

Of the Social Contract Towards Rethinking Modernity

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Many among us are under the misconception that talking about civil society shows the relative unimportance of the nation state, questions its sovereignty, demeans it, and restricts its authority. They also view civil society as some radical sociological theory looking to separate itself from politics, leaving in its wake a society indifferent to politics. This essay will show the unbreakable inherent bond joining civil society and the nation state, two pivotal aspects and essential hallmarks of modernity. The "social contract" still wins the most support as being the grounds for civil society, and leads directly to the modern secular state. In the social contract are the logical grounds for the creation of the state, or, as Rousseau puts it, the body of authority. The

essential contestation of those opposing the mere idea of a civil society seems to be the negation of a public will to which they prefer personal interests still dominating the Arab political scene as well as the Arab political "mind."

Jean Jacques Rousseau's opening statement, in his famous book, *The Social Pact*, is the following: "My purpose is to consider if, in political society, there can be any legitimate and sure principle of government, taking men as they are and laws as they might be." (2) This statement highlights the book's main problematic, namely: Are societies able to find a sure legal basis for government? a basis whose elements are taken from real circumstances, populated with real people, situated in a real context, and with laws that can actually organize their lives. Rousseau, unquestionably realistic in his outlook, rightfully highlights the source of this legislation which organizes life in civil society. He adds:

I start without seeking to prove the importance of my subject. I may be asked whether I am a prince or a legislator that I should be writing about politics. I answer no; and indeed that is my reason for doing so. If I were a prince or a legislator I should not waste my time saying what ought to be done; I should do it or keep silent.

Born as I was the citizen of a free state and a member of its sovereign body, the very right to vote imposes on me the duty to instruct myself in public affairs, however little influence my voice may have in them."(3)

Political issues are public affairs and every citizen has the right to voice his opinion on them, for they are just this, public affairs.

These two facts are unquestionably given, even when any citizen's opinion on public affairs requires proving. "Man was born free, and he is everywhere in chains. Those

who think themselves the masters of others are indeed greater slaves than they."(4) Indeed, this is an optimistic view of human nature that not only considers freedom as inherent to the human being, but also says of the social contract that it is a voluntary choice based on freedom. This view contradicts Hobbes' somber statement that "man is a wolf to man," a conclusion derived from the assumption that the human gathering is driven by necessity. Rousseau's gathering of people, on the other hand, is born of freedom and is a free space, a society founded on a free, voluntary contract.

A thousand years before Rousseau, Umar b. al-Khattab asked: "How can you enslave people whose mothers brought into this world as free individuals?"

The question is valid up until now: Was humanity born Free? Is freedom inherent to humans or do they acquire it?

Two contradictory theses are answers to these questions, those we associate with Rousseau and Hobbes, but many others also

remain available to us. Man was undoubtedly born bound by natural necessity, or necessities, from which he liberated himself by gathering into a society. I chose not to say consciously, for it is a social trait, no matter the individual manifestations of it, or the category, class, religious or sectarian manifestations.

The work-based society has nonetheless freed humanity, little by little, of these necessities which can neither be eliminated nor abolished. All that humanity can do is to understand and somewhat control these necessities. It is primordial to assert that the social contract freed people from their natural necessities. Freedom is nonexistent outside the social context which appears as an obligation, one of the many new social, economic, political and cultural necessities on whose realization and control the human freedom depends. Exerting a control over this necessity is the same as controlling the product of one's work.

Two theses are at hand: Hobbes' necessity and Rousseau's freedom (a thesis

also stated by others, preceding and following them). Both ideas are right when taken together but wrong when considered separately. Where there is no necessity, there is no freedom, for humans are prone to freedom. We should distinguish freedom from liberation. Liberation means breaking free from an external bond, like colonialism or political despotism, unlike freedom which is an internal act, inherent to the individual, the society and the human community.

Human beings are prone to either freedom or slavery; this predisposition is conditioned by and limited to consciousness; consciousness being the perception of our material existence. Those who say we have immaterial causes for a material phenomenon have no justification for this. Rousseau provides an ingenious response to the question of master and slave. He who thinks himself master to others is not only slave to his own illusions but to the illusions of others as well. In this idea lies another meaning of freedom, a

political one if you will: Slave is master and master is slave.

This meaning is at the root of the idea of civil society as both a stage and free space for history. The master-slave polemic can be fully disclosed only in the social system Rousseau sees this as a sacred right basic to all others; a right whose source is not nature, but a contract between free and independent persons. In order for us to get a clear idea of the boundaries of freedom, sovereignty and independence, removed from abstraction, not only do we need to mention the dialectic of freedom and necessity, but also compare it to that of the arbitrary and the orderly, which I claim to be the law of civil society. This seconds Rousseau's argument that the social order is a sacred right, prerequisite to all others. The social covenant is the foundation for changing from the natural state to the civil society.

