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Schmitt Reads Rousseau.

General Will: Abstract Rationality or Practical Rationality?

1. Schmitt's Dictatorship

Is there a necessary relationship between modernity and democracy? Can the one be conceived without the other? In many respects, it all depends on the extension given to the term democracy. If it is taken in its narrow acceptance to mean a form of government, then it is plain to see that the 20th century has deceived our democratic expectations. But if we take democracy to mean something larger, which does not simply describe a political regime but the *democratic* character of our societies, it becomes more difficult to reach a definite answer.

Our contention is that a useful approach to this thorny question can be found in Schmitt's critical reading of Rousseau, one of the fathers of modern democratic thought. Concentrating on Schmitt's commentary of the Genevan's political thought, our introductory question on the relationship between modernity and democracy can be reformulated as such: is there in *The Social Contract* an element which allows the general will of the people to accomplish itself historically, or should we resign ourselves to accepting that the rousseauian pact is ultimately an abstract one?

Before getting to the heart of the matter, let us simply underline that, given the vast production of the German jurist, we have chosen to focus our analysis on a particular text by Schmitt, which is often overlooked and considered outdated, namely *Dictatorship*¹.

The reasons for investigating this text in particular, even though Rousseau is a constant reference in Schmitt's work as a whole are twofold. The first one is

1 This text belongs to Schmitt's Weimar period. From his production, we only retain the following works: *Dictatorship*, trans. M. Hoelzl and G. Ward, Polity Press, Cambridge 2014; *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab, The MIT Press, Massachusetts and London 1985; *The Crisis of Parliamentary democracy*, transl. E. Kennedy, The MIT Press, Massachusetts and London 1988; *Constitutional Theory*, trans. J. Seitzer, Durham and London: Duke University Press, 2007 (consulted in the French edition *Théorie de la constitution*, trans. by Lilyane Deroche, Léviathan, 1^{er} éd, Paris: Presses Univ. de France, 1993) and *The Concept of the Political*, trans. G. Schwab, Chicago: University of Chicago Press, 1996. On Schmitt's role in the Weimar Republic as a "committed jurist", see O. Beaud, «*Légalité et légitimité: la lutte de Carl Schmitt contre la république de Weimar et sa défense d'une «contre-constitution» allemande*», in *Crise et pensée de la crise en droit*, textes réunis par Jean-François Kervégan, Lyon: ENS Éditions, 2002; P. Pasquino, «Schmitt à Weimar. Remarques sur la préface d'Olivier Beaud à: Carl Schmitt, *Théorie de la Constitution*», in *Revue française de science politique*, 43^e année, n°4, 1993, pp. 702-708.

circumstantial, since this text, dated 1921, presents a systematic commentary of Rousseau's political theories. In the economy of Schmitt's work, this passage intervenes at the moment when the author analyses the transition from a commissary dictatorship to a sovereign dictatorship in the 18th century².

The second reason is methodological: while discussing *Dictatorship*, we hope to make a "side step" with respect to the theories about democracy that Schmitt formulated in *Constitutional Theory* in 1928. "Side-stepping", because our choice is not to engage in a debate *about* the democratic theory that Schmitt developed, and which he based on the two political principles of the State, namely the principle of identity and the principle of representation³. Rather, the concern of this contribution is to show that such a "side step" can prove useful in order to try and grasp at the source the issue of democratic sovereignty. Indeed, focusing on Schmitt's *Dictatorship* – whose purpose is to trace a genealogy of the legal concept of dictatorship, from the origins to modern days – we can, on the one hand, leave aside considerations which have to do with the constitutional form of modern States. On the other hand, it become possible to examine the issue of sovereign democracy, starting from the discrepancy between the modern, legally qualified practices of governments and the self-evidence of principles promoted by modern political philosophy, among which that of democracy.

