

## Principle and Prudence: Rousseau on Private Property and Inequality

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*This article analyzes Rousseau's political theory of private property, fills a lacuna in the literature, and develops a novel interpretation of Rousseau's apparently contradictory remarks. Although Rousseau was critical of private property, he did not advocate a clear and easy solution to the problems he discerned. Instead, he put forth a highly differentiated perspective that was principled and pragmatic. He rooted the legitimacy of private ownership in an ideal theory of republican property rights, which refers primarily to the normative principle of reciprocity. In his opinion, a balance of private property rights is indispensable to a well-ordered society and a just republic not only because it binds the state, society, and citizen together, and not only because it secures the independence of individual citizens from each other, but also because it enhances political legitimacy and reciprocity. On these principled grounds, Rousseau's theory rules out "collectivist" solutions as much as vast differences in wealth and "absolutist" theories of more or less unlimited private property rights. Instead, his theory builds on the republican idea of private property as a public political institution. Within this ideal framework, Rousseau allows for certain non-ideal deviations in particular circumstances on prudential grounds. Polity (2014) 46, 381–406. doi:10.1057/pol.2014.13*

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I must read Rousseau until the beauty of the language no longer moves me, and then I look at him rationally.

Immanuel Kant<sup>1</sup>

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1. Immanuel Kant, *Observations on the Feeling of the Beautiful and the Sublime*, 1764, quoted in Ernst Cassirer, *Rousseau, Kant and Goethe* (Princeton: Kristeller and Randal, 1945), 6–7.

While many of Rousseau's ideas are well understood on what would be his tricentennial, his thoughts on political economy—particularly his analysis of private property—are still seen by many scholars as puzzling at best, and incoherent at worst. In his most famous work on this subject, *the Second Discourse*, Rousseau presents himself as a radical critic of private property who supported far-reaching reforms. Yet in other writings, particularly in his *Discourse on Political Economy* and in the *Social Contract*, he champions private property not only as a core social institution, but even as the foundational principle of any legitimate political community. Critics have often taken this duality in his analysis of private property—with “contradictions enough to warm the enthusiasm of any Hegelian”<sup>2</sup>—as evidence of incoherence. One critic even accused Rousseau of writing opportunistically on the topic of private property.<sup>3</sup> However, the frequency and intensity of Rousseau's references to property, and its centrality to his thoughts about liberty and justice, indicate the depth of his concern and suggest the need for a more systematic explanation beyond opportunism.

This article inquires whether it is possible to defend Rousseau's own claim that any of the “contradictions [in his writings] reflect the contradictions in things.”<sup>4</sup> On the one hand, Rousseau argues ardently that private property has been unjustly instituted; yet, on the other hand, he claims that the institution of property is the foundation of justice. How can property be both the foundation of justice and injustice? Are there different theories of property in Rousseau?<sup>5</sup> Or does Rousseau,

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2. James McAdam, “Rousseau: The Moral Dimensions of Property,” in *Theories of Property: Aristotle to the Present*, ed. Anthony Parel and Thomas Flanagan (Waterloo, Ontario: Wilfrid Laurier University Press, 1979), 181–202; James McAdam, “Moral Dimensions of Property,” in *Rousseau's Response to Hobbes*, ed. Howard R. Cell and James McAdam (New York: Peter Lange, 1988), 113. On these contradictions, also see Karlfriedrich Herb, “Autonom oder authentisch? Rousseau und die Ambivalenzen des modernen Bürgerseins,” *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 20 (2012): 93–104; Ryan P. Hanley, “Political Economy and Individual Liberty,” in *The Challenge of Rousseau*, ed. Eve Grace and Christopher Kelly (Cambridge: Cambridge University Press, 2013), 37–38; Bertil Fridén, *Rousseau's Economic Philosophy* (New York: Springer, 1998), 120–21; Samuel Fleischacker, *A Short History of Distributive Justice* (Cambridge: Harvard University Press, 2004), 58–61; Hannah Arendt, *On Revolution* (London: Penguin Books, 1965); Carol Blum, *Rousseau and the Republic of Virtue: The Language of Politics in the French Revolution* (Ithaca, NY: Cornell University Press, 1986); Lucio Colletti, *From Rousseau to Lenin* (London: Monthly Review, 1972); Lester Crocker, *Jean-Jacques Rousseau, vol. I-II* (New York: Macmillan, 1968); Jacob Leib Talmon, *The Origins of Totalitarian Democracy* (London: Secker & Warburg, 1952).

3. Alexandre Chabert, “Rousseau économiste,” *Revue d'histoire économique et sociale* 42 (1964): 345–56.

4. Allan Bloom, “Jean-Jacques Rousseau,” in *History of Political Philosophy*, ed. Leo Strauss and Joseph Cropsey (Chicago: University of Chicago Press, 1987), 559–80. On Rousseau's awareness of these apparent paradoxes, see Jean-Jacques Rousseau, “Letter to D'Alembert on the Theatre,” in *Politics and the Arts*, trans. Allan Bloom (Ithaca, NY: Cornell University Press, 1973), 131.

5. Robert Wokler claims that *Political Economy* represents a different view on property than the other treatments by Rousseau, and believes this text to be influenced by Locke, but Wokler does not seek to reconcile or understand the sources of the contrasting views. See Robert Wokler, *Social Thought of J.J. Rousseau* (New York: Garland, 1987), 77, n89. Other studies have attempted to resolve apparent contradictions in Rousseau by noting his political prudence, but have not focused sufficiently on the issue

although he lacks “a succinct ... theory of property,”<sup>6</sup> nonetheless offer a coherent framework, albeit one that embodies complicated tensions?

Some scholars have suggested that the tensions in Rousseau’s theory may be reconciled by more cautiously differentiating his references to the “sovereign” and the “magistrate” with regard to the relation between the state’s and the individual’s property rights.<sup>7</sup> Other scholars have looked at Rousseau’s emphasis on the civic nature of property rights and at their inherent limitations as enduring themes in his writings on property.<sup>8</sup> Recent contributors to this discussion have focused on *amour propre* in the *Second Discourse* as a key to his thinking about political economy<sup>9</sup> and his theory of property in particular.<sup>10</sup> Others have emphasized Rousseau’s *Discourse on Political Economy* and have argued that his theory of property expresses “prioritarian libertarianism,” which underscores the crucial right of self-preservation and hence the natural foundation of ownership.<sup>11</sup>

In this article, we offer an interpretation of Rousseau’s theory of property that takes into account equally the *Second Discourse* and *Political Economy*, that integrates the *Social Contract* into the picture, and that systematically connects the allegedly contradictory arguments found in these writings. We contend that Rousseau’s position on property involved three principal arguments.<sup>12</sup> First, he was concerned with the *social status of property*, which renders its significance and consequences highly contextual. In his opinion, the normative implications of property substantially vary according to the social, cultural, and political conditions in which it is situated. This is a key reason why Rousseau’s perspective on private property is critical and affirmative without being incoherent or opportunistic.<sup>13</sup>

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of private property. See Ruth Weissbourd Grant, *Hypocrisy and Integrity: Machiavelli, Rousseau, and the Ethics of Politics* (Chicago: University of Chicago Press, 1997), 102–10.

6. McAdam, “Rousseau: The Moral Dimensions of Property,” 181.

7. For references to this argument, see Ryan P. Hanley, “Political Economy and Individual Liberty,” 37; and especially Robert Derathè, “Introduction: Discours sur l’économie Politique,” in *Oeuvres Complètes, Volume III*, ed. Bernard Gagnebin and Marcel Raymond (Paris: Gallimard, 1964), 72–81.

8. Christo Bertram, *Rousseau and the Social Contract* (London/New York: Routledge, 2004), 90.

9. Frederick Neuhauser, *Rousseau’s Theodicy of Self-Love: Evil, Rationality, and the Drive for Recognition* (Oxford: Oxford University Press, 2008)

10. Chris Pierson, “Rousseau and the Paradoxes of Property,” *European Journal of Political Theory* 12 (2013): 409–24.

11. Hanley, “Political Economy and Individual Liberty,” 34–56.

12. In addition to the above cited works, this article also builds on work by earlier scholars who sought to reconcile Rousseau’s writings on private property, including Nannerl Keohane, “Rousseau on Life, Liberty and Property: A Comment on McAdam,” in Parel and Flanagan, *Theories of Property*, 203–20; Richard Teichgraeber, “Rousseau’s Argument for Property,” *History of European Ideas* 2 (1981): 115–34; Ethan Putterman, “The Role of Public Opinion in Rousseau’s Conception of Property,” *History of Political Thought* 20 (1999): 417–37; Ethan Putterman, “Realism and Reform in Rousseau’s Constitutional Projects for Poland and Corsica,” *Political Studies* 49 (2001): 395–418; and Bloom “Jean-Jacques Rousseau.”