For Rousseau, the family is the oldest of societies and stands alone as the natural society. Nonetheless, he states:

"Children remain tied to their father by nature only so long as they need him for their preservation. As soon as this need ends, the natural bond is dissolved. Once the children are freed from the obedience they owe their father, and the father is freed from his responsibilities towards them, both parties equally regain their independence. If they continue to remain united, it is no longer nature, but their own choice, which united them; and the family as such is kept in being only by agreement."(5)

For Rousseau, just as for Hegel and Marx after him, family is the natural foundation of civil society, all of the members in it as purely natural as long as self-preservation is their obligation, which is before gaining their independence and turning to free souls. Independence and freedom are the prerequisites for a natural person to join civil

society, under no circumstance a natural one, and at once become a member of the political state. The family whose members have become independent is the first "micro" model of a political society: "The head of the state bears the image of the father, the people the image of his children, and all, being born free and equal, surrender their freedom only when they see advantage in doing so." In making the social contract, individuals surrender some of their liberties for the advantage of all, since the final aim of this contract is the public good. This covenant between free and equal individuals, these people change from the natural right advocated by Hobbes and Grotius--who have taken as basis for their reasoning Aristotle and Caligula's natural inequality--to civil and political rights, alongside political equality.

Natural differences among individuals, pertaining to strength and weakness, wealth and possessions, etc. should not be basis for rights and obligations. If they were, then rights

would only be based on an unstable, unsure foundation, not to mention being illegitimate.

If might is what gives rights to those who have it and forces obligations upon those who do not, then the strong oust those weaker than them and lay out new rights and obligations, "but what can be the validity of a right which perishes with the force on which it rests,"(6) since there will always be a higher one? Hence, it is not permissible that right be proportional to might. This principle is not only invalid for establishing a social order, but it also creates chaos pure and simple. How conceivable is it that inter-citizen relations are defined by the wars waged by the state in which they live? We can only explain transformation from the natural state to the civil state by the development of needs and the ways to fulfill them. Civil society, as defined by Hegel, is the organization of needs, the social status that ends might's ruling power.

Since no man has any natural authority over his fellows, and since force alone bestows no right, all legitimate authority among men must be based on covenants...hence, an arbitrary government would be legitimate only if every new generation were free to accept or reject it, and in that case the government would cease to be arbitrary.(7)

To alienate or renounce one's freedom is to renounce one's humanity, one's rights as a human and equally one's duties. How can people renounce the very instruments of their preservation, their freedom and strength, without putting themselves in peril?

Rousseau's answer to these questions is to "find a form of association which will defend the person and goods of each member with the collective force of all, and under which each individual, while uniting himself with the others, obeys no one but himself and

remains as free as before." This association is the social contract, whose principles are freedom and independence. Foundation is partnership and the end is public profit, a gain for all. The articles of this contract, or partnership, everywhere the same, can be reduced to a single one: the alienation by each associate of himself and all his rights to the whole community. Thus, in the first place, as every individual gives himself absolutely, the conditions are the same for all, and precisely because they are the same for all, it is in no one's interest to make the conditions onerous for others.

Secondly, since the alienation is unconditional, the union is as perfect as it could be, and no individual associate has any longer any rights to claim. If rights were left to individuals, in the absence of any higher authority to judge between them and the public, each individual, being his own judge in some causes, would soon demand to be his own judge in all. In this way the state of nature

would be kept in being, and the association inevitably becomes either tyrannical or void.

Finally, since each man gives himself to all, he gives himself to no one. Since there is no associate over whom he does not gain the same rights as others gain over him, each man recovers the equivalent of everything he loses, and in the bargain he acquires more power to preserve what he has. If then, we eliminate from the social pact everything that is not essential to it, we find it comes down to this: "Each one of us puts into the community his person and all his power under the supreme direction of the general will; and as a body, we incorporate every member as an indivisible part of the whole."

Immediately, in place of the individual person of each contracting party, this act of association creates an artificial and collective body composed of as many members as there are voters in the assembly, and by this same act that body acquires its unity, its common ego, its life and its will. The public person thus formed is the *republic*; those who are

associated in it are the *people*, and individually *citizens*, sharing in the sovereign power and *subjects*, putting themselves under the laws of the republic.(8) Citizen, people and republic might be called the three "hypostases" of democracy.

Diverging from Aristotle's "man is a political animal"--that humans are political (i.e., social) by nature, i.e. society is nature's creation--Rousseau affirms that society, and more particularly civil society, is the work of humanity, created from their consciousness and will, in others words, by history. Rousseau nonetheless does not pause to ask which came first. He has possibly overlapped consciousness with existence, but we will not ponder this question for already mentioned is the notion that work, that of the head and hands, is the foundation of social interaction. The argument we wish to assert, however, is that society is history's child and not nature's, and that this is the essential bet of secularism.

