his *Considerations on the Government of Poland*. Moreover, he speaks of Poland's freedom from the armies of the Russian Empire and the European powers, which is somewhat reminiscent of arguments about the collective liberty

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<sup>84</sup> Rousseau J.-J. *Considerations on the Government of Poland // The plan for perpetual peace, On the government of Poland, and other writings on history and politics. The collected writings of Rousseau*, Vol. II. Hanover, 2005. P. 169-171.

<sup>85</sup> *Ibid*, P. 170.

<sup>86</sup> Rousseau, J.-J. *Considérations sur le gouvernement de Pologne*. P. 434, 454.

<sup>87</sup> Pocock, J. G. A. *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*. Princeton, 1975.



of the people.<sup>88</sup> At the same time, when it comes to the creation of law, Rousseau begins to use the concept of “liberty” differently.

Rousseau links the existence of liberty to a functioning legislature, calls *sejmiki* the true palladium of liberty, and says that the king cannot force the nation, the militia to oppress itself as long as everyone has a share in liberty, that is, participates in making laws. Therefore, one may assume that Rousseau could at least have sought to preserve the ideal of moral liberty in the text on Poland. Some may be right to object here. If Rousseau links the preservation of liberty to the work of the legislature how can one be sure that it is the moral liberty he is talking about?

There is a ready response to such an objection: refer to the changed nature of the criticism of representative government in the *Considerations on the Government of Poland*. Nowhere in the text does Rousseau speak of representative government as a threat to the general will of the collective organism, the people. Rousseau now defines the main shortcoming of representative government as the corruption of representatives, the “terrible evil of corruption, which turns the organ of freedom into the instrument of slavery.”<sup>89</sup> When this dissertation further talks about the means of overcoming corruption, it presents a more detailed look at what meanings Rousseau puts into the concept of “corruption.” For now, it is sufficient to mention that the criticism of representative government in the text on Poland is conducted in the political language of civic republicanism, not in terms of the contractual tradition of modernity. This gives one yet another reason to assume that liberty in the *Considerations on the Government of Poland* was understood as moral liberty, inherent in every citizen of the republic, and not as the liberty of the collective person, the people. The question remains to be answered is why the institution of deputies, to which Rousseau agrees in the *Considerations on the*

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<sup>88</sup> Rousseau J.-J. *Considerations on the Government of Poland // The plan for perpetual peace, On the government of Poland, and other writings on history and politics. The collected writings of Rousseau, Vol. II.* Hanover, 2005. P. 174, 210.

<sup>89</sup> Rousseau, J.-J. *Considérations sur le gouvernement de Pologne.* P. 454.

*Government of Poland*, is compatible with moral liberty. Is not this institution a type of representation?

As Keith Baker and Nadia Urbinati have demonstrated, as early as in *On the Social Contract*, the chapter *Deputies or Representatives*, Rousseau speaks of two different institutions, accepting one and rejecting the other.<sup>90</sup> In the very title of the chapter, the conjunction “or” denotes disjunction, not equivalence. If one turns to its content, one will find that Rousseau emphasizes the main difference between representatives and deputies, which boils down to the fact that deputies (“des députés”) are the attorneys of the people (“ses commissaires”). Consequently, there is a “contrat de commission” between deputies and the people. This agreement implies that the people directly approve the law, while the deputies only voice what has been approved by the people.

At the same time, this argument seems appropriate when one is talking about the people as a collective person that has general will and can enter a contract of commission (that is how this dissertation translates “contrat de commission”) with their attorneys, the deputies. But what does the argument about deputies and the contract of commission mean for the critique of representative government, which has been formulated in the language of civic republicanism? Rousseau provides an answer to this question by proposing the mechanism of instructions. Firstly, the instructions, which were to be followed by the deputies, are a kind of contract of commission. They are drawn up not by the people of the Polish-Lithuanian Commonwealth as a collective person, but by the inhabitants of specific voivodeships. Secondly, the procedure of drawing up instructions is a form of realization of moral liberty. Thus, the institution of deputies is consistent with the ideal of moral liberty. Let me now consider more closely how, according to Rousseau’s plan, the citizens of the Polish-Lithuanian Commonwealth could realize moral liberty.