13. On Rousseau’s contextualism in this respect, see also Teichgraeber, “Rousseau’s Argument”; Timothy O’Hagan, *Rousseau* (London: New York: Routledge, 1999); Fridén, *Rousseau’s Economic Philosophy*.

Second, his positive conception of property implicitly weaves together two distinct strands of reasoning. Rousseau advances what John Rawls calls a “realistic utopian” political theory of private property, which combines “ideal” and “non-ideal” theory. On the one hand, Rousseau reflects on the “ideal” constitution of property under ideal or most favorable conditions—that is, within the context of his theory of a fully legitimate republican government. On the other hand, he also considers property when its real-world settings deviate from those that define just republics. In those reflections, thoughts about prudence also guide Rousseau’s analysis. Consequently, the tensions that exist *within* his normative political theory of private property should not be interpreted as evidence of incoherence but rather as a reflection of the real trade-offs between principle and prudence.

Finally, with regard to Rousseau’s ideal theory of private property, we emphasize a normative argument that has hitherto been often neglected in the literature.<sup>14</sup> We maintain that while Rousseau takes into account the natural rights of first occupants, he insists that it is the political *principle of reciprocity* that eventually renders individual property claims legitimate. This argument is most clearly articulated in the *Social Contract*, but is evident throughout his *oeuvre*. Hence, while many interpreters consider the *Social Contract* as “the most difficult text to incorporate into a single, coherent Rousseauian view” on property,<sup>15</sup> it is precisely here that the key principle of his ideal theory of private property lies. The principle of reciprocity both implies that the legal protection of private property rights is crucial for the individual freedom of citizens and, at the same time, that there are limits equally important for citizens’ freedom. Since this principle and its concrete implications can only be realized by the institution of private ownership within the context of a just republic, Rousseau holds that private property is an indispensable dimension of a legitimate and just political regime. Understood in this manner, Rousseau’s political economy offers a coherent theory of the legitimacy and political function of private property as a republican institution.

Our analysis proceeds in four stages. The first connects Rousseau’s republican understanding of property with the concepts of “ideal” and “non-ideal” theory, and “realistic utopia” (originally coined by John Rawls). The second section investigates Rousseau’s understanding of the social status of private property in his

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14. Putterman, in “The Role of Public Opinion,” hints at some aspects of this argument when he stresses Rousseau’s idea of “legal title” and of “mutually agreed upon convention(s)” as rendering the peculiar form of legitimacy of private property (435). Putterman focuses above all on the question of the relation between property and public opinion. See also Klaus D. Schulz, *Rousseaus Eigentumskonzeption. Eine Studie zur Entwicklung der bürgerlichen Staatstheorie* (Frankfurt a. M./New York: Campus, 1980).

15. Pierson, “Rousseau and the Paradoxes of Property,” 416. Frederick Neuhouse, “Rousseau’s Critique of Economic Inequality,” *Philosophy and Public Affairs* 41 (2013): 193–225, stresses the significance of the political principles set out in the *Social Contract* for Rousseau’s reflections on the problem of economic inequality. For Neuhouse, these political principles can be derived from the two “fundamental interests” of citizens in well-being and in freedom.

critique of inequality in the *Second Discourse*. Although Rousseau appears almost exclusively critical here, he also reveals the foundations for his positive republican theory of private property. The third section examines Rousseau's "ideal" or principled defense of private property as a necessary component of republican citizenship in the *Discourse on Political Economy* and the *Social Contract*. The fourth section discusses Rousseau's attempts to reconcile his principled and his prudential reflections and the trade-offs that particular circumstances may imply for private property.

### Private Property and "Realistic Utopia"

Rousseau tackles the question of private property, its potentially problematic implications, and its peculiar legitimacy at two distinct theoretical levels. Each has substantially different implications. To clarify these two levels and the connection between them, we first offer a reading of Rousseau's republican theory of private property as a "realistic utopia." In doing so, we build on the work of John Rawls, who coined the term "realistic utopia" with direct reference to Rousseau's political philosophy.<sup>16</sup> For Rawls, the term alludes to the way in which Rousseau combines the *natural* conditions of human existence with man's *social* existence. According to Rawls, this combination may serve as a model for the normative function of political philosophy in general: "Political philosophy is realistically utopian when it extends what are ordinarily thought to be the limits of practicable political possibility and, in doing so, reconciles us to our political and social condition."<sup>17</sup> Rawls sees this specific combination of attention to natural conditions and social possibilities in Rousseau's *Social Contract*. In Rawls's opinion, a realistic utopian political theory

must rely on the actual laws of nature and achieve the kind of stability those laws allow, that is, stability for the right reasons. It takes people as they are (by the laws of nature), and constitutional and civil laws as they might be, that is, as they would be in a reasonably just and well-ordered democratic society ... Following Rousseau's opening thought in *The Social Contract*, I shall assume that his phrase "men as they are" refers to persons' moral and psychological natures and how that nature works within a framework of political and social institutions; and that his phrase "laws as they might be" refers to laws as they should, or ought, to be.<sup>18</sup>

Rawls's attention to how Rousseau combines natural conditions with social possibilities suggests a method for coming to terms with the complicated tensions

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16. John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), 7.

17. *Ibid.*, 11.

18. *Ibid.*, 13, 7.

within Rousseau's political economy.<sup>19</sup> As we will see, Rousseau's principled argument for private property is indeed located between the two poles of what Rawls would call a realistic utopia. Insofar as Rousseau refers to the basic psychological and moral aspects of property, his arguments are founded on the natural conditions of human existence. Insofar as property is embedded in the context of a well-ordered republic, the theory reflects the possibilities of laws and social institutions as they "should, or ought, to be."

The tension between the natural and the social conditions of political institutions implies, for Rousseau as much as for Rawls, a division in political theory into an ideal and a non-ideal component. As Rawls puts it: "The first or ideal part assumes strict compliance and works out the principles that characterize a well-ordered society under favorable circumstances ... [It] presents a conception of a just society that we are to achieve if we can. Existing institutions are to be judged in the light of this conception."<sup>20</sup> Non-ideal theory, by contrast, "asks how this long-term goal might be achieved, or worked toward, usually in gradual steps. It looks for courses of action that are morally permissible and politically possible as well as likely to be effective."<sup>21</sup> Although Rawls explains this distinction through a reference to Rousseau, he does not dwell on Rousseau's approach and how it affects either his broader political philosophy or specifically his theory of property. Nor have there been systematic attempts to apply Rawls's distinction to understand Rousseau's work. We argue that such an endeavor is particularly illuminating with regard to Rousseau's republican theory of private property.

The notion of a "realistic utopia" is useful because Rousseau both criticizes and affirms certain institutionalizations of private property. Rousseau criticizes the bourgeois society of proprietors emerging in his time, yet he makes two distinct types of arguments in favor of republican private property. One is principled (or "ideal") and the other prudential (or "non-ideal").

His principled arguments regard the question of what property might be under the most favorable social conditions—if set within the ideal context of a well-governed republic—and given the natural conditions of human psychology and morality. His prudential arguments, by contrast, try to determine the peculiar shape and function of property under non-ideal conditions, in specific societies, such as Poland, Corsica, or ancient Rome. Although these conditions fall short of the social and cultural conditions of an ideal republic, they nonetheless provide the basis for

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19. The distinction between ideal and non-ideal theory plays a crucial role in Rawls's overall conception of political liberalism and political philosophy, as well. For more on the distinction in Rawls's thought, see A. John Simmons, "Ideal and Nonideal Theory," *Philosophy & Public Affairs* 38 (2010): 5–36; Laura Valentini, "On the Apparent Paradox of Ideal Theory," *The Journal of Political Philosophy* 17 (2009): 332–55; Zofia Stemplowska, "What's Ideal About Ideal Theory?" *Social Theory and Practice* 34 (2008): 319–40.

20. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 245 ff.