Rousseau walked in the same path as Hegel and Marx who follow him. Members in

a civil society are equal associates in one sovereign body (the state), which is inalienable and indivisible, neither has more rights than the other and none is more of a citizen than the other. Thus, we say that citizenship, like humanity, is a non-differential and non-preferential trait. Humans derive this equality from each being a whole member in this sovereign body, none able to less or more of a member, while staying a citizen and a human being. Society is the most primary form of humanity in people and no such humanity exists beyond it.

Under the act of association, all associates, or citizens, in making a contract, find themselves doubly committed: first in relation to individuals, bound by civil laws; and second, in relation to the sovereign body, bound by political rights. This double relationship imposes reciprocal obligations. Here, there can be no invoking of the principle of civil law which says that "no man is bound by a contract with himself," in regard to the obligations of the sovereign. Indeed,

It would be against the very nature of a political body for the sovereign to set over itself a law which it could not infringe. There neither is, any kind of fundamental law binding on the people as a body, not even the social contract itself. The political body, owing its being to the sanctity of the contract, cannot commit itself, even to foreign powers, to anything that would derogate from the original act of association; it could not, for example, alienate a part of itself or submit to another sovereign. To violate the act which has given it existence would be to annihilate itself; and what is nothing can produce nothing.

As soon as the multitude is united thus in a single body, no one can injure any one of the members without attacking the whole, still less injure the whole without each member feeling it.

This here is the golden rule which we must obey, a rule that renders even gold worthless. Duty and self-interest thus equally oblige the two contracting parties to give each other mutual aid; and the same men should seek to bring together in this dual relationship, all the advantages that flow from it.

Now, as the sovereign is formed entirely of the individuals who compose it, it has not, nor could it have, any interest contrary to theirs; and so the sovereign has no need to give guarantees to the subjects, because it is impossible for a body to wish to hurt all of its members, and, as we shall see, it cannot hurt any particular member. The sovereign by the mere fact that it is, is always all that it ought to be.

But this is not true of the relations of subject to sovereign. Despite their common interest, subjects will not be bound by their commitment unless means are found to guarantee their fidelity. For every individual as

a man may have a private will contrary to, or different from, the general will that he has as a citizen; his absolute and naturally independent existence may make him regard what he owes to the common cause as a gratuitous contribution, the loss of which would be less painful for others than the payment is onerous for him; and fancying that the artificial person which constitutes the state is a mere rational entity (since it is not a single person), he might seek to enjoy the rights of a citizen without doing the duties of a subject. The growth of this kind of injustice would bring about the ruin of the political body.

Hence, in order that the social pact shall not be an empty formula, it is tacitly implied in that commitment, which alone can give force to all others, that whoever refuses to obey the general will shall be constrained to do so by the whole body, which means nothing other than that he shall be forced to be free; for this is the condition which, by giving each citizen

to the nation, secures him against all personal dependence, it is the condition which shapes both the design and the working of the political machine, and which alone bestows justice on civil contracts-without it, such contracts would be absurd, tyrannical and liable to the grossest abuse.(9)

The passing from the state of nature to the civil society produces a remarkable change in man; it puts justice as a rule of conduct in the place of instinct, and gives his actions the moral quality they lacked... what man loses by the social contract is his natural liberty and the absolute right to anything that tempts him and that he can take; what he gains by the social contract is civil liberty and the legal right of property in what he possesses. If we are to avoid mistakes in weighing the one side against the other, we must clearly distinguish between *natural* liberty, which has no limit but

the physical power of the individual concerned, and *civil* liberty, which is limited by the general will; and we must distinguish also between *possession*, which is based only on force or "the right of the first occupant", and *property*, which must rest on a legal title. We might also add that man acquires with civil society, moral freedom, which alone makes man the master of himself; to be governed by appetite alone is slavery, while obedience to a law one prescribes to oneself is freedom.(10)

In ownership is a will that can either be private and absolute, which strips ownership of property of its nature, since ownership of everything is in fact that of nothing; or it can be an objective will abiding by the limits of the general will. This kind of ownership makes the owner's property rightfully his; never contested by anyone, equally to the fact that he himself does not unrightfully contest any other's property.

So long as this is the case, a bond of necessity ties freedom and property. Property is both private and public; it can be either be that of an individual or a family, or that of the sovereign, the state. In a moderate state, there are no contradictions between the two properties.

Every man has a natural right to what he needs; but the positive act which makes a man the proprietor of any estate excludes him from everything else. His share having once been settled, he must confine himself to it, and he has no further right against the community. Thus we see how the 'right of the first occupant', weak as it is in the state of nature, compels in political society the respect of all men.