The pages of *Dictatorship* present the idea that Rousseau's concept of the general will paved the way for the "despotism of freedom"⁴, an idea which is not exactly new. Yet it is necessary to go back to this criticism made by Schmitt, and highlight as we proceed the importance of the theoretical place occupied by the legislator in Rousseau's system⁵. Thereby, by redirecting our argumentation to the legislator's role and stressing the reasons for Schmitt's incapacity to recognize the "prophetic" element inherent in this figure in *The Social Contract*, we aim to propose another way of reflecting on the type of rationality that drives the general will.

Abstract rationality of general will

To fully understand Schmitt's theological-political perspective in *Dictatorship*, we must let ourselves be affected by a peculiar experience; indeed, if we agree to define "will" as a psychological resolution to do this or that thing, then a way of

2 Schmitt, *Dictatorship*, pp. 80-111.

3 Schmitt, *Constitutional Theory*. Particularly in the French version *Théorie de la constitution*, chap. XVI, § 2 "Les deux principes politiques formels: identité et représentation (Repräsentation)", p. 342.

4 Schmitt, *Dictatorship*, p.104. Among the many authors who, after the French Revolution, criticised the abstract nature of general will, we need to mention at least Hegel with *Philosophy of Right*, trans. S.W. Dyde, Kitchener: Batoche Books, 2001, §258, from p.195.

5 The character of the legislator appears in *The Social Contract* following the chapter about law, namely in Book II, Chap. VII p.180. The English edition to which we refer throughout the article is: *The Social Contract and The First and Second Discourses*, trans. S. Dunn, New Haven and London: Yale University Press, 2002.

reaching its accomplishment would consist in trying to grasp, with the means of thought alone, the point beyond which the ability of rational will suddenly turns into its contrary, namely a tyranny of passions. Nevertheless, in our opinion, the interest in Schmitt's interpretation of *The Social Contract* consists in the fact that it invites us to consider this type of experience when "self-control" is no longer envisaged at the level of individuals, taken singly or in groups, but at the level of the political body as a whole. In this regard, the starting point of Schmitt's analysis goes back to the break introduced by Rousseau, namely to the concept of the general will which allows him to think political representation through the paradoxical form of its abolition⁶. The philosophical problem which Rousseau sets himself is: "To find a form of association that may defend and protect with the whole force of the community the person and property of every associate, and by means of which each, joining together with all, may nevertheless obey only himself, and remain as free as before"⁷.

Translating this definition into a more sociological language, it could be said that Rousseau's theoretical effort consists in clarifying the necessary political, historical and social conditions from which to posit the emergence of a civil association, where the people's sovereignty is exerted through laws which are the expression of the general will.

The problem is that the challenge Rousseau sets himself is all but obvious, especially considering the way the general will expresses itself.

Precisely, Schmitt's analysis concentrates on the non self-evident character of Rousseau's proposition. His line of thought is that, although it may be true that general will "is reason itself"⁸, meaning that Rousseau's theoretical contribution needs to be measured with regard to the rationality of the pact he describes, it must also be observed that because of the abstract nature of the general will, *The Social Contract* "serves as justification for dictatorship and provides the formula for the

6 With this statement we want to highlight the break with Hobbes' paradigm of political representation: popular sovereignty, after Rousseau, can't be alienated or represented by any other subject than the people themselves. *The Social Contract*, Book II, Chap. I: "I say, then, that sovereignty, being nothing but the exercise of the general will, can never be alienated, and that the sovereign power, which is in fact a collective being, can be represented only by itself; power indeed can be transmitted, but not will." Rousseau, p. 170. The link between general will, political representation and Rousseau's anthropological assumptions is clarified by this quotation by Alessandro Biral: "The figure of the political representative person is assassinated: his institution goes back to the horrible and false assumption that will is totally alien to the majority of people and it should be brought to them from the outside, without them vouching for it as their own. Hobbes has to resort to the representative person because, by accustoming people to the passions of civil disorder and war, he removes from their hearts any pity-driven sentiment and transforms virtue into a mere substance of reason, that few can understand" found in "Rousseau: la società senza sovrano". A. Biral, *Storia e critica della filosofia politica moderna*, ed. by Giuseppe Duso, Per la storia della filosofia politica, 1^a ed., Milano: Angeli, 1999, p. 173 (author's translation).

