

## **“Justice, Beneficence, and Boundaries: Rousseau and the Paradox of Generality”**

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**\*\*Draft of March 18, 2011\*\***

### Justice and Generality

Blindfolded and bearing her trade-mark scales and sword, statues of “Lady Justice” are fixtures in courtrooms and public buildings around the world. These likenesses of the Roman goddess personify one of the core commitments of liberal political theory: namely, that justice consists of applying general rules impartially to all citizens regardless of their circumstances or differences. Rather than being the invention of contemporary liberal theorists such as John Rawls, these governing ideals of strict impartiality and generality seems to be constitutive features of the modern political tradition.<sup>1</sup> The modern view of justice as procedurally neutral, disinterested, civically blind, and indifferent to the identities of particular persons did not emerge out of whole cloth in the seventeenth and eighteenth centuries, of course, but classical liberal thinkers such as Thomas Hobbes, John Locke, David Hume, and Adam Smith were notoriously single-minded in advancing modern procedural justice at the expense of classical or Christian theories of distributive and commutative justice.<sup>2</sup>

To the extent that the modern conception of justice as strict impartiality won out, it did so, as Patrick Riley has importantly emphasized, at the expense of an older moral tradition—variously Platonic, neo-Platonic, or Christian—which understood justice in

terms of charity, love, and benevolence.<sup>3</sup> Conspicuous in texts such as Plato's *Symposium*, Augustine's *Confessions* and *City of God*, Shakespeare's *Merchant of Venice*, and the writings of Leibniz, this older tradition regarded justice as borne of wise love, benevolence and generosity toward particular persons rather than abstract reason or disinterested impartiality. One thinks of Portia's impassioned plea in the *Merchant of Venice* for Shylock to abandon the antiseptic language of rights and contracts and embrace Christian charity. While conceding Shylock's point that strict justice must normally be upheld lest the rule of law suffer, Portia nonetheless maintains that "The quality of mercy... becomes the thronèd monarch better than his crown/ His scepter shows the force of temporal power... But mercy is above this sceptred sway/ It is enthronèd in the hearts of kings/ It is an attribute to God himself/ And earthly power doth then show likest God's/ When mercy seasons justice."<sup>4</sup>

As Portia's speech demonstrates, justice understood as wise love and benevolence has never completely vanished, tacitly shaping our moral intuitions about the limits of procedural legalism. Even so, modern procedural justice has apparently solidified its position across a wide spectrum of contemporary political thought. Thinkers as different as Rawls, F. A. Hayek, and Michael Oakeshott have all argued for the importance of abstract rules of justice applied impartially to all members of a political community. Not only has the purely procedural conception of justice won out, but it tends to regard the older tradition as a dangerous pathology. For Hayek, the possibility that we might depart from strict neutrality out of concern for particular persons constitutes an "atavism," a reversion to "suppressed primordial instincts" that threaten the abstract rules on which modern commercial society depends.<sup>5</sup> As the faithful protégé of Hobbes and Hume,

Oakeshott dismisses this older moral tradition as the “politics of the felt need,” an emotional siren’s song that pulls us away from abstract rules of civility which are constitutive of our membership in civil association.<sup>6</sup> Even Rawls acknowledges that in the original position it is ultimately our reason and self-interest—rather than charity, sympathy or benevolence—that gives rise to justice as fairness, the difference principle, and fair equality of opportunity.<sup>7</sup>

This taxonomical distinction between modern and pre-modern conceptions of justice may be helpful in making sense of the history of Western political thought. If nothing else it avoids some of the most familiar (and often distorting) tropes of “ancient” versus “modern,” “secular” versus “theistic,” or “enlightenment” versus “anti-enlightenment.” Some early modern thinkers such as Thomas Hobbes and David Hume fall tidily—even stereotypically—into the camp of modern procedural justice, whereas others such as Leibniz are throwbacks to the older moral tradition. But not all early modern thinkers have so thoroughly emancipated themselves from classical or Christian ideas that justice inevitably requires some degree of partiality, sympathy, love, benevolence, or affection. Given the profound influence of Platonism and Christianity on Western political thought, not every thinker fits into this neat dichotomy between Hobbists and neo-Platonists. Among prominent moral philosophers, Jean-Jacques Rousseau proves an especially puzzling case.

At first blush, Rousseau seems to have a lot in common with the Platonic and Christian tradition of justice as wise love and benevolence. Rousseau has been accused more than once of being the patron saint of a sentimental politics of pity or compassion. Clifford Orwin alleges that “Rousseau invented liberal guilt,” inspiring everything from

the French and Russian Revolutions to “the modern Left, the most significant of all his political offspring.”<sup>8</sup> Worse still, Hannah Arendt famously blamed Rousseau for a romantic sentimentalism and impatience with the legal abstractions of justice that led to the atrocities of the French Revolution.<sup>9</sup> In some circles Rousseau appears as a popular whipping boy for the sentimentalization of modern politics, while for other “communitarians” he is a hero precisely for having called attention to the affective failures of modern procedural liberalism.