21. Rawls, *The Law of Peoples*, 89.

legitimate or “morally permissible and politically possible” second-best solutions. The particular institutional shape of property rights must be accommodated to these conditions.<sup>22</sup> Rousseau’s principled arguments are oriented toward the “natural” conditions of human psychology and morality as well as toward the ideal political context of a well-ordered society. His prudential arguments are normatively guided by the principles of this ideal theory of republican property, but they flexibly apply the principles to non-ideal social contexts. Taken together, these two levels of reflection form the basis of a realistic utopia of private property as a republican institution.

The principled arguments of his realistic utopia appear most forcefully in *Political Economy*, in *Geneva*, in *Emile*, and (although disputed in the literature)<sup>23</sup> in the *Social Contract*. Rousseau’s fully developed theory of the just republic, put forth in the *Social Contract*, first introduces the crucial argument of his ideal theory of property. According to this argument, a legitimate and just political society requires a balance in private ownership, not simply because it is a necessary means to bind the state, society, and citizen,<sup>24</sup> and not only because it enhances individual autonomy<sup>25</sup> or individuals’ well-being and their natural right of self-preservation,<sup>26</sup> but also because it enhances political *legitimacy*. Before we elaborate this core idea of Rousseau’s ideal theory of property, however, let us recall his more critical view, which he famously formulated in the *Second Discourse*.

## The Critique of Property and Its Social Status

Perhaps the most famous, and definitely one of the most impressive, of Rousseau’s statements on property is the dramatic opening passage from the second part of the *Second Discourse*, proclaiming that the “first man who, having fenced off a plot of land, thought of saying: ‘This is mine’ and found people simple enough to believe him, was the real *founder of civil society*.”<sup>27</sup> Rousseau explains that the cultivation of the soil spawned private property, and that the cultivation continues only insofar as the property is protected from theft and violence. Rousseau also recognizes that at this point in his hypothetical history, there is no judge to

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22. See also Arthur M. Melzer’s characterization of Rousseau’s general philosophical perspective as a “complex idealistic realism” that “structures his thinking on the deepest level” and allows him to “somehow combine the two opposite tendencies” of idealistic and realistic political theorizing, in Arthur M. Melzer, *The Natural Goodness of Man: On the System of Rousseau’s Thought* (Chicago: University of Chicago Press, 1990), 25, 26.

23. See, for instance, McAdam, “Rousseau: The Moral Dimensions of Property.”

24. Fridén, *Rousseau’s Economic Philosophy*, 121.

25. Teichgraeber, “Rousseau’s Argument for Property”, 121 ff; O’Hagan, *Rousseau*, 102 ff, cited above, note 13.

26. Hanley, “Political Economy and Individual Liberty,” 38, original citation above, note 2.

27. Jean-Jacques Rousseau, “Second Discourse,” in *Oeuvres Complètes, Volume III*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964), 164, emphasis added.

adjudicate between competing claims. This leads to “a state of potential war between the haves and have nots.”

Rousseau describes how labor and possession gave rise to property rights claims, and these claims, in turn, gave rise to counterclaims rooted in need. The cunning rich man suggested a contract to guarantee his dubious right to the property. Thereafter, inequality is lawfully enforced. “How can this be legitimate?” Rousseau asks rhetorically. Who is responsible for the fraud? Is it a conspiracy of the rich? What implications does legally enforced inequality have for political and social order? (And, we shall add, how can these implications be possibly reconciled with those much more affirmative comments of Rousseau on property?)

There is no doubt that Rousseau is highly critical of the contract in the *Second Discourse*, even though in other writings he credits the same contract with bringing men together in a way that nothing else could.<sup>28</sup> It is important, however, to consider a number of specific qualifications implied in his critique. One of the argument’s most fundamental assumptions is, surely, the distinction between the natural origins and the social basis of property. While Rousseau understands property or possession in its most primitive forms as natural and, similar to Locke, derives it from individual labor, Rousseau stresses that property *rights* (and especially property rights in land) are strictly relational phenomena, and thus founded not on “nature” but on society. He further argues that society is founded upon (among other things) the institution of private property.

In the *Second Discourse*, Rousseau is particularly interested in the social foundation of property. What can be said about language, reason, morality, and justice—that for Rousseau they are all historical results of the unfolding of the human “perfectibilité” leading from “nature” to “society”—also holds true for property. Being a proprietor is a specific feature of the *homme civilisé* but not of the *homme de la nature*. Insofar as the *homme civilisé* is portrayed in the *Second Discourse* as a mere “bourgeois . . . individualist in society, who needs society and its protective laws, but only as means to his private ends,” private property appears as one of his most characteristic features.<sup>29</sup> Accordingly, Rousseau’s portrait of man and society in the *Second Discourse* is decidedly critical. He explicitly claims that rivalry, competition, and conflicting interests are the “first effects of property.” In his opinion, “Men are forced to caress and destroy one another at the same time

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28. Jean-Jacques Rousseau, “Languages,” in *Oeuvres Complètes Volume V*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964); Jacques Dehaussy, “La dialectique de la souveraine liberté dans le Contrat social,” *Etudes sur le Contrat social* (Paris: Association nord-américaine des études Jean-Jacques Rousseau, 1964), 119–41.

29. Bloom, “Rousseau’s Critique,” 146 ff. On the specific characteristics of “bourgeois society” from Rousseau’s perspective, see also Arthur M. Melzer, “Rousseau and the Problem of Bourgeois Society,” *American Political Science Review* 74 (1990): 1018–33; Ryan P. Hanley, “Commerce and Corruption,” 139–40; and Dennis Carl Rasmussen, *The Problems and Promise of Commercial Society: Adam Smith’s Response to Rousseau* (University Park: Pennsylvania State University Press, 2008), 25.

... when they are born enemies by duty and knaves by interest."<sup>30</sup> These effects ineluctably lead, in Rousseau's teleology, to the last stages of human development, where property is under threat and men come together to secure it. Rousseau says that men, rather than abolish the state of inequality through institutional change, gather to conclude a social contract that reinforces this inequality with the power of law, thus "eternally fixing the law of property and inequality."<sup>31</sup> The result is an enduring inequality.

Although readers of the *Second Discourse* have given the social institution of property a lion's share of their attention, property is not the only source of inequality in Rousseau's analysis. "Esteem for *natural* distinctions," such as beauty of voice and movement, unusual strength, and dexterity, are the primary or the more natural sources of inequality<sup>32</sup> and manifestations of the evolving *amour propre*, as several scholars have noted.<sup>33</sup> Only *later* in the development of human history does Rousseau attribute inequality to *artificial* distinctions, such as private property.<sup>34</sup> To be sure, property plays a crucial role the *Second Discourse*. The *amour propre* of the *homme civilisé* assumes those objective and solid forms only in those artificial distinctions established by property, which provide the basis on which the ever-growing inequalities between men are effectively perpetuated.

But surprisingly, Rousseau expresses ambivalence toward the contract that establishes these artificial distinctions. Insofar as Rousseau tells the history of mankind as a story of decay, the specific forms of private property appear problematic and illegitimate. This, however, is not the whole story. Rousseau argues in the *Social Contract* that man in civil society is deprived of some advantages he received from nature. Yet, in return he gains other benefits: his faculties are "so stimulated and developed, his ideas so extended, his feelings so ennobled, and his whole soul so uplifted."<sup>35</sup> Thus, Rousseau viewed ambivalently the historical outcomes, such as language, reason, morality, society, and property, from the unfolding of human *perfectibilité*.

Even in the largely critical *Second Discourse*, he grants property a key role in the establishment of justice. "The cultivation of the lands," he writes "necessarily followed their division; and from property, once recognized, the first rules of justice because, in order to render to each his own, each must be able to possess

30. Rousseau, "Second Discourse," 164, note 9.

31. *Ibid.*, 178.

32. *Ibid.*, 131.

