

THESIS

THE FRACTURING OF ROUSSEAU'S SOCIAL CONTRACT

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## ABSTRACT

### THE FRACTURING OF ROUSSEAU'S SOCIAL CONTRACT

Although not without debate, hydraulic fracturing, or fracking, has become the primary extraction method for hard to reach natural gas trapped in shale rock around the globe. In the United States, fracking for natural gas has alleviated the need for foreign oil by creating a domestic fuel source, facilitating job creation, and sparking contentious debates from California to New York. The most prevalent arguments from the citizens against the technique are the potential risks posed to the air, water, human, and animal health from the methane and carcinogenic byproducts released into the atmosphere, the threat of water contamination, and the risks posed to those who live, work, and play in the vicinity of well pads. Citizens have organized in shale rich states in opposition to the extraction technique to protect their families and neighbors, and for the stewardship of future generations. Yet others claim that fracking for natural gas is a safe technique to extract clean burning, domestic fuel.

Looking through the lens of Jean Jacques Rousseau, this work will use hydraulic fracturing as a case study to evaluate the relevance of theoretical concepts as: the state of nature, the common good, the general will, and the Sovereign. The state of nature, according to Rousseau, was the original source for virtuous qualities in humans, before the driving passions and desires of greed, competition, and corruption arose in society. Due to the redefinition of nature that occurred during the intellectual revolution of the 16<sup>th</sup> and 17<sup>th</sup> centuries that created the dichotomy wherein humans either live in society or in nature, Rousseau interpreted the state of nature to be inclusive and attempted to deconstruct this dichotomy. I argue, with Rousseau, that once one realizes the interconnectedness of humans, nature, and society through experience and the development of a sense of place, one can access the original and virtuous dispositions that existed in the state of nature.

The common good is the concept that explains that what makes the collective society flourish and attain well-being. Rousseau believes that the common good can be realized through strong virtuous

morals and acceptance of the two-fold responsibility of humans: that one must develop an interest in those in the community around them, and then one must have a duty to that interest. Each individual has the potential to recognize the common good, which is expressed through the general will. This will is the common expression of the good through democracy in order to make laws that are by the people and for the people. The Sovereign's primary role is to enact this general will into law.

Rousseau's concepts will be applied to the reality of hydraulic fracturing in the United States in order to access the cohesiveness of the modern social contract. First, I argue that fracking is against the common good of society through the intensive consumption of fresh water and waste produced, the risks posed to the environment and life around the wells, and the decline in the quality of life which does not ultimately promote health, well-being, and flourishing for a community. Next, in some Colorado cities, the citizens have expressed their general will to ban hydraulic fracturing through an act of popular sovereignty, as required by Rousseau's social contract. I then discuss how the general will is not being enacted by the Sovereign, as required by the contract. Instead, the people and some cities in Colorado are entrenched in litigation, based on the people's expression of the common good. Finally, I argue that the Sovereign, and some representatives of government, are enraptured by the desires and passions of the individual will, which is the third fracture in Rousseau's social contract. The fracturing of the social contract, according to Rousseau, deems for a dissolution of government. However, throughout this work, I show some potential ways in which society can learn to realize what is commonly good for all through a sense of place, through recognizing that we all have a duty and interest in others, and to attain well-being and health through a flourishing environment.

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## CHAPTER 1

### INTRODUCTION

Under the bright bluebird sky, you look out on the green pastoral rolling hills as far as the eye can see, with houses and farms scattered sporadically across the horizon. To the west, the Rocky Mountains stand guard like a jagged wall of stone and snow-capped peaks, reaching to the north and the south until the rocky wall disappears into the distance. The cool Colorado morning is crisp as you take in a deep breath of fresh air and think about all the hard work it took your family to finally purchase your ideal country home on the Front Range of Colorado, away from the hustle of the city. You then hear a knock on your door and you wonder, “Who could that be? I just moved in and do not know any of the neighbors yet...” A man in a gray jacket is standing on your porch with a stack of brochures. He says, “Hello. I am with Coloradans for Responsible Energy Development, better known as CRED. I would like to give you this brochure to let you know the benefits that hydraulic fracturing can bring to you, your family, and your community.” Hydraulic fracturing? It sounds familiar, but you are unsure what it is. Curiosity overcomes you, and you must investigate this further.

#### WHAT IS HYDRAULIC FRACTURING?

Hydraulic fracturing, or fracking, is a method utilized to extract natural gas reserves which have been trapped for millennium in shale rock underground. This method is the dominant trend in gas extraction today, although the technique was created in 1949 by Stanolind Oil.<sup>1</sup> Historically, fracking has been a more costly extraction method than drilling for easily available gas and oil supplies which previously existed closer to the surface. With declining supplies of oil, the dirty image that coal carries, and the modern American mainstream preoccupation with material consumption that enhances the significance of production – fracking has been brought to the forefront as the primary technology in energy extraction that aims to increase exports as well as domestic supplies of energy. In the United States, shale gas contributed to 1% of the national gas supply in 2000, and as of 2010 it increased to

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<sup>1</sup> Carl T. Montgomery, and Michael B Smith, eds. “Hydraulic Fracturing: The History of an Enduring Technology.” *JPT*, 2010.

become 20% of the US supply.<sup>2</sup> Natural gas is projected to make up nearly 35% of the domestic US energy supply by 2040.<sup>3</sup> This booming process can be witnessed on local level by the fact that natural gas production in Ft. Worth, Texas increased 3000% from 1998 to 2007 – all from the utilization of hydraulic fracturing in the Barnett shale play.<sup>4</sup>

Natural gas is extracted from hard to reach shale deposits around 2400 - 6600 feet underground.<sup>5</sup> Shale is a type of sedimentary rock which was formed by ocean sediments from the Paleozoic and Mesozoic eras. The gas and oil industry has identified natural gas fields in various shale formations throughout the United States, including areas in Texas, Oklahoma, Louisiana, New Mexico, Colorado, California, Wyoming, North Dakota, and the Marcellus shale region of the eastern US. In all, there are eight states that produce the majority of the natural gas in the US, with Texas maintaining the largest reserves.<sup>6</sup> The largest reserve in the eastern portion of the United States is the Marcellus shale play that underlies the Appalachian Basin from West Virginia to Pennsylvania to upstate New York. The word “play” is a term utilized by the gas and oil industry to indicate shale-rich areas where exploration of natural gas would be beneficial.

The first step to drill the well is to bore a hole that first dives vertically and then horizontally deep underground for 24 hours a day during a period of around 3 weeks.<sup>7</sup> This requires a drill rig adorned with bright lights that can be seen across the horizon for miles that houses the 54 foot tall drill mast. After the well is drilled, a concrete casing is then inserted into the shale from the surface to about a half mile down. A “perf” gun is then inserted into the pipe and small explosives are shot into the well to perforate the rock. The fracking process begins with an injection of fracking fluid which is brought to the well by 400-

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<sup>2</sup> Richard A. Kerr. “Natural Gas from Shale Bursts onto the Scene.” *Science* 328(5968), 2010.

<sup>3</sup> Clifford Krauss and Stanley Reed. “Surge Seen in US Oil Output, Lowering Gasoline Prices.” *The New York Times*, December 16, 2013. [http://www.nytimes.com/2013/12/17/business/international/global-coal-use-predicted-to-keep-growing.html?\\_r=0](http://www.nytimes.com/2013/12/17/business/international/global-coal-use-predicted-to-keep-growing.html?_r=0).

<sup>4</sup> Kerr, 2010.

<sup>5</sup> Montgomery and Smith, 2010.

<sup>6</sup> Rahm, Dianne. “Regulating Hydraulic Fracturing in Shale Gas Plays: The Case of Texas.” *Energy Policy*. 39, 2011: 2974-2981.

<sup>7</sup> Peter Law. “Drilling for Gas Raises Water Worries.” *South Wales Echo*, February 28, 2011.