If we accept the notion that there is an identifiable tradition of moral thinking whereby justice consists of love, charity and benevolence, it is sorely tempting to include Rousseau. After all, compassion, sympathy, and the powerful sentiments of “nature’s voice” play a major role in Rousseau’s thinking, perhaps even to the point of informing his notion of justice.<sup>10</sup> As he famously wonders in the *Second Discourse*, “what are generosity, clemency, [and] humanity, if not pity applied to the weak, to the guilty, or to the human species in general?” “Benevolence and friendship,” he continues, are nothing more than “a constant pity fixed on a particular object” (SD, 132). He is also clearly influenced—though to what degree remains uncertain—both by Christianity and Platonism.<sup>11</sup> Nonetheless, this initial impression may be misleading, for at the end of the day Rousseau’s understanding of political justice is not only outside of that tradition but regards these forms of moral partiality as threats to a well-ordered political community. As we will see, affective partiality figures into Rousseau’s moral theory, but it does so only at the boundaries (both figurative and literal) of political justice.

This chapter explores Rousseau’s ambiguous position *vis a vis* the two divergent moral traditions sketched out above. The first and admittedly counterintuitive claim is

that Rousseau—like his intellectual foils Hobbes and Locke before him, and Adam Smith afterwards—belongs squarely in the camp of modern procedural justice. That is to say that he rejects the Platonic/ Christian assumption that mercy, charity, or benevolence can serve as adequate substitutes for political justice. Indeed these *inherently partial* sentiments pose formidable challenges to its strict administration. For Rousseau, as for Smith and others, there is an inextricable *tension* between justice (which is general and impartial) and compassion (which is necessarily particular and partial). Nonetheless, while political justice must avoid surrendering to pity, sympathy, and compassion at all costs, Rousseau cannot help bringing moral partiality back into his political theory at a higher level—in the form of patriotism and nationalism. Paradoxically, although the administration of political justice requires the *suppression* of a natural sympathy and partiality for those who are like us—friends, family members, neighbors, etc—the very existence of the political community rests on the *encouragement* of partiality toward our fellow citizens. Paradoxically, Rousseau ends up being an advocate of a legitimate moral partiality centered on the boundaries of the political community.

### Generality and Political Justice

Rousseau’s emphasis on the condition of “generality” in shaping both the substance of—and the formal conditions for—the laws of any given political community demonstrates more clearly than anything else his affinity for the modern procedural view of justice. At one level this is uncontroversial. For Rousseau, the political community’s laws draw both their force and legitimacy from their generality. At least ideally, just laws

are those that reflect a political community's *general* will or common good. Regardless of the substance of those laws, it is absolutely essential that they be ratified by the general *will* or assent of the whole community. Moral freedom and political legitimacy demand that we be subject only to laws imposed upon ourselves, and the condition of generality is crucial in satisfying both of these conditions. As Joshua Cohen has recently noted, "the general will is *general*, then, not simply in that it comes from all, acting on their judgment of the common good, but because it is by its nature—that is, by the terms of its construction and authorization—directed to the advantage of all."<sup>12</sup> Put simply, generality has both procedural and substantive components.

Before exploring further the paradoxical relationship between generality and political justice, it may be helpful to unpack some of the key implications of Rousseau's concept of generality, most notably his description of the "general will" in the *Social Contract*. Doing so brings to light at least five distinct and identifiable dimensions to Rousseau's conception of "generality." First, and almost tautologically, the condition of generality refers to the *general* interest. Generality relates to commonality, or the public good of the entire community. General laws take into account the well-being of the *whole* political community and not just its largest or most influential parts. Laws cannot be truly general if they omit the concerns of any significant element of the political community. Conversely, "partial" laws that privilege the interests of one group at the expense of another or the community as a whole are defective insofar as they fail to achieve the generality that follows from aggregating what Rousseau calls the "sums" of the "differences" (SC, II, 3).

Second, in order for laws to be considered truly just, they must be *impartial* in the sense that they do not single out particular persons or groups. Generality requires laws to be abstract and indifferent to the particular identities of the persons making them as well as those to whom they will apply. Rousseauian citizens legislate by means of rules that are abstract and impersonal, indifferent to private identities or differences among the citizenry. Ethan Putterman has suggested that a more appropriate meaning of “generality” is “universality,” or “strict impersonality.”<sup>13</sup> As Rousseau notes, “When I say that the object of the laws is always general, I mean that the law considers the subjects in a body and their actions in the abstract, never any man as an individual or a particular action” (SC, II, 6). The very essence of the general will “changes in nature” when it deigns to pronounce on a particular object (SC, II, 4).

