

## The Roman Republic of Jean-Jacques Rousseau

Valentina Arena

### INTRODUCTION

In his *Social Contract* Rousseau dedicates almost the entire last book to the description of the institutional workings of the Roman Republic. This includes a very detailed analysis of the Roman voting system (the *comitia curiata*, the *comitia centuriata*, and the *comitia tributa*), an examination of the role of three Republican magistracies (the tribunate of the plebs, the dictatorship, and the censorship), and finally some considerations on Roman religion, providing Rousseau with a smooth transition to the most famous section of Book IV on civic religion.

In this paper my aim is twofold: first, I hope to achieve a clearer understanding than hitherto attained of the nature of the Roman Republican system as described by Rousseau; secondly, I would like to shed some light on the reasons for which Rousseau inserts this lengthy discussion of Roman institutions into the *Social Contract* in the way he does and thereby clarify the function of the analysis of the Roman political system in Rousseau's thinking.

The predominant answer to the question concerning the nature of the Roman political system in Rousseau is that for him Rome, as well as Sparta, represented a model of virtue and rustic, austere life. In line with what was an almost stereotypical image of Rome in the seventeenth and eighteenth centuries, the Roman Republic represented a form of commonwealth whose citizens were motivated by their patriotic devotion to the *res publica*, going well beyond self-interest and characterised by obedience to the laws and a passion for liberty, frugality, and austerity of *mores*. Since for Rousseau Roman *virtus* coincided with love of the *res publica*, which was manifested in the citizens' commitment to rendering the greatest services to the fatherland, it follows that Rome was primarily an ethical model to which it was also attached a (secondary) political dimension.

Within this wider picture, Rousseau's detailed description of the institutional workings of the Roman Republic is rather at odds with such an interpretation of Rome and is, therefore, often ignored or quickly bypassed if one wishes to reach the much more interesting section on civic religion.<sup>1</sup> The rather complex and at times unpalatable subject matter of the chapters dealing with Roman intricate and often obscure institutional procedures has further contributed to the marginalisation of this important section of the *Social Contract* within the main scholarly debates on Rousseau's political thought. Examined with an almost antiquarian attention and a modern understanding of Roman politics, this section has been open to criticism because of its lack of historical accuracy and, as such, has been rejected in its entirety.<sup>2</sup> More often, however, this section has been perceived as not adding much to the principles of Rousseau's political thought but rather functioning as a bridge that would allow him to reach the description on religion.<sup>3</sup>

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<sup>1</sup> D. Leduc-Fayette, *Jean-Jacques Rousseau et le mythe de l'antiquité* (Paris: Vrin, 1974), 106 claims that this section does not fit well with the rest of the work.

<sup>2</sup> J. Jean Cousin, 'J.-J.-J. R. Rousseau, interprète des institutions romaines dans le *Contrat social*', in *Études sur le Contrat social* (Paris: Les Belles Lettres, 1964), 13-34.

<sup>3</sup> Robert Derathé (ed.), *Du Contrat social*, Rousseau, *Œuvres Complètes*, ed. B. Gagnebin, M. Raymond et al. (Paris: Galimard, 1959-85), III, 1495, n.1. According to Derathé, the chapters on Roman institutions are a subject much more appropriate to Sigonio than to Rousseau, and have only a distant relation to Rousseau's political principles. The true reason why Rousseau included these chapters in the work, he argues, was the possibility to tag along in the least disjointed manner the section on civic religion which he had written *in extremis*.

An interesting exception to this trend is John McCormick's recently published essay.<sup>4</sup> In his study, McCormick gives pride of place to Rousseau's account of Roman Republican institutions in order to highlight the nature of his republicanism. In direct contrast with Machiavelli's anti-elitist treatment of Roman assemblies and magistrates, McCormick argues, Rousseau endorses those Republican institutions which empowered the wealthy and *de facto* disfranchised the poor and deliberately eschewed magistrates such as the tribunes of the plebs who acted in defence of the people.

Although this study has the merit to draw attention to Rousseau's treatment of Roman institutions and their value to deepen our understanding of his political tenets, some important features of Rousseau's treatment are better understood, I would claim, when set in the context of both, on the one hand, the sources available to him (in their dual nature of ancient texts and antiquarian studies of the 16<sup>th</sup> century) and, on the other, the debate on constitutional powers contemporary to Rousseau's writing.

By analysing Rousseau's Roman Republican institutions in these contexts, I hope not only to offer a clearer depiction of the political system that Rousseau ascribes to Rome but also to show that, by describing the Roman political system in the way he does, Rousseau does not add an improbable insertion of antiquarian nature in his main treatment, but engages in a contemporary debate on the nature of the best constitution. By doing so, he enters in dialogue primarily with Montesquieu, whose constitutional thought he rejects.

Following most likely Polybius's account of the Roman constitution, as well as Jean Bodin's and Nicolas de Grouchy's discussion of Republican institutions, Rousseau comes to describe Rome as endowed with a tempered but not mixed government. By doing so, he took part in the lively constitutional controversy of the time, fought over the model of the Republic *par excellence*, Rome. Responding to Montesquieu's great concern with the checks and balances of power, Rousseau puts forward the idea of Rome as perfect political model where a single, absolute, and indivisible power lies with the people while the function of administering it resides with an elected government. The duty to preserve a balance between these two functions is assigned to a magistrate, the tribune of the plebs, which in Rousseau's reading is an office outside the constitution, possessing exclusively the right to annul political acts but nothing else.

## THE ROMAN REPUBLIC OF J.J. ROUSSEAU

As Rousseau himself explained to his critics, his analysis of past societies should not be interpreted as a search for historical truth, but rather as 'mere hypothetical reasoning whose aim is to explain the nature of things rather than to show its truthful historical origin.'<sup>5</sup> In line with this statement, in Book 4 of the *Social Contract* he begins his sustained analysis of Roman institutions, which he had previously discussed fragmentarily in Book 3, by stating that 'the historical sketch of Roman administration ... will explain more concretely all the maxims which I might establish.' Taking Rome as a model of a community governed by a council of two hundred thousand men, Rousseau wishes to investigate 'how the freest and most powerful people on earth exercised its supreme power', a question not so dissimilar from the query at the origin of Pobylyus' work of how the Roman people succeeded in conquering the entire world in mere fifty-three years.<sup>6</sup>

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<sup>4</sup> John McCormick, 'Rousseau's Rome and the Repudiation of Populist Republicanism', *Critical Review of International Social and Political Philosophy* 10.1 (2007), 3-27.

<sup>5</sup> J.J. Rousseau, *Discours sur l'origine et les fondemens de l'inegalite parmi les homes*, 3, 132-3 in B. Gagnebin et M. Raymond (eds.), *Jean-Jacques Rousseau, Oeuvres Complètes*, (Paris: Bibliothèque de la Pléiade, 1959-1969). See Chantal Grell, *Le Dix-huitième siècle et l'antiquité en France 1680-1789* (Oxford: Voltaire Foundation, 1995), 1, 460-68.

<sup>6</sup> Rousseau, *Contract Social*, 4.3.1 and 4.4.1 from V. Gourevitch (ed.), *J.J. Rousseau, The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press, 1997). All further citations from this work are taken from this edition. Pol. 1.1: 'For who is so worthless or indolent as not to wish to know by what means and under what system of polity the Romans in less than fifty-three years have succeeded in subjecting nearly the whole inhabited world to their sole government — a thing unique in history?'