In abiding by this law, we not only respect what does not belong to us as much as we respect our own possessions, but we also

respect what effectively belongs to others, and this truly guarantees our right.

The right to property, as an expression of the objective will, makes of rulers not the supreme sovereigns over people, but the heads of states. If all that belongs to private individuals is part of the public sovereignty, then:

What is unique about alienation entailed by the social contract is that the community, in accepting the goods of an individual is far from depriving him of them; on the contrary it simply assures him of their lawful possession; it changes usurpation into valid right and mere enjoyment into legal ownership. Since every owner is regarded as a trustee of his public property, his rights are respected by every other member of the state, and protected with its collective force against foreigners; men have, by a surrender which is advantageous to the

public and still more to themselves, acquired, so to speak, all that they have given up—a paradox which is easily explained by the distinction between the rights which the sovereign has and which the owner has over the same property... the right of any individual over his own estate is always subordinate to the right of the community over everything; for without this, there would be neither strength in the social bond nor effective force in the exercise of sovereignty.

The fundamental charter (the social contract as expressed by the constitution), in any given social system "far from destroying natural equality, substitutes, on the contrary, a moral and lawful equality for whatever physical inequality that nature may have imposed on mankind; so that however unequal in strength, intelligence [and talent], men become equal by covenant and by right."(11)

The social contract originates a general will which "can direct the forces of the state with that end which the state has been established to achieve: the common good; for if conflict between private interests has made the setting up of civil societies necessary, harmony between those same interests has made it possible. It is what is common to those different interests which yields the social bond; if there were no point on which separate interests coincided, then society could not conceivably exist. And it is precisely on the basis of this common interest that society must be governed." Public administration, in this sense, is the exercise of sovereignty and the practical formula of sovereignty, and the latter is inalienable "the sovereign, which is simply a collective being, cannot be represented by anyone but itself; power may be delegated, but the will cannot be." Public will is the foundation of public administration, in turn the exercise of the public will, or sovereignty.

We must stop awhile and reflect on this democratic spirit, the spirit of moderation--

democracy and moderation molded into one. This spirit does not only encompass what sets individuals apart, it also encompasses what brings them together, and no difference exists in the absence of similarities. This spirit not only notes contradictory interests, but also converging interests--absolute paradox lingers in the mind only. This spirit not only perceives necessity, but also highlights the possibility on the other side of it--reality is a series of necessary relations, which all result from possibility. Reality bears innumerable possibilities and probabilities because it lives on contradiction, but a non-absolute contradiction. In reality, everything depends on, is affected by and also affects everything else. All of this was present in the preliminary lines of the democratic vision. In this sense democracy is closely tied with the theory of knowledge, in reasoning with the existing world, as it is. A "democratic theory" does not exist; rather, what exists is a theory of democratic knowledge, or dialectics. Democracy is an open generator of a system since in preliminary concept, it is created on a

basis of freedom to all of its elements and the dialectic binding necessary and voluntary relations. It stands thus on possibility and probability.

Reality, in both sociology and political sociology is society in its actual form, and its possible form; traditional or civil society, the relations which classify it under both definition, and the phenomena and administrative forms which generate from these relations, including the state.

Reality is both concrete and a web of possible, probable and contradictory relationships. So is society. The only difference at this level between traditional and modern societies is the proportionality between the forces of attraction and repulsion to and from the center. Social and political relations revolve around what is general and common to all citizens and social categories and powers. This factor of the general and the common is not less real than that of difference and contradiction; for the second is a prerequisite to the first. Similarity is authentic,

being the state of non-limitation, while dissension is only temporary for it is the trait of the limited and the doomed, the restricted to the form and formation, to the principle of definite form and the logic of the end. Every limited and definite creature is a final product. Reality in political science is the people, the political state, nations, peoples and countries.

For indeed while it is not impossible for a private will to coincide with the general will on some point or other, it is impossible for such a coincidence to be regular and enduring; for the private will inclines by its very nature towards partiality, and the general will towards equality.(12)

Thus, the social contract is always open to progress, growth and change, without losing its contractual trait. Even that "civil society" loses its essence when it is not subordinated to development and thus constantly criticized.

What is noteworthy in Rousseau's words is when he says that what is even more impossible than a perpetual agreement between the general and private wills is to find a guarantee to this agreement, a guarantee that should exist, but when it is actually found, it is merely by chance. Political turmoil which neglected no state or society has always led to the rebuilding of the social contract, accordingly to the new circumstances. Political turmoil is the disequilibrium between wills and interests, or wills/interests. Besides, coincidence is the bearer of law, so we cannot say that the agreement of the private and public wills is but a coincidence. This same coincidence is the generator of law. When the sovereign yields to a private will, then either it has started to degenerate, or this private will holds a public aspect that was not as such before. While randomness and coincidence cannot be proscribed from social life, the sovereign body can nonetheless, never be anything but a form of law and order. General will cannot be arbitrary, and if it is so becomes, then it cannot remain a public will.