600 trucks, or through underground pipelines.<sup>8</sup> Although there is much debate over the exact contents within the fluid, it is generally known to be a mixture of around 7 million gallons of water (per frack treatment), sand, and a cocktail of over 900 chemicals such as benzene, diesel fuel, acids, n-dimethylformamide, kerosene, toluene, xylene, and other proven carcinogens.<sup>9</sup> The mixture is then shot through the well at 10,000 pounds of pressure per square inch. The pressure cracks open the rock while the sand grains prop open the tiny fissures that were blasted by the perf gun explosions. Each well can then be fracked from 8 to 40 times, depending on the size and productivity of the well.<sup>10</sup>

The next step after injection of the fracking fluid is to cease pumping. This creates a lack of pressure wherein the gas and fracking fluid begin to seep up the well hole to the surface. With the cease in pressure, a soupy mixture of fracking fluid, sand, and contaminated water (also known as flowback or produced water) that potentially could include potassium chloride, guar gum, ethylene glycol, potassium carbonate, sodium chloride, borate salts, citric acid, glutaraldehyde, acid, petroleum distillate, and isopropanol, surfaces after each frack treatment and when pumping has stopped.<sup>11</sup> These fluids are then stored in plastic lined and (and sometimes unlined) on-site pits, disposed of in injection wells, or are trucked to offsite locations. To increase the rate of evaporation of the flowback water contained in pits, especially in the dry climate of the western US, drilling companies utilize evaporation sprayers. These sprayers mist the toxic soup of produced water into the dry, hot air to expedite evaporation. The toxins that evaporate increase the amounts of ozone into the atmosphere.<sup>12</sup> A more in depth discussion on hydraulic fracturing and the wastewater disposal options will follow in chapter 3.

With the extensive proliferation of hydraulic fracturing in the United States, scenarios such as the one presented at the beginning of the chapter portrays the reality for many families in shale rich states across the country. Often, however, there is never a knock on the door; rather, it is typically a drill mast

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<sup>8</sup> Josh Fox. *Gasland*. International Wow Company, *HBO Documentary Films*, 2010.

<sup>9</sup> Hunter, 2010.

<sup>10</sup> Montgomery and Smith, 2010.

<sup>11</sup> List compiled using: Kara Cusolito. "The Next Drilling Disaster?" *The Nation*, June 21, 2010: 18-21, and Rahm, 2011.

<sup>12</sup> Fox, 2010.

that makes its presence known to neighbors along with the 400-600 trucks necessary to conduct the drilling, fracking, and completion of each well. Other times, it may be a representative from the gas and oil industry that knocks on the door to offer the homeowner royalty payments in exchange for their mineral rights. With the proliferation of fracking in the US, and around the globe, this situation will present itself time and time again from California to New York and North Dakota to Texas.

### THE SOCIAL CONTRACT: BRINGING THEORY AND PRACTICE TOGETHER

Stephen Eric Bronner argues that the “past is not mechanically divided from the present like the markings on a clock.”<sup>13</sup> Likewise, he explains that traditional political theory is often utilized to translate historical projects into a relevant theory for the modern day. According to this line of thought, modern theorists can interpret the traditional projects in relation to the practices in today’s society. John M. Meyer builds on this idea by noting that while correlating traditional projects with the present is valuable, it is not sufficient. In *Political Nature: Environmentalism and the Interpretation of Western Thought*, Meyer argues that the ambiguity within traditional theory must be brought closer to the practice of reality.<sup>14</sup> In many works, the theory presented is far from the reality of the situation. Due to this disconnect between theory and the practical reality, I intend to interpret hydraulic fracturing through the lens of Jean Jacques Rousseau and the theoretical concepts contained within his works of *The Discourse on the Origin of Inequality* (1755), *The Social Contract* (1762), and *Emile* (1762). These works will help to illuminate the shortcomings of modern society and government regarding the current legal battles and risks that are connected with the extraction process, the gas and oil industry, and the American government.

Using Rousseau’s ideas, the goal of this work is to translate his conception of the social contract into modern society by practically applying his concepts – the state of nature, the common good, the general will, and the Sovereign – to the risks, popular sovereignty, and legislation regarding the extraction technique of fracking. As is well known, the social contract tradition is based on a set of novel ideas that

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<sup>13</sup> Stephen Eric Bronner. *Ideas in Action: Political Tradition in the Twentieth Century*. Rowman & Littlefield Publishers, Inc., Lanham, MD: 1999.

<sup>14</sup> John M. Meyer. *Political Nature: Environmentalism and the Interpretation of Western Thought*. MIT Press: Cambridge, MA, 2001: 13.

theorists have used to explain the origination of civil society. Many classical social contract theorists define natural law as a law that has been passed down by God, which subsequently is seen as ensuring God given rights for human beings. Rousseau, however, is sometimes marginalized in the social contract theorist category, due to his conception of natural law as being rooted in nature, rather than being natural through providence.<sup>15</sup> Rousseau recognizes the value of nature in politics, and he questions how one may know what laws God may want humans to follow. Using Rousseau as an inspiration, I would like to make a cognitive connection that shows that humans are a part of nature. Through this interconnectedness, humans must realize that in order to love ourselves and our communities, we must respect and have an interest in the nature and environment that we live in as well. Meyer would argue that this is an “apparent obvious truth” and to alter worldviews in this manner would be to overturn the whole of Western thinking and mutually exclusive categorical thought.<sup>16</sup> However, I do not feel that many realize this “apparent obvious truth,” due to the dichotomy between nature and society that has been created and embedded into Western ideals for centuries.<sup>17</sup> A dichotomy can be defined as a contrast and/or division between two things that are thought of as being completely opposite, such as nature and society. This work aims to assist those in making the interconnection between nature and society that is required to break the false dichotomy that we are separate, and to instill the virtues that are necessary to make a more equitable and healthy society.

### WHY ROUSSEAU?

In order to effectively answer Meyer’s challenge of bringing theory closer to practice, Rousseau’s visions of society and nature will be utilized to facilitate this recognition of interconnection. Rather than attempting to interpret the state of nature using God or providence, as does Thomas Hobbes and John Locke; Rousseau takes a more inclusive perspective to describe nature. During Rousseau’s time, the meaning of nature was altered due to the rise in physical sciences during the intellectual revolution of the

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<sup>15</sup> Matthew Simpson. *Rousseau: A Guide for the Perplexed*. Continuum International Publishing Group: London, 2007: 60.

<sup>16</sup> Meyer, 2001: 13.

<sup>17</sup> Meyer, 2001: 13.

16<sup>th</sup> and 17<sup>th</sup> centuries. Prior to this time, nature was seen in a holistic manner which included humans and was teleological. Laurence D. Cooper refers to this older view of nature as “Christianized Aristotelianism.”<sup>18</sup> Cooper considers the newer view of nature as one “understood by the realm of objective necessity” which conceives of nature as a “world of mathematized objects that could in principle always be explained by the deterministic laws of the physical sciences.”<sup>19</sup> Cooper explains the problem with this view, as Rousseau would see it, is that “nature can tell us much about how things are but nothing about what [humans] ought to be; that kind of knowledge (or belief) would have to come from some other source.”<sup>20</sup> As will be explained in chapter 2, we cannot know what God, or some other source or belief, wills for human beings on earth, so how can we use providence to discover what is natural?

According to Rousseau, humans must instead look to the wilderness of nature to discover what is natural and to learn from the lessons that nature presents to us. Rousseau sees the lessons of nature as the basis of experiential learning, to be further explored in chapter 2. In *Emile*, which was written as an educational treatise, Rousseau provides the foundational steps an educator should take in order to develop one into the perfect citizen through experiential learning in nature, rather than learning based on the ills of society. Rousseau recognizes that there is a social construction of nature that has been entrenched into the human discourse for centuries, and the only way to reconnect with this forgotten and disparate nature is to deconstruct the dichotomy between nature and society, while discovering the roots of inequality. This is necessary in order for humans to cognitively realize that in order to flourish, we must respect the nature and wilderness that we depend on for life, food, luxury, and aesthetics.

Rousseau was cognizant of the devastating effects of this dichotomy, and his collective works provide an explanation of the problem, a framework for society that works to solve this problem, and also a prescription to overcome the problem through civil and social praxis. According to Andrew Biro,

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<sup>18</sup> Laurence D. Cooper. *Rousseau, Nature, and the Problem of the Good Life*. Pennsylvania State UP: University Park, PA, 1999: 72.

<sup>19</sup> Cooper, 1999: 71.

<sup>20</sup> Cooper, 1999: 71.

Rousseau's early works present the problem to be overcome, which is the alienation of humans from nature.<sup>21</sup> Biro also argues that Rousseau's prescription is forward looking, rather than advocating for a return to an earlier time. Rousseau does not want to regress back to the uncivilized state of nature, rather, he aims to take the best virtues from nature and the best characteristics from society to prescribe the traits that will make good and virtuous humans in society while alleviating the ills of corruption and greed. Rather than speaking of revolting against the hierarchy and oppression of capitalism as Karl Marx, or giving all rights of the people over to a strong and overbearing Sovereign as Thomas Hobbes, Rousseau provides a framework for government that is ruled by the people for the people. This ideal structure of government is also one that will work to promote equality, interconnectedness, virtue, and morality through the people's decisions on what will be best for the entire community. Knowing that humans are a part of nature while also recognizing that humans cannot return to a more simplified and uncivil society, Rousseau understands the dialectic between nature and society which allows him to rethink what humans ought to be doing politically. The basic characteristics of democracies can be seen within Rousseau's social contract theory and these tenets allow for Rousseau's ideas to be applied to democracies in general. This work will attempt to utilize Rousseau's ideas through the application of his principles to the reality of the problematic nature of hydraulic fracturing. Rousseau's political theory attempts to not only deconstruct the social construction of inequality and the dichotomy between nature and society, but also it tries to articulate a path for society and government that can shape a society to be more equal and more democratic through enacting the will of the people based on what is commonly good for all.