Third, laws not only have to be formally general—articulated in terms of universal rules rather than particular edicts or commands. They also and maybe more importantly presuppose an intrinsic moral equality among citizens: “Thus by the nature of the pact...every genuine act of the general will either obligates or favors all citizens equally, so that the Sovereign knows only the body of the nation and does not single out any one of those who make it up” (SC, II, 4). Laws granting special privileges or imposing disproportionate burdens are anathema not only because they diverge from the general will but also and maybe more importantly because they deny the essential moral equality and reciprocity between persons that is constitutive of citizenship. “The Sovereign power, absolute, sacred, and inviolable though it is, does not and cannot exceed the limits of the general conventions,” for to “burden one subject more than

another” transforms the general will into a “particular affair,” in which case “its power is no longer competent” (SC, II, 4).

Fourth, as Rousseau distinguishes, it is not enough for laws to reflect the general interest or well-being of the whole community. They must also be products of the community actively exercising its collective will. Not only must the subject “matter with regard to which the statute is being enacted” be “general,” but so too must be the “enacting will” (SC II, 6). Ideally, at least, generality implies that laws are not imposed from the outside upon a passive people, but arise actively from the body of the people themselves. Their legitimacy derives from the fact that they are *generally willed*, or at least assented to, by the people as a whole. While there may be some role for legislators, magistrates, and representatives in crafting the details of legislation and setting the agenda for their ratification, legislation is not law unless or until it has been acclaimed by the people in their collective capacity.<sup>14</sup>

Lastly, the true test of a just law is whether we would will it as reasonable and just for an entire political community—including for ourselves. That is to say, in Kantian terms, whether it is *generalizable*. “One has to understand,” Rousseau notes, “that what generalizes the will is not so much the number of voices as it is the common interest which unites them: for in this institution, everyone necessarily submits to the conditions which he imposes on others” (SC II, 4). Given the equality that structures the terms of their association within the social contract, no citizen has the right to “require another to do what he himself does not do” (SC III, 16). If we are unwilling to submit ourselves to a law, then it is illegitimate for us to impose it on our fellow citizens, and vice-versa.

Justice is the product of a kind of hypothesized reciprocity informed by reason as much as by the will.

To summarize, then, Rousseau's conception of generality implies at once commonality (general with respect to the *whole* political community), impartiality and universality (general as opposed to merely *partial* or *interested*), equality and uniformity (applying generally to *all* members of the political community *equally* and in precisely the same way *irrespective of their differences*), an active political willing (made *by* the whole people, not *for* them, regardless of the substance of the law), and generalizability (the justice of a law is confirmed by whether we would accept its consequences for ourselves and others as a more *general rule*).

### Sympathy and Partiality as a Challenge to Justice?

Rousseau's conviction that justice consists of this kind of strict generality is obviously appealing. At least in principle, the scales of justice are applied impartially and blindly, which means that regardless of one's status in society, a citizen may expect the same protections, privileges, and immunities as anyone else. But as the older tradition of Platonic and Christian moral theory saw quite well, sometimes treating different people equally and applying general rules can lead to outcomes that look morally dubious. Dispassionate legalism can be a harsh constraint as well as a protection or consolation.<sup>15</sup> Sometimes, as Ronald Dworkin has observed, we must appeal to basic principles, rather than general and logically consistent rules.<sup>16</sup> The battered wife who kills her abusive husband and is convicted of first-degree murder; the elderly widow evicted from her

home for non-payment of her mortgage; the five-year-old child who is permanently expelled for bringing a butter knife to school in his backpack—all these instances demonstrate that the strict application of general rules can be punitive and contrary to our moral intuitions. Wouldn't the exercise of charity, mercy, or wise benevolence lead to very different conclusions in these and other hard cases?

At first glance Rousseau would seem to be the poster child for such an alternative—a kinder, gentler version of justice that leaves space for the sentiments, wise love, and compassion. Indeed there has been considerable discussion of the role of pity or compassion in Rousseau's political theory, particularly its relationship to justice.<sup>17</sup> For some, justice in Rousseau seems to have a necessary relationship to pity, compassion, and the affective sentiments. Justice represents a kind of refracted, refocused, or perfected version of the elemental sentiment of natural pity. Given the stress that Rousseau lays on the importance of the “gentle voice” of pity or compassion, it is tempting to think that this sympathetic emotion plays some role in either grounding, at maximum, or leavening or moderating, at minimum, the strict application of justice.

Without denying the significance of pity or compassion in Rousseau's moral psychology, others have taken issue with the notion that pity and justice are inextricably related, with the latter representing some more abstracted or refined version of the latter. While Rousseau asks, perhaps rhetorically, whether “generosity, clemency, and humanity” are not just the faculty of “pity applied to the weak, to the guilty, or to the human species in general,” it is instructive to note that none of these virtues are—properly speaking—political *justice*. The particular objects of our sympathy are either smaller or larger than the political community as a whole. Each of the categories

mentioned above relate to *particular* groups. “Benevolence and friendship” are “the products of a constant pity fixed on a *particular* object” (SD, 132). Yet Rousseau’s comment only emphasizes that unlike justice—whose object is always general—one essential feature of compassion, beneficence, and friendship is that they always relate to “*particular*” persons.