The general will can only tend to the public good. Immediately when a ruler comes who represents his personal and individual self then the sovereign body is thus annihilated and the political structure fades.

The general will is only found in what all citizens agree on. Any abstention or honest objection takes away the quality of being general, even when this abstention or objection comes from one source, or a small number of people. These here issues are of the most obscure and complicated in politics, the questions of national consensus, of political opposition and the relation of the political majority with the minority to both the opposition and the authority, of the degree of agreement and disagreement between private wills and interests on one hand and general will on the other, in addition to the chief issue of all, that of the passing from one political and social system to another, and the identity of he who decides it and the way it happens, and so on.

It is our belief that the concept of civil society, as a field without structure, space of freedom, and scene of history will always contain innovative solutions to these contradictions. These solutions do not only come through its actual and possible organizations, but also through its ability to transform these solutions into laws whose rightfulness depends on the degree of this concept's presence in the political body, and its ability to steer the wheel.

Furthermore, the different opposing groups, no matter the issues they are opposed to, contribute to raising these questions and putting them in the "hot spot" of the debate, when they take on the colors of social organizations, such as associations and political parties which express the vitality and richness of a society, while showing its evolution towards balance and progress.

On the other hand, "just as sovereignty is inalienable, it is for the same reason indivisible; for either the will is general or it is not." So long as it is, then it is backed by law.

The separation of powers is in fact a division of functions, not one of sovereignty. A division imposed by that of work as well as by the independence of the fields of social life in the given society. Sovereignty is not, and can never be, a sum of the powers to which it delegates authority to perform certain functions, like the legislative, the executive, the judiciary, education, public works etc.

Public institutions, apart from the legislative, are no more than functional institutions and not sovereign ones. Only the legislative combines both the functional and the sovereign traits, with the functional only coming second. There is an essential difference between the general will and that of all. The will of all is a mathematical calculation of wills, while the former is a logical abstraction of what is common to all citizens, which finds its form in the fundamental law, or Constitution. Let us say that this abstraction is present in the generality and objectivity of law, which respects all that is general and common, is never laid out

because of a private case and is not conform to special cases and individual differences.

Marquis d'Argenson says "every interest has its different principles. Harmony between two interests is created by opposition to that of a third." Rousseau comments "[the Marquis] might have added that the harmony of all interests is created by opposition to those of each. If there were no different interests, we should hardly be conscious of a common interest, as there would be no resistance to it; everything would run easily of its own accord, and politics would cease to be an art."(13)

Should divergences and contradictions not exist in interests, ideas, depictions and in the doctrines which express all of these, then the need would not exist either for politics as a dialectic composition of all differences and oppositions, or for the constitution of the sovereign body as an abstraction of generality.

Rousseau defines general will: "There is often a great difference between the will of all and the general will; the general will studies

only the common interest while the will of all studies private interest, and is indeed no more than the sum of individual desires. But if we take away from these same wills, the pluses and minuses which cancel each other out, the sum of the difference is the general will." This thought is logic in form. He adds:

If the general will is to be clearly expressed, it is imperative that there should be no sectional associations in the state--because every association or party is an expression of general will in the eyes of its members and of a private one in the eyes of the state- and that every citizen should make up his own mind for himself, such was the unique and sublime invention of the great Lycurgus. But if there are sectional associations, it is wise to multiply their number and to prevent inequality among them, as Solon, Numa and Servius did. These are the only precautions which can ensure that the general will is always

enlightened and the people protected from error.(14)

If the state is nothing other than a legal person the life of which consists in the union of its members and if the most important of its cares is its own preservation, it must have a universal and compelling power to move and dispose of each part in whatever manner is beneficial to the whole.(15)

Thus its absolute sovereignty is equaled only by its absolute power; "however, we have to consider beside the public person, those private persons who compose it, and whose life and liberty is naturally independent of it."

This balance between the rights of citizen and those of state has always been, as it will stay, an intricate one. Rousseau thus felt it difficult to explain his attitude at this point, and his view which can be divided into two claims: the rights of the state and the rights of

the citizen. Drawing an analogy between the state and a person, if yet a moral one, may have added to the existing complications, since a person is content with his own freedom and not in need of the freedom of each of his members or parts.