#### THE FRACTURING OF THE SOCIAL CONTRACT AND CHAPTER OUTLINE

Using the requirements that Rousseau presents for a cohesive social contract, I intend to show that hydraulic fracturing has fractured the social contract, as he conceives it. First, the dichotomy between nature and society must be deconstructed in order for humanity to realize that we are one with nature – we are nature and we live in nature. Essentially, as will be shown in chapter 2 “The Dichotomy and the State

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<sup>21</sup> Andrew Biro. *Denaturalizing Ecological Politics: Alienation from Nature from Rousseau to the Frankfurt School and Beyond*. University of Toronto Press, Toronto, 2005: 64.

of Nature,” this refers to the fact that a social construction of nature has been instilled into Western thought which has given rise to the conception of two natures. In this chapter, I will argue that there is only one nature, and humans must realize this fact in order to effectively learn from nature as Rousseau advocates for in *Emile*. This argument will be supported through an extensive comparison of Hobbes’s and Rousseau’s conceptions of the state of nature in order to show how Rousseau’s vision is truly rooted in the natural, while Hobbes projects societal characteristics into his providential depiction of natural man.<sup>22</sup> Further, Rousseau utilized his conception of the natural to critique the ills of society in order to articulate his notion of politics. Rousseau’s vision of a single nature is valuable to effectively interpret the interconnectedness of nature and society that can facilitate a cohesive social contract.

Rousseau deconstructs social man to discover the first principles of original man that are rooted in pre-societal humans. Virtues such as *amour de soi* (love of self), pity, and self-preservation will be introduced as examples of Rousseau’s principles that have been carried over into society from the state of nature. Further, I will argue with Rousseau that in order to effectively learn the lessons provided by nature, one must fully experience nature. This experiential learning can be seen as the pathway to developing a sense of place in modern society and is necessary to maintain a vision of interconnectivity with all life in one’s community. Chapter 2 will expound in Rousseau’s conception of nature in order to provide an understanding of his project of presenting a problem and a prescription for practice that will alleviate the problems presented.

A foundational conception of Rousseau’s earlier works is also necessary to address the problem presented – the alienation from nature – in order to lay the path for praxis through the ideas Rousseau provides in *The Social Contract*. In chapter 3, “Rousseau and the Common Good,” a potential solution to the alienation from nature is presented through the basic concepts of the common good which requires one to balance their inner sentiments of *amours de soi* and *amour propre*. Rousseau argues that the virtue

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<sup>22</sup> Throughout my thesis I will use Rousseau’s gendered usage of “man,” fully understanding the problems this poses for contemporary theorists. I am only using man to alleviate any confusion in the exchange of terminology from the original usage and works of Rousseau. Where applicable, I will interchange human with man at points, but I will mostly use man to imply the human race as a whole.

of *amour de soi* can be easily overcome by the passions introduced in society – those of *amour propre* (self-love). As introduced in chapter 3 and further expounded on in chapter 4, *amour propre* is the self-love that drives the passions of greed, vanity, and corruption. A proper balance of these amours, according to Rousseau, leads to a realization of the two-fold responsibility that each human has in society, which is the development of an interest in others and the duty to others in respecting their interests. In other words, a balance of *amour de soi* and *amour propre* can assist in restraining the societal passions and desires driven by a strong sense of *amour propre*, and instead, can lead to a realization of what is commonly good for all life in one's community. The ability to recognize the common good in a community is the first requirement for a cohesive social contract, according to Rousseau. In order to practically exhibit the common good in modern society, the risks and consequences of hydraulic fracturing will be investigated to decide if fracking can be considered as a common good. After a review of modern transformations of the meaning of the common good, chapter 3 will explain Rousseau's conception of the common good in order to highlight the ways in which hydraulic fracturing has fractured the common good in modern society. The potential for a renewal of the common good is also reviewed in this chapter through legislation focusing on the rights of nature and the collective community in Ecuador, Pittsburgh, Pennsylvania, and Santa Monica, California.

According to Rousseau's *The Social Contract*, the common good must be expressed through an act of sovereignty by the people. This second requirement to the contract is conducted through a vote by the people, and the tallied results of the vote depict the general will. The general will should be based on what is commonly good for all members of society. According to Rousseau, this is what allows a community to flourish and contributes to a collective well-being. For a cohesive social contract, Rousseau's third requirement is that the general will be enacted into law by the Sovereign, whose main role is to adhere to the will of the people and maintain proper governmental structures that will protect and enhance the general will. In chapter 4, "The Theoretical and Practical General Will," a look into the practical general will in Colorado cities will reveal a large fracture in the social contract. Municipalities in Colorado such as Longmont, Broomfield, Lafayette, and Fort Collins have expressed the general will to

ban all fracking activities in their communities. According to Rousseau's contract, the Sovereign must enact the will of the people into law, but the Sovereign is not enacting the will of the people and rather, these cities are now in litigation that was brought against the people's will by the economic interests of the industry and the state, against the common good and general will of the body politic. Further, Rousseau warns that if the will of the people is denied over the will of the Sovereign, this is the Sovereign's illegitimate use of their personal individual will and is against the general will – which is a fracturing of the social contract.

In modern society, hydraulic fracturing has fractured the social contract by being in direct opposition and conflict with the common good, the flourishing and well-being of all. A larger fracture has been caused through the suppression of the general will in Colorado cities and the consequent denial of the Sovereign to enact the will of the people. Rousseau argues that if the contract has been fractured in these ways, the social agreement must dissolve. The conclusion will shed more light on this notion, along with a recent study by Princeton and Northwestern Universities, which warns that the United States is in danger of no longer being a majoritarian democracy and instead, is heading down a path toward oligarchy. According to Rousseau's *The Social Contract*, an oligarchical government represents an abuse of government in which the contract has already been dissolved, and society is then considered to be under anarchy.

First we must turn to the foundation of humans in the state of nature, before modern society had developed. The next chapter will expound on Rousseau's ideas of nature, in order to find the root of the passions that have been instilled within members of society – those traits of *amour propre* that drive the desire to compete for esteem and pride. These traits can easily lead to the overall obsession with the accumulation of capital that is wanted to consume the material goods that determine the amount of *amour propre* that exists within each person. Before these desires took hold of humans, according to Rousseau, the first principles of original man can be found – *amour de soi*, self-preservation, and pity. After these first principles are explained in further detail, Rousseau's ideas will be brought into the social world with the commencement of life under the social contract. The foundational concepts found in Rousseau's



works, such as the state of nature, the common good, the general will, and the Sovereign, will highlight the ways in which the contract is being fractured by hydraulic fracturing in modern society.

## CHAPTER 2

### THE DICHOTOMY AND THE STATE OF NATURE

Nature is an elusive idea and can be envisioned and defined in a variety of ways to many different people. John M. Meyer argues that there are two different natures that have been envisioned by people. Wilderness, or nature, can be seen as a “collective phenomena” of the world or it can hold a “quality or an essence.”<sup>23</sup> The mainstream view of nature is that nature is a phenomenon that exists as something “out there,” away from the everyday hustle of human lives. It is not rare to hear of “going back to nature” or someone planning a hiking trip to “visit nature.” Typically, this separation of humans from the natural world is a product of the objectification of reality.<sup>24</sup> It is some-*thing* that exists outside of ourselves and is beyond our everyday social lives. Nature is a place that humans visit to “get away” from life and escape to relax and decompress from the stresses of the urban lifestyle. This vision of nature is as a phenomenon of the world to be visited, protected, and revered. Kate Sopes refers to this physical place of nature as “the nature we have destroyed and polluted and are asked to conserve and preserve.”<sup>25</sup> This destruction of natural environments and nature was the impetus for the United States government to enact the Wilderness Act of 1964 which, consequently, provides a legal definition for wilderness as natural spaces that are in contrast with “areas where man and his own works dominate the landscape.” Moreover, it is “an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.”<sup>26</sup> This Act set aside tracts of land to remain unchanged by the hands of humans, where people are allowed to visit, but they are prohibited from altering or inhabiting the land in any way.