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<sup>90</sup> Baker, K. M. *Inventing the French Revolution*. NY., 1990. P. 237; Urbinati N. *Rousseau on the Risks of Representing the Sovereign* // *Politische Vierteljahresschrift*. 2012. Vol. 53, №. 4. P. 648.

### *Institutions of federalism and realization of moral liberty*

Moral liberty allows the citizen to enact a law that will be an expression of the general will inherent in the citizen, and which, as a consequence, will not be a source of domination over the citizen later on. Therefore, moral liberty implies, firstly, that the citizen expresses “his” general will (not a private one) by participating in the making of the law. In addition, it is necessary that the citizen participate directly in the making of the law; otherwise, the law will not be considered “originating” from him and expressing the general will. Thus, citizens must participate in the making of all laws in force in the polity, and they must participate in their making directly.

Rousseau urged Poles to preserve and strengthen the *sejmiki*, to make them the legislative organs of the voivodeships. The *sejmiki* are institutions of direct democracy, in which the entire *szlachta* of the voivodeship participated. Probably, Rousseau considered participation in the *sejmiki* to be the main way to realize moral liberty for the inhabitants of voivodeships. The latter becomes possible thanks to the *sejmik*, because the *szlachta* participates directly in making the law of the voivodeship and because they express the will of the voivodeship at the *sejmik*. At the same time, the question arises: is the realization of moral liberty possible when it comes to collective decisions not of an individual voivodeship, but of the entire Polish-Lithuanian Commonwealth? I would like to demonstrate that the inhabitants of the Polish-Lithuanian Commonwealth had several kinds of moral liberty. While the first was exercised within the boundaries of the voivodeship, the second could be realized through participation in the adoption of the laws of the Polish-Lithuanian Commonwealth. In order to understand how the realization of moral liberty was possible within the Polish-Lithuanian Commonwealth, let me attempt to ascertain whether the participants of the *sejmik* preceding the *sejm* were guided by the general will of the Polish-Lithuanian Commonwealth, and then whether this procedure can be considered a direct participation in the making of the laws of the Polish-Lithuanian Commonwealth.

At the *sejmik* preceding the *sejm*, deputies were elected and instructions for them were drawn up. Did the participants of the *sejmik* preceding the *sejm* express the general will of the Polish-Lithuanian Commonwealth in a vote? Nowhere does Rousseau describe this aspect of the procedure in detail. In the text on Poland, unlike in *On the Social Contract*, Rousseau does not write that each individual possesses the general will. Nor can one make such an assumption, since Rousseau does not write about a procedure in which the entire community of inhabitants of the Polish-Lithuanian Commonwealth would express its general will. Rousseau writes only about the adoption of laws and the adoption of instructions at the level of voivodeships. On the other hand, speaking of the reform of manners and the education of patriotism, Rousseau observes: “They [the Poles] will obey the laws and will not evade them, because the laws will suit them, and they will have the internal assent of their will.”<sup>91</sup> Therefore, the voices of the participants of the *sejmiki* must still be connected in some way with the general will of the Polish-Lithuanian Commonwealth. I assume that Rousseau replaces the structure of the general will at the level of the individual with a sense of patriotism.

The ideal procedure described by Rousseau in *On the Social Contract* implies that each member of the assembly expresses his own opinions about the general will. These opinions are then consolidated, and the result reflects the general will.<sup>92</sup> From this dissertation’s point of view, in the text on Poland, Rousseau attempted to preserve this scheme, but offered several intermediate authorities for expressing an opinion on the general will of the Polish-Lithuanian Commonwealth. At the voivodeship’s *sejmik* preceding the *sejm*, the inhabitants of that voivodeship expressed their opinion on the general will of the Polish-Lithuanian Commonwealth, while relying on a sense of patriotism (analogous to the general will as a personal structure). In the course of the described procedure,

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<sup>91</sup> Rousseau J.-J. *Considerations on the Government of Poland // The plan for perpetual peace, On the government of Poland, and other writings on history and politics. The collected writings of Rousseau, Vol. II.* Hanover, 2005. P. 175.