Interestingly aware of the scholarly debate on the origins of Rome, as lively at the time of his writing as it is nowadays, Rousseau declares that in his treatment of this quasi-mythical past he will follow those readings supported by the greatest authorities and confirmed by the strongest plausible reasons.<sup>7</sup>

He then begins by analysing the rather complex workings of the Roman voting assemblies and associates each of them with a founder: Romulus, the first king of Rome, is associated with the *comitia curiata*, the most archaic Roman assembly based on the voting unit of the *curia*, which in Rousseau's opinion is an ethnic or racial division. In his historical account, once the inadequacies of this assembly were manifest, the king Servius Tullius founded the *comitia centuriata*, in his opinion the most important division of the people, based on the voting unit of the *centuria* and organised around division by census. In his historical reconstruction, the tribunes of the plebs instituted the third most important Roman assembly, the *comitia tributa*, which he conflates with the *concilium plebis* (4.4.21). Based on the voting unit of the tribe – initially a territorial division, devised in his opinion by Servius Tullius – this assembly was considered the most democratic of Roman institutions, as it allowed popular representation regardless of the class of census.

Although his historical reconstruction of Roman popular assemblies is not always sound, Rousseau is undoubtedly very perceptive concerning some of the deepest and most important historical mechanisms of the division of the Roman people into political and voting units and some of their most important political effects. Worthy of note, for example, is his analysis of the shift in the significance of the citizens' affiliation to a tribe from an indication of territorial residence to a name associated with an individual (4.4.11), or his correct treatment of the political status of freedmen and their confinement within the urban tribes for most of Republican history (4.4.8), and even the greater prestige attached to the thirty-one rustic tribes as opposed to the four urban ones.<sup>8</sup>

Having analysed in detail the workings of the assemblies, Rousseau then proceeds to discuss the role of the tribunate of the plebs, of which he rather curiously emphasises solely its power of veto. He then goes on to explore the two Republican emergency measures, the appointment of a dictator and the declaration of the so-called *senatus consultum ultimum* (a decree by which the senate conferred the defence of the safety of the commonwealth on Roman magistrates), *prima facie* a rather odd addition at this stage in the discussion. He concludes the section on Rome by discussing the role of the censor and briefly also Roman religion as guardians of ancient morals, moving on to the famous discussion of civic religion.

By analysing Roman republican institutions Rousseau wishes to illustrate one of his central tenets, that 'so long as several men united consider themselves a single body, they have but a single will, which is concerned with their common preservation and the general welfare' (4.1.1). This was the case in Rome, Rousseau claims, even if the struggle between patricians and plebeians may at first sight indicate otherwise. During that time Rome was in fact composed of two states, which should be considered, so he claims, separately. 'And indeed even in the stormiest times the people's plebiscites always passed quietly and by a large majority, when the senate did not interfere: the citizens having but a single interest, the people had but a single will.' (4.2.2). It is in the assemblies that Roman citizens consented to all laws, even to those that seemed to be contrary to their own interest. In fact, Rousseau argues (4.2.8), citizens gathered in assembly are not asked whether they approve or reject the proposal, but whether that proposal does or does not conform to their general will; the result of the majority of votes yields the declaration of the general will.

During the Republic, Rousseau argues, Roman assemblies endowed with a legislative function were the sovereign power in Rome, while the Prince or government was responsible for the executive function of the state. Explicitly taking issue with Montesquieu regarding the methods of choice of the executive and the judiciary powers, Rousseau argues in a rather Platonic mode that while individual choice should apply to those positions that require specific talents, such as military offices, drawing lots is instead appropriate for those positions for which good sense, justice and integrity are sufficient

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<sup>7</sup> On the scholarly debate on the origins of Rome in the eighteenth century see Grell, *Le Dix-huitième siècle*, 826-51.

<sup>8</sup> See also Fergus Millar, *The Roman Republic in Political Thought* (Hanover-London: University Press of New England, 2002), 115.

(4.3.8).<sup>9</sup> Since this ideal constitutional system was embodied by Rome, where sovereignty lay with the people gathered in assembly, it follows that a historical sketch of Roman administration is the best way to discuss how votes should be cast and collected (4.3.10). The different divisions of the Roman people produced various assemblies:

‘The *comitia* by *curiae* had been instituted by Romulus, the *comitia* by *centuriae* by Servius, the *comitia* by tribes by the tribunes of the people. No law was sanctioned, no magistrate elected except in the *comitia*, and since there was no single citizen who was not enrolled in a *curia*, a century, or a tribe, it follows that no citizen was excluded from the right to vote, and that the Roman people was genuinely sovereign both by right and in fact.’ (4.4.21)

Of all these assemblies, which to a certain extent fulfilled different functions in Rome, Rousseau accords his preference to the *comitia centuriata*, the assembly organised according to six classes of census.<sup>10</sup> Since a higher number of *centuriae* (voting units) were assigned to the first class of census, it followed that in this assembly— in Rousseau’s reconstruction — an agreement among the *centuriae* of the first class was sufficient to make redundant the collection of ballots from other *centuriae*: ‘what the smallest number had decided’, Rousseau comments, ‘passed for a decision of the multitude; and in the *comitia* by *centuriae* affairs can be said to have been settled more often by majorities of cash than of votes’ (4.4.28).

Rousseau justifies this situation, which has led some commentators to portray him as a supporter of an aristocratic regime of timocratic nature,<sup>11</sup> mainly in two ways. First, he discusses the three factors (of social, institutional, and ethical nature) that in his opinion did, at least partially, correct this imbalance. Secondly, he underlines an important feature of the *comitia centuriata*, which, missing from the other Roman assemblies, conferred upon it a higher status.

As far as the three means to correct this imbalance are concerned, first, according to Rousseau, the tribunes more often than not, and a large number of the plebeians, belonged to the class of the rich (4.4.29). As such, they played an important part in the *centuriae* of the first class and contributed to balancing the influence of the patricians in the first class of census. Secondly, the introduction of the institutional innovation of the *centuria praerogativa* addressed the aristocratic bias of the *comitia centuriata*. According to this ill-attested reform, most likely adopted in the third century BC, rather than following a fixed order for casting and collecting votes, the first *centuria* called to cast its vote, the so-called *centuria praerogativa*, was to be chosen by lot amongst the first class of census.<sup>12</sup> The bandwagon effect, as Lily Ross Taylor called it, was therefore no longer in the hands of the wealthiest, but rather entrusted to lot.<sup>13</sup> Again, echoing Montesquieu’s point, Rousseau comments that ‘in this way the authority of example was withdrawn from rank and given to lot in conformity with the principle of democracy’ (4.4.30). Thirdly, in Rousseau’s opinion, what can truly function as a

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<sup>9</sup> For Rousseau’s quotations of Platonic works see the index in Robert Derathé’s edition in *Ouvres Complètes*; more generally on Rousseau and Platonism, see Miriam Leonard and Jared Holley’s essays in this issue of *International Journal of the Classical Tradition*.

<sup>10</sup> Cic. *rep.* 2 39-51; Liv. 1.42.5-43.9; Dion. Hal. 4.16-8 – although Cicero’s passage was not available to Rousseau at the time of writing. Rousseau emphasises (4.4.20) the total number of six classes of census (as attested also in the ancient sources), in opposition to the five classes of census in the antiquarian tradition of in the 16<sup>th</sup> century.

<sup>11</sup> See, for example, McCormick, ‘Rousseau’s Rome’.

<sup>12</sup> On the *centuria praerogativa* see. Cic. *Q. fr.* 2,14,4; *Phil.* 2,82; Liv. 24,7,12. The choice of the *centuria praerogativa* was regarded as an *omen comitiorum* (Cic. *div.* 1,103; 2, 83; cf. Cic. *Mur.* 38: *omen ... praerogativum*) to the extent that it seems that the candidate elected by the *comitia praerogativa* was often successful (Cic. *Plan.* 49). Perhaps C. Gracchus proposed the choice of the *centuria praerogativa* from all the classes of census. See C. Nicolet (ed.), *Demokratia et Aristokratia: à propos de Caius Gracchus: mots grecs et réalités romaines* (Paris: Université de Paris I, 1983).