The other form of nature is one in which there is an essence or principle to be taken from Nature. Meyer argues that this capitalized vision of Nature is one that shows or teaches a form of natural principles. This idea of Nature is one that Rousseau uses in his political theory, particularly in his

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<sup>23</sup> Meyer, 2001: 7.

<sup>24</sup> James D. Proctor. “The Social Construction of Nature: Relativist Accusations, Pragmatist and Critical Realist Responses.” *Annals of the Association of American Geographers*, 88(3), 1998: 357.

<sup>25</sup> Kate Sopes as quoted in Meyer, 2001, 7.

<sup>26</sup> Proctor, 1998: 355.

educational treatise, *Emile*. In *Emile*, for example, the young student is exposed to experiential learning in order to learn the natural instincts and lessons that Nature has to offer, rather than the social learning that is conducted through the lessons of Emile's tutor. Rousseau feels that the foundational education from Nature can enhance a person's virtues of *amour de soi* which is the key to developing a good citizen in society. Rousseau also believes that all education begins at birth, and that "[e]xperience precedes instruction," as humans begin natural experiential education. This occurs even before speech and prior to the cognitive understanding that one is learning.<sup>27</sup>

The implications of the lack in experiential learning, has led to the mainstream ideal of nature (in which it is a place or a destination) that perpetuates the dichotomy between nature and society. The danger in this mainstream view of nature has been illuminated by environmental historian William Cronon, who explains the dichotomy that this ideal creates as "a dualistic vision in which the human is entirely outside the natural."<sup>28</sup> Cronon further explains this dichotomy as a situation in which we contrast wilderness, or the natural, or nature, with civilization and the urban environment to create a dangerous conception where humans are distinctly separate and opposite from nature. The fallacy of this conception is in the fact that humans *are* part of nature. All life, existence, and human creations stem from nature. The idea that humans in society are separate and different than wilderness and nature is purely a social construction which threatens the existence of a cohesive and respectful social contract.

This chapter will begin with a review of the various conceptions of nature that question the existence of nature, the tangible reality of nature, and the social construction of nature that has occurred over time. Taking the ideas and arguments of recent environmental philosophers as well as Rousseau and his critics, I intend to build on the idea that nature is a social construction that needs to be deconstructed in order for humans to live complete and moral lives. While still building on this idea, the chapter will then explain Rousseau's notions of nature and the state of nature. After expounding on Rousseau's critique of Hobbes and the argument that we as social creatures cannot know what natural law consisted

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<sup>27</sup> Jean Jacques Rousseau. *Emile*. Barbara Foxley, trans. J.M. Dent & Sons, Ltd: London, 1955: 29.

<sup>28</sup> William Cronon. "The Trouble with Wilderness; Or, Getting Back to the Wrong Nature." in *Uncommon Ground: Toward Reinventing Nature*, William Cronon, ed. WW. Norton: New York, 1995: 80.

of because we do not possess the abilities to interpret God's will, I will then interpret Rousseau's ideas of natural man that are rooted in *amour de soi* to express his vision of the original man without the pressures and influences of society and social norms which are based on the passions of *amour propre*. I will complete Rousseau's conception of nature with a discussion *amour de soi*, or love of self, and what he sees are the first principles of man: self-preservation and pity. Rousseau's critics charge him with being somewhat incoherent on his ideals of nature, but I argue, rather, his critics are victims of the social constructed dichotomy between nature and society, which is why they cannot envision a reality in which nature and society are one in the same. The social construction of nature, since the fall of the holistic views contained within Christianized Aristotelianism, has also effectively alienated the human species from nature through culture, worldviews, and instincts. The chapter will conclude with a practical vision of how we can re-naturalize the denatured in order to develop a sense of place through experiential learning in modern society.

#### CONCEPTIONS AND IDEAS OF NATURE

There are many words used to describe nature: the "natural", the "environment", and "wilderness" – and there are even more ways that people define these terms. Some see wilderness as a feeling, others as a tangible location as defined by the US Wilderness Act, and still others see the natural world as a social construction – but for many different reasons.<sup>29</sup> Neil Evenden would argue that the act of defining these terms is a social construction in itself.<sup>30</sup> He argues that nature is a category, a filing cabinet for ideas which vary based on the "mindset of the beholder."<sup>31</sup> Evenden's argument could be strengthened and furthered with the idea that prior to the social construction and defining of nature, nature did not exist. Not because it was not there, but because it was everywhere. In this sense, the term environment would be used to denote that it is something that surrounds someone – such as a building

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<sup>29</sup> Holmes Rolston III. "Nature for Real: Is Nature a Social Construct?" in *The Philosophy of the Environment*, T.D.J. Chappell, ed. Edinburgh UP: Edinburgh, 1997: 39.

<sup>30</sup> Rolston III, 1997: 42.

<sup>31</sup> Rolston III, 1997: 41.

(“the built environment”), a forest (“the natural environment”), or a city (“the urban environment”).<sup>32</sup>

Nature was the environment around all human and animal life. Only with the commencement of its destruction and the expansion of the human species, according to Evenden, did there become the need to name the world around us. Before the absence of what had always been there, it was not necessary to name the environment surrounding all life.

Today, as natural areas and habitats are threatened through pollution, development, and industry, it is necessary to name these scarce and disappearing areas, as previously noted by Kate Sopes. Holmes Rolston III argues this point when explaining the progression and shifting of the definition of wilderness over the past centuries:

Such a state is not something humans have ever really known; ‘wilderness’ so imagined is a foil for their culture, a romanticized Garden of Eden. The word gets made up when there is very little of wild nature left, as in Europe, when explorers leave for exotic places, or in the United States, when the frontier is closed, and wild places are threatened by the successes of civilization.<sup>33</sup>

By legally defining wilderness, the United States has perpetuated the nature and society dichotomy – which has been rooted in bourgeois ideals for centuries. Meyer would argue that this derivative (i.e., “some image of nature serves as the normative principle from which social and political order is derived”) notion of nature has not been perpetuated by the dichotomy of past thought, and is rather a sign of the unecological character of overall past and present conceptions of nature.<sup>34</sup> I would contend that this dichotomy *is* the overall conception of nature of past and present thought, which is consequently unecological in character.

Due to the creation of wilderness through a definition and through government designation, people such as William Cronon see wilderness as purely a human creation.<sup>35</sup> Roderick Nash argues that wilderness does not exist – he sees wilderness as a state of mind or a feeling, rather than a location or a place. Likewise, David Rothenberg argues that civilization created wilderness – that wilderness is a

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<sup>32</sup> Rolston III, 1997: 42.

<sup>33</sup> Rolston III, 1997: 46.

<sup>34</sup> Meyer, 2001: 36.

<sup>35</sup> Proctor, 1998: 356.

consequence of civilization.<sup>36</sup> Rolston III argues, however, that this is untrue. He disagrees with Nash that wilderness is purely a state of mind, and rather, Rolston III argues that wilderness is “what existed before there were states of mind.”<sup>37</sup> “Nature”, “environment”, and “wilderness” are all terms used today to describe what we humans see as natural. However, Rousseau utilized such terms as “natural”, “the original constitution”, and “savage” which were used to describe the places, the lives, and the ideas that society had yet to alter. Overall, Rousseau uses the idea of the state of nature in order to delineate a time before societies and rulers, to uncover the original constitution of man.

### ROUSSEAU’S NOTIONS OF NATURE

For many social contract theorists, natural law is simply defined as law that has been naturally set by God – natural laws are God given rights. In *The Social Contract*, Rousseau contends that: “All justice comes from God; he alone is the source. But if we know how to receive it from so exalted a source, we would have no need for government or laws.”<sup>38</sup> So how can we know what rights God would wish us to have? What exactly is natural about natural rights? These are precisely the questions that Rousseau asks in the *Discourse on the Origin of Inequality* in his critique of Hobbes and Locke. Rousseau warns that it is difficult to “have a proper understanding about a state which no longer exists”<sup>39</sup> Further, because we are in society and we cannot have a clear conception of the natural world without projecting individualized social concepts into this world, he argues that “it is this ignorance of the nature of man which throws so much uncertainty and obscurity on the true definition of natural right.”<sup>40</sup>

Rousseau charges Hobbes’s and Locke’s notions of the state of nature as being faulty because, first, social man cannot know nature due to the alienation of nature caused by the dichotomy and separation of nature and society. Meyer argues that Hobbes shares this sentiment in the sense that “we

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<sup>36</sup> Rolston III, 1997: 47-48.

<sup>37</sup> Rolston III, 1997: 49.

<sup>38</sup> Jean-Jacques Rousseau. *The Basic Political Writings*. Hackett Publishing Company: Indianapolis, 1987: 160.

<sup>39</sup> Rousseau, 1987: 34.