7 Rousseau *The Social Contract*, Book I, Chap. VI p.163.

8 Schmitt, *Dictatorship*, p.101.

despotism of freedom”⁹. The dictatorship he is referring to is clearly the one established in France during The Terror.

Schmitt’s observation about the tyranny of freedom encapsulates two distinct criticisms, or rather two different moments of the same criticism that need to be discerned first, in order to be able to elucidate them later. Let’s proceed step by step. It is important here to keep in mind the capital difference, developed in *The Social Contract*, between sovereignty and government. Rousseau resorts to an image to illustrate this at the beginning of the third book’s first chapter of *The Social Contract*:

Every free act has two causes which together produce it; one is moral, that is, the will that determines the act; the other is physical, that is, the power that executes it. When I walk toward an object, first I must want to go toward it; in the second place, my feet must take me to it. Should a paralytic wish to run, or an agile man not wish to do so, both will remain where they are. The body politic has the same driving forces; in it, we discern force and will, the latter under the name of legislative power, the former under the name of executive power. Nothing is, or ought to be, done in it without them.¹⁰

This statement is useful insofar as it allows us to clarify the first element of Schmitt’s critique of the rousseauian pact, which targets the *type of movement* generated by the political body’s two driving forces, sovereign power and executive power.

First, Schmitt’s strategy consists in opposing Rousseau to the legal-political ideas of his famed contemporary Montesquieu, cited here as a counterpoint. To understand this argument, we need to consider that according to the German jurist, in spite of appearances, royal absolutism and democratic regimes stand on a continuous line and are not opposed to, or divorced from each other, contrary to what common-sense intuition would dictate. From an historical analysis of the legal practices of the two regimes, Schmitt notes that, regardless of the qualitative difference in the subject of sovereignty – be it as an attribute of the monarch or as a collective one – the actual performing of sovereign decisions remains fundamentally the same¹¹.

In other words, according to Schmitt, there is evidence of a continuity between royal absolutism and democratic regimes, in the way both operate through the delegation of power to an organ in charge of performing sovereign decisions, by way of a *commission*. Whether such delegation is commissioned by the monarch

9 *Ibid.*, p.104.

10 Rousseau, *The Social Contract*, Book III, Chap. I, p.193.

11 By democratic regime we refer to Rousseau’s political system, since Schmitt’s aim is to point to the relation of continuity between the two regimes from a bureaucratic point of view. The third chapter begins with an analysis of the role of the intendant, a figure which acted as a commissary at the time of the absolute monarchy; this reference is used to highlight the resemblance with Rousseau’s conception of the government: “The king of France – an absolutist king – governed through commissars. The intendant [*Intendant*], who was in charge of the royal administration, conformity and centralisation – *le vrai agent de l’autorité royale* – was a commissar.” Schmitt, *Dictatorship*, p.80.

or the people, it does not have real leeway in the application of the law. This is the first line of criticism developed by Schmitt. Focusing on Montesquieu's theory of checks and balance, especially on the power of "mediation" between intermediary bodies, which he plays off against Rousseau's reduction of the government's performance to that of a commission, Schmitt notes that the conjoined moral and physical driving forces may be capable, in the rousseauian system, of producing an *accelerating* movement that could prove deleterious to the political body¹². Let us clarify this point: Schmitt believes that the lack of an adequate "mediation" of the law (such as may be found in Montesquieu) in *The Social Contract*, paves the way for a kind of acceleration which may be potentially dangerous for the *sanity* of the political body, since the general character of the law, as the expression of the general will of the people, demands as a counterpart that all discretionary influence be eliminated in its application. In short: "nothing has changed as far as *volonté générale* is concerned: only within the executive is there an acceleration and intensification of the force with which one and the same old law is executed"¹³.