<sup>13</sup> L. R. Taylor, *The Voting Districts of the Roman Republic: The Thirty-five Urban and Rural Tribes* (Rome: Roman Academy, 1960), 91-96.

corrector of the aristocratic and timocratic bias in the *comitia centuriata* is ultimately not so much an institutional devise, but rather the moral fibre of the Romans.

‘I believe I can safely say that it [the centuriate system] could only be made to work because of the first Romans’ simple morals, their disinterestedness, their taste for agriculture, their contempt for commerce and the ardour for gain ... Indeed, it has to be stressed that, in Rome, morals and the censorship, stronger than this institution, corrected for its vice, and that some rich men found themselves relegated to the class of the poor for having made an excessive display of their riches.’ (4.4.19)

However, for Rousseau the most politically compelling argument in favour of the *comitia centuriata*, which, despite its aristocratic bias, makes it the most preferable of Roman assemblies, lies in its membership. While, according to Rousseau’s reconstruction, the *comitia curiata* excluded from its composition the citizens living/enrolled in the rural tribes, and the *comitia tributa* (erroneously conflated with the *concilia plebis tributa*) excluded the senators and the patricians, the *comitia centuriata* included all Roman citizens, and as such it was in it that the whole majesty of the Roman people resided (4.4.34). Whilst the *comitia curiata* fell into discredit as it supported ‘tyranny and evil designs’, to the extent that it was eventually replaced by thirty lictors, the *comitia tributa*, which, in Rousseau’s reconstruction, elected tribunes and passed *plebiscita*, was the most unjust as it took decisions binding on the whole community while excluding senators and patricians from their voting body.

‘Not only had the senate no standing in them, it had not even the right to attend them, and the senators, forced to obey laws on which they could not vote, were in this respect less free than the last citizens. This injustice was altogether ill conceived, and it alone was enough to invalidate the decrees of a body to which not all its members were admitted.’ (4.4.32)

Alluding to Montesquieu yet turning him on his head, as it were, Rousseau endorses the timocratic *comitia centuriata* as the best Roman assembly, since – contrary to the other assemblies – all citizens have the right to take part in it, while the three factors mentioned above correct its timocratic bias.

In Rousseau’s reading of Roman republican constitution, whilst the Sovereign holds legislative power and the Prince or the Government executive power, the relation between them and the exact proportion of these constitutive parts of the state is guaranteed and preserved by the tribunate of the plebs. In a rather surprising reading of the tribune of the plebs, Rousseau argues that not only is this magistracy not part of the constitution (4.5.8), but also that as an external agency it is meant to function as a middle term between the Sovereign and the Prince and, if necessary, to restore the true relation between them (4.5.1).<sup>14</sup>

Although, according to Rousseau, it did not have any share in either legislative or executive power, the tribune of the plebs was the preserver of laws and legislative power, maintaining the balance between the Sovereign, who promulgates the laws, and the Government, who executes them. He disregarded the second-century law that transformed the tribunate of the plebs into a regular office of the *cursus honorum* normally held after the quaestorship (and requiring plebeian status), the tribunes’ right to sit in the senate, and even to assemble and address it (the *ius sentus habendi*, which seems to have been in place as early as the third century BC). In addition, he also did not take into account the tribunician right to summon the *concilium plebis*, lead the assembly, and introduce legislation, which by 287 BC was binding on the whole people and situated the tribune at the centre of Roman legislative power. Rousseau, instead, chose to focus only on the tribunes’ negative right of preventing unwelcome acts of magistrates, the *ius intercessionis*, which he considers in its most restrictive form of the right to veto against the resolutions of the senate as well as legislative proposals, disregarding

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<sup>14</sup> See P. Andrivet, ‘Jean-Jacques Rousseau : quelques aperçus de son discours politique sur l’Antiquité romaine’, *Studies on Voltaire and the Eighteenth-Century* 151 (1976), 131-148., which, however, underlines the role of the tribune of the plebs in establishing the sovereignty of the people.

even the right to *auxilium*. According to Rousseau, the only power of the tribunate of the plebs was the right to veto: ‘while it can do nothing, it can prevent everything’ (4.5.3).

It follows that in the Roman republican system, ‘a wisely tempered tribunate is the firmest bulwark of a good constitution.’ To preserve the magistracy intact and protect it from potential abuses and usurpation of power, Rousseau suggests altering the temporal status of the office, which, rather than being annual, should be suspended at regular intervals. In his opinion, the fall of the Roman Republic is to be attributed, to a great extent, to the degeneration of this magistracy, which ‘usurps the executive power of which it is but the moderator, and tries to administer the laws which it ought to protect.’<sup>15</sup> Thus, according to Rousseau, Rome perished in the same way as Sparta did, ‘and in the end the excessive power the tribunes had gradually usurped served, with the help of laws that had been made for the sake of freedom, as a safeguard to the emperors who destroyed freedom’ (4.5.5). In the *Letters from the Mountain* Rousseau returns to this topic by referring to this very passage of the *Social Contract*.<sup>16</sup> It is in this earlier work, he argues in Letter 9, that he explained the good principles on which the tribune of the plebs was based and accuses the Roman people of having being unable to contain this office within its assigned limits, thus causing the fall of the Republic. By temporarily suspending the magistracy - something that could be easily done, Rousseau comments, since the tribunate is not part of the constitution - it would have been possible to guarantee that the tribunes remained within the remit of their mandate.

From this unconventional role of the tribune of the plebs, it follows that, in Rousseau’s picture, the Roman republican system was characterised by sovereignty invested in the people, who upheld legislative powers, and a government in charge of the actual conduct of public affairs and composed of an elected aristocracy. This aristocracy ensured that those with specific talents, required by the duty at hand, would hold the corresponding office (4.3.8). Such a constitutional system was not divided in itself, Rousseau emphasises, but rather tempered by the action of this office. As Rousseau argues in Book 3, when ‘the executive power is not sufficiently dependent on the legislative, that is when the ratio of Prince to Sovereign is greater than that of people to prince, this lack of proportion has to be remedied’ either by dividing the government or, as in the case of Rome, by establishing an intermediate magistrate ‘who, leaving the government whole, merely serve to balance the two powers and to uphold their respective rights. Then the government is not mixed, it is tempered.’ (3.7.5)<sup>17</sup>

To preserve this tempered government, Rousseau continues to argue, alongside the tribune of the plebs, two additional institutional means must be adopted to overcome the inadequacy of the laws in those circumstances in which the safety of the state is at stake. At times, the inflexibility of the laws might render them dangerous for the state and numerous cases may arise for which the lawgiver did not provide (4.6.1). However, Rousseau specifies, the only occasions when the sacred laws should be suspended is when the safety of the country is at stake. There are two ways in which it is possible to achieve this aim: the first is the so-called *senatus consultum ultimum*, a senate’s decree by which a magistrate is granted exceptional powers to provide for the safety of the commonwealth, and the second is the dictatorship, an extraordinary magistracy which, released from the constriction of collegiality, concentrates temporarily unprecedented powers in the hand of one individual with the mandate to save the *res publica*.<sup>18</sup> In the first case, Rousseau comments, there is an increase of the

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<sup>15</sup> Earlier on at 4.4.24 Rousseau had discussed augury as a means by which the ardour of seditious tribunes could be held in check, but which ultimately remained inefficacious.

<sup>16</sup> C. Kelly and E. Grace (eds.), J.J. Rousseau, *Letter to Beaumont, Letters written from the Mountain, and Related Writings* (Hanover, N.Y: University Press of New England, 2001), Letter 9, 292.