<sup>40</sup> Rousseau, 1987: 34.

cannot properly understand humanity without recognizing its embeddedness in nature.”<sup>41</sup> However, Rousseau is clear in his contentions that this is not the case, and Hobbes is viewing the state of nature from a social perspective. Second, Rousseau argues that the notions and definitions of natural law based on providence cannot be “found in books” due to a lack of uniform and universal definitions.<sup>42</sup> Lastly, he contends that men cannot conceive of the state of nature using books because these books are written with social faculties that men would not have in the state of nature. Rousseau critiques Hobbes’s and Locke’s attempts to philosophize on the state of nature, for they “have felt it necessary to return to the state of nature, but none of them have reached it.”<sup>43</sup> For these reasons, Rousseau sets out to reconstruct natural man living in the state of nature, as he sees man to exist without being socially constructed. Although this seems ironic in the sense that Rousseau himself is a social man, again, he is using the false dichotomy between nature and society to deconstruct the idea that humans are separate from nature.

Rousseau begins by explaining that the first origin of man can be found in the animal. The differences that we can perceive amongst men are the same differences we can observe in animals – such as the physical differences in the same species of animals. Consequently, Rousseau points to these physical varieties within a species as also being the root of inequality among men.<sup>44</sup> These inequalities would be considered physical inequalities – which would particularly refer to the declining strength of certain humans, and the advancement of strength and health in other humans. In his explanation of the original constitution of man, Rousseau returns to a time after the evolution of man from animal, but before the moment where humans began to travel in herds and well before the sedentary agricultural lifestyle that was adopted soon after the nomadic lifestyle. His mission in doing this is to strip man of his social influences in order to arrive back at the original man. Once he depicts this vision of original man –

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<sup>41</sup> Meyer, 2001: 123.

<sup>42</sup> Rousseau, 1987: 35.

<sup>43</sup> Rousseau, 1987: 38.

<sup>44</sup> Rousseau, 1987: 33.

without the supernatural gifts and artificial faculties that society has imposed on the human species – he finds the “most advantageously organized animal.”<sup>45</sup>

Rousseau sees man as a highly organized animal in nature as possessing two original principles that existed before he had the ability to reason, an ability which came later with his entrance into society. These two principles are also natural traits that can be found throughout the animal world – self-preservation and well-being.<sup>46</sup> Self-preservation is a trait that can be found amongst animals in the sense that all animals strive to exist – they compete to survive and the primary reason for life is to live. Not only do all animals want to exist, but they want to live well by attaining enough food, rest, and shelter to ensure further survival and self-preservation. Like animals, natural man was able to satisfy his needs for subsistence without luxury and mass consumption. These principles of self-preservation and well-being of the original man are some of the few characteristics that remain in most humans of the social world today. When man was in his original state, he held many other instincts that social man has lost through lack of practice. Rousseau believes that these two principles in particular – self-preservation and well-being – were the impetus for social man to later develop the ability to reason. It is the conjunction of these principles combined with the beginnings of social life that Rousseau believes developed the rules of natural right as found in providence, or in God. Ironically, however, Rousseau also argues that these natural rights effectively “smothered” out nature and what is truly natural in the process.<sup>47</sup>

In *Emile*, Rousseau speaks of *amour de soi* as the source of our primitive, innate passions that originate in the state of nature – the state of natural man. In the *Discourse on the Origin of Inequality*, Rousseau uses this same concept to explain the natural instinct that natural man utilized to preserve his own life.<sup>48</sup> This concept can be defined as a “love of self” and can be envisioned as the root of the modern ideas of reason, compassion, humanity and virtue. The idea of *amour de soi* can be seen as “naturally good” – as to protect one’s life is not wrong, self-preservation and love of self assists in attaining well-

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<sup>45</sup> Rousseau, 1987: 40.

<sup>46</sup> Rousseau, 1987: 35.

<sup>47</sup> Rousseau, 1987: 35.

<sup>48</sup> N.J.H. Dent. *A Rousseau Dictionary*. Blackwell Publishers: Cambridge, MA, 1992: 30.



being and a healthy life, and the disposition of *amour de soi* is not “malicious” in any way as it is one “tempered by compassion.”<sup>49</sup> While a more in depth analysis and explanation of *amour de soi* will follow within the discussion of the common good in chapter 3, it is important for our purposes now to note the fact that the love of self originated in the state of nature and is a natural instinct or sentiment, one of the few that remain in the humans after the transition from the state of nature to society was complete.

Moreover, the love of self naturally leads to a path of well-being and also can facilitate the ability to feel compassion, or pity, for others in the same species as well as those of other species.

Rousseau explains this extension of pity and duty to animals in the preface of the *Discourse on the Origin of Inequality*:

For it is clear that, lacking intelligence and liberty, [animals] cannot recognize this law; but since they share to some extent in our nature by virtue of the sentient quality with which they are endowed, one will judge that they should also participate in natural right, and that man is subject to some sort of duties toward them.<sup>50</sup>

This right does not exist because animals have rationality, nor because they are as organized as are humans, but because these animals are sentient. Animals are aware, and they can feel, but as Rousseau alludes to above, they cannot reason in order to understand law. Likewise, the whole of nature cannot reason, yet, our modern society requires a voice to participate in politics. Thus, humans must recognize the sentience of animals and the uncivil and silent manner of nature in order to find respect and duty in the life around us, which will assist in breaking down the socially constructed dichotomy that humans are not part of nature. Since the origination of society, humans have developed the notion that we are separate from nature, and in the process of this idea’s development we have successfully alienated ourselves from being a part of nature.

#### THE FALL OF NATURE AND THE MAKING OF SOCIAL MAN

Many critics and admirers of Rousseau find his discussion of nature, especially in *Discourse on the Origin of Inequality*, incoherent or as providing conflicting ideas regarding his conceptions and discussions of nature across his works. Many of these arguments are based on Rousseau’s statement that

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<sup>49</sup> Dent, 1992: 30.

<sup>50</sup> Rousseau, 1987: 36.

in order to attain the ideal society and the good life, we must simultaneously destroy nature but yet provide nature its freedom as well: “in the formation of society the independence of nature must necessarily be destroyed, and yet if society is to be made tolerable for men, it must create the independence of nature.”<sup>51</sup> John Charvet considers this paradox as a main part of the incoherence of Rousseau’s notions of nature. Likewise, Peter V. Conroy Jr. discounts Rousseau’s ideas as confused regarding nature, while dismissing this confusion as a product of the 18<sup>th</sup> century and prior to advances in anthropology. Conroy argues that Rousseau’s state of nature actually describes early primitive societies.<sup>52</sup> Meanwhile, Voltaire has criticized Rousseau as wanting “human beings to return to the forests to walk on all fours.”<sup>53</sup> While Rousseau’s reconstruction may seem historically problematic, throughout Rousseau’s works, he clearly pinpoints the time in history that he is discussing, which is prior to nomadic early tribes as well as before man could build a fire. Rousseau is clear when he explains the basic needs of man – fire and the cooking of food was not listed. In fact, Rousseau even ponders “how many centuries have perhaps gone by before men were in a position to see any fire other than that from the heavens?” Thus, Rousseau illuminates the idea that the state of nature was before man utilized fire for existence.<sup>54</sup>

Although Conroy charges Rousseau with describing early civilizations in the state of nature, Christopher D. Wraight argues that this idea is precisely the impetus for Rousseau to philosophize on the state of nature. He explains that Rousseau felt Hobbes and Locke did not go far enough in their attempts to visualize the state of nature and rather, they had “merely come up with a more basic version of the society they already inhabited.”<sup>55</sup> In other words, they were theorizing their own societies rather than visualizing the life of pre-social man. In comparison to other natural law theorists, Matthew Simpson conjectures that Rousseau may be outside of the tradition all together. His reasoning for this argument is

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<sup>51</sup> John Charvet. *The Social Problem in the Philosophy of Rousseau*. Cambridge UP: London, 1974: 3.

<sup>52</sup> Peter V. Conroy Jr. *Jean-Jacques Rousseau* Twayne Publishers : New York, 1998: 20.

<sup>53</sup> Biro, 2005: 59.

<sup>54</sup> Rousseau, 1987: 47.