33. Particularly Neuhausser, *Rousseau's Theodicy of Self-Love*.

34. Rousseau, "Second Discourse," 132.

35. Jean-Jacques Rousseau, "The Social Contract," in *Oeuvres Complètes, Volume III*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964), 364–65. Rousseau's brief clause following this passage—"that if the abuses of this new condition did not often degrade him beneath the condition he has left"—may indicate, however, that these moral improvements come mainly from a legitimate, republican contract.

something.”<sup>36</sup> This first man, according to Rousseau, was “the real *founder of civil society*”<sup>37</sup>—a formulation that turns out to imply an intriguing constructive argument, notwithstanding its mainly ironic tone. These “first rules of justice,” according to Rousseau’s telling, endowed actions with a morality and intelligence that were surely imperfect and partly deprived, but also completely absent beforehand. As he later stresses in the *Social Contract*:

The transition from the state of nature to the civil state produces a most remarkable change in man by substituting *justice* for *instinct* in his conduct and endowing his actions with the morality they previously lacked. ... Out of a stupid and bounded animal [it] made an intelligent being and a man.<sup>38</sup>

Thus, besides being a critique, Rousseau’s *Second Discourse* also implies a normative theory of property as a social institution. Consistent with this more differentiated view, Rousseau places the responsibility for the illegitimate manner in which property came to be protected on “society”—neither on “human nature” nor on “a divinity.”<sup>39</sup> This is crucial, because one obvious consequence of seeing evil as a product of political and social institutions (such as private property)—instead of a divinity or human nature—is that the solution can involve changing those institutions.<sup>40</sup> Human nature is a fickle thing to try to change, and the heavens do not always respond to our pleas; but institutions are man-made and therefore can be re-made. Rousseau’s critique therefore leads not to a complete rejection of private property. He calls neither for a “return” to some pre-proprietary “state of nature” nor for some form of post-proprietary “communism,” as some scholars have suggested, which is a criticism that conflates Rousseau’s description with his prescription.<sup>41</sup> Rousseau is a tough critic when describing the consequences of property, but he is more cautious and “realistic” in his attempts to change the institution than some interpreters of his writing on property admit.

36. Rousseau, “Second Discourse,” 173.

37. *Ibid.*, 164, emphasis added.

38. Rousseau, “The Social Contract,” 364–65, emphasis added.

39. Cassirer, *The Question of Jean-Jacques Rousseau*, trans. Peter Gay (New York: Columbia University Press, 1932), 75: “Rousseau created a new subject of responsibility ... not individual man, but society.” Critics from the Church understood this. The archbishop of Paris, for instance, condemned *Emile* because it seemed to deny the dogma of original sin. See Cassirer, *The Question*, 74; O’Hagan, *Rousseau*, 38; Marc F. Plattner, *Rousseau’s State of Nature: An Interpretation of the Discourse on Inequality* (Dekalb: Northern Illinois University Press, 1979).

40. Fidel Castro allegedly told a French journalist that Rousseau was his “teacher” and that he had fought Batista with the Genevan in his pocket. See Colletti, *From Rousseau to Lenin*, 144.

41. Bloom, stresses that Rousseau’s harsh critique of property and inequality “does not mean Rousseau is a communist or that he believed it is possible or desirable to do away with private property. He is far too ‘realistic’ to follow Plato’s Republic and abandon the sure motive of love of one’s own things. It does mean, however, that he strongly opposes the emancipation of acquisitiveness and that he argues against *laissez-faire*” (Jean-Jacques Rousseau, 152).

Several determined critics of Rousseau have missed this realistic emphasis entirely. Voltaire, for example, argues that Rousseau wishes for us “to walk on all fours.” Voltaire derives his conclusion from the *Second Discourse*, in which Rousseau writes:

Must societies be totally abolished? Must *meum* and *teum* be annihilated, and must we return again to the forests to live among bears? This is a deduction in the manner of my adversaries, which I would as soon anticipate as let them have the shame of drawing.<sup>42</sup>

Rousseau understands that some readers might deduce a radical solution from his description of the problems property poses. After all, he criticizes the development of private property in lurid language by confronting the “bourgeois” society of the *homme civilisé* with the natural equality of the *homme de la nature*. However, what he thinks should be done with property is another matter. Its development is irreversible, for all practical purposes. He therefore uses the “state of nature” as an analytical category, and not as an objective toward which we should strive or state to which we should return.<sup>43</sup> Instead of proposing a return to nature, the *Second Discourse* remains almost exclusively analytical and critical, not prescriptive. Its two major objectives are (1) to emphasize the status of property as a general social phenomenon, and (2) to criticize the particular institutional form that property has assumed in bourgeois society. The prescriptions that Rousseau derives from this analysis are found primarily in other writings and are much more cautious and complex than certain critics have assumed.

In the *Second Discourse*, the solution to the problems posed by property is not found merely “in nature” and, hence, not in an abandonment of property and society altogether. It is found in a politically transformed society, which includes the institution of private property. His solution to the contradictions of the bourgeois *homme civilisé* as proprietor is not the unpropertied *homme de la nature*, *homme du communisme*, or proprietary statism, but private property on the basis of (and for the sake of) citizenship. Insofar as it is a social phenomenon, the meaning of property for Rousseau depends largely upon its social context, even though the natural rights associated with property are universal and prior to government. Within the natural environment of the *homme sauvage*, property is at best a very marginal phenomenon. In the full sense of the term, it is nonexistent. Within the context of the contradictory, scattered categories of *homme civilisé*’s society, property is a primary source of injustice, conflict, suffering, and cultural decay. Within the context of a “republic,”

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42. Rousseau, “Second Discourse,” 207.

43. For an early critique of the idea that Rousseau uses “nature” as an unqualified standard or as an absolute normative principle, see Arthur Lovejoy, “The Supposed Primitivism of Rousseau’s Second Discourse,” in his *Essays in the History of Ideas* (New York: Capricorn, 1948).

and its respective “political economy,” property is the cornerstone of social justice and “the most sacred of all the rights of citizenship.”<sup>44</sup>

Property is both indispensable and variable, and thus figures prominently both in Rousseau’s critique of bourgeois society and in his normative theory of republican government. In these substantially different contexts, the meaning of property is dissimilar (the *Second Discourse* being primarily critical, and the theory of republican government being largely prescriptive). In both theoretical contexts, Rousseau takes “men as they are.” However, while the *Second Discourse* examines society, the laws and especially property as they potentially can, but should not be, Rousseau’s theory of republican property examines its positive potential. This is why the “same institution, which is an instrument of exploitation in unjust societies, can be transformed, in a legitimate society founded on the social contract, into the vehicle of individual autonomy.”<sup>45</sup>

However, how does this transformation take place? And what is the normative basis of this explicitly affirmative part of Rousseau’s understanding of property? From where, exactly, does the legitimacy of this transformed variant of property right come from? Not being a “natural” right in the full sense of the term, what kind of right is it? Is it founded on pragmatic or functional reasons, such as its beneficial effects on individual material autonomy?

According to a “realistic utopian” interpretation of Rousseau’s thinking, Rousseau is proposing that the normative problem of property requires prudential considerations, yet also entails a fundamental principle. This principle, however, cannot be naturalistic. Rather, it follows a political logic that, while taking “men as they are,” is still able to extend “what are ordinarily thought to be the limits of practicable political possibility.”<sup>46</sup> Rousseau’s peculiar way of connecting principle to prudential considerations gives his theory of private property its characteristic theoretical physiognomy. In the next section, we lay out its “ideal” foundation.

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44. Jean-Jacques Rousseau, “Political Economy,” in *Oeuvres complètes, Volume III*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964), 262–63. We leave aside here the further distinctions of various forms of life that can be derived from Rousseau’s different writings, particularly the distinction of different kinds of social and solitary forms. On this question, see Matthew D. Mendham “Gentle Savages and Fierce Citizens against Civilization: Unraveling Rousseau’s Paradoxes,” *American Journal of Political Science* 55 (2011): 170–87; and Laurence D. Cooper, *Rousseau, Nature, and the Problem of the Good Life* (University Park: Pennsylvania State University Press, 1999). It is plausible that the question of property is of minor importance for the various forms of solitary life that Rousseau analyzes. However, insofar as Rousseau refers to the “actual laws of nature” when legitimizing property rights (see below), the most fundamental characteristics of property presumably are significant even within more solitary forms of life. Because of space constraints, we cannot further explore the intricacies of this topic in this article. We only can say that there is need for further work on how Rousseau connected his views of the natural origins of property to notions about solitary forms of individual emancipation.