The political state is unarguably that of all of its citizens, but according to Rousseau, sovereignty is not related to the sum of individuals, but to the common grounds which make of these individuals citizens, while each, outside of these grounds, is independent. Otherwise, the social contract and the sovereign body would not have come to exist. Where complete dissension exists, a social pact cannot be, nor is it needed where complete agreement lies. This twist or agreement/dissension makes of the citizen both ruler and ruled, at once. The ruler, or master, is common to all citizens; it is the general will, the ruled in this sense is the different and the opposed. Difference imposes the need for a covenant and by agreement, this covenant is made possible. This is contrary to

slavery and despotism, where difference (the private will), is master and ruler and agreement (the general will), is ruled. Difference makes the state necessary.

Unfortunately, it is in difference and opposition that innovation and revival lie, for the latter are born of change from the typical and familiar patterns. Those states which tried to control and suppress difference have turned into totalitarian and despotic regimes before they were doomed and collapsed. Their attempts to unjustly and wrongfully stifle the natural course of things brought on their destruction. Heedless of all details, the collapse of totalitarian and despotic states is brought by their contrariety to the "laws of nature," which by the same account are those of reason.

This paradox between dissension and agreement is naturally a dialectic one, hence the governor may become governed and vice-versa, since a perpetual agreement is impossible, as noted by Rousseau, because consistency of the internal shape in any given

society is impossible, as is the consistency of individuals.

It is not the number of citizens which confers sovereignty upon a state; otherwise, sovereignty would differ from a state to another, proportionately to the number of citizens. But, in fact, this has never been the case, and neither is it today. There are no differences or preferences between free, independent citizens of one state. Neither do these differences and privileges exist between free and independent states. Independence and sovereignty are two sides of the same coin, whether on the individual level, or that of societies and states. Sovereignty, as the general will, or the sovereignty of the nation and the people, is as enduring as this will is and as comprehensive, as inviolable and inalienable. But in no case is it a direct sovereignty upon individuals who have become free and independent citizens. It is enforced by the mediation of law, for the individual's relation to the state is no longer a direct and personal one, a relation of servitude.

It is now an indirect, impersonal, mediated relationship, whose vehicles are the organizations and institutions of civil society. These bodies, and especially unions and political parties, are the forms of mediation between the individual and the state, the space for individual participation in politics, which in its modern sense is an exercise that is close to the concept of citizenship.

Rousseau writes:

the commitments which bind us to the social body are obligatory only because they are mutual; and their nature is such that in fulfilling them a man cannot work for others without at the same time working for himself. How should it be that the general will is always rightful and that all men constantly wish the happiness of each, but for the fact that there is no one who does not take that word 'each' to pertain to himself and in voting for all think of himself? This

proves that the equality of rights and the notion of justice which it produces derive from the predilection which each man has for himself and hence from human nature as such. It also proves that the general will, to be truly what it is, must be general in its purpose as well as in its nature; that is should spring from all and apply to all; and that it loses its natural rectitude when it is directed towards any particular and circumscribed object- for in judging what is foreign to us, we have no sound principle of equity to guide us.(16)

This only happens when the general will elevates itself over any arbitration in private matters, which does not go through the independent channels of the judiciary.

For it is not up to the general will to punish or praise, or impose more burdens on one or a few than it does on the others. If it so does, then it becomes a party in the conflict of

a private will. It does not rely upon the general will to be a legislator, a judge and an executor all at once, which is why there was need to separate powers and the reign of law." The sovereign recognizes only the whole body of the nation,"(17) and is thus only concerned with that which is general.

We have given life and existence to the body politic by the social pact; now it is a matter of giving it movement and will by legislation. For the primitive act by which the body politic is formed and united does not determine what it shall do to preserve itself...so there must be covenants and positive laws to unite rights with duties and to direct justice to its object. In the state of nature, where everything is common, I owe nothing to those to whom I promised nothing, and I recognize as belonging to others those things that are of no use to me. But this is no longer the case in civil society, where all rights are determined by law.

The principle of law is that "the general will cannot relate to any particular object... thus the law may lay down that there shall be privileges, but it may not nominate the persons who shall have those privileges," otherwise, it is no longer a law, by the same way it ceased being general. Even bestowing a moral honor upon persons for valuable services rendered and exceptional deeds can only be by way of decree, not law. Neither can law punish private and definite deeds of specific persons and still be general. Law only considers subjects en masse and actions in the abstract; while it punishes acts of theft and embezzlement, it does not name a particular thief or embezzler, nor does it state the sum which was stolen or embezzled, or the innumerable kinds and types of theft and embezzlement, all these actions are up to the jurisprudence of the judiciary, which decides of each case separately.

The generality and abstraction of law is what separates modern state from pre-state regimes.

Laws are really nothing other than the conditions on which civil society exists. A people, since it is subject to laws, ought to be the author of them. The right of laying down the rules of society belongs only to those who form the society.(18)

Therefore, any state which is ruled by law is called a "republic", as we have previously noted, whatever the form of its administration or government.