<sup>17</sup> Cf Rousseau’s footnote to 3.30.3: following the so-called struggle of the orders, when the tribunes of the plebs were established, ‘only then was there a true government and a genuine democracy. Indeed, the people was then not only sovereign, but also magistrate and judge, the senate was no more than a subordinate tribunal to temper or to concentrate the government, and even the consuls, although patricians, although the first magistrates, although absolute generals in war, were in Rome no more than the presidents of the people.’ Cf also 3.13.5.

<sup>18</sup> V. Arena, *Libertas and the Practice of Politics in the Late Roman Republic* (Cambridge: Cambridge University Press, 2012), 200-19. On dictatorship A. Lintott, *The Roman Constitution* (Oxford: Oxford University Press, 1999), 109-13.

activity of the government, that becomes concentrated in the hands of one or two of its members, so that the authority of the laws remains untouched, but only the form of their administration varies. If, however, the danger faced by the state is such that the laws become an obstacle to guarding against it, then a supreme commander is named, 'who silences all the laws and provisionally suspends the sovereign authority' (4.6.4) In these cases, there is no doubt about the general will since the people's foremost intention is that the state does not perish.

Rousseau advances the rather original claim that in 63 BC the commonwealth should have nominated a dictator to deal with the Catilinarian conspiracy, since by suspending but not abolishing the legislative authority, this office holder would have been able to solve the crisis without being open to the accusation of having transgressed the laws, as happened to Cicero.<sup>19</sup>

However, alongside these institutional means, Rousseau argues that the moral fibre of the Romans, preserved by the role of the censors and civic religion, is an essential means to preserve a tempered form of government. Consistently shifting between an historical analysis and a normative account of the political principles embodied by the Roman model, in the same vein as in the *Letter to d'Alembert* (although less extensively so), Rousseau argues that the censors are 'not the arbiter of people's opinion', but rather its public voice. 'Just as the general will is declared by law, the public judgment is declared by the censorship; public opinion is the kind of law of which the censor is the minister, and which, on the model of the prince, he does no more than apply to particular cases' (4.7.1). Since 'among all peoples of the world, not nature but opinion determines the choice of their pleasure ... it follows that the censorship can be useful in preserving morals, never in restoring them' (4.7.5). Thus, while the censors in Rome should preserve public morals, they neither establish nor restore them. The function of forming a more cohesive society by creating an allegiance to the community and its laws is fulfilled by a collective code of morality and beliefs, whose importance Rousseau discusses in the famous section on civic religion. Although the Romans fade here into the background, Rousseau's argument is clear: in order to maintain a functioning Republican system, it is necessary to preserve a high level of popular morality and commitment to the accepted values of society.

## ROUSSEAU'S SOURCES

It is very hard to assert with certainty the ancient sources that Rousseau consulted to depict his institutional picture of Rome during the Republic, and even more so those he read first-hand.

Although from 1730 onwards the knowledge of ancient languages started to diminish in scope, 281 monographs about the classical world were published in the course of the eighteenth century.<sup>20</sup> Rousseau was certainly familiar with Livy's historical account, which was of course also at the basis of Machiavelli's *Discorsi*. This was a book much admired by Rousseau, providing him with the narrative of early Rome, especially of the struggle between patricians and plebeians and the latter's progressive advances.<sup>21</sup> However, alongside Livy and ancient authors such as Varro, Pliny the Elder, and perhaps even Cicero – all of whom he seems to have accessed indirectly through Sigonio – it seems plausible that Rousseau might have read Polybius's work, or at least the fragments of Book 6 of his *Histories* which began to circulate separately and which by the sixteenth century had begun to enjoy greater fame than the rest of the work. In the course of the seventeenth century, 16 new editions

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<sup>19</sup> Derathé (in *Ouvres Complètes*, 1497) sees the main source on Rousseau's treatment of dictatorship as Machiavelli, *Discorsi*, I.1.ch. 34-5.

<sup>20</sup> On the decline of knowledge of ancient languages see T. Schleich, 'Bausteine einer quantifizierenden Rezeptionsgeschichte griechischer und römischer Autoren in Westeuropa 1700-1800', in G. Berger (ed.), *Zur Geschichte von Buch und Lese im Frankreich des Ancien Régime. Beiträge zu einer empirischen Rezeptionsforschung aus dem Deutschen Romanistentag 1983 in Berlin* (Rheinfelden-Berlin: Schäuble, 1986), 216-37; on publications concerning ancient history, H. Duranton, 'Le métier d'historien au 18<sup>e</sup> siècle', *Revue d'histoire moderne et contemporaine* 23 (1976), 481-500.

<sup>21</sup> On the importance of Livy for Rousseau's image of Rome see Leduc-Fayette, *Jean Jacques Rousseau*, passim and 103-5; Cousin, 'Rousseau interprète', 27. See also Millar, *Roman Republic*, 114.

of Polybius's work were published against ten of Livy, both in their original languages and in vernacular languages. The interest in Polybius's work was expressed in a finer appreciation of the quality of his historical narrative of both military and civil matters, as well as of his ability to explicate, warn, and instruct for the present.<sup>22</sup> By the beginning of the eighteenth century Polybius's work was well known and critically analysed, as attested, for example, by the controversy over the first treaty between Carthage and Rome.<sup>23</sup>

Even if he never refers to Polybius by name, it may be plausible to claim (although not beyond doubt) that Rousseau had in the background not so much the exact details of Polybius's account of the Roman constitution, but rather the general outline of its main principles or, at least, of those he perceived as such. From Polybius, who is the first to have used the term, he might have derived not only the description of the negative form of democracy as ochlocracy,<sup>24</sup> but also some aspects of the workings of the assembly and of the tribunate of the plebs, understood as the only office not under the consuls and whose power of *intercessio* could prevent the senate from conducting his affairs.<sup>25</sup> Most interestingly, Rousseau might have also derived from Polybius the role of civic religion as reinforcing the moral fibre of the Roman people and as an essential means for the preservation of a functioning constitution.

However, while Polybius' influence might be found in certain important political principles, Rousseau's most important source of information about the institutional workings of the Republic was Carlo Sigonio's *De antiquo iure civium Romanorum*, first published in Venice in 1560. As Derathé has noticed, in Book 4 of the *Social Contract* the explicit references to ancient texts seem to be borrowed from Sigonio's work.<sup>26</sup> The paraphrase of Varro's *De re rustica*, which praises the Roman ancestors to have placed the farmers in the countryside at the centre of civic life, and of Pliny the Elder, who reports on the prestige of the rustic tribes because of the fibre of the men who composed them, seem to derive directly from Sigonio's *De antiquo iure civium Romanorum* rather than from a direct reading of the ancient evidence.<sup>27</sup> Rousseau certainly read, or at least owned, this important book. In his letter of 26 March 1767 to Dutens, to whom he had sold his books, Rousseau writes 'qu'il y a encore quelques livres qui reviennent à la masse, entre autres l'excellente *Histoire florentine* de Machiavel, son *Discours sur Tite-Live* et le *Traité de Legibus romanis* de Sigonio.' As a result of a ferocious academic dispute with Nicolas de Grouchy on the interpretations of Roman institutions, Sigonio's work had come to the forefront of Roman studies and gained the status of an authoritative, if not the ultimately authoritative, text on ancient Roman institutions. Montesquieu in *Mes Pensées* not only proudly claims to own a copy, but also urges others to read it.<sup>28</sup>

Although some scholars have attempted to trace down the influence of Sigonio on Rousseau's interpretation of Rome,<sup>29</sup> it seems that no more than a generic resemblance can be identified between the two interpretations of Rome – one which ultimately does not differ much from Montesquieu's reading of it.<sup>30</sup> However, an essential point to bear in mind - not yet fully appreciated by scholars working on Rousseau's interpretation of Rome – is that if Rousseau possessed and read the most

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<sup>22</sup> Peter Burke, 'A Survey on the Popularity of the Ancient Historians, 1450-1700', *History and Theory* 5 (1966), 132-52.