Not only does Rousseau resist the urge to connect justice with a natural sense of compassion or beneficence, but he seems acutely aware of the ways in which these partial moral sympathies exist in considerable *tension* with the generality upon which political justice rests. Taken too far, they may even *destroy* political justice. As David Hume, Adam Smith, and other thinkers warned, our natural sympathies toward some particular person or group—a friend, family member, celebrity, member of our own religious or ethnic group, someone who suffers, etc—run directly up against the sense of justice upon which the well-being of the political community depends. It may be tempting to be merciful or beneficent on any one occasion. But to indulge these sentiments risks undermining the very foundations of justice and political order. As Hume counsels in the *Treatise on Human Nature*, “however single acts of justice may be contrary, either to public or private interests, ‘tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society and the well-being of every individual.”<sup>18</sup> Conversely, dispassionately meting out justice is often hard to stomach: “when a man of merit, of a beneficent disposition, restores a great fortune to a miser, or a seditious bigot, he has acted justly and laudably,” even if our moral sympathies tell us he should have done otherwise.<sup>19</sup>

In a passage that directly parallels Scottish warnings about the inevitable tension between justice and beneficence, Rousseau argues quite emphatically in the *Discourse on Political Economy* that whereas the duties of the father are “dictated to him by natural feelings,” these very same natural sentiments may lead political rulers astray. “Nature’s voice” may prove the best guide for a father in fulfilling his paternal duties, but for the magistrate to allow natural feelings of partiality to intervene is to surrender to “a false guide” which diverts him from acknowledging his general duties of justice to the political community. Natural sentiments of affection and compassion are the “very inclinations that corrupt the magistrate.” Whereas a father does good merely by “consult[ing] his heart,” the magistrate “becomes a traitor the moment he listens to his own.” True justice consists in following “no other guide than public reason, which is the law” (DPE, 211). Substituting partial sympathies and emotions for the dispassionate and impartial rule of justice opens the door for abuses such as favoritism, nepotism, and arbitrariness. Rousseau acknowledge that this partiality for one’s friends or kin may be natural and legitimate, but political society relies upon the subordination, rather than the indulgence, of these and other “natural” feelings.

Precisely the same tension is at stake in Adam Smith’s moral theory, though Smith is arguably more explicit about it than Rousseau. Many have pointed to Smith’s *Theory of Moral Sentiments* to show how the virtue of beneficence may augment, supplement, or soften the bare bones of procedural justice. There is something to be said for this reading. Even so, there is a clear hierarchy in Smith, and justice is infinitely more important than beneficence: “Society may subsist, though not in the most comfortable state, without beneficence; but the prevalence of injustice must utterly destroy it” (TMS,

86). Smith acknowledges that a world held together only by pure procedural justice lacks something essentially humane, and a person altogether lacking in sympathy and partiality for family, friends, and co-nationals would be morally monstrous. But the relationship between justice and benevolence is adversarial rather than complementary. The temptation to set aside the rigorous discipline of justice and sympathize with criminals, debtors, or those who are like us can lead a nation terribly astray. As Smith notes, navigating the tension between beneficence and justice is one of the most difficult tasks of the law-giver: “Of all [his] duties...this, perhaps, is that which it requires the greatest delicacy and reserve to execute with propriety and judgment. To neglect [beneficence] altogether exposes the commonwealth to many gross disorders and shocking enormities, and to push it too far is destructive of all liberty, security, and justice” (TMS, 81).

### Justice Among Citizens

As we have seen, the general will is perfectly general with respect to any given political community. It is general both in the sense that it reflects the general welfare of the whole community, and it is general with respect to each member who has contributed to making it. True law “combines the universality of the will and that of the object” (SC, II, 6). But if the general will is by definition just and proper with respect to all members of the political community—reflecting either what they *actually do* desire, or as is more likely, what they *should* desire if they were aware of their truly general interests—this is not always the case for non-citizens.

Indeed, if the general will is only “general” or “universal” with respect to some *particular* political community, then it seems to follow logically that it will inevitably be “partial” with respect to subgroups within a nation, not to mention toward members of other political communities. While Rousseau flirts occasionally with the notion that there may be something like a natural or “universal justice” that emanates from God or pure reason alone, in point of fact justice among human beings is necessarily “reciprocal” (SC, II, 6). Antecedent conventions and laws *among a particular group of people* are necessary in order to “bring justice back to its object” (SC, II, 6).

According to Rousseau, the “object” of justice may be found either within a political community or outside of its borders. The former case presents no difficulties, as it is self-evident that the object of justice is general with respect to the political community as a whole. But what about an object that is “foreign” or located outside of the nation? In such cases, the relationship between the political community and “a will that is foreign” is particular, rather than general. These wills confront one another as “two separate beings” or “unequal parts,” from which it follows that their wills can never be general with respect to one another but must always be particular or alien (SC, II, 6).