<sup>55</sup> Christopher B. Wraight. *Rousseau’s Social Contract: A Reader’s Guide*. Continuum International Publishing Group: London, 2008: 11.

due to Rousseau finding the natural in nature – rather than other theorists finding the natural in God.<sup>56</sup> Further, for this reason, he explains Rousseau’s conceptions of the state of nature as “somewhat confusing.”<sup>57</sup>

Focusing on Rousseau’s original conceptions of the state of nature, Joseph R. Reisert compares Rousseau’s ideas to the ways in which Hobbes and Locke theorized about the state of nature. Hobbes defines the historical state of nature as “the state of men without civil society,” but as described in some detail above, Rousseau did not see his predecessor’s ideas as going far enough to explain nature before it was a social society. Further, Biro argues that Hobbes and Locke did not look at the effects of society on the development of the human character, which is why Rousseau claims that these theorists were depicting civil man rather than natural man.<sup>58</sup> For these reasons, Reisert argues that Rousseau’s notions of the state of nature are psychological, rather than philosophical or historical.<sup>59</sup> This is due to the fact that in the *Discourse on the Origin of Inequality*, Rousseau claims that his visions and descriptions of the state of nature “which no longer exists, which perhaps never existed, which probably never will exist” leads to a hypothetical state of nature which runs contrary to the ideas that Hobbes and Locke used to base their conception of pre-civil society on.<sup>60</sup> Rousseau envisions a purely hypothetical state in order to strip man of his social faculties and abilities to speculate over the condition of the first un-socialized natural men. Further, by hypothesizing on the state of nature, he hopes to uncover “what can and cannot have been true of man’s life and relations with others under the conditions posited.”<sup>61</sup>

The purpose of Rousseau’s interpretation and tracing of humanity’s roots into the state of nature is to uncover the source of the passions that are driven by *amour propre*. His motive for this practice is to see if these desires and passions existed in humans before society. Hobbes and Locke, rather, use the state of nature as a conceptual tool to “illustrate the consequences of their conceptions of the natural freedom

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<sup>56</sup> Simpson, 2007: 60.

<sup>57</sup> Simpson, 2007: 65.

<sup>58</sup> Biro, 2005: 60-61.

<sup>59</sup> Joseph R. Reisert. *Jean Jacques Rousseau: A Friend of Virtue*. Cornell UP: Ithaca, 2003: 32.

<sup>60</sup> Rousseau, 1987: 34.

<sup>61</sup> Charvet, 1974: 6.

and equality of human beings and thus to discover the ends that political society is established to accomplish.”<sup>62</sup> Meyer argues that this is due to Hobbes’s vision of the state of nature as one that is nonteleological, mechanical, and deterministic.<sup>63</sup> He further argues that Hobbes’s vision of nature was not natural because there are no natural or expected ends for nature – it is ever moving and has no *telos*. This presents a problem for Hobbes’s theory on the state of nature in the sense that there is no natural constraint that would prevent his Sovereign from ordering particular human ends, because the determination of a *telos* for life is artificial and contrary to nature.<sup>64</sup> This problem for Hobbes could have been easily resolved if he had used the earlier Christianized Aristotelianism for a vision of nature, that is not only more holistic to include humans, but it was teleological as well.

Instead, Rousseau is more interested in finding the reason for our passions and the source of their complexity in the state of nature, which are the passions that led to the establishment of civil political society. In *Emile*, Rousseau uncovers the root of political society in the final stage of the state of nature wherein human needs and desires had grown into such a strong force that the creation of government was the consequence of the increasing violence, instability, and general chaos that anarchic human life brought about.<sup>65</sup> Threat of revenge is the primary impetus that Rousseau attributes to the necessary beginning of political society. When nomadic humans transitioned into sedentary lifestyles, public esteem gained strength as a value, which ultimately led to the ideology that people had a right to this esteem. If ever this esteem was threatened by another, the immediate consequence was the introduction of acts of revenge to retain the esteem that was threatened or lost. Rousseau claims that if political society had not developed, “humankind would [have] perished.”<sup>66</sup> Yet, in modern society, we are still plagued by the constant competition for esteem, but there are now laws in place to decrease the risk of revenge.

If natural man had advanced to a point in which a nascent society was necessary to have government rule, what exactly brought about this change in the state of nature? In what ways did natural

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<sup>62</sup> Reisert, 2003: 33.

<sup>63</sup> Meyer, 2001: 81.

<sup>64</sup> Meyer, 2001: 84-85.

<sup>65</sup> Reisert, 2003: 122.

<sup>66</sup> Reisert, 2003: 122.

man develop to gain coherency of society and further, to create a political structure of hierarchy and law? Rousseau would argue that these developments came from within man's natural instincts of love of self (or *amour de soi*) and pity. Pity, according to Sally Scholz, is the first sentiment in nature – it is rooted in the realization that others suffer, just as oneself does.<sup>67</sup> From these instinctual two principles of the natural human soul, man developed a capacity called perfectibility.<sup>68</sup> Perfectibility lies in the idea that humans strive for moral perfection, due to the instincts of *amour de soi* and pity, and is developed from the natural capacity of free will. While making this same argument, Jonathan Marks points out the idea that not only does nature exude perfection, but it is also this drive for perfection that Rousseau argues will take the human species beyond the “purely animal functions” that existed in natural man.<sup>69</sup> In the *Discourse on the Origin of Inequality*, Rousseau praises the fact that natural man is free from all dependency and that he possesses the freedom of will to do what he chooses. Through free will, natural man strives to perfect his abilities, which ultimately leads to the development of the capacity to reason and rationalize.

But where does perfection really stem from? Is it a natural instinct? Rousseau believes that it is rooted in the natural principles of *amour de soi* and pity, but does that make perfectibility natural or social? Cooper argues that perfectibility seems reasonable “only if there was already something present to be perfected – to be awakened or activated and then developed.”<sup>70</sup> In other words, man would have to realize that he is a being that can be perfected, not only physically but morally as well, and this quality would have to exist within him, obscure until awakened. Cooper rests his argument on one of Rousseau's basic tenets – that man can develop faculties that did not exist in natural man living in a state of nature. These are the same faculties that Rousseau charges Hobbes and Locke of projecting into natural man existing in a state of nature. In *Discourse on the Origin of Inequality*, he states that “they spoke about savage man, and it was civil man they depicted” and specifically, he argues that “all of them, speaking continually of need, avarice, oppression, desires, and pride have transferred to the state of nature the ideas

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<sup>67</sup> Sally Scholz. *On Rousseau*. Wadsworth: Belmont, CA, 2001: 43.

<sup>68</sup> Reisert, 2003: 34.

<sup>69</sup> Jonathan Marks. *Perfection and Disharmony in the Thought of Jean-Jacques Rousseau*. Cambridge UP: Cambridge, 2005: 2.

<sup>70</sup> Cooper, 1999: 46.

they acquired in society.”<sup>71</sup> Other interpreters, according to Cooper, have explained Rousseau’s notions of perfectibility to explain the beginning of history. It is this trait, this goal, of humans that has led to the capacity to make possible the existence of history through showing “infinite plasticity.”<sup>72</sup> Essentially, plasticity refers to the ability of the human species to be reformed and reshaped – made malleable. Plasticity creates resiliency and allows for the human species to be remade in the face of change. Cooper argues that this is an inaccurate interpretation of Rousseau because “the elements of original human nature persist in modern man” and therefore there must be limits to the plasticity of human nature.<sup>73</sup> However, Cooper’s argument is moot due to the fact that Rousseau does see limits on the plasticity of human nature, which is why in Rousseau’s *Discourse on the Origin of Inequality* he clearly highlights the idea that not all of the elements of human nature persist in man today. Therefore, the plasticity of humans allowed some traits to develop while less utilized traits began to diminish and/or disappear altogether.

When natural man entered society, and became “habituated” as a “slave” in society, he physically degraded to become weak in strength and spirit while also losing his courage as a soft and fearful social man. In a sense, this transition forced natural man’s instincts to leave him in adjustment to life in a fabricated social world.<sup>74</sup> In the same way that man lost his body’s ability as a tool due to lack of practice in society, man has lost natural animalistic instincts through disuse, as discussed above.<sup>75</sup> Rousseau argues this point when he says: “In instinct alone, man had everything he needed in order to live in the state of nature; in a cultivated reason, he has only what he needs to live in society.”<sup>76</sup> Essentially, Rousseau seems to be describing a trade-off of faculties and abilities. While man has been consistently and effectively alienated from nature since living in society, Rousseau questions the feasibility and successfulness of social man when he has been drastically altered from the original constitution of man.<sup>77</sup> Further, he doubts the ability of social man to even have the capacity or the ability to know himself, due

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<sup>71</sup> Rousseau, 1987: 38.

<sup>72</sup> Cooper, 1999: 43.

<sup>73</sup> Cooper, 1999: 43.

<sup>74</sup> Rousseau, 1987: 43.

<sup>75</sup> Rousseau, 1987: 40.

<sup>76</sup> Rousseau, 1987: 52.

<sup>77</sup> Rousseau, 1987: 33.

to the extent of alienation from nature and since the human species has moved farther away from its primitive state.