<sup>23</sup> On this debate see M. Raskolnikoff, *Historire Romaine et critique historique dans l'Europe des lumières* (Rome: École Française de Rome, 1992), 427-9.

<sup>24</sup> On Polybius' introduction of the term ochlocracy see T.A. Sinclair, *History of Greek Political Thought* (London: Routledge, 1951), 174, 1. The term ochlocracy, however, was first introduced into the French language in 1568; cf. A. Hatzfeld, *Dictionnaire general de la langue Francaise: du commencement du XVIIe siecle jusqu'a nos jours, precede d'un traité de la formation de la langue* (Paris: Ch. Delgrave, 1888), s.v. ochlocracy.

<sup>25</sup> Pol. 6.12: the tribunes are the only magistrates who are not under the consuls; at 6.6 for the tribune's right of *intercessio*.

<sup>26</sup> R. Derathé in Rousseau, *Ouvres Complètes*, III, 1494-5.

<sup>27</sup> Var. rust. 3.1 = Sigonio, *de antiquo iure*, 1.3; Plin. Nat. Hist. 18.3 = Sigonio, *de antiquo iure*, 1.3.

<sup>28</sup> Montesquieu, *Ouvres complètes*, ed. A. Masson (Paris: Nagel, 1950-1955), II, 84.

<sup>29</sup> P. Catalano, *Populus Romanus Quirites* (Torino: Giappichelli, 1974), 13-7.

<sup>30</sup> W. McCuaig, *Carlo Sigonio: The Changing World of the Late Renaissance* (Princeton: Princeton University Press, 1989), 178-80.



important edition, published in Bologna in 1574, it would have included not only Sigonio's *De antiquo iure civium Romanorum* but also his *De antiquo iure Italiae*, *De antiquo iure provinciarum*, and his *De lege curiata* – a collection that suits well Rousseau's description of Sigonio's treatise as a work on 'Roman laws'. In turn, this work would have exposed him not only to Sigonio's interpretation but also to Grouchy's critiques and their subsequent rebuttal by Sigonio.<sup>31</sup>

Even if Rousseau had not read Sigonio's treatise *Posterior cum Nicolao Gruchio disputatio*, reading his *De antiquo iure provinciarum* and *De lege curiata* would have made him aware of the fierce scholarly debate between him and Nicolas de Grouchy, author of the *De comitiis Romanorum* (1555), ever since the first edition of Sigonio's *de antiquo iure civium Romanorum* (Venice, 1560).<sup>32</sup> At the heart of the dispute lay the interpretation of *magistratus*, *imperium*, *auspicium*, and the role of the Roman people in bestowing them upon an individual.<sup>33</sup>

A careful consideration of the main issues of this dispute shows that Rousseau's emphasis on certain institutional arrangements in Rome and his less orthodox (at least in today's eyes) interpretation of the tribunate of the plebs are influenced by this debate. More specifically, the reason for the importance attached to the *comitia centuriata*, the emphasis on the role of the *centuria praerogativa*, and the rather reductive role of the tribune of the plebs seem all to have been brought to the forefront of Rousseau's considerations by his reading of Nicolas de Grouchy and Sigonio's criticism.

In his analysis of the Roman assemblies, although improving on the reading by Budé – according to whom *curiae* and *tribus* were one and the same subdivision – Grouchy established that there were at least three assemblies, but conflated the *concilium plebis* with the *comitia tributa*.<sup>34</sup> This confusion would prove rather persistent and reach, amongst others, both Montesquieu and Rousseau. However, asserting the centrality of the people's assemblies in the Roman political system, Grouchy claimed that 'as far as the right to vote went, all assemblies were assemblies of the people, for no citizen could be excluded from the vote if he wished to attend the assembly.'<sup>35</sup> It was this very reasoning that Rousseau put forward in his predilection for the *comitia centuriata*, the assembly from which no citizen was excluded, and which, Rousseau insists, was composed of six rather than five classes of census. Rousseau's claim is rather interesting: the available ancient sources describing the centuriate system refer to six classes of census and the issue does not seem contentious.<sup>36</sup> Yet it is Grouchy who asserts that the classes of census are five and with his authority supports and contributes to the establishment of this description of the *comitia centuriata*, against which Rousseau proudly takes an independent stance.<sup>37</sup>

Even more striking, however, is, first of all, not only the centrality that the reform of the *centuria praerogativa* had in the debate between Grouchy and Sigonio, a reform that nowadays is rarely discussed in scholarship, but also Grouchy's democratic interpretation of it. This third-century reform was interpreted by Grouchy as enacting a symbolic as well as an effective shift in power. Although a decade earlier Budé had already argued that the *centuria praerogativa* would have been chosen amongst those of the first class of census, Grouchy emphasised its equalising nature, based on the use of lot – the only truly democratic means of selection – and discussed its extension to the centuries of all classes of census. According to Grouchy, with the third-century reform of the *comitia centuriata*,

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<sup>31</sup> For a complete list of Sigonio's editions see McCuaig, *Carlo Sigonio*, 346-54. For the revision of these texts and their final inclusion in the edition of 1594 see W. McCuaig, 'Sigonio and Grouchy: Roman Studies in the Sixteenth Century', *Athenaeum* 74 (1986), 147-73, esp. 171.

<sup>32</sup> At various times in his *Confessions* Rousseau refers to his training in Latin, which overall he did not seem to have enjoyed, but that should have been sufficient to provide him with the necessary skills to read these texts.

<sup>33</sup> For an excellent account of the dispute see W. McCuaig, 'Sigonio and Grouchy', 147-73.

<sup>34</sup> Cf. Festus 47L *curia*.

<sup>35</sup> Nicolas de Grouchy, *De comitiis* 2.4. f. 92r. On Grouchy's analysis of the *comitia* see McCuaig, 'Sigonio and Grouchy', 149-50.

<sup>36</sup> Dion. Hal. 4.16-21. Cf. Liv. 1.43. In the eighteenth century Dionysius's work appeared in French translation in two editions: G.F. Le Jay, *Les Antiquitez romaines de Denys d'Halicarnasse avec des notes historiques, crititques and géographiques* (1722), and F. Bellenger, *Antiquités romaines de Dynes d'Halicarnasse, traduites en français avec des notes historiques, géographiques, chronologiques and critiques* (1723).

<sup>37</sup> Grouchy, *De com. rom.* 1.1.

the *centuria praerogativa* was chosen by two subsequent lots: the first sortation chose the tribe and the second the *centuria* within that tribe to become the *praerogativa*. In Grouchy's reconstruction, even a *centuria* from a lower class of census could be chosen, a feature that he interpreted as an important mean to temper or even compensate for the timocratic bias of the *comitia centuriata*.<sup>38</sup> Although Rousseau does not venture into nor hints to the scholarly debate surrounding this reform (whose date Sigonio changed to the fifth century BC and associated with the evolution of the *bina comitia*), he too refers to the *centuria praerogativa* as one of the necessary means to moderate the aristocratic bias of the *comitia centuriata*, emphasising the equalising character of this reform.