A general will—or indeed any form of political association—presupposes the existence of a “people” as distinct from a mere aggregation of individuals. The formation of a “people” is a crucial step in the movement into a political association. Without some antecedent agreement to be bound by the decisions of a majority, the concept of majority rule is meaningless. Initially there must be at least one unanimous agreement to unite one’s self together as a people and to be concluded by the majority’s will. It should be noted, however, that this initial agreement among members of a people to be bound by

the collective decision-making of the whole is premised on the distinction between members and non-members. A people—like the convention of democratic decision-making to which it gives rise—must necessarily be bounded or circumscribed (SC I, 5).

The more controversial flip-side of Rousseau’s account of generality as constitutive of political membership is that a political community may not owe the same standards of justice to non-members. This seems to follow for several reasons. First, the nature of the social contract is such that we are all parties to two distinct agreements—an initial agreement among all members of a political community to be bound by the decisions of the whole, usually understood to be represented by the will of the majority—and a second and more metaphysical agreement between ourselves as private individuals and ourselves in our public capacity as members of the sovereign. Non-members are parties to *neither* of these two agreements. They have neither agreed to be bound by the original determination to submit themselves to the will of the community, nor—by virtue of being non-members—can they subsequently be part of the sovereignty to which this agreement gives rise. They are neither members of the “people” nor the “sovereign” authority that emanates from it. If, as Rousseau says, the rights of membership and the duties of political obligation are necessarily “reciprocal”—gaining their moral authority *only* by virtue of the fact that we impose them upon ourselves—then it is unclear how someone who did not participate in the making of the laws could be expected either to owe them any legitimate moral obligation, on the one hand, or to benefit from their provisions, on the other.

Second, if it is the case that the general will takes into account the well-being of all members of the political community, then it follows—by definition—that it does not,

and need not, take into account the concerns and interests of non-members. Just as the wills of those various “factions,” “small associations,” or “partial societies” *within* the body of a political community are “general in relation to [their] members” but “particular with respect to the State,” the general will of the political community bears this same relationship of particularity with respect to those *outside* its boundaries: namely, non-citizens, other states, and perhaps even the human race as a whole (SC, II, 3). The general will is coextensive with the community of citizens—perfectly general in comprehending *all* of their common interests, but also *nothing more extensive than these*.

Presumably non-citizens residing either individually or collectively within a political community are akin to those “partial societies” that are anathema to the general will. As Rousseau notes, “the will of the state, although general in relation to its members, is no longer so in relation to other states and their members.” For them, the general will of another political community is merely a “particular and individual will.” Ideally, of course, there should be some common “rule of justice” grounded in the “law of nature” by which to govern conflicts between the particular wills around which national communities are formed (DPE, 212). But the fact that the wills of political communities are general only with respect to themselves and their members, and partial with respect to other nations and non-citizens, means that public deliberations concerning foreign affairs may be inequitable: sometimes even a “well-governed republic” may “wage an unjust war.” And because “particular societies are always subordinate to those which contain them,” the duties of the citizen ought to take precedence over the interest of our own partial association or group, just as those of the human being, or citizen of the world, rightly take precedence over those of the citizen (DPE, 213).

That the “most general will”—one which is general with respect to *all* human beings *qua* human beings, rather than as members of any particular political association—is paramount and reflects the divine will seems to gesture toward a kind of imminent cosmopolitanism (DPE, 213). Nonetheless, Rousseau concedes that in practice, the most extensive group of which we can imagine ourselves to be members is the political community. The Genevan notes, quite realistically, “that the feeling for humanity is dissipated and weakened by being extended over the whole earth.” In a passage that directly parallels Smith’s infamous apology for our moral indifference to a massive earthquake in China, Rousseau emphasizes that it is virtually impossible for us to feel the same sense of compassion for suffering victims of a natural disaster in “Tartary or Japan” as we do for “those of a European people.” “Interest and commiseration” must necessarily be “limited and compressed in some way to make them active.” Because “this inclination in us can be useful only to those with whom we have to live, it is good that humanity concentrated among fellow citizens acquired new force within them through the habit of seeing each other and through the common interest which unites them” (DPE, 218-9).

At the end of the day, while Rousseau may opine about the virtues of a natural sympathy and commiseration by which we relate to other human beings as *semblables*—glimpsing, like natural man, an underlying humanity beneath the layers of difference imposed upon us by habit and acculturation—nationality represents a *salutary* form of difference. It crystallizes our sympathies and affections on the most extensive group of people for which we can reasonably feel any degree of real affection—our fellow citizens. Rousseau famously criticizes those “supposed Cosmopolites who, justifying

their love of fatherland by their love of mankind, boast of loving everyone so that they might have the right to love no one” (GM, 158). The deeper point is that it is only by means of a kind of partial affection for our own nation and its members that we could hope to ever imagine what it is like to be a human being who has feelings for the entire human race.