However, it will be obvious that the first element of Schmitt's criticism, concerning the relationship between sovereign power and executive power, may not be enough to explain such a stern statement. Let us recall the terms chosen by the author to express it:

The *Contrat social*, in which direct self-government of the free people is promulgated as an inalienable right, is a fundamental axiom; hence it serves as justification for dictatorship and provides the formula for the despotism of freedom¹⁴.

It may be argued however that the rousseauian conception of the relationship between sovereignty and government, may lead to quite an opposite assumption to Schmitt's. It may be proposed that the reduction of the government to a simple executive role could, in a democracy, prove an effective safeguard against the abuse that the political body could find itself exposed to, should discretionary elements remain in the government's hands. There remains an important discrepancy between Schmitt's judgement on the rousseauian pact and the reasons that lead him to disparage it. In other words: how does Schmitt go from the criticism of Rousseau's conception of government to its complete rejection as a "despotism of freedom"? If, as we noted earlier, the aim of Rousseau's social pact is to clarify the political, historical and social conditions which allow the emergence of a civil association in which the people, declaring the general will, become sovereign, it

12 *Ibid.*, p.86. It should be noted that although Rousseau assimilates the performance of the government to that of a commission, he does use the expression "intermediary bodies". Therefore Schmitt posits a difference between Montesquieu and Rousseau that actually needs to be nuanced: "What, then, is the government? An intermediate body established between the subjects and the sovereign for their mutual correspondence, charged with the execution of the laws and with the maintenance of liberty both civil and political." Rousseau, *The Social Contract*, Book III, Chap. I, p.194.

13 Schmitt, *Dictatorship*, p.106.

14 *Ibid.*, p.104.

can be argued that the rousseauian conception of the government is not immune to the possibility that the government produce an *accelerating* movement that could become deleterious for the political body. This is due to the impossibility for the people to fully understand the general will. In short, it opens the possibility for the government to actually perform a despotic will rather than the general will.

At this point we now reach the second part of Schmitt's criticism of *The Social Contract*, which focuses on the abstract character of the general will. What this criticism holds is that although Rousseau theoretically considers the people as the seat of sovereignty, the collective subject can never thoroughly know what the general will is, since the concept itself implies an idea of individual freedom detached from any practical and rational aspiration. In other words, if the general will presupposes an abstract conception of freedom, the incapability of the people to know the general will invalidates the very essence of the pact itself. One if left with the recognition that any will that is publicly imposed can only be, at least in part, imposed from the outside, and is not the general will¹⁵. It ensues that if the people can not actually have access to the general will, decisions can never be anything than despotic acts, inasmuch as they come from either a minority or, on the contrary, from a majority in order to silence a minority.

One more comment before continuing with our analysis: we began by saying that the methodological choice to investigate *Dictatorship* is justified by the fact that this work develops important insights about what, in modern politics, we call democratic sovereignty. The commentary it provides about Rousseau, allows us to ascertain that one of the aims in Schmitt's analysis consists precisely in pointing to a sort of "functional" discrepancy between modern governmental practices – of which the most significant example in history are the extraordinary measures taken during the French Revolution – and the principles that justify them¹⁶. In other words, modern democratic theories are essentially based on what Schmitt called, in 1922, the "state of exception"¹⁷. Be that as it may, the purpose here is not to engage with such a vast debate, and we will limit ourselves to briefly suggesting a different way of understanding of the rousseauian pact. Concentrating on the figure of the legislator in *The Social Contract*, we will try to show that Rousseau's idea of the general will refers to a kind of rationality that can be called practical, at least in opposition to Schmitt's interpretation: instead of validating a state omnipotence,

15 *Ibid.*, p.105 : "Rousseau has undertaken to show how it is possible to have a state in which not one single person is enslaved. The practical answer was that the enslaved have to be eliminated".