<sup>92</sup> Rousseau, J.-J. *Of the Social Contract // The Social Contract and other later political writings.* NY., 1997. P. 124.

the opinions of the inhabitants of the voivodeship on the general will of the Polish-Lithuanian Commonwealth were consolidated, but expressed not the general will of the Polish-Lithuanian Commonwealth, but the voivodeship's opinion on the general will of the Polish-Lithuanian Commonwealth. The opinions of the voivodeships on the general will of the Polish-Lithuanian Commonwealth were then transmitted in the form of instructions to the *sejm*, where, on the basis of these opinions, the general will of the Republic was then ascertained.

Let me now return to the second criterion of moral liberty: the participation in making a collective decision directly. Can we consider that the citizens of the Polish-Lithuanian Commonwealth, by participating in the adoption of instructions, participated directly in the making of the laws of the Republic? Of course, this cannot be called direct participation in the sense mentioned by Rousseau in *On the Social Contract*. At the same time, however, I believe that in *Considerations on the Government of Poland*, Rousseau attempted to use existing Polish institutions in order to realize participation scenarios as close as possible to his ideal from the earlier work. To do so, however, he had to allow for a paradox. The people in the text on Poland are, on the one hand, a unity of citizens bound together by a sense of patriotism, and on the other hand, a unity of voivodeships. The all-Polish *sejm* considers the opinions of the voivodeships on the general will of the Polish-Lithuanian Commonwealth, not the opinions of individual citizens. However, the bearers of the sense of patriotism, analogous to the general will as a personal structure, are, of course, individual citizens.

I believe that Rousseau, seeing the impossibility of a general assembly in the Polish-Lithuanian Commonwealth, nevertheless decided not to abandon the ideal of direct participation. This was made possible by the introduction of two kinds of opinion on the general will. All citizens were still to express an opinion on the general will of the Polish-Lithuanian Commonwealth in general assemblies. Now, however, these were general assemblies of voivodeships, the *sejmiki* preceding the *sejm*. In the course of those *sejmiki*, as was already noted above, the consolidated opinions of the inhabitants of the voivodeship on the general will of the Polish-

Lithuanian Commonwealth became the opinion of the entire voivodeship on the general will of the Polish-Lithuanian Commonwealth. It was in this sense that the voivodeship expressed the opinion of the general will of the Polish-Lithuanian Commonwealth. Thus, after the *sejmiki* preceding the *sejm*, as well as during the sessions and votes in the all-Polish *sejm*, the voivodeships were the members of the people in terms of legislative procedure, not individual citizens.

Thus, in the two-step procedure considered, every inhabitant of the Polish-Lithuanian Commonwealth had the opportunity to express an opinion about the general will of the Polish-Lithuanian Commonwealth. Moreover, every inhabitant did so in *sejmiki*, which fully corresponded to Rousseau's ideal of direct democracy. In this sense, the principle of moral liberty was respected. The main addition was the consolidation of the opinions of individual citizens about the general will of the Polish-Lithuanian Commonwealth into the opinions of the voivodeships about the general will of the Polish-Lithuanian Commonwealth. This new condition would not destroy moral liberty if it was introduced alongside the institution of instructions. Thus, the inhabitants of the voivodeship took part in the adoption of the laws of the Polish-Lithuanian Commonwealth at the *sejmiki* preceding the *sejm*, speculating on questions concerning the whole polity and drawing up obligatory instructions for the deputies. In doing so, they were guided by a sense of patriotism, a love for the whole fatherland, and not only by the will of their voivodeship. This allows one to say that at the *sejmiki* preceding the *sejm* the inhabitants of the voivodeships were exercising moral liberty, but not as residents of the voivodeships, but as citizens of the Polish-Lithuanian Commonwealth.