However, perhaps the most interesting influence of Grouchy's interpretation of Rome on Rousseau is visible in the interpretation of the office of the tribunate of the plebs. The subject had been, once again, at the centre of the debate between Grouchy and Sigonio, encapsulating the nucleus of their different views of Roman Republican history.<sup>39</sup> According to Sigonio, the tribunes of the plebs were magistrates endowed with *potestas*, who, albeit with a differentiated role, functioned as an integrated component of the hierarchy of Roman magistracies. In his view, the tribunes were deprived of coercive powers, of which instead the consuls were endowed, but possessed the power of *intercessio* that belonged exclusively to them. According to Grouchy, on the other hand, the tribunes of the plebs could not and should not be fully considered Roman magistrates of the whole *populus Romanus*.<sup>40</sup> When, according to tradition, the plebeians seceded from the commonwealth, they created their own revolutionary and autonomous organisation which included also the election of two magistrates, the tribunes of the plebs. However, when with the *lex Hortensia* in 287 BC plebeian resolutions gained binding force for the whole community, the new state of affairs left unresolved the issue of the exact nature of the powers of the tribunes of the plebs. While, according to Sigonio, the archaic city-state had been transformed into a new patrician-plebeian state, according to Grouchy, the *comitia tributa* had remained an essentially separate, although somehow included, revolutionary body and its main magistrates, the tribunes of the plebs, autonomous representatives of only one section of the whole community.<sup>41</sup> Therefore, it becomes clearer how Rousseau could make those rather puzzling claims about the role of the tribunes of the plebs. Following Grouchy's interpretation of the tribunate as an office that ultimately resides outside the constitution, Rousseau not only assigns solely the power of veto to the tribunes, but also makes them – in an original twist – the mediator between the two parts of the commonwealth.

A similar line of argument is found in Bodin's *Methodus ad facilem historiarum cognitionem* published in 1566. Bodin, who had evidently read Grouchy and Sigonio and was aware of the dispute over their interpretations of ancient Rome, explicitly opposed Sigonio while indirectly siding with Grouchy. The latter, for his part, did not miss the opportunity of saluting Bodin in his *Refutatio* of 1567, thereby publicly declaring their alliance and further delineating the opposing camps of this fierce scholarly debate.<sup>42</sup>

Whilst Sigonio had embraced the Aristotelian understanding of citizenship as full participation in politics and, following Polybius, claimed that the Romans had achieved, at least for a short period of time, the perfect mixed and balanced constitution, Bodin argued that citizens were subjects of a unified sovereignty which, although it could take the form of a monarch, an aristocratic group, or the people, remained always a sole source of sovereignty. In Rome, Bodin argued, this unified sole sovereign was the *plebs*,<sup>43</sup> and the tribunes of the plebs were the greatest holders of *imperium*, superior also to the consuls and acting as the true masters of the assemblies and the people.<sup>44</sup>

In line with Grouchy's analysis, according to whom Rome was a city-state where the ultimate locus of judicial, legislative, and electoral powers was the assemblies, while the administration of power

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<sup>38</sup> Grouchy, *De com rom.* f. 44-45r.

<sup>39</sup> McCuaig, *Carlo Sigonio*, 193 and passim.

<sup>40</sup> Grouchy *de com. rom.* 3.2 ff. 102v-4v.

<sup>41</sup> On the anomalous status of the tribunes of the plebs see also Plut. *Quaest. Rom.* 81.

<sup>42</sup> Grouchy, *Refutatio* 1567, f. 5v. On the role of Bodin see McCuaig 'Sigonio and Grouchy', 180-1.

<sup>43</sup> J. Bodin, *Oeuvres Philosophiques*, ed. Pierre Mesnard (Paris: Presses universitaires de France, 1951), 167-72 (on citizenship) and 177-80 (on the mixed constitution).

<sup>44</sup> Bodin, *Methodus*, 179.

resided with the magistrates,<sup>45</sup> Bodin distinguished in his *Methodus* the *summum imperium*, that is sovereignty lying with the people, from the administration of power. In his view, the Roman mixed and balanced constitution had never existed, but was simply a myth: the Roman Republic had always been a *popularis* state,<sup>46</sup> where sovereignty – in itself an indivisible power – was invested in the popular assemblies, the democratic element in the theory of the mixed constitution. Sovereignty was also defined, according to Bodin, in the confrontation between the *populus* and the *plebs*, while the consuls – representatives of monarchical power in the theory of the mixed constitution – were nothing more than the agents of the sovereign will. In this theory the senate, representative of the aristocratic component of the mixed constitution, was not much more than an emanation of the popular assemblies. In line with Grouchy’s interpretation of the struggle between patricians and plebeians, and once again against Sigonio’s interpretation, Bodin did not consider the *lex Hortensia* as signalling the end of the struggle and the establishment of a new patrician-plebeian state which integrated the plebs fully into the Roman state, but rather as sanctioning the distinction of the plebeians within the state and the transfer of sovereignty to the lowest group of society.<sup>47</sup> It followed that, in Bodin’s reading, the tribunes of the plebs, who presided over the *comitia tributa*, were the most powerful magistrates of Republican Rome.

The notion that sovereignty in Republican Rome lay with the people and was distinct from its government is found not only in Bodin (and to a certain extent in Grouchy), but also in Rousseau, whose definition of the body politic in Book 1 of the *Social Contract* makes an explicit reference to by Bodin.<sup>48</sup> The idea that Rome, whose indivisible sovereignty resided with the people, could never have had a mixed constitution, recurs prominently in Rousseau’s analysis of the Roman republican constitution.

#### MONTESQUIEU’S ROME IN *THE SPIRIT OF THE LAWS*

The most striking features of Rousseau’s Rome are manifest not only in the choice of the *comitia centuriata* as the best Roman assembly, in the democratising role assigned to the *centuria praerogativa*, or in the rather limiting powers of the tribunes of the plebs and their positioning outside the constitution, but also in the actual selection of the institutions discussed and the function assigned to them. As Millar puts it, ‘Rousseau is plucking an institution out of its Roman context and asking what steadying function each – tribunate, (temporary) dictatorship, and censorship – could play in any state.’<sup>49</sup> The reason behind Rousseau’s apparently arbitrary choice of institutions and his analysis of their balancing qualities should be found, I would argue, in Montesquieu’s interpretation of Rome in his *De l’esprit des lois*.<sup>50</sup> Not only does Rousseau explicitly refer to Montesquieu right at the start of his discussion of Roman assemblies with reference to the democratic nature of sortation,<sup>51</sup> he also seems to analyse the same Roman institutions which Montesquieu discusses.

The reference to Montesquieu is, in fact, most evident when one considers the institutional components of the Roman republican system on which Rousseau chooses to build his analysis of Rome: the centrality of the popular assembly as depositary of legislative power, the preference for the

<sup>45</sup> Grouchy, *de com. rom.* Preface fr. 3r

<sup>46</sup> Bodin, *Methodus*, 177a.

<sup>47</sup> Bodin, *Methodus*, 177b-180a.

<sup>48</sup> Rousseau, *Social Contract*, 1.6. See Derathé ad loc.

<sup>49</sup> Millar, *Roman Republic*, 119.

<sup>50</sup> P. Andrivet, “Rome enfin que je hais...”? *Une étude sur les différentes vues de Montesquieu concernant les anciens Romains* (Orléans: Paradigme, 2012).

<sup>51</sup> Montesquieu, *L’esprit*, 2.2 from A.M. Cohen, B.C. Miller, and H.S. Stone (eds.), Montesquieu, *The Spirit of the Laws* (Cambridge: Cambridge University Press, 1989). All further citation from this work are from this edition. Rousseau, *Social Contract* 3.11 on the inevitable decline of even Sparta and Rome is almost a verbatim quotation from Montesquieu, *L’esprit* 11.6. See also Rousseau, *Social Contract* 1. 4; 2.6 (Montesquieu’s *L’esprit* 1.1); 2.12 (Montesquieu’s *L’esprit* 1.3); 3.4 (Montesquieu’s *L’esprit* 7.2 and 3.3); 3.5 (Montesquieu’s *L’esprit* 3.4); 4.2 (Montesquieu’s *L’esprit* 2.2 on the *comitia* and the introduction of secret ballot at Rome) and *passim*.