45. O’Hagan, *Rousseau*, 102.

46. Rawls, *The Law of Peoples*, 11.

## The Principled Case for Private Property

Rousseau penned two works in 1755 that discuss private property at some length. Only one, however, has received sustained attention: the *Second Discourse*.<sup>47</sup> The *Discourse on Political Economy*, which Rousseau wrote for Diderot's *Encyclopedie*, has received much less scholarly attention, although this oversight appears to have changed in recent years.<sup>48</sup> Today, some scholars even suggest that the latter text contains Rousseau's most elaborate theory of private property.<sup>49</sup>

We argue that the *Discourse on Political Economy* counterbalances the critical tone of the *Second Discourse* and prepares the ground for the key arguments of Rousseau's ideal theory of property, which he articulates more clearly in later writings, especially the *Social Contract*. *Political Economy* contains important arguments regarding the natural basis of property, which help to connect Rousseau's critique of property in the *Second Discourse* with his idea about the political legitimacy of property in the *Social Contract*. *Political Economy* makes perhaps Rousseau's strongest argument for private property as a "natural right"—that is to say, as directly reflecting "persons' moral and psychological natures."<sup>50</sup> "It is certain," he writes, "that the right of property is the most sacred of all the rights of citizenship and even more important in some respects than liberty itself."<sup>51</sup> Rousseau offers two main reasons for this assessment.

The first concerns property and life—a connection that is famously associated with Locke. Rousseau avers that the law must defend private property because "it more nearly affects the preservation of life."<sup>52</sup> He writes: "property being more easily usurped and more difficult to defend than life, the law ought to pay a greater attention to what is most easily taken away."<sup>53</sup> In other words, the government provides a public good—security and the enforcement of property rights—because it would be inefficient and impracticable for each individual to provide it alone. As a consequence, government has the right to raise taxes—that is, to interfere, within certain limits, with the property rights of citizens—in order to fulfill

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47. This piece was originally submitted for a contest held by the Academy of Dijon for the best response to the question: "What is the source of inequality among Men and is it sanctioned by Natural Law?" The academy rejected Rousseau's work because it exceeded length limitations, yet among his political and social writings it is widely read and arguably has received disproportionate attention from scholars.

48. Some notable recent exceptions to the general trend include Bertram, *Rousseau and the Social Contract*; Hanley, "Political Economy and Individual Liberty"; and Pierson, "Rousseau and the Paradoxes of Property," 414–15.

49. Hanley, "Political Economy and Personal Liberty."

50. Rawls, *The Law of Peoples*, 7.

51. Rousseau, "Political Economy," 262–63.

52. *Ibid.*

53. *Ibid.*, 263.

its protective function.<sup>54</sup> To the extent that citizens enjoy the security of their property rights as a public good provided by the state, the security has to be financed.<sup>55</sup>

Rousseau's second reason for valuing property involves a connection between property and justice. He argues that "property, being the true foundation of civil society, is the real guarantee of the undertakings of citizens: for if property were not answerable for personal actions, nothing would be easier than to evade duties and laugh at the laws."<sup>56</sup> Just as citizens need the protection of self and property to prosper, so too does society need private property for justice to flourish. By integrating the psychological and moral propensities of human nature, private property constitutes and strengthens the bonds between state, society, and citizen. Government was created to reinforce these bonds nurtured by property. Rousseau, when suggesting that government exists because of property, rather than the reverse, seems to echo Locke: "The general administration," Rousseau writes, "is established only to secure individual property, which is antecedent to it."<sup>57</sup>

Property's double function in the promotion of both individual liberty and justice primarily reflects the fact that private property has important psychological and moral benefits because of its accord with "the actual laws of nature" (to apply Rawls's phrase). This was already indicated in the *Second Discourse*, where Rousseau argues that people's "lives, liberties and *properties* are the constitutive elements of their being."<sup>58</sup> In *Emile*, he writes (of his student's education) that

the first idea he needs is not liberty but property, and for him to have this idea, he must have something that belongs to him ... I increase this joy by saying to him—this belongs to you. And then, explaining to him the term "belong,"

54. Hanley, "Political Economy and Individual Liberty," 42–47.

55. See Jean-Jacques Rousseau, "Poland," in *Oeuvres Complètes, Volume III*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964), 1010: "The citizens do not want to pay anything at all. But men who want to be free should not be the slaves of their purses; and where is the state when liberty does not have to be paid for, often very dearly?"

56. Rousseau, "Political Economy," 263. In these works, Rousseau often sounds like Edmund Burke. "Property," writes Burke, "was not made by government, but government by and for it. The one is primary and self-existent; the other is secondary and derivative." See Edmund Burke, *Burke's Politics*, ed. Ross J.S. Hoffman and Paul Levack (New York: Alfred Knopf, 1949), 349. Rousseau, though he is not known much for it, said the same thing (about the role of government and the existence of private property) almost 25 years earlier, in a work usually cited for its attack on property.

57. Rousseau, "Political Economy," 242. Despite this obvious agreement, Burke characterized Rousseau's writings on political topics as "on the whole ... so inapplicable to real life and manners that we never dream of drawing from them any rule for laws or conduct." See Burke, *Burke's Politics*, 389. For other differences, see Grant, *Hypocrisy and Integrity*, 105–6. On Rousseau's "quarrel with Locke" over the question of property in general, see Charles Vaughan, "Introduction," *The Political Writings of Jean Jacques Rousseau*, 2 vols. (Oxford: Cambridge University Press, 1915); Teichgraber, "Rousseau's Argument for Property" 125–6; and Bertram, *Rousseau and the Social Contract*, 91–93.

58. Rousseau, "Second Discourse," 180–81.

I make him feel that he has put his time, his labor, his effort, finally his person there.<sup>59</sup>

Appropriation through labor is not only a natural right; it also corresponds to the natural psychological, emotional, and moral inclinations of human beings. When Rousseau argues in the *Discourse on Political Economy* that property was “the true foundation of civil society” and the “true foundation of the individual,”<sup>60</sup> he seems to be clearly referring to these important psychological and moral benefits of property. They amass in individuals to generate a healthy community and help promote justice. In this sense, as Rousseau writes in *Geneva*, property indeed is “the center of community.”<sup>61</sup>

This does not imply that Rousseau identifies the *political* problem of property with its *natural* foundations, or that he grants natural forms of property the status of an inviolable right. These “natural” characteristics of ownership, rooted in our psychological and moral inclinations, form the basis for Rousseau on which a Rawlsian “realistic utopia” of “the laws as they can be” has to be built. Although he, like Locke, emphasizes the importance of legally protecting and politically promoting property rights, Rousseau views the protection and promotion of natural property rights in a republic as *transforming* rather than merely *securing* these rights. This is indicated in his reflections on the status of inheritance rights and his references to Pufendorf, who had recently argued that “the right of property, by its very abstract nature, should not extend beyond the life of the proprietor, and the moment a man is dead, his goods should cease to belong to him.”<sup>62</sup> Rousseau seems to agree with this view as far as the natural right of property is concerned. At the same time, however, he makes an interesting argument in favor of the intergenerational transfer of ownership—inheritance law.

The spirit of these laws [which regulate the power of individuals in the disposition of their own goods], which the government ought to follow in their application, is that, from father to son, and from relation to relation, the goods of a family should go as little out of it and be as little alienated as possible. There is a sensible reason for this in favor of children, to whom the right of property would be quite useless, if the father left them nothing, and who besides, having often contributed by their labor to the acquisition of their father’s wealth, are associates in his right of property.<sup>63</sup>

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59. Jean-Jacques Rousseau, *Emile*, in *Oeuvres Complètes, Volume IV*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964), 259–62.

60. Rousseau, “Political Economy,” 263; Rousseau, *Emile*, 271.

61. Jean-Jacques Rousseau, “Geneva,” in *Oeuvres Complètes, Volume III*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964), 293.

62. Rousseau, “Political Economy,” 263.

63. *Ibid.*, 263.

A wise magistrate should follow a general “spirit” regarding the laws of inheritance, a spirit that apparently is not founded on the natural rights of first occupants. Instead, Rousseau defends the legitimacy of inheritance laws with a pragmatic argument: that permanent change in the status of citizens always ought to be avoided because it endangers the stability of political order.<sup>64</sup> This is a crucial aspect of Rousseau’s non-ideal reflections on property in general.