#### *Institutions of federalism and overcoming the corruption*

It is this dissertation's position that in his work on Poland, Rousseau speaks of corruption in two ways. Firstly, with this word he denotes the process of distortion of civic virtue, in the course of which the inhabitants of the republic try

to satisfy a personal interest while neglecting the common interest.<sup>93</sup> This approach is much the same as that used by Rousseau in his *Discourse on the Arts and Sciences*, where he contrasts the “corruption” (decline) of morals in his contemporary societies to the ideal of ancient virtue.<sup>94</sup> However, I believe that in the text on Poland, Rousseau also speaks of corruption as a type of domination relationship based on the inequality of fortune between the parties.<sup>95</sup> This can be demonstrated if one traces the structural similarity between the argument against corruption in the *Considerations on the Government of Poland* and the argument against corruption in the works of the civic humanists of the late 17th century. This point will be elaborated in the third chapter of the dissertation.

In *Considerations on the Government of Poland*, in the chapter *Means of Maintaining the Constitution*, Rousseau writes: “Without being instructed about Poland’s affairs, I would wager everything in the world that there is more enlightenment in the Diet and more virtue in the Dietines.”<sup>96</sup> In other words, Rousseau laments the lack of virtue in the members of the *sejm*, the parliament. Recall that Rousseau meant patriotism by civic virtue in this text, love of the fatherland. For Rousseau, the lack of virtue in parliamentarians is a problem because it turns out to be one of the causes of the corruption of representatives. The three conditions for the domination of parliamentarians by other political institutions (or private groups of citizens) were already listed above. Parliamentarians’ lack of virtue means that they will tend to satisfy their need for recognition not through merit to the state, but in other ways. As Rousseau notes, if society’s love of the fatherland has faded and there are serious economic inequalities, the measure of social recognition will be luxury.<sup>97</sup> Thus, parliamentarians in these circumstances will tend to satisfy their need for

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<sup>93</sup> Rousseau, J.-J. *Considérations sur le gouvernement de Pologne*. P. 434.

<sup>94</sup> Rousseau, J.-J. *Discourse on the Origin and Foundations of Inequality among Men* // Rousseau. *Discourses and Other Early Political Writings*. NY., 1997. P.144-147.

<sup>95</sup> Rousseau, J.-J. *Considérations sur le gouvernement de Pologne*. P. 454.

<sup>96</sup> Rousseau J.-J. *Considerations on the Government of Poland* // *The plan for perpetual peace, On the government of Poland, and other writings on history and politics. The collected writings of Rousseau*, Vol. II. Hanover, 2005. P. 189.

<sup>97</sup> *Ibid.* P. 178.

recognition by building up personal fortunes. This makes parliamentarians dependent on other political institutions or private groups of citizens, who are willing to give generous rewards to the representatives in order to ultimately subjugate them.

The need for recognition based on ego (“amour propre”) cannot be eradicated, according to Rousseau. But it can be restructured and redirected so that it does not lead to a situation of domination.<sup>98</sup> This requires, firstly, reducing economic inequality between different groups of the population in order to reduce the desire for luxury. This, however, is not enough.<sup>99</sup> It is necessary at the same time to redirect the passion for recognition to something of “healthier and nobler tastes.”<sup>100</sup> It was for this purpose that Rousseau proposed a detailed scheme of advancement in public service (the rank system) in which citizens were rewarded for meritorious performance of their duties with badges of distinction and the opportunity to assume a higher position. The rank system consisted of three levels: servant of the state, elected citizen, and guardian of the laws. Each of the ranks gave access to a number of positions.<sup>101</sup>

Now it is possible to explain in more detail the connection of federalism with this system of ranks. The first rank allowed a citizen to be elected as a deputy to the parliament (*sejm*). At the same time, a citizen could receive this rank only from the *sejmik* of his voivodeship.<sup>102</sup> Before that, a citizen had to serve for three years in the court of the voivodeship, in the advocacy, or in a number of other institutions, and receive a recommendation from the place of service, which had to be confirmed by public opinion (unfortunately, Rousseau did not specify the form of this confirmation). In the end, the *sejmik* elected a deputy from the voivodeship

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<sup>98</sup> Neuhouser, F. Jean-Jacques Rousseau and the Origins of Autonomy. P 487-488.