16 Cf. chap. V, "The Custom of People's Commissars during the French Revolution"; *Dictatorship*, p. 132-147.

17 Schmitt, *Political Theology. Four Chapters on the Concept of Sovereignty*, p.5. Jean-Claude Monod puts in perspective the concepts of dictatorship and the state of exception in the introductory pages of the French edition of *La dictature* published in 2015: Carl Schmitt, *La dictature*, ed. by Jean-Claude Monod, trans. by Mira Köller and Dominique Ségald, Paris: Éd. du Seuil, 2015, p.7-48. For an introduction to the historical and philosophical concepts of political theology in modern thought, see the edited volume *Political Theology and Early Modernity*, edited by Hammill and Lupton, Chicago and London: The University of Chicago Press, 2012.

the laws that express the general will demonstrate a form of immanent normativity, inscribed within the social practices of the political body.

Rousseau's legislator: the practical rationality of the general will.

We have seen how, according to Schmitt, Rousseau's general will may lead to a "despotism of freedom". If we accept that Schmitt's first criticism – namely, towards Rousseau's choice to reduce the performance of the government to that of a commission – gains weight when put in perspective with his second line of criticism, it becomes obvious that, in order to test the validity of Schmitt's hypothesis, we need to understand his conception that the general will, as a "drive" or "excess" that moves the political body to action, always remains impossible to comprehend to the people, by virtue of its abstract nature.

Our contention is that Schmitt grounds his demonstration on a "rationalist" concept of the law and of the legislator's role, but in doing so reveals more about his own struggle to conceive sovereignty as anything but State-related, than about the supposedly abstract nature of general will itself.

The first element on which Schmitt rests his argumentation is rather solid, though not quite insurmountable. He relates the theological origin of the general will to the "rationalist" concept of law in Rousseau. Schmitt's idea is that Malebranche's system is the touchstone that accounts for the central concept of the generality of political law for a number of philosophers of the 18th century¹⁸.

More particularly, by insisting on the aspect of generality, which is encountered both in the laws of nature and grace in Malebranche and in political and civil laws in Rousseau, Schmitt endeavours to define a kind of metaphysic continuity between them, which hinges upon the idea of the "rational" content of law, which, he tells us "became paradigmatic in French political philosophy"¹⁹. In short, according to Schmitt, Rousseau's choice to use the notion of general will, other than suggesting a terminological loan, could also refer to a certain *type of rationality*, expressed in the general character of the law. This would account for the signs of a kind of "rationality" in a theorisation of state omnipotence: as God governs the world through the general and unchanging laws of nature, so does the State through political laws carrying the same strength and the same generality²⁰.

18 Schmitt, *Dictatorship*, p.88.

19 *Ibid.*, p.88.

20 About Malebranche's occasionalism influence, the German jurist says: "One must grasp this metaphysics in order to understand the argument of the *Contrat social*". Schmitt, *op. cit.*, p.271. The same idea is more systematically developed in his *Political Theology*, p.48: "The metaphysical proposition that God enunciates only general and not particular declarations of will governed the metaphysics of Leibniz and Nicolas Malebranche. The general will of Rousseau became identical with the will of the sovereign; but simultaneously the concept of the general also contained a quantitative determination with regard to its subject, which means that the people became the sovereign".

The problem with this argumentation is that it can not be given too much importance, since Schmitt doesn't explain – beyond the terminological loan of the phrase “general will” – the passage from the generality of natural laws to the generality of political laws, or from God's general *wills* to the people's general will²¹. Without underestimating the influence of Malebranche's occasionalism in the thought of 18th century philosophers such as Rousseau and Montesquieu, it remains that supposing, as Schmitt does, that it is useful to ascertain in what measure Malebranche's occasionalism influenced the argumentation in *The Social Contract*, we would still be left with something like a “residue” of social nature which would contradict the proposition. That is because the step from the theological to the political can't completely absorb *the social*, unless it comes from the imposition of state will.