However, Rousseau also uses a more principled argument to explain why the natural property rights of first occupants and those of citizens apparently are not identical in scope. Rousseau maintains that becoming a citizen gradually alters one’s status as a proprietor. Citizens, in his view, ought to contribute materially to support the republic, because as “members of a society” they have agreed in principle to subordinate at least part of their property to further the “means” to the “end” of a republican government that protects private property and provides other guarantees of security.<sup>65</sup> That the private property rights of citizens may at times (for instance, in the case of inheritance) “extend” and at other times “restrict” (for instance, taxation) the scope of “natural” property rights seems legitimate not only for prudential reasons, but also because it follows directly from the principle of republican citizenship. Although Rousseau only intimates at these political implications in *Political Economy*, he clearly does not merely echo Locke’s idea of natural property rights. While stressing the importance of rights as natural conditions, he at the same time indicates that they have to be integrated in a perspective that identifies the possibilities of their social and political transformation.

Only in the *Social Contract*, however, does Rousseau directly address the question of how to incorporate or “transform” the natural benefits of property into a well-ordered political constitution. To serve as the “center of community,” as Rousseau referred to property in *Geneva*, property has to be transformed into a political right. This transformation “restricts” and “extends” the natural rights of property, but most importantly the transformation also fundamentally changes the nature of property’s legitimacy. In a pivotal chapter (“On the Civil State”), Rousseau ranks civil liberty and the political right of private property as equally important. These are the two fundamental rights, in his view, that individuals gain when they become citizens in a republic.<sup>66</sup> Moreover, these two rights are

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64. *Ibid.*, 264.

65. *Ibid.*, 263.

66. “What man loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting; what he gains is civil liberty and the proprietorship of all he possesses,” Rousseau, “Social Contract,” 364. O’Hagan suggests that property in this passage appears merely as “an acquisition of civil society which emerges alongside others in the balance sheet of SC I 8” (*Rousseau*, 103). Alternatively, one could interpret the significance of the context in which property is set as an indication of the crucial significance of property rights in a republic. O’Hagan’s overall argument that Rousseau might have de-emphasized property in the *Social Contract* primarily focuses on the pre-political right of the first occupant, which indeed appears less important in the *Social Contract*. At the same time, however,

reciprocally constitutive. Private property is a prerequisite for citizenship, and citizenship in turn sets the frame for the legitimacy of private property rights. They are social rights—not natural, as Locke held—so “the right which each individual has to his own estate is always subordinate to the right which the community has over all.”<sup>67</sup> However, in Rousseau’s view, this limitation only strengthens the force of property rights because the legitimacy of such social rights in a republic exceeds that of the mere natural right of the “first occupier.” The property of citizens, far from being merely “a necessary means whereby to keep citizens dependent on their government,”<sup>68</sup> is founded on a genuinely political form of legitimacy.

This legitimacy is achieved through a twofold act of transformation, during which the right of property assumes a reciprocal form. As described in the *Social Contract*, the constitution of such a republican property rights regime requires not only the alienation of all natural rights of individuals and their transfer to the sovereign. It also requires that the sovereign in turn give these rights back to individual citizens. Only after this second step is property legitimate in terms of Rousseau’s ideal theory.

Rousseau describes the two steps in detail. In the first step, individuals give up all their natural rights and transfer them to the sovereign: “Each member of the community gives himself to it, at the moment of its foundation, just as he is, with all the resources at his command, including the goods he possesses.”<sup>69</sup> However, this “total alienation”<sup>70</sup> is not sufficient to constitute legitimate property. It only establishes a necessary premise.

The peculiar fact about this alienation is that, in taking over the goods of individuals, the community, so far from despoiling them, only assures them legitimate possession, and changes usurpation into a true right and enjoyment into proprietorship. Thus the possessors, being regarded as depositaries of the public good, and having their rights respected by all the members of the State and maintained against foreign aggression by all its forces, have, by a cession which benefits both the public and still more themselves, acquired, so to speak, all that they gave up.<sup>71</sup>

In other words, the transfer of all individual possession to the sovereign is not an institutional act in its own right. It is inseparably connected with the subsequent act

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Rousseau clearly stresses the crucial significance of property rights as grounded in the political principle of reciprocity. See O’Hagan, *Rousseau*, 104–105.

67. Rousseau, “Social Contract,” 367.

68. Fridén, *Rousseau’s Economic Philosophy*, 121.

69. Rousseau, “Social Contract,” 365.

70. *Ibid.*, 360.

71. *Ibid.*, 367.

of “reprivatization.” Rousseau is eager to point out that “alienation” does not constitute property in the real sense of the term:

This act does not make possession, in changing hands, change its nature, and become property in the hands of the Sovereign; but, as the forces of the city are incomparably greater than those of an individual, public possession is also, in fact, stronger and more irrevocable, without being any more legitimate.

What makes mere possession “change its nature” is the second step—the transfer of property back to individual citizens. Property gains a fully legitimate status in the hands of individual citizens, as it were, and not in the hands of the state. This means that, for Rousseau, legitimate property is possible only in the form of private property. Only then is the relational right of property finally constituted and does property reach its legitimizing potential (even though it first goes through the hands of the sovereign). The legitimizing potential lies in the principle of reciprocity that property establishes:

Every man has naturally a right to everything he needs; but the positive act which makes him proprietor of one thing excludes him from everything else. Having his share, he ought to keep to it, and can have no further right against the community. This is why the right of the first occupier, which in the state of nature is so weak, claims the respect of every man in civil society. In this right we are respecting not so much what belongs to another as what does not belong to ourselves.<sup>72</sup>

Through the second step of reprivatization, property receives its distinctly reciprocal character: any property right of an individual citizen necessarily implies the recognition of the property rights of his fellow citizens. Rousseau stresses that these mediated, politically constituted, private property rights not only strengthen the natural rights of the “first occupiers.” More profoundly, the nature of their legitimacy changes. The transformation adds to the legitimacy of the natural rights derived from first occupation a distinctly political legitimacy.<sup>73</sup> Republican property is derived both from its function in fostering civil liberty and from the principle of reciprocity that it implies. Neither the natural rights of possession nor a communal property right would have this specific legitimacy based on reciprocity between citizens. To be legitimate in this sense, property rights for Rousseau have

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72. *Ibid.*, 365.

73. Consequently, this pivotal argument of Rousseau’s ideal theory of property implies a principal priority of politics over economics in questions of legitimacy—an argument that plays a significant role in the reception of Rousseau within the American political tradition. See Hans-Jörg Sigwart, “Rousseau in Amerika. Liberale Tradition und demokratischer Dissens im US-amerikanischen Selbstverständigungsdiskurs,” *Jahrbuch für Recht und Ethik—Annual Review of Law and Ethics* 20 (2012): 209–16.

to be politically constituted, and this means they have to be individual, private rights.

This is the core argument of Rousseau's ideal theory of private property, which he derives both from the "natural" conditions of human psychology and morality, and from the ideal social conditions of a well-ordered republic and its frame of "laws as they should, or ought to be" (again to use Rawls's terminology).<sup>74</sup> Instead of simply repeating Locke, Rousseau's theory of property anticipates important aspects of the later debate among republican theorists about reciprocity, such as Kant's conception of property and Tocqueville's analysis of the American idea of property, which he found to be peculiar to modern democracy.<sup>75</sup> On principled grounds, then, Rousseau rules out any return to "natural" forms of possession, as much as any kind of rigorous economic egalitarianism, or even communism. Rousseau instead stresses both the social and the private nature of property.

Consequently, Rousseau allows for certain inequalities. Even in the *Second Discourse*, he depicts both political and natural inequality as facts of life. He writes:

I conceive that there are two kinds of inequality among human beings; one which I call natural or physical because it is established by nature, and consists of differences in age, health, bodily strength and the qualities of mind or of the soul; and another, which may be called moral or political inequality because it depends on a kind of convention.<sup>76</sup>

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74. This idea of reciprocity is also the crucial lesson Rousseau teaches *Emile* in the episode with the melons. Pierson rightfully highlights this episode as a particularly interesting passage regarding Rousseau's understanding of property. See Pierson, *Rousseau and the Paradoxes of Property*, 415–16. Read within our interpretive framework, *Emile* primarily learns a lesson about reciprocity during his controversy with the gardener.