<sup>99</sup> Rousseau J.-J. Considerations on the Government of Poland // The plan for perpetual peace, On the government of Poland, and other writings on history and politics. The collected writings of Rousseau, Vol. II. Hanover, 2005. P. 178.

<sup>100</sup> Ibid. P. 179.

<sup>101</sup> Ibid. P. 223-226

<sup>102</sup> Ibid. P. 224.



to the *sejm* from among these candidates.<sup>103</sup> In other words, the process of electing a representative of the voivodeship turned into a long collective evaluation procedure, in which the inhabitants of the voivodeship participated.

After the end of the two-year term of office, the deputy reported on his work to the *sejmik*, whose members evaluated his actions on the basis of those very instructions.<sup>104</sup> As a result, if the members of the *sejmik* were satisfied with the deputy's performance, the deputy was offered either to run for the *sejm* again, or, if that citizen had already been elected as a deputy three times and all three times had received a positive assessment from the *sejmik*, he could be recommended for the rank of "elected citizen." The rank itself was awarded by the *sejm*.<sup>105</sup> Thus, on the one hand, the instructions limited the deputy. On the other hand, the same instructions, in conjunction with the ranking system, induced the deputy to act in accordance with the interest of the voivodeship. This scheme made it possible to overcome corruption and the dependence of parliamentarians on other political institutions or private groups.

Hence, Rousseau introduced a ladder of ranks, which created new ways of gaining recognition in the eyes of others for the citizens, including deputies: awards, ranks, titles. The deputies could obtain these forms of recognition not through the decision of other political institutions and private groups, but only through the decision of the residents of the voivodeships. The inhabitants of the voivodeships were bound to one another by the will of the voivodeship, a stable unity of interests. This bond allowed the inhabitants of the voivodeships and their *sejmiki* to draw up instructions, decide who could be elected as a representative from the voivodeship to parliament, and evaluate how the representative performed in his role. Thus, federalism and the ladder of ranks worked as one system to overcome the corruption of representatives in parliament.

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<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

## **Conclusion**

Let me go back to the research questions. Recall that above I spoke of two federalist logics aimed at overcoming organ sovereignty. The first logic emphasized the constitutive power of the people, characterized as the ability of peoples to form unions or even new polities through agreements, as well as to withdraw from these unions. On the one hand, this approach allowed for the autonomy of the constituent parts of the federal polity and denied the principle of organ sovereignty. On the other hand, this logic did not allow for much to be said about the direct exercise of power by the people, about their making collective decisions. If some solutions to this problem were proposed, they were applicable primarily within the framework of a federal union.

We linked the second federalist logic to the arguments of *The Federalist Papers*, to the works that inherit it (the texts of Daniel Elazar were spoken about in more detail), and to the arguments of legal scholars concerned with the sociology of law (emphasizing the texts by Eugen Ehrlich). This logic explained the existence of multiple normative orders on the territory of a single state. On the one hand, the works of the above authors deny the central government's monopoly on lawmaking (both in the case of *The Federalist Papers* and the tradition associated with it, and in the case of Ehrlich) and, as a consequence, the possibility of localizing sovereignty in a single body. At the same time, this federalist logic does not provide a definitive answer to the question of the status of centers of power that have their own legal order (whether states or "social unions").

The limitations of the federalist logics described prompted the following questions: How does appealing to the principles of federalism allow for a description of popular participation in collective decision-making that is not limited to those forms of participation set by the idea of organ sovereignty? Is it possible to give such a description while remaining within the model of a unified federal polity that is not composed of sovereign states?

In sum, Rousseau's late model of federalism provides answers to both questions. On the one hand, this model provides a consistent description of the

status of the structural parts of a single federal polity. This sets it apart from the second federalist logic. On the other hand, unlike the first federalist logic, which speaks only of the constitutive power of the people, Rousseau's later model of federalism allows to describe the participation of the people in collective decision-making in a unified federal polity.