The trade-off in abilities that Rousseau is describing has been born out of the development of passion, a development which he attributes to the development of human understanding. This passion was expanded from the desire that natural man possessed, the simple desire to do as he pleased because he had free will and a complete lack of dependency with the absence of all social inequality. In original man, this desire was only guided by the goal of preservation. In the transition to social man, it is from the activity of our desires that “our reason is perfected.”<sup>78</sup> Although Cooper was challenging Rousseau’s notions of perfectibility as necessitating something to exist to be perfected upon – it seems that Cooper has fallen into the trap of the social construct of nature. He has overlooked the fact that Rousseau sees nature as exuding perfection, and the human species – whether speaking of natural or social man – is a part of nature. Hence, according to Rousseau, there is a natural tendency to perfect our abilities, capabilities, and functions. In man’s original constitution, this would have been the equivalent of developing the ability to become a successful hunter or to strengthen his subjective abilities to use his own body as a tool of perfection. Ultimately, it seems as if perfectibility is rooted in the natural, and is not a trait that was created by society. The real determining factor ought to be whether the focus of perfectibility is natural or social, or moreover, if the end goal of a particular perfectibility is focused on improving on the natural or the social.

One consequence of this nascent transformation into social man was the shift from *amour de soi* or love of self, to the sentiment of *amour propre*, or self-love. As already explained previously, *amour de soi* is rooted in the natural and is a natural instinct of the original constitution of man. Although both terms are a form of love, *amour de soi* is rooted in Rousseau’s conception of the state of nature and *amour propre* develops through desires formed while living in society. In other words, rather than an individual focusing on self-preservation and existence through love of self (as in *amour de soi*), society altered the composition to a self-love which can now be formed through desire and the material wants of

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<sup>78</sup> Rousseau, 1987: 46.

private property. Once this original conception of animalistic desire and free will becomes all-consuming, and the nascent social man finds his own importance and value, the “craving for domination and prestige” gives rise to the demand for “deference and subordination.”<sup>79</sup> This alteration welcomes the introduction of caprice, or artificial, values that supplant real values – the values that allow for flourishing and natural growth. The rise of *amour propre* can also further facilitate the alienation from nature through internal shifts of virtues, vices, and social wants over natural needs. Rousseau envisions *amour propre* as the sole reason for the development of corruption and suffering in later social man. A further discussion of the development of these negative values that arise in *amour propre* and the trade-off of instincts, faculties, and capabilities as well as the consequences of these exchanges from natural man to social man will be further explored in chapter 4.

In *Discourse on the Origin of Inequality*, Rousseau’s primary goal of the essay was to trace the root of inequality in Geneva. What he accomplished, instead, was a psychological exercise using the theoretical concept of the state of nature that depicted man without the capabilities that are taken for granted in the social world. In so doing, Rousseau was attempting to break down the social construction of inequality. By tracing the origin of inequality to the end of the state of nature and the arrival of the social world that has developed into the modern society that we know today, Rousseau was presenting his deconstruction of society in stripping man of all non-natural qualities. The byproduct of this attempt at recreating natural man was that he coincidentally deconstructed the dichotomy of living in either nature or society as well. With the commencement of modern society, the two seemingly different ideas of inequality and alienation from nature are seen as the results of this transition into the social world. With the ever increasing rift between humans and nature, we can observe the amount of inequality increasing and spreading around the social world – the world as we know it. This is the socially constructed story that Rousseau aimed to break down in his *Discourse on the Origin of Inequality*, the psychological exercise that allowed us to envision the faculties that man was initially endowed with and to explain the development of the social abilities that we have acquired since the beginning of written history. Finally, in

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<sup>79</sup> Dent, 1992: 33.



order to challenge the ideas of Hobbes and Locke, Rousseau was attempting to present a better social deconstruction of natural rights while introducing a new formulation of the state of nature.

So what does this mean for modern times? How can we take the ideas of the goodness of natural man and combine them with the concepts of perfectibility in order to overcome the alienation of nature and attempt the creation of naturalized social humans? Later in Rousseau's life, he contemplated these ideas when writing the utopian ideals included in *Dialogues*. In this work, Rousseau begins to create a vision of his ideal world to which he holds in comparison to the real world, and then attempts to reconcile the two worlds. In other words, Rousseau is making an attempt at envisioning an ideal society wherein the people live socially while retaining their naturalness, as he proposed in his paradox to attain the good and moral life.

#### THE IDEAL WORLD AND THE ABILITY TO DEVELOP A SENSE OF PLACE

In Rousseau's psychological and hypothetical experiment to discover original man without the imposed traits and capabilities developed in the social world, he finds that the differences between men can be explained through the work habits of each man, and through the type of life each man adopts in society. Cormac Cullinan explains that this is due to a co-evolutionary process that has existed alongside the changes in the earth and biosphere: "Everything about our species, from the size of our brain, the shape of each tooth, and our sense of beauty and colour which has been shaped by our interaction with the universe and plants, animals and microbes with which we have danced in the intimacy of co-evolution."<sup>80</sup> As discussed earlier in the chapter, Rousseau's paradox to attain the good life requires, first, that nature be destroyed. Humans have accomplished the first step to a good life, in the sense that humans have successfully alienated themselves from nature. In *Emile*, Rousseau attempts to resolve the second part of his paradox in which humans are to reconnect with the natural to ultimately attain the good life. Rousseau's purpose for writing *Emile* was to create an educational treatise that would shape Emile, his imaginary student, into the perfect man and citizen. One of the primary modes of attaining this perfection

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<sup>80</sup> Cormac Cullinan as quoted in Judith E. Koons. "At the Tipping Point: Defining an Earth Jurisprudence for Social and Ecological Justice." *Loyola Law Review* 58(349), 2012: 383.

is through education designed toward contentment that is created through the fostering of the gifts of nature.<sup>81</sup> Likewise, in *Reveries*, Rousseau extensively relayed the importance of nature and knowing all nature in one's environment. This importance of experiential learning can be evidenced in the ideal education that Rousseau depicted in *Emile*, as it can lead to development of a sense of place, it can reunite social man with the natural instincts that were once so prevalent in the original man, and it can renew *amour de soi* while balancing and properly maintaining the desires within *amour propre*. Thus, the balance of *amour de soi* and *amour propre* in modern society can alleviate tendencies and passions driven by material social life and can illuminate the way for living with nature, in nature.

Rousseau saw the effects of alienation from nature through the bourgeois conception of nature that developed during his life. This alienation was caused by the rise in the elite's selfishness and social exploitation which created a "pettiness of soul" and was quickly leading away from natural goodness. To lessen the blunt force of such a societal ideal, Rousseau wrote *Emile* in order to articulate a "dual-level understanding of nature."<sup>82</sup> This dual-level is correlative with Meyer's notion of the two natures – nature as a location or phenomenon and Nature as providing life principles. Rousseau recognized the nature and society dichotomy that was developing, and he hoped to break down this dichotomy by deconstructing the ideas that were taking hold of the population. Rousseau first framed this argument in the *Discourse on the Origin of Inequality*, by deconstructing the social projections into what we believed were distinctively human traits, as explained in some detail throughout this chapter. By breaking down the construct of what is natural by excluding the social, Rousseau effectively sets up his argument to reunite man with nature.

In *Emile*, Rousseau confuses readers by expressing repeatedly that if natural man is real man, and a citizen can only be social man, then "no one can be both man and citizen and that the difference between the two is a matter of being educated according to nature versus being 'denaturalized'."<sup>83</sup> Rather than living as one with oneself as the natural man, the social citizen following the desires of *amour*

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<sup>81</sup> Scholz, 2001: 4.

<sup>82</sup> Cooper, 1999: xiii.

<sup>83</sup> Cooper, 1999: 48.

*propre* lives life and “defines himself only with regard to others.”<sup>84</sup> When one develops the education of nature and lives accordingly to the rules of nature in a social world, he believes the citizen’s soul is in a form of correspondence with nature – “the citizen’s soul is well ordered as such, though not natural, corresponds to the order that existed, by nature, in primitive man’s soul.”<sup>85</sup> This dual conception of nature, Rousseau believes, can be developed through various forms of experiential learning within nature. After all, for Rousseau, in agreement with Aristotle, the good life – one of moral existence – is a life that is lived with nature.<sup>86</sup> To clarify, Rousseau is not delusional or a regressionist in any way, rather, he realizes that we cannot go back in time, instead he is advocating for replicating and resurrecting the principles of an earlier time. He simply would like to find balance in the traits of *amour de soi* and *amour propre* in social man to renew the natural animal instincts that we have lost through lack of practice. In promoting this dialectical relation to a “supposed” past, Rousseau hopes to decrease the rampant effects of *amour propre* such as subordination, greed, and vanity.