To us, the first point on which Schmitt rests his argumentation does not allow him to convincingly demonstrate that Rousseau's concept of general will has an abstract rational nature. We can now turn to a second line of criticism, which has to do with the figure of the legislator in the economy of Rousseau's system. We need to go back to the text to understand this central figure. Indeed, after explaining the birth of the political body through the social pact, Rousseau faces the problem of how to set this political body in motion, through legislation. In chapter VI of the second book of *The Social Contract*, he expresses this problem as a gap, which needs to be filled, between the will and the political body's capacity to understand: on the one hand, the political body is made of particulars, individuals with material and moral motives which go further than the individual frame of existence; on the other hand, is the public, a “blind multitude” whose will lacks a precise sense of direction: “Individuals see the good which they reject; the public desire the good which they do not see”²².

The legislator intervenes in the historical scene as a kind of political catalyst, bridging the gap between the will and the understanding of the people; Rousseau entrusts the legislator with a “prophetic” mission.

How does Rousseau use the term? In chapter VII of second book of *The Social Contract*, the legislator's “prophetic” nature is described as composed of two traits that cannot be dissociated. First, this character wields a different kind of authority. Since he cannot impose his particular will – which would be tantamount to destroying the general will – he must claim, in order to convince the people to

21 To support this hypothesis, it is clear that Schmitt must, on the one hand, radicalise the status of Rousseau's political laws, giving them characteristics that used to be divine attributions, such as immutability, simplicity, constancy, etc.; while on the other hand, with Malebranche, Schmitt needs to play down the fact that the opposition between general will and particular will doesn't mirror the relation between God's will and men's will – namely, a relation where God's general will stands as a counterpoint to men's particular wills for their salvation – but it refers to *how* God governs the world, following general laws or not: “I say that God acts by general wills, when he acts in consequence of general laws which he has established. [...] I say on the contrary that God acts by particular wills when the efficacy of his will is not determined at all by some general law to produce some effect.” Malebranche, *Treatise On Nature And Grace*, trans. P. Riley, Oxford: Clarendon Press, 1992, p.195.

22 Rousseau, *The Social Contract*, Book II, chap. VI p.180.

listen to his voice, a divine authority. But there is another trait to point out, which allows us to understand his *secret* job: the legislator stands outside of the people, a *stranger* in the society where he intervenes. “When Lycurgus gave laws to his country, he began by abdicating his royalty. It was the practice of the majority of the Greek towns to entrust to foreigners the framing of their laws”²³.

Rousseau resorts to this “prophetic” figure because this stranger can prove able to translate, in the etymological sense, a population from the initial state of “a blind multitude, which often knows not what it wishes” to the actual state of a sovereign body²⁴.

What happens to Rousseau’s legislator in the pages of *Dictatorship*? Although this character intervenes only fleetingly and at the end of the commentary, his appearance represents the moment when the abstract nature of general will comes out, maybe, most clearly.

The relevant passages reveal that Schmitt actually “disarms” the legislator, giving him an aporetic mission. In other words, according to Schmitt, the legislator, as a wise man or an *enlightened jurist*, faces the impossible mission of establishing a legal order. From this point of view, according to Schmitt, the reasons of his mission’s failure are easily explained: the legislator develops a project of law informed by a superior wisdom, in reference to a divine inspiration (“He thus dictates his law on the basis of inspiration”²⁵), the problem being is that his voice, as inspired as it may be, is condemned to remain unheard by the people because of his extra-judicial nature²⁶. This is, then, what we can draw from Schmitt’s interpretation of Rousseau’s legislator: because of the lack of criteria that would allow people to formally recognise the legislator’s wise propositions, we are led again to admit the abstract nature of general will, since there is no kind of guarantee that people would actually recognize it when it arises.

Schmitt is certainly right to insist on that point: it is not possible to give guarantees with regards to the delicate subject of providing a people with its own legislation. However, having considered Schmitt’s commentary on *The Social Contract*, having tried to delve into the two criticisms the jurist puts forward, we need to observe that his interpretation fails precisely in regard to the legislator’s “prophetic” nature.