75. Both Kant and Tocqueville stress the political nature of property rights and the importance of the idea of reciprocity. On Kant's understanding of property, see Elisabeth Ellis, "Citizenship and Property Rights: A New Look at Social Contract Theory," *The Journal of Politics* 68 (2006): 547–53. Regarding Tocqueville, see the following passage from *Democracy in America*, which almost seems to tacitly quote Rousseau's argument in *Emile*, referred to in the previous footnote: "When a child begins to move among external objects, instinct leads him to put everything that comes within reach to his own use; he has no idea of the property of others, not even that of existence; but as he is informed about the cost of things and as he discovers that things can, in turn, be taken from him, he becomes more circumspect and ends by respecting in his fellows what he wants them to respect in him. What happens to the child concerning toys, happens later to the man concerning all the objects belonging to him. Why in America, country of democracy par excellence, does no one raise against property in general the complaints that often resound in Europe? Is it necessary to say? In America, there are no proletarians. Each person, having an individual possession to defend, recognizes in principle the right of property. In the political world, it is the same. In America the common man has conceived a high idea of political rights, because he has political rights; he does not attack the rights of others, so that no one violates his." Alexis de Tocqueville, *Democracy in America*, Historical-Critical Edition of *De la démocratie en Amérique*, ed. Eduardo Nolla, trans. James T. Schleifer (Indianapolis: Liberty Fund: 2010), 390.

76. Rousseau, "Second Discourse," 131. Elsewhere he writes that human beings have "a prodigious diversity of minds" by nature, "a particular temperament" and certain capacities, which determine the "genius and character" of each individual. Jean-Jacques Rousseau, "Julie," in *Oeuvres Complètes, Volume II*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964), 562–65.

The conclusion that Rousseau appears to draw from this distinction is that a “balanced proportion” should exist between the two types of inequality because “it is contrary to the law of nature, however defined, that children should command old men and fools wise men”.<sup>77</sup>

Although Rousseau’s ideal theory of property neither promotes nor enforces equality, it does rule out extreme forms of inequality and argues in favor of a society of proprietors in which every citizen has at least a minimal share of private property.<sup>78</sup> Otherwise, the principle of reciprocity would be violated and property would lose its unique political legitimacy. As Rousseau asserts in the *Social Contract*: “In fact, laws are always of use to those who possess and harmful to those who have nothing: from which it follows that the social state is advantageous to men only when all have something and none too much.”<sup>79</sup> When these fundamental conditions are absent, then the Sovereign has the right to bring them about. The “natural” rights of first occupants give way to the more fundamental implications of property’s political legitimacy.

If the sovereign power rests upon the right of ownership, then there is no right more worthy of respect; it is inviolable and sacred for the sovereign power as long as it remains a private individual right. Once it is viewed as common to all citizens, it is subject to the common will, and this will may destroy it. The sovereign therefore has no right to touch the property of one or many, but may lawfully take possession of the property of all, as was done in Sparta in the time of Lycurgus. By contrast, the abolition of debts by Solon was an illegitimate act.<sup>80</sup>

The sovereign power therefore has the right not only to tax citizens in order to be able to protect their property,<sup>81</sup> but also to enforce the reciprocity principle against

77. Rousseau, “Second Discourse,” 194.

78. Rousseau’s attitude toward extreme inequality in general is not the focus in this article. Scholarly works that address this important topic include Joshua Cohen, *Rousseau: A Free Community of Equals* (Oxford: Oxford University Press 2010), 53, 117, 140, and 164; Neuhaus, *Rousseau’s Theodicy*, 165–66; and David Williams, *Rousseau’s Plantonic Enlightenment* (University Park: Pennsylvania State University Press, 2010), 172–76.

79. Rousseau, “Social Contract,” 367.

80. Rousseau, *Emile*, 841.

81. Hanley opines that both the right of taxation and the government’s function to protect the citizens’ “natural” rights of private property arise from Rousseau’s “commitment to maximizing the sphere of negative freedom of the individual.” Moreover, Hanley contends that Rousseau’s alleged “egalitarian” inclinations in fact reflect “a counterintuitive libertarian foundation of a solicitude for the maximum possible protection of necessary property.” See Hanley, “Political Economy,” 42–48. This article diverges from Hanley’s analysis by emphasizing a fundamentally different principle: reciprocity. This changes the meaning of Rousseau’s argument about property and points to a different set of theoretical implications and its potential practical consequences. The level of “necessity” of the least well off, for instance, may be determined quite differently if the criteria include not only the absolute natural right of “self-preservation,”

“natural” processes of appropriation. To be sure, it may be prudent for the sovereign to refrain from acting on this fundamental right, even when the distribution of private property in a given society compromises the principle of reciprocity, but those prudential reasons do not affect the primary argument of Rousseau’s ideal theory of property.

In sum, Rousseau’s ideal theory of private property grounds legitimacy on both natural and political considerations, and prioritizes the latter. The theory binds the natural conditions of human psychology and morality with the natural rights of first occupiers. Most importantly, it relies on distinctly socio-political principles of citizenship. The key legitimizing mechanism is reciprocity, as practiced in a well-ordered republic, through which the “natural right” of first occupants is transformed into a political right of citizens. The result is an institutionalization of private property that allows for certain inequalities, but excludes its extreme forms.

We now turn to Rousseau’s “non-ideal theory”—or those statement that discuss how his ideal principles about property are to be applied, adopted, and adapted to concrete circumstances, which frequently fall short of the conditions in a well-ordered republic. As we shall see, Rousseau, while guided by the principles laid out in his ideal theory, allows for compromises, particularly with regard to the principle of reciprocity.

## The Prudential Case for Private Property

Rousseau, a prudent political reformer, was generally skeptical about both reaction and revolution as viable solutions to the political problems of his day. Reaction is unsound, in his opinion, because it is futile to resist the tides of change. Although he appears to condone revolution in some writing and settings,<sup>82</sup> he generally urges gradualism with regard to specific private-property reforms.<sup>83</sup> He writes:

Nothing is more fatal to morality and to the Republic than the continual shifting of rank and fortune among the citizens: such changes are both the proof and the source of a thousand disorders, and overturn and confound everything; for those who were brought up to one thing find themselves destined for another; and neither those who rise nor those who fall are able to assume the rules of

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but also and primarily the citizens’ relational political right to the minimal material conditions for reciprocity with their fellow citizens. Consequently, the principle of reciprocity may also directly legitimize forms of taxation that aim at the redistribution of private property rights.

82. Rousseau, “Second Discourse,” 381.

83. It is hard to make any categorical statements about Rousseau’s views on revolution, which are outside the scope of this article. For a sustained and sophisticated discussion on the topic, see Hogel Ross Lauritsen and Mikkel Thorup, eds., *Rousseau and Revolution* (Camden: Bloomsbury, 2011).

conduct, or to possess themselves of the qualifications requisite for their new condition, still less to discharge the duties it entails.<sup>84</sup>

In *Poland* and *Corsica*, Rousseau comes across as an exceedingly prudent reformer, wishing to avoid the pitfalls of both radical revolution and of reactionary inflexibility.<sup>85</sup> Uncertain about local conditions in these two contexts and attuned to the prospect of unintended consequences, Rousseau errs on the side of the *status quo* in thinking about property reforms and the possible redistribution of voting rights, even though it required continuing to deny equal political participation to all citizens. In *Poland*, he writes:

With regard to property qualifications, which could determine the amount of land a nobleman would have to own in order to be admitted to the dietines, I can see that there is something to be said both for and against the proposal, and since my knowledge of the country is insufficient to enable me to estimate the consequences, it would be utterly foolhardy for me to reach any conclusion on the matter.<sup>86</sup>

Rousseau acknowledges limits to his ability to prescribe for Poland and confesses that there is “something to be said both for and against” property qualifications in this particular case. He sees different sides because he considers not just the ideal, but also the non-ideal implications of the problem. As a matter of principle, Rousseau endorses the goal of fostering the economic conditions of reciprocity, at least among the different classes of Polish noblemen: “Legislation must always tend to diminish those great inequalities of fortune and power which set too great a distance between magnates and simple noblemen, and which always have a natural tendency to increase.”<sup>87</sup> However, he also prudently emphasizes the importance of taking into account the actual consequences of certain policies, laws, and institutions—not in terms of their “immediate effects,” but in terms of their “distant but inevitable consequences.”<sup>88</sup> Accordingly, any reform of the “economic system” of Poland must be oriented both toward republican principles and toward the range of possibilities set by the traditions and manners of the people, the climate conditions, and the size of the territory. These possibilities fall short of ideal conditions in several respects: Poland’s territory is large and its nobility tends to engage in vainglorious display. Rousseau, therefore, entertains

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84. Rousseau, “Political Economy,” 264.