### Patriotism and the Cultivation of Partiality

Much has been written about the role of patriotism and nationalism in Rousseau’s political theory, and I cannot hope to synthesize the whole subject in the present context.<sup>20</sup> But it is important to note that our partiality for members of our own nation implies not only a legitimate moral priority, all other things being equal, for co-nationals, but at the extremes a readiness to inflict harm or even kill members of other nations who threaten our national existence. As Judith Shklar has observed, when push comes to shove, citizenship demands not simply the transcendence of our natural instinct of self-preservation but also the suppression of our natural aversion to seeing other living beings suffer pain or death.<sup>21</sup>

Where does this partiality for fellow-citizens come from, we might wonder, and is it natural or conventional? Rousseau comments somewhat enigmatically in the *Second Discourse* that sympathy for other human beings is both original as well as the product of an elaborate regime of cultivation. Pity, he observes, is “obscure but lively” in savage man, whereas it is “developed but weak” in civilized man. Natural pity is “lively” insofar as it speaks directly and reflexively to uncultivated souls. However, it remains “obscure”

in the sense that in its uncultivated form it is insufficient to engender sociability or any kind of concerted social action. By way of contrast, the compassion of civilized man may be exquisitely refined or “developed,” but the very same faculty of reason that helps us to extend and cultivate compassion makes it that much less likely we will act upon it in any given instance. It is too readily stifled by reason, self-love, and the pathologies of civil society. Ironically, then, the development of a sense of compassion requires the active denaturing of human beings—an arrest of the transparency of simple souls who intuitively feel the suffering of *any* other sensible being (for in this sense, Rousseau’s natural pity is not only imminently cosmopolitan but crosses borders and blurs lines between human and animal)—and the deliberate redirection of compassion toward a smaller subset of particular objects. The effectual cultivation of compassion seems to presuppose the creation of entirely new and artificial distinctions of ethnicity, nationality, religion, and other artificial forms of moral partiality.

Moving from the abstractions of Rousseau’s moral psychology to his more overtly political writings shows a consistent acknowledgement that this apparently “natural” love or partiality for our nation and fellow citizens cannot be taken for granted. Patriotism and moral partiality have to be actively cultivated. “It is not enough to say to citizens, be good,” Rousseau observes, “they must be taught to be so,” and patriotism is the most effective means toward this end (DPE, 218). But what use is patriotism to citizens if “the homeland is nothing more for them than for foreigners, and accords them only what it cannot refuse to anyone?” (DPE, 219). In addition to inculcating a sense of virtue and one’s legitimate duties to the political community, a patriotic education must impart a lasting sense of the moral *distinctiveness* of the relationship between a citizen

and his nation. It is no surprise, then, that Rousseau models a patriotic civic education on the ultimate form of moral partiality: the natural affection of parents for their children, and children for their siblings. Children must not only be raised in the midst of equality, suffused with the spirit of the laws, and nursed on the general will. They also need to be surrounded by “objects that constantly remind them of the tender mother who nourishes them, her love for them, the inestimable benefits they receive from her, and what they owe in return.” The end result is they will come to “love one another as brothers” and “one day to become the defenders and fathers of the homeland whose children they will have been for so long” (DPE, 223).

[More specific examples of role of patriotism and nationalism in FD, SC, DPE, LFM, etc]

While seeking to foster a sense of familiarity among citizens by means of a quasi-naturalistic discourse of blood ties, familial connection, and maternal intimacy, Rousseau also works to foster a sense of alienation, distrust, and difference toward foreigners. Before the rise of Christianity, Rousseau notes, it was “long believed, according to Grotius, that it was permissible to rob, plunder, mistreat foreigners and above all barbarians” (GM, 158). “The words for foreigners and for enemies were long synonymous among several ancient peoples,” and strangers were assumed to be brigands or pirates (GM, 158-9). Hobbes’s error, according to Rousseau, was not to have attributed natural avarice and enmity to human beings who have become sociable but to have failed to recognize that this condition of universal violence and misery is not natural to human beings as such, but owes to the condition of war prevailing between distinctive political communities (GM, 159). International relations are the original sources of violence,

cruelty, and distrust, rather than a sphere where natural laws might be identified and faithfully observed.

A completely “general society” exists only in the minds of philosophers, and the abstract idea of “mankind” or “humanity” is nothing more than an abstraction that affords no “real unity among the individuals who constitute it” (GM, 155). The solution to this lack of a truly “general association” of all human beings is the creation of “new associations,” that is to say, political communities organized around the model of justice, generality, and community that Rousseau holds dear (GM, 159). This enterprise entails not just an institutional or political dimension—crafting a good constitution and good laws—but also and maybe more importantly the affective project of cultivating a sense of moral distinctiveness and partiality among the citizenry.

#### Conclusion: The Paradox of Partiality

We have seen how Rousseau’s conception of generality informs his notion of political justice. One of the preconditions for modern politics is that laws treat citizens equally, and magistrates must avoid the temptation to be partial—whether for friends, family members, co-ethnics, or even total strangers who strike them as sympathetic. Beneath the gratifying cloud of compassion, pity, and mercy that envelops Rousseau’s rhetorical vision of a humane society, there lurks a hard-nosed political justice that is seemingly impervious to these and other forms of moral partiality. Indeed, rather than looking to pity, compassion, and mercy to soften the sharp edges of political justice,

Rousseau appreciates—as do Hume, Smith, Hayek, Oakeshott, and others—the threat partiality poses to the strict administration of justice.