First of all, Rousseau's concept of the "wills of the Nation" allows to describe the status of the constituent parts of a federal polity without resorting to the controversial idea of divided sovereignty. The concept of divided sovereignty confronts several issues: how can sovereignty, indivisible by definition, be divided? Who exactly conveys a "part" of sovereignty to the central organs of the federal polity and another "part" to the organs of the constituent parts of a federation, the people of the entire polity or the constituent peoples of a federation? Rousseau's concept allows to sidestep these questions by localizing sovereignty in the people of a federal polity as a whole. This step, however, does not deny the self-government of the constituent parts of a federal polity. Their self-government is described by means of their special status as bearers of two wills: the will of a federal polity as a whole and the will of the constituent part of a polity.

In addition, Rousseau's ideal of moral liberty allowed him to outline the peculiarities of popular participation in the federal polity, without reducing people's actions to founding new polities or withdrawing from existing ones. In *On the Social Contract*, Rousseau wrote mainly about the constitutive power of the people, although he also offered a description of popular participation in collective decision-making. As it has been repeatedly noted, this participation was reduced to acclamation (although this work has already formulated the principle of moral liberty). At the same time, in his *Considerations on the Government of Poland*, having almost abandoned the language of social contract theories, Rousseau also stopped talking about the constituent power of the people, focusing on the participation of the people in collective decision-making. This participation was now described by Rousseau in terms of moral liberty, was not reduced to universal

suffrage, and was to be realized through the institutions of federalism: voivodeship parliaments, deputy instructions.

Democracy theorists today are focused on solving problems arising from the tension between the ideals of the normative theory of democracy and the concept of organ sovereignty. One such problem is the impossibility of describing various forms of popular participation in collective decision-making (the realization of the democratic ideal of liberty). The people are thought of as the original source of power, however, they forever surrender it to a specific state organ and reclaim it only on rare occasions of elections. It is difficult to imagine other centers of collective decision-making than parliament within such a concept.

In this sense, Rousseau's late model of federalism is unexpectedly relevant. It allows one to think of multiple centers of collective decision-making within a single polity. Rousseau's conceptual solution suggests what popular participation might look like if one were to try to realize the normative principle of freedom and abandon the idea of organ sovereignty altogether.

## **Testing**

### **Publications:**

**Articles which are published in journals indexed in international indexing and citation databases and included in the list of high-level journals by HSE**

1. Shablinskii A.I. On Mini-Publics in Deliberative Democracies: Inefficient Instrument or Arendt's "Oasis of Freedom" // *Russian Sociological Review*. – 2018. – Vol.17, № 4. – P. 103-116.
2. Shablinskii A.I. Public Opinion and Political Participation: Based on the Works of James Bryce // *Monitoring of Public Opinion: Economic and Social Changes*. – 2019. – Vol.154, № 6. – P. 202-219.
3. Shablinskii A.I. On Trust in Representatives Why Jean-Jacques Rousseau Accepts Political Representation, or How the General Will Gave Way to Federalism // *The Journal of Political Theory, Political Philosophy and Sociology of Politics Politeia*. – 2020. – Vol.98, № 3. – P. 82-98.

### **Conferences:**

1. «Republicanism. Theory, history, contemporary practices» (11-12 December 2020, EUSPb), Theme: Federalism as solution to the problem of corruption in republic or why has Rousseau accepted representative government?
2. «Modes of Thinking, ways of speaking. 11th International conference of the School of Philosophy, HSE» (7-10 October, 2020 г., HSE), Theme: History of Ideas and History of Philosophy: why has Rousseau accepted representative government?
3. «Dawn of law. Spaces of freedom. 3rd International forum» (6 December 2019, HSE), Theme: Sovereignty and Federation

4. «Modes of Thinking, ways of speaking. 9th International conference of the School of Philosophy, HSE» (26-30 April 2018, HSE), Theme: General will and negative freedom in Rousseau's "On the Social Contract"