85. For a recent work that explores Rousseau’s writings on Poland and Corsica, see Putterman, “Realism and Reform.”

86. Jean-Jacques Rousseau, “Poland” in *Oeuvres Complètes, Volume III*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964), 1002.

87. Rousseau, “Poland,” 1002.

88. *Ibid.*, 1004.

non-ideal solutions. The principles of republican citizenship have to be adapted to the real possibilities:

If a great state refuses to conduct itself on the principles of a small republic, it must not look for the same benefits, nor should it reject the cause while desiring the consequence. If Poland were, as I should like it to be, a confederation of thirty-three small states, it would combine the power of a great monarchy with the freedom of a small republic; but this would mean renouncing ostentation, and I am afraid that this would be the hardest thing of all.<sup>89</sup>

In Rousseau's opinion, Poland, as it exists, cannot do without property qualifications to the dietines, without a rather elaborate monetary system, and without prudentially established forms of taxation.<sup>90</sup> These arrangements and institutions, while problematic when judged by republican principles, help to approach the best possible solutions.

In *Corsica*, Rousseau again looks closely at local conditions. Although frequently accused of using vague and flowery language, Rousseau is blunt. "It is not my intention to destroy private property, for that is impossible, but to give a rule ... which will contain and direct it, and keeps it always subordinated to the public good."<sup>91</sup> Rousseau argues that given Corsica's rather undifferentiated peasant economy, the state should play the role of proprietor. This, he believes, would help preserve the current overall distribution of private property. Some readers, such as Proudhon, recognized that Rousseau was in effect justifying the *status quo* and accused him of being reactionary.

Indeed Citizen of Geneva, you talk well! You who have impeached so eloquently the inequality of conditions among men, what dignity, what heritage, have you for me in your republic? Perfidious declaimer, have you inveighed so loudly against exploiters and tyrants, only to deliver me to them without defense?<sup>92</sup>

Rousseau may have been a critic *par excellence* of contemporary conditions and events, but as a reformer he was exceptionally prudent, and at times unexpectedly conservative. "Precisely when Rousseau's thought appears to inspire revolutions," wrote one scholar, "it can present itself as a conservative return to the founding principles."<sup>93</sup>

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89. *Ibid.*, 1010.

90. *Ibid.*, 1011.

91. Jean-Jacques Rousseau, "Corsica," in *Oeuvres Complètes, Volume III*, Bibliothèque de la Pléiade (Paris: Gallimard, 1964), 931.

92. Pierre-Joseph Proudhon, *General Idea of the Revolution in the Nineteenth Century* (London: Freedom Press, 1878), 115–19.

93. Christopher Kelly, "Rousseau and the Case for (and against) Censorship," *Journal of Politics*, 59 (1997): 1246; James Miller, *Rousseau: Dreamer of Democracy* (New Haven: Yale University Press, 1984).

Rousseau also adopts a prudential and contextual perspective in his interpretations of institutions in antiquity. For instance, when praising the *comitia centuriata* in Ancient Rome, he not only accepts but seems to endorse substantial economic differences between different classes of the citizenry. While stating that his intention is not to reflect on the legitimacy of this institutionalized inequality “in itself”—*en lui-même*<sup>94</sup>—Rousseau nonetheless approves of the inequality as a non-ideal solution of concrete and distinctly “Roman” problems.<sup>95</sup> These problems included waves of immigrants into the large and growing Roman republic,<sup>96</sup> the cleavage between the city and the provinces,<sup>97</sup> and, above all, the large number of citizens in Rome to whom the principle of reciprocity could not be applied because they owned virtually nothing.<sup>98</sup>

Rousseau apparently sees no contradiction between his theoretical critique of the development of private property and his prudent approach to the reform of actual institutions of private property. He recognizes that in particular cases, such as those of Corsica, Poland, and Rome, it is infinitely more difficult to create institutions than to destroy them. Consequently, he recommends a prudent approach and judges it better to contain the malignant effects of less-than-ideal institutions than to eradicate the institutions entirely.<sup>99</sup> Although Rousseau’s advice for Poland and Corsica was not, strictly speaking, in accord with Rousseau’s ideal republican theory, he is not simply contradicting himself. Rather, he is articulating deviations from the ideal and contemplating the pragmatic necessities of local situations. In terms of such concrete institutional settings, there is no best regime or scheme of laws for all under all circumstances.<sup>100</sup> Each form of government and property rights regime is “the best in some cases, and the worst in others.”<sup>101</sup> Rousseau’s prudence, in other words,

94. Rousseau, “Social Contract,” 448.

95. This distinction is not accounted for in McCormick’s otherwise excellent analysis of Rousseau’s interpretation of the Roman assemblies. See John McCormick, “Rousseau’s Rome and the Repudiation of Populist Republicanism,” *Critical Review of International Social and Political Philosophy* 10 (2007): 3–27.

96. Rousseau, “Social Contract,” 445.

97. *Ibid.*, 446.

98. *Ibid.*, 447.

99. In Poland, the institution was serfdom; in Corsica it was property and the exchange economy. This is entirely consistent with Rousseau’s thought on other subjects, such as censorship, where we observe the distinction between criticisms on the one hand, and arguments directly inciting to action on the other. See Kelly, “Rousseau and the Case for (and against) Censorship,” 1245. Rousseau railed against the corrupting effects of art, science, and education, yet did not mean that education, science, arts, and letters should therefore be eliminated.

100. Rousseau, “Social Contract,” 392, 403, 419; Bloom, “Jean-Jacques Rousseau,” 573–75. On Rousseau’s rejection of the “best regime” approach, and for an intriguing discussion of this topic in both Rousseau and Montesquieu, see David Williams, “Political Ontology and Institutional Design in Montesquieu and Rousseau,” *American Journal of Political Science*, 54 (2010): 525–42.

101. Rousseau, “Social Contract,” 403; Williams, “Political Ontology,” 531–32.

requires diverse solutions for disparate situations, even when his principles might dictate otherwise.<sup>102</sup>

This does not mean that Rousseau's prudential reflections render his principled arguments impractical and irrelevant. "Non-ideal" compromises may be necessary given the cultural traditions and the social circumstances in a specific society, and they may be "legitimate" to the extent that they gradually enable liberty and thus approximate the requirements of the principle of reciprocity. Such compromises, however, are not fully legitimate—and this holds true particularly with respect to vast differences in property—insofar as they do not fully meet reciprocity's requirements and, in fact, remain an obstacle to fully establishing the principle of reciprocity. Rousseau's non-ideal theory of property should be read as an effort to design ways to live with these obstacles, if necessary, but not to recommend them as substitutes for republican citizenship and for the balance in property that republican citizenship requires.

## Conclusion

In the context of his entire *oeuvre*, the alleged contradictions within Rousseau's theory of property turn out to be conceptual distinctions within a complex, yet coherent, overarching vision. The core normative notion is the idea of reciprocity and the reciprocal character of property rights within the framework of a "realistic utopia" of republican citizenship. According to Rousseau, any individual claim of legitimate private property rights necessarily implies the recognition of fellow citizens' respective property claims as equally legitimate. This indispensable basis of legitimacy rules out both "communism" as well as vast differences in private property on principled grounds.

Consistent with property's *social* status, the *political* principle of reciprocity serves as the normative connection between Rousseau's ideal and non-ideal theory of property. In terms of his ideal theory, reciprocity is his principal argument for a balanced distribution of private property. Rousseau seeks a society of proprietors in which every citizen has at least a minimal share of private property. In terms of his prudential considerations, reciprocity serves a more supple but equally essential purpose. His account of property, which retains flexibility without abandoning principles, sets an adaptable agenda for any transitory non-ideal arrangements along with standards according to which such arrangements can be assessed.

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102. Rousseau, "Social Contract," 392, 403, 419. On Rousseau's prudence, see Grant, *Hypocrisy and Integrity*, Ch. 4, and Roger Masters, *The Political Philosophy of Rousseau* (Princeton: Princeton University Press, 1968), Ch. 8. In this, as in other aspects, "Rousseau was not wholly in the Enlightenment, but he was of it," as Peter Gay aptly portrayed Rousseau's ambivalent relationship to the Enlightenment in Gay, *The Enlightenment: An Interpretation* (New York: Norton, 1977), 529. See also Graeme Garrard, *Rousseau's Counter-Enlightenment* (New York: State University of New York Press, 2003), 3.

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