All that being said, we have also seen that Rousseau's general will is properly general *only with respect to a given political community*, and necessarily partial with respect to other nations, foreigners, and non-members who reside within its territorial borders. His vision of justice is ultimately *political*, not universal, human, or metaphysical. Paradoxically, then, the administration of political justice and the survival of the political community demand the active cultivation of a legitimate kind of moral particularism.

This juxtaposition of strict domestic impartiality with a disregard of one's duties toward other members of the human race may strike the contemporary liberal cosmopolitan as incoherent if not outright hypocritical. Why, we might wonder, should our sense of justice stop at national borders? If moral partiality is to be avoided at all costs within the political community, how can it be condoned outside in the sphere of international relations or on the grand stage of humanity? And if some degree of partiality is indeed defensible, why does it have to be coextensive with the political community rather than some other plateau of moral proximity either narrower (family, friends, neighbors) or potentially broader (co-ethnics, co-religionists, fellow human beings) than the borders of the nation-state? Many thinkers in the history of Western political thought have tacitly assumed that justice is *political*, that is to say, circumscribed by the borders of *polis* or nation-state. Others have either ignored the question or resisted the apparent contradiction that the distinction between citizen and non-citizen presents. It may be

Rousseau's singular accomplishment to have provided one of the most explicit justifications for why we do *not* owe the same standards of justice to non-members.

Cosmopolitan theorists have been duly puzzled by attempts to justify a political community's disproportionate obligations to its own members. Charles Beitz, Martha Nussbaum, and Joseph Carens have adamantly denied that we owe more to fellow citizens than to other human beings—particularly when the vast majority of humanity is worse off in absolute terms.<sup>22</sup> Even the most benign expressions of patriotism look an awful lot like racism.<sup>23</sup> Others such as Michael Walzer, Stephen Macedo and Michael Blake have insisted that while there is a certain baseline of minimal (negative) obligations we owe to other nations, there is a categorical difference between citizens and non-citizens, and it is perfectly appropriate to privilege the interests of the former over the latter if or when they should come into conflict.<sup>24</sup>

What has been more difficult for these and other defenders of particularism to articulate is what, *specifically*, accounts for the moral distinctiveness of political membership? Rousseau's discussion of political justice may be instructive on this score. Our legitimate partiality toward members of our own political community does not arise exclusively from cultural affinities and shared values (Walzer); "extensive institutional relations of shared governance" (Macedo); or the fact that as citizens we have the "shared liability" of being legitimately subject to coercion by a state (Blake).<sup>25</sup> Rather, being a member of a political community generates a special moral relationship to co-nationals by virtue of common bonds of political citizenship. Rousseau's defense of moral partiality has an undeniable *cultural* component—in the sense that it is ultimately a sense of "familiarity" or *habitus* that gives rise to sympathy and affective connections. Living

in proximity to others, regardless of our political identity, generates a sense of connectedness. There is also our underlying, pre-political membership in a “people”—as distinct from a mere “aggregation”—with an *existential* sense of a shared past, future, and common destiny. But maybe most distinctively, Rousseau’s accomplishment is to have shown how *political conventions* work to generate a reciprocal sense of political obligation that must, paradoxically, and for better or worse, be simultaneously general as well as particular.

### *Works Cited*

All parenthetical references are to the following editions of Rousseau’s works:

DPE=*Discourse on Political Economy*, in *On the Social Contract with Geneva Manuscript and Political Economy*, ed. Roger Masters. (New York: St. Martin’s, 1978).

GM=*Geneva Manuscript*, in *The Social Contract and Other Later Political Writings*, ed. Victor Gourevitch. (Cambridge: Cambridge University Press, 1997).

SC=*Of the Social Contract*, in *The Social Contract and Other Later Political Writings*, ed. Gourevitch.

SD=*Discourse on the Origins of Inequality*, in *First and Second Discourses*, eds. Judith and Roger Masters. (New York: St. Martin’s, 1969).

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<sup>1</sup> See especially, John Rawls, *A Theory of Justice*. (Cambridge, MA: Belknap, 1971), esp. pp. 83-90. For some critics, these governing ideals of proceduralism and neutrality are not only constitutive of liberalism as a public philosophy, they are its central weaknesses. See especially William Galston, *Liberal Purposes*. (Cambridge: Cambridge University Press, 1991); Michael Sandel, *Liberalism and the Limits of Justice*. (Cambridge: Cambridge University Press, 1998) and Iris Marion Young, *Justice and the Politics of Difference*. (Princeton: Princeton University Press, 1990).