It is noteworthy to mention that Rousseau considers public will to be the law. We have pointed out that law is the soul and *raison d'etre* of the state, only because it is the spirit of the people. Law is only as such when it respects the generality of will and purpose,

otherwise, no obligation exists to obey it, respect it and abide by it, nor does the justification for its superiority. Things being as they are, the sovereign body, in its restricted sense, lays down laws, meaning the legislative power which is rightly elected. It is necessary that this power be an enlightened one, which can only be with the union of will and understanding (union of thought and politics).

"The greatest good of all," sought by the general will and whose accomplishment lies on the sovereign body derives from "two main objects: freedom and equality. Freedom because any individual independence means that much strength withdrawn from the body of the state, and equality because freedom cannot survive without it;" this form of equality upon which relies the survival of freedom, it does not "imply that degrees of power and wealth should be absolutely the same for all, but rather that power shall stop short of violence and never be exercised except by virtue of authority and law... where wealth is concerned, that no citizen shall be

rich enough to buy another and none so poor as to be forced to sell himself; this in turn implies that the more exalted persons need moderation in goods and influence and the humbler persons moderation in avarice and covetousness."

Such moderation (bringing the two extremes close together), bestows strength, durability, equilibrium and stability upon a state.

However, these general objectives of all (sound) institutions must be modified in each country to meet local conditions and suit the character of the people concerned... What makes the constitution of a state really strong and durable is a close observance of conventions that natural relations and laws come to be in harmony on all points, so that the law, shall we say, seems only to ensure, accompany and correct what is natural. But if the

lawgiver mistakes his object and builds on principles that differ from what is demanded by the circumstances... then the laws will be weakened imperceptibly, the constitution will deteriorate, and the state will continue to be disturbed until it is finally destroyed or transformed, and invincible nature regains her empire.(19)

In truth, the close observance of the state's laws and the nature of things is what makes the state's politics rational and enlightened. By the nature of things, we mean the logic of reality, in all of its dimensions: time and space, history and universe.

Social and political stability, according to the logic of agreement, means the harmony of public laws and political exercise with the ever-shifting logic of reality. Otherwise, stability turns to stagnancy which deteriorates the structures of society and state alike.

According to the degree of harmony joining the laws of state and those of reality, that of the people and their productions, laws change in the end, to become a form of ethical code which makes of the respect of others' rights and their freedoms an internal stand which is the essence of the civilized humanity.

The utmost goal of laws is to humanize social relations, including political ones too. Moreover, the measure of the politic body's strength, confirmed by all theoretical studies, is its ability to preserve freedom, that of all the citizens alike. There is no harm in reconfirming that the free state is the one whose citizens are all free. Rousseau confirms in all clarity the difference between the state, or the first sovereign, of which the clearest expression is the legislative authority, and the government, including the head or president of the state. The former, the state, "exists by itself," meaning by the free and voluntary social contract whereas the latter, the government, "exists only through the sovereign."

Let us consider that the former is the rule and the latter its instrument, deriving all its qualities from the objective of rule and its legitimacy from the sovereign. Some parts of *The Social Contract* reveal a kind of "social Pythagoreanism," notably when it comes to the relationship between the state's power and the number of citizens in it, so much so that we find the following words: "the bigger the state, the less the freedom." I am inclined to state otherwise: The degree of participation of citizens in the state is not measured by numbers. Citizens participate in the state through the common qualities they share, which do not vary according to their number, whether it be great or small. No matter how great a state gets, the common elements binding its citizens together, those of the social contract, do not change. These elements are qualitative and not quantitative, which is why I presume that the greater the state, the stronger it is and the greater the freedom its citizens enjoy. The greater the state and the more stable its political life, the bigger the necessity for the institutions of the civil society to take

some of its functions. The state is only responsible for what the individuals are unable to do on their own, or even combined. Far from diminishing state's strength, this trait augments it. Hence, I suppose that the relation between the state's strength and the freedom of its citizens is a proportional one, as opposed to an anti-proportional one perceived by many persons who see an opposition between the two elements.

Rousseau may have stayed faithful to Plato's idea about the number of citizens in the republic. Besides, when he says, of the government, that it is an intermediary body established between the subjects and the sovereign, he makes a debatable point, because he confers upon the government a quality of sovereignty which it does not possess. The quality of sovereignty of the government belongs to the law by which it abides.

Government, or executive authority, lacks all the conditions of sovereignty which the legislative authority possesses, since all of its decisions and practices are subjected to the

agreement of the legislative. I speak here of a state of right and law, a political state none of whose qualities apply to any present day Arab state.

States in general, and great ones especially, require strong governments; but the stronger a government gets, the larger their inclinations to infringe on the authority conferred to them by the legislative. When the balance between the legislative and the executive, the government and the sovereign is broken, the former infringing on the latter, then the state starts gradually turning into an authoritative state, verging on despotism.