*comitia centuriata*, the discussion of the dictator (and the *senatus consultum ultimum*), the function assigned to the censors, and the role of the tribune of the plebs as well as his right to render null any resolution. If, on the one hand, his sources offered him a specific interpretative angle on each of those, Montesquieu, on the other, provided him with the basic sketch of the Roman constitution with which to engage.

In Montesquieu's analysis, the working of these institutions showed why the Roman Republic was destined to fall. Its end was inevitable, he argued, as it fell short of those essential requirements to create a stable commonwealth, where the three components of the mixed constitutions, understood as the three different functions of government (legislative, executive, and judicial) are in check and balance with one another.

In *De l'esprit des lois*, according to Montesquieu, the Roman Republic was doomed to fail mainly because of three factors. First, in Rome the people themselves voted on resolutions binding the whole community rather than electing representatives who could have done so on their behalf; second, the tribune of the plebs checked both the legislative and the executive power, rather than allowing the executive power to exercise control over the legislative power, as he considered most functional; third, the tribune of the plebs arrogated to himself the right to veto, that is to render null any resolution, rather than allowing the executive powers (senators and magistrates) to exercise it against one another. The censors and the right of the senate to appoint a dictator are singled out as the two institutional means by which the power of the people, which, Montesquieu argues, should never be too strong, could have been regulated and limited.

Adopting as his sources Livy, Polybius, and most of all Dionysius of Halicarnassus, his main discussion of the Roman Republic in Book 11 is broadly constructed along the lines of its constitutional development from monarchy, to the acquisition of plebeian rights, to the loss of liberty (as a result of the Decemvirs' ascendancy to power) and its return after the death of Virginia. Analysing these constitutional developments, Montesquieu follows the variations of power balance between the legislative, executive, and judicial functions of the state, emphasising how the excess of power in the hands of one of the segments of the state would provoke the loss of liberty. The chronological narrative fades in the background almost to the point of disappearing in the next three chapters, where Montesquieu analyses the legislative, the executive, and the judicial powers of the Roman Republic. It is mainly in these chapters, I would argue, that Rousseau has in mind when constructing his own version of the Roman Republican system.

As far as the legislative power of the people is concerned, Montesquieu claims that what he calls the *comitia tributa* (which, like Rousseau, he conflates with the *concilium plebis tributum*) held too much power and deprived a portion of Roman citizens of their liberty. Since this assembly was open only to the plebeians, once in virtue of the *lex Hortensia* in 287 BC it gained the right to pass laws, *plebiscita*, legally binding the whole community, a situation was created where 'there were cases in which they were subject to the legislative power of another body of the state. It was a frenzy of liberty. The people, in order to establish democracy, ran counter to the very principles of democracy' (11.16). Fortunately, Montesquieu's argument continues, Rome had two admirable institutions, the censorship and the dictatorship, fulfilling respectively the function of regulating and limiting the legislative power of the people. In his reading of these magistracies Montesquieu argues that since every five years the censors had the duty to draw up the list of Roman citizens, thus 'creating the body of the people ... they exercised legislation even over the body that had legislative power. On the other hand', he continues, 'the senate had the power to remove the republic from the hands of the people, so to speak, by creating a dictator before whom the sovereign bowed and the most popular laws remained silent' (11.16).

Responding to this idea, Rousseau intervenes in this constitutional debate by asserting the centrality of the popular assembly and its legislative power. In order to respond to the obvious accusation of exclusion imputable to the *concilium plebis tributum*, which he himself confuses with the *comitia tributa*, Rousseau favours the *comitia centuriata* as the all-inclusive assembly. Hence, having been forced, so to speak, to elect the *comitia centuriata* as the best Roman assembly, he finds himself having to dwell upon the means to correct the aristocratic bias of this *comitia*.

Contrary to the principles enunciated by Montesquieu, Rousseau's idea of a popular sovereign and its manifestation in the exercise of legislative power cannot admit any form of regulation nor limitation. Hence, Rousseau spends some time discussing the role of the censors as well as of the

dictator in response to Montesquieu. The censors, according to Rousseau, cannot protect nor reform morals, they can simply provide them with a mere form of expression; the dictator, on the other hand, in case of public emergency when the safety of the state is at stake may silence the law and suspend the sovereign authority, as Montesquieu argues, yet such a suspension is only apparent. The selection of a dictator, Rousseau maintains, is rather an expression of the general will and in line with a popular sovereign which is not thereby abolished. The dictator, Rousseau continues, ‘dominates it without being able to represent it; he can do everything, except make laws’ (4.4.6).

Montesquieu claims, and Rousseau seems to agree here, that the executive power in Rome resided mainly in the hands of the senate and the consuls, whose functions he describes (11.17). According to him, the Roman Republic failed because its constitution did not manage to preserve the separation and stable balance of its powers. It is, he argues, the lack of checks and balances between the legislative and the executive powers that caused a great ill to the Republic. The tribunes of the plebs, who, alongside the senate and the other Roman magistrates, possess executive powers in this reading, are endowed solely with the faculty of vetoing - ‘the right to render null a resolution taken by another.’ He reinforces the rather limited view of this magistracy by adding that ‘although the one who has the faculty of vetoing can also have the right to approve, this approval is no more than a declaration that one does not make use of one’s faculty of vetoing, and it derives from that faculty.’ However, in Rome the tribunes of the plebs extended their control not only over the legislative power, which they were required to ‘check and balance’ to prevent one section of government from becoming despotic, but also over the execution of this legislation. This, Montesquieu claims, was at the root of great ill. ‘Executive powers’, he continues, ‘... should take part in legislation by its faculty of vetoing; otherwise it will soon be stripped of its prerogatives. But if legislative power takes part in execution, executive power will equally be lost’ (11.6). Thereby, the cause of subversion of government in Rome, in his opinion, resides in the lack of the faculty of vetoing on the part of the senate and the magistrates, both holding executive power.

‘here, therefore, is the fundamental constitution of the government of which we are speaking. As its legislative body is composed of two parts, the one will be chained to the other by their reciprocal faculty of vetoing. The two will be bound by the executive power, which will itself be bound by the legislative power.’ (11.6)

It seems that Montesquieu places a considerable emphasis on the right of vetoing, essential to the proper functioning of the state, since, in his view, the two components of the legislative power should use it against one another. In Rome, Montesquieu argues, the misuse of this right by the tribunes of the plebs, who resorted to it also to check the executive power, was one of the causes that led to the fall of the Republic. Rousseau seems to respond to this rather peculiar interpretation of the tribunate of the plebs, conferring on this office a *prima facie* puzzling role. While for Montesquieu the tribunician right to veto should temper the powers of the two components of the legislative power, for Rousseau the tribune of the plebs, whose powers he himself limits to the right to veto, should act as a check between the legislative and the executive powers. When set in its intellectual context, Rousseau’s interpretation of the tribunate becomes, therefore, clearer. Rather than a sign of Rousseau’s undemocratic bias, his limitation of the tribunes of the plebs to the right of veto sets Rousseau’s reading of the Republic in dialogue with Montesquieu’s interpretation of Rome, endowing their historical description of this ancient Republic with the paradigmatic value of their own political principles.

## CONCLUSION

As Chantal Grell has suggested, in Rousseau Rome acts as a normative model allowing him to formulate a judgment not only and not so much about the past, but rather concerning the present.<sup>52</sup> Although Rousseau’s discussion of the mixed constitution is set in the context of ancient debates and

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<sup>52</sup> Grell, *Le Dix-huitième siècle*, 461.

is often associated with the name of Polybius,<sup>53</sup> Rousseau's most immediate point of reference in this discussion was not Polybius but rather Montesquieu.