<sup>2</sup> Cf. Alasdair MacIntyre, *Whose Justice, Which Rationality?*; MacIntyre, *After Virtue*

<sup>3</sup> Patrick Riley, *Leibniz' Universal Jurisprudence: Justice as the Charity of the Wise*. (Cambridge, MA: Harvard University Press, 1996).

<sup>4</sup> Shakespeare, *The Merchant of Venice*. (New York: Bantam Classics, 1988), Act IV, Scene 1, pp.72-3.

<sup>5</sup> F. A. Hayek, *Law, Legislation, and Liberty. Vol. 3: The Political Order of a Free People*. (Chicago: University of Chicago Press, 1979), p. 165.

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<sup>6</sup> Michael Oakeshott, *On Human Conduct*. (Oxford: Clarendon, 1975); Oakeshott, *Rationalism in Politics*. (Indianapolis: Liberty Press, 1991); Oakeshott, *Morality and Politics in Modern Europe*. (New Haven: Yale University Press, 1993).

<sup>7</sup> John Rawls, *A Theory of Justice*, esp. pp. 142-9.

<sup>8</sup> See especially, Clifford Orwin “Rousseau and the Discovery of Political Compassion” in *The Legacy of Rousseau*, eds. Clifford Orwin and Nathan Tarcov. (Chicago: University of Chicago Press, 1997) and Orwin, “Moist Eyes: From Rousseau to Clinton,” *Public Interest* (Summer, 1997), p.

<sup>9</sup> Hannah Arendt, *On Revolution*. (New York: Penguin, 1977), esp. p. 90.

<sup>10</sup> On this notion that it is a refracted and generalized sense of sympathy or compassion that ultimately grounds Rousseau’s political theory, see especially John Charvet, *The Social Problem in the Philosophy of Rousseau*. (Cambridge: Cambridge University Press, 1974).

<sup>11</sup> On the Platonic roots of Rousseau’s thinking, see especially David Williams, *Rousseau’s Platonic Enlightenment*. (University Park, PA: Penn State University Press). On the connections between Rousseau’s thought and Christianity, see especially

<sup>12</sup> Joshua Cohen, *Rousseau: A Free Community of Equals*. (Cambridge: Cambridge University Press, 2010), p. 66.

<sup>13</sup> Ethan Putterman, *Rousseau, Law, and the Sovereignty of the People*. (Cambridge: Cambridge University Press, 2010), pp. 11-12.

<sup>14</sup> For a detailed examination of this process and the acclamatory role of the people, see Putterman, *Rousseau, Law, and the Sovereignty of the People*, esp. pp. Cf. John T. Scott, “” APSR.

<sup>15</sup> On the moral and political ambiguities of legalism, see especially Judith Shklar, *Legalism: Law, Morals, and Political Trials*. (Cambridge, MA: Harvard University Press, 1964).

<sup>16</sup> Ronald Dworkin, *Taking Rights Seriously*. (Cambridge, MA: Harvard University Press, 1978), esp. pp. 14-80.

<sup>17</sup> Bloom; Marshall; Wingrove; Ogrodnick; Morgenstern; Orwin; Boyd; Marks

<sup>18</sup> David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge and P. H. Nidditch. (Oxford: Oxford University Press), Bk. III, Pt. 2, Section 2, p. 497.

<sup>19</sup> Hume, *A Treatise of Human Nature*, p. 497.

<sup>20</sup> On the subject of Rousseau and patriotism or nationalism, see Plattner; Morgenstern; Shklar; Abizadeh; Garsten; Melzer.

<sup>21</sup> Put differently, political life necessarily rests on a kind of “de-naturing.” See Judith Shklar, *Men and Citizens: A Study of Rousseau’s Social Theory*. (Cambridge: Cambridge University Press, 1985), pp.

<sup>22</sup> Martha Nussbaum, “Patriotism and Cosmopolitanism” in *For Love of Country? Debating the Limits of Patriotism*, ed. Joshua Cohen. (Boston: Beacon Press, 1996); Joseph Carens, “Aliens and Citizens: The Case for Open Borders” *Review of Politics* 49 (1987), pp. 251–73; Charles Beitz, *Political Theory and International Relations*. (Princeton: Princeton University Press, 1979), pp.

<sup>23</sup> See especially Paul Gomberg, “Patriotism is like Racism” *Ethics* 101 (1990): 144–50.

<sup>24</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*. (New York: Basic Books, 1983); Stephen Macedo, “The Moral Dilemma of U.S. Immigration Policy: Open Borders versus Social Justice,” in Carol Swain ed. *Debating Immigration*. (New York: Cambridge University Press, 2007); Michael Blake, Blake, “Immigration” in R. G. Frey and Christopher Heath Wellman, eds. *A Companion to Applied Ethics*. (Malden, MA: Blackwell, 2003).

<sup>25</sup> Walzer, *Spheres of Justice*; Macedo, “The Moral Dilemma of U.S. Immigration Policy,” esp. p. 76; Blake, “Immigration,” p. 228.