Indeed, taking into consideration the character’s “physiognomy”, we can note that the main reason for Schmitt’s mistake is his stubbornness in making the Sta-

23 Rousseau, *op. cit.* II, VII, p.181.

24 Rousseau, *op. cit.* II, VI, p.180.

25 Schmitt, *Dictatorship*, p.110.

26 Rousseau, *op. cit.*, Book II, chap. VII, p.181: “The legislator is in all respects an extraordinary man in the State. If he ought to be so by his genius, he is not less so by his office. It is neither magistracy nor sovereignty. This office, which constitutes the republic, does not enter into its constitution; it is a special and superior office, having nothing in common with human jurisdiction.” According to Schmitt, making the legislator an extra-judicial character, Rousseau also condemned him *ipso facto* to a juridical and political powerlessness: “The content of the legislator’s action is right, but devoid of legal power: it is powerless right”. Schmitt, *Dictatorship*, p.110.

te's juridical order the only territory for the legislator's efforts, whereas Rousseau, throughout Book II, makes sure to emphasize that the legislator's secret task goes right down to the juridical order's foundations²⁷.

In this matter, this passage of *The Social Contract* is probably the most enlightening of all: after distinguishing political, civil and criminal laws, Rousseau entrusts the most important one to the legislator:

To these three kinds of laws is added a fourth, the most important of all, which is engraved neither on marble nor on bronze, but in the hearts of the citizens; a law which creates the real constitution of the State, which acquires new strength daily, which, when other laws grow obsolete or pass away, revives them or reinforces them, preserves a people in the spirit of their institutions, and imperceptibly substitutes the force of habit for that of authority. I speak of manners, customs, and above all of opinion — a province unknown to our politicians, but one on which the success of all the rest depends; a province with which the great legislator is occupied in private, while he appears to confine himself to particular regulations, that are merely the sides of the arch, of which customs and morals, slower to develop, ultimately form the immovable keystone.²⁸

Therefore, we need to insist on this point because, thanks to the centrality of this figure in *The Social Contract*, we can pull away Rousseau's political thought from a philosophical and juridical tradition which tried to shed light onto the most abstract elements of his political proposition. Contrary to what Schmitt exposes, the "prophetic" nature of the legislator's mission is not attributed to a divine inspiration that would be capable of infusing him of a perfect understanding. Rather, on the contrary, it is to be looked for in his *strangeness*, which enables him to work on *customs*, which according to Rousseau embody "the real constitution of State", thus leading the people to the understanding of its own will. Surely, we would need to insist more on the legislator's figure, because this leaves the question pending, as to who nowadays could pick up this type of challenge. This *outsiderness* needs to come from a new perspective, not from a reference to *foreignness* or national boundaries, but from other levels²⁹.

We can imagine, then, some other figures, such as sociologists, philosophers or anthropologists whose scientific look on social groups could be compared to the dedication of Rousseau's legislator. Indeed, there is still the possibility, as theoretical as it may be, for such a presence in the political body to nuance judgements, to reconsider the position of those who decided to put a premature end to the debate on general will.

27 In a different perspective than ours and in a wider debate about the conception of democracy in Schmitt, Ch. Mouffe points out that by denying the pluralist logic of liberalism, the German jurist displays rejection towards the symbolic transformation that obeys to the arising of modernity. Mouffe Chantal, «Penser la démocratie moderne avec, et contre, Carl Schmitt», in *Revue française de science politique*, 42e année, n°1, 1992, pp. 83-96.

28 Rousseau, *op. cit.*, II, XII, p.191-192.

29 For the analysis of the legislator's mission in our work we refer to Karsenti B., «Introduction. Prémisses rousseauistes», in *Moïse et l'idée de peuple*, Paris: Les Éditions du Cerf, 2012, pp. 11-58.