According to Polybius, Rome was a mixed and balanced constitution with a preponderance of the senate, where the three elements that made up the Roman constitution (the monarchical, aristocratic, and democratic elements) were manifest in institutions (the consuls, the senate, and the assembly). By contrast, in Rousseau the elements of the mixed constitution are neither institutions nor social classes, as, for example, in Aristotle's theory of the mixed constitution, but rather, following Montesquieu, functions of government. The Prince is identified with the capacity of executing laws and the Sovereign with the capacity of promulgating laws and judging their interpretation. This clear shift of language applied to classical conceptual categories makes sense if we look at contemporary discussions of the role of the mixed constitution and the separation of powers.

By discussing the Roman institutions in the way he does, Rousseau is making an intervention in this particular debate that assumed central stage in 1748 with the publication of Montesquieu's *De l'esprit des lois* when separation of powers and the division of the sovereign came, or returned, to the forefront of political debate.<sup>54</sup> In its purest form the doctrine of separation of powers is based on the view that government has three functions: to give laws, to implement laws, and to interpret laws. To each of these three functions corresponds a branch of government: the legislative, the executive, and the judiciary. The separation of powers consists of two principles: the first regards separation of function; the second separation of persons.<sup>55</sup> Any function of government must be performed by one and only one branch of government without encroaching upon the functions of the other branches; a person who occupies a position in one of the three branches must not at the same time play a role in any of the other two branches. The idea behind this theory is that if such a separation of function and persons is respected, each of the three branches of government will act as a check to the exercise of power by the other two, so as to avoid an excessive concentration of power and thereby its likely abuse.

Although Montesquieu argued that the English constitution exemplified such a separation of powers, he was aware that to a certain extent this was an ideal type. In his analysis Montesquieu gives considerable prominence to the 'power of judging,' namely the institutional power and political impact of courts and legal practices. In his interpretation of Republican Rome, the failure to achieve a separation of the judiciary from the legislative power – as well as the failure to entrust the legislative power to a body of representatives – explained the precariousness of Republican Rome and led to the astonishing claim that 'the Italian Republics enjoyed less liberty than our monarchies.' (11)

Opposing Montesquieu's rejection of Roman Republican system as a model of government for modern times, Rousseau argues that the Roman constitution until the second century BC, when the tribunes usurped their balancing role, represented an example of strength and liberty. Centred on the people's assembly, which exercised the legislative power and acted as the manifestation of the sovereign will, the Roman constitution never knew separation of powers, which, independent from one another, could check the abuses of the others. Rome, however, experienced a distinction between the functions of government, which were carried out by convergent institutional branches such as the magistrates and the senate, representing the executive branch of government, and the assembly which represented the legislative as well as the judiciary branch of government (and often by the same agents playing different roles). The Roman constitution worked on a principle of what Polybius called

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<sup>53</sup> See, for example, Darethé's comment (Rousseau *Œuvres complètes*, III, 1483, n.5) on the *Social Contract* 3.7.

<sup>54</sup> On the principle of division of powers before Montesquieu see W.B. Gwyn, *The meaning of the separation of powers: an analysis of the doctrine from its origin to the adoption of the United States Constitution* (New Orleans: Tulane University, 1965); on the issue of the division of sovereignty and its relation to the idea of the mixed constitution see J.H. Franklin 'Sovereignty and the Mixed Constitution: Bodin and his Critics', in J.H. Burns with M. Goldie (eds.), *The Cambridge History of Political Thought 1450-1700* (Cambridge: Cambridge University Press, 1991), 298-328, and P. Pettit, 'Two Republican Traditions' in Andreas Niederberger and Philipp Schink (eds), *Republican Democracy: Liberty, Law and Politics* (Edinburgh: Edinburgh University Press, 2013), 169-204.

<sup>55</sup> See M. Hansen, 'The mixed constitution versus the separation of powers: monarchical and aristocratic aspects of modern democracy', *History of Political Thought* 31 (2010), 509-31.

the checks and balances, that it is a principle of mutual dependence that led to a strong cooperation between the different institutions, which prevented political paralysis. For Rousseau, the vital principle embodied in the Roman constitution was that the government was subject to the overriding legislative power of the sovereign people. His preference for the *comitia centuriata* not only guaranteed that no citizen was in principle excluded from exercising his right to vote, but also placed an elective aristocracy in charge of the executive power and allowed for the appropriate distinction between the sovereign and the governmental powers (3.1 and 3.5).

In Book 3, just before devoting detailed attention to Rome and its tendency to degenerate, Rousseau discusses the forms of government: 'which is better, a simple or a mixed Government? The question is much debated by politicians, and it should be given the same answer I gave about all forms of Government' (3.7.3). Ideally, a simple form of government is preferable; however, to ensure that the proportion of power between the Sovereign and the Government is preserved and the executive power 'is sufficiently dependent on the legislative', there are two possible remedies. The first concerns the division of government, which has to be divided in such a way that 'its several parts have no less authority over the subjects and their division reduces their combined force against the Sovereign' (3.7.4). The second remedy, which was adopted by Rome, Rousseau argues, concerns the establishment of 'intermediate magistrates who, leaving the Government whole, merely serve to balance the two Powers and to uphold their respective rights. Then the Government is not mixed, it is tempered' (3.7.5).

By analysing Roman institutions according to the institutional principles that he had found in his ancient and early modern sources, Rousseau succeeds in presenting Rome as a form of government where sovereignty lies absolute and indivisible only with the people, while the government – composed of appointed magistrates – depends on the sovereign, and each power is held in balance by the tribunes of the plebs. Informed not only by Livy and perhaps Polybius, but also by the scholarly debate between Grouchy and Sigonio as well as by Bodin's interpretation of the Roman Republic, Rousseau's republican constitution is not a mixed and balanced constitution but rather a system where the 'the Roman people was genuinely sovereign both by right and fact' (4.4.21). Far from Machiavelli's interpretation that gives considerable emphasis to the antagonistic relation between patricians and plebeians, Rousseau proposes that 'even in the stormiest times, the people's plebiscites passed quietly and by a large majority, when the senate did not interfere. The citizens, having a single interest, the people had but a single will' (4.2.2). Following Bodin, Rousseau considers the legislative authority to be the sovereign power, since all other agencies have the duty to apply the law while the sovereign is the only one able to make it (2.2.3). Yet he also establishes a distinction between sovereignty and government whose function is the administration of sovereignty. It is the administration which might be divided in itself and constitute a form of mixed government, but not the sovereign (3.7.4).<sup>56</sup> Contrary to the principle widely shared amongst the writers of the seventeenth century, Rousseau espouses the idea of the indivisibility of sovereignty, which, he argues, Rome embodied.<sup>57</sup> In addition, following most likely Polybius's analysis, Rousseau also emphasises the importance of morals in supporting the workings of this constitution, and like Polybius, he includes in his account a discussion of the role of religion.

However, in discussing Roman institutional arrangements in these terms Rousseau also took part in the contemporary debate on the separation of powers, thereby deeply transforming the nature of the Roman Republic. Far too often regarded as an odd excursus that does not fit well with the rest of the *Social Contract*, Rousseau's analysis of Roman Republican institutions is nevertheless an ideal model elaborated by Rousseau as a valid alternative in the lively context of mid-eighteenth-century constitutional controversies.

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<sup>56</sup> On the influence of Bodin and Hobbes on Rousseau see P. Pettit, 'Two Republican Traditions', 169-204, esp. 184-8. For Rousseau, however, as Pettit underlines, sovereignty is inalienable.

<sup>57</sup> R. Derathé, *J.J. Rousseau et la science politique de son temps* (Paris: Vrin, 1995), 280-94.