What prevents this from occurring, and can restore the original state after it was altered, is the strength of legislative authority, its authentic representation of the people and its ability to restrain the government. We will explain further in the chapter on "civil society and the national state."

The principle of political life dwells in the sovereign authority. The legislative power is the heart of the state, the executive power is the brain, which sets all the parts in motion. The brain may become paralyzed and the individual still live. A man can be an imbecile and survive, but as soon as his heart stops functioning, the creature is dead. It is not only through law that the state keeps alive; it is through the legislative power. Yesterday's law is not binding today, but for the fact that silence gives a presumption of tacit consent and the sovereign is taken to confirm perpetually the laws it does not abrogate while it has power to abrogate them. Everything which it has once declared to be its will, it wills always, at least until it issues a revocation.(20)

Should we set aside all the comparisons which Rousseau draws to make his ideas more understandable, we see that the life of the state

is bound to legislative power, sovereign power, a simple indivisible, inalienable authority that cannot, for these reasons, be represented.

Its essence is the general will, and will cannot be represented-either it is the general will or it is something else; there is no intermediary possible. Thus the people's deputies are not, and could not be, its representatives; they are merely its agents; and they cannot decide anything. Any law which the people has not ratified in person is void; it is not law at all.(21)

All forms of corruption, perversion and dissolution are to be attributed to the broken balance between the three powers, especially between the legislative and executive powers, or to the replacement of the first by the second, which incurs grave consequences: "It is absurd and self-contradictory that the sovereign

should give itself a superior" and obey its orders. (22)

The act which institutes the government is not a contract, but a law, and the holders of the executive power are not the people's masters but its officers; and the people can appoint them and dismiss them as it pleases; and there is no question of their contracting, but of obeying; and in discharging the functions which the state imposes on them, they are only doing their duty as citizens, without having any sort of right to argue terms.(23)

We conclude, from this precedent, that the position of the head of state, or president of the republic, or monarch (in constitutional monarchies), is but a symbolic position, referring to the unity of the three powers. No occupant of this chair should hold any legislative authority, and despite the

symbolism of this person, he is not above the law. This position is probably a tradition that seeped from the regimes of absolute monarchy into political life. As much as the general will joins understanding and enlightenment, it restraints the authority of the head of state and prevents him from taking power in his own hands, according to its own will. Otherwise, the republic becomes an authoritative rule and the constitutional monarchy into an absolute monarchy. It is a paradox, and contrary to the concept, generality and wholeness of state, that the head of state, or of the republic, be at the same time the head of a national party, like the popular democracies, which have turned, to an extent, into totalitarian regimes, have done.

When the most important quality of the state is its positive impartiality towards all religions, rites and ideologies, and towards all the social categories, political parties and cultural tendencies which express them, it is obvious that the position of the head of state be as such. If it were not, it would be a contradiction in itself. Whereas the prime

minister, head of the executive power could also be the head of a party or even that a single party could compose the government, which will be called a minority government, without this being contradictory to the idea of state, since the government does not, in any case, represent sovereignty.

Here lies the difference between sovereignty, of the state and of the nation, and politics, that of the government. Sovereignty belongs to the nation, not to one of its parts, however important that part may be. What is referred to as "the one party state," or "the leading party," is not at all a state, but something beneath it.

[1] - a Syrian writer.

2 - ROUSSEAU, Jean Jacques, *The Social Contract or the Principles of Political Law*, Arabic translation by Boulos Ghanem

(Beirut: Lebanese committee for Translation of Great Works, 1972), p.10.

3 - Ibid, p.10-[1]

4 - Ibid, p.11.

5 - Ibid, p.12.

6 - Rousseau asserts that wars are waged between states and not individual. The citizens of a given state are not the enemies of those residing in the enemy state, fought by their own. If conquering a state is possible without a single soldier in it losing his life, then war does not allow any unnecessary right to reaching its ultimate goal. Rousseau adds "the right of conquest has no foundation than the law of the strongest. And if was gives he conqueror no right to massacre a conquered people, no such right can be invoked to justify their enslavement". Ibid, p21.

7 - Ibid, p.17.

8 - Ibid, p.26-27.

9 - Ibid, p.62-64.

10 - Ibid, p.65.

11 - Ibid, p.67-8.

12 - Ibid, p.69.

13 - Ibid, p.73.

14 - Ibid, p.73-4.

15 - Ibid, p.74.

16 - Ibid, p.75.

17 - Ibid, p.76.

18 - Ibid, p.83.

19 - Ibid, p.97-8.

20 - Ibid, p. 135.

21 - Ibid, p.141.

22 - Ibid, p.144.

23 - Ibid, p.146.