To cultivate a sense of nature in social man, Rousseau heavily advocates for the usage of experiential learning throughout his educational treatise of *Emile*. This position may have been influenced early in Rousseau’s life when he spent a year wandering the French countryside in his nascent independence.<sup>87</sup> Rousseau’s contemporaries during the Enlightenment period, rather, rushed to escape from rural lifestyles to the urban city centers of culture and knowledge. Sally Scholz explains that “these crowded urban areas created their own standards of morality according to the fickle winds of fashion.”<sup>88</sup> Further, Rousseau saw the proliferation of enlightenment knowledge as leading to a life regulated by public opinion which made individuals “idle and weak.”<sup>89</sup> He believed that a society that was organized, equitable, and well-ordered would be a reality that would restore natural goodness to the social human species. Hence, Rousseau advocated for human exercise to allow the mind to develop – particularly

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<sup>84</sup> Cooper, 1999: 32.

<sup>85</sup> Cooper, 1999: 49.

<sup>86</sup> Cooper, 1999: 40.

<sup>87</sup> Leo Damrosch. *Jean-Jacques Rousseau: Restless Genius*. Houghton Mifflin Company, Boston: 2005.

<sup>88</sup> Scholz, 2001: 2.

<sup>89</sup> Scholz, 2001: 4.

exercise through farming and the cultivation of the land – which consequently can also allow one’s sense of place to develop, along with the ability to know the land, cycles, and environment around one in order to cherish, to flourish in, and to preserve one’s environment.

When Rousseau focuses on the development of Emile’s morals as a child, he succinctly states that moral development should never be instructed and discussed, but rather, should be developed solely by learning through experience. He teaches these morals through pain, human misery, and the order of nature in education – all as foundational and natural lessons that are necessary before the student is at the age of reasoning.<sup>90</sup> These acts of experiential learning of natural man and moral man are necessary to develop Emile’s acquired faculties and capacities which “extend and deepen his ‘original dispositions’,” precisely what Rousseau was referring to when he described the meaning of being “natural in the civil state.”<sup>91</sup> In this sense, Rousseau refers to Emile as a student that is in all actuality, a “savage made to inhabit cities.”<sup>92</sup> Essentially, Emile is a savage before he develops into social man through experiential learning and developing virtuous morals, but he is a savage who has also developed “all the faculties and capacities of civilized man, [meanwhile] he manages to do so without losing his original goodness.”<sup>93</sup> Cooper explains this by the notion that what is natural for society may alter and transform over time. However, Rousseau’s first principles that he uncovered in the state of nature rooted in original man – love of self and pity – remain constant throughout time.<sup>94</sup> His goal in *Emile* is to unify these principles in order to reveal “the intimate relationship between civilized naturalness and its savage forebear, and a unity that justifies the ascription of the label ‘natural’ to both the savage and Emile.”<sup>95</sup> Through the renaturalization of social man, Rousseau is attempting to reconnect humans with their natural selves through the “renaturalization of human nature,” as is required in his paradox.<sup>96</sup>

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<sup>90</sup> Scholz, 2001: 32-33.

<sup>91</sup> Cooper, 1999: 63.

<sup>92</sup> Cooper, 1999: 62.

<sup>93</sup> Cooper, 1999: 185.

<sup>94</sup> Cooper, 1999: 63.

<sup>95</sup> Cooper, 1999: 63.

<sup>96</sup> Cooper, 1999: 187.

How does this hypothetical education for Emile manifest itself in the modern world, outside of the theoretical world of books? The primary route for this form of education is through experiential learning and the cultivation of a sense of place. According to Mark Sagoff, a sense of place emerges when “it is cultivated, when it constrains human activity, and is constrained by it, when it functions as a center of felt value because human needs, cultural and social as well as biological, are satisfied in it.”<sup>97</sup> Unlike Rousseau’s advocating for a return to the countryside and rural existence, a sense of place can still be developed in urban centers around the world. The primary requirement to develop this sense is through the realization that we, as humans, are in fact a part of nature. In other words, humans must be reintroduced to nature and accept our position in the natural order of the world. As naturally looking at life through a human perspective, or anthropocentrically, we must seek to develop a balance between our anthropocentrism and the ecocentrism that is advocated by the proponents of deep ecology. This chasm between anthropocentric and ecocentric worldviews of nature is another dichotomy that must be deconstructed, but that is a task beyond the scope of this project. The balance between the worldviews may allow some to develop a sense of place in a particular bioregion, as in the early history of America. Thomas Jefferson, like Rousseau, advocated for rural lifestyles and the development of love of the land and place through the cultivation of agriculture and subsistence.

The landscape and environment of rural communities were the tools that Thomas Jefferson believed made the people of the United States into true Americans. Jefferson believed that the “[c]ultivators of the earth are the most valuable citizens... They are the most vigorous, the most independent, the most virtuous, and they are tied to their country and wedded to its liberty and interests, by the most lasting bonds.”<sup>98</sup> William Shutkin expounds on Jefferson’s beliefs in explaining that this open and fertile land for the use of agricultural purposes was the bond that allowed “American republicanism to develop and thrive,” and that “Jefferson forever linked Americans’ political identity with their relation to

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<sup>97</sup> Mark Sagoff as quoted in Meyer, 2001: 137-138.

<sup>98</sup> William Shutkin. *The Land That Could Be: Environmentalism and Democracy in the Twenty-First Century*. MIT Press: Cambridge, MA, 2001: 24-25.

the land.”<sup>99</sup> The meeting and coupling of sense of place and sense of community are the connections that tie one to the land and allow for one to respect and care for the habitat around them. Further, it is the bond that allows for the emotion of pity and a sense of duty to be felt toward fellow neighbors and the larger community. A sense of place has been considered as “the physical, social, and emotional space that nurtures us as individuals and members of a community and is an animating force for civic engagement.”<sup>100</sup> This animating force is the reality of Devon Pena’s acequia community in the San Luis Valley, in Southern Colorado. Using the traditional method of communal farming waterway irrigation (i.e. an acequia), he believes that his community has developed an environmental ethic that has been “derived from localized identities.”<sup>101</sup> The sense of belonging to the community and the landscape around one can cultivate the American citizen that Jefferson spoke of, and also can invoke the feeling of wanting to do what is best for one’s neighbors as a community, rather than focusing what is best for oneself. To be further discussed in the next chapter, this is basically the notion of what Rousseau refers to as the common good. Shutkin does warn that this feeling is tentative in that “[t]he forces of development, production, and consumption can corrode the sense of place that is essential to a community’s civic and environmental health. Place serves as a mirror into the soul of a community and reinforces its cultural and social conditions.”<sup>102</sup>

During the 20<sup>th</sup> century, this mirror began to illuminate the fact that many Americans felt detached from society and longed for a vibrant community that created the solidarity found in Dolores Hayden’s idea of place-based identities.<sup>103</sup> What is needed, in order to allow people to care about the needs of others, is the collective decision that community is an important part of human society. In order to develop a love of self and for others, society must unify into the idea that all life on earth forms a community and the decisions that we make affect ourselves, all others, and all future generations. The

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<sup>99</sup> Shutkin, 2001: 24-25.

<sup>100</sup> Shutkin, 2001: 140.

<sup>101</sup> Pena, Devon G. “Endangered Landscapes.” in *The Environmental Justice Reader: Politics, Poetics, and Pedagogy*, Joni Adamson, Mei Mei Evans, and Rachel Stein, eds., The University of Arizona Press: Tucson, 2002: 65.

<sup>102</sup> Shutkin, 2001: 140.

<sup>103</sup> Shutkin: 2001.

sentiments that are necessary to create a strong place-based identity will be a topic further explored in the next chapter.

### CONCLUDING THOUGHTS ON THE MODERN STATE OF NATURE

We are in a position within human history where we need to adhere to the lessons that Rousseau has presented regarding nature in order to preserve life as we know it. Judith E. Koons argues that: “A radical shift in thinking and behavior is necessary because in order to ‘save the Earth,’ humankind must change in ways that reconstitute what it means to be a human being.”<sup>104</sup> Further, she argues that it is time to transform the human heart. It seems, though, that over the time of history we have worked too hard to transform the human heart. Rather, we need to let nature into the social human heart in order to regain our natural instincts and reclaim the faculties and capabilities that we had once before. Thomas Berry realizes this alienation from nature that the human species has developed since becoming social, and “notes that we abandoned our relation with the planet and must find our way back to Earth.”<sup>105</sup> The collective wisdom that is necessary to change this socially constructed worldview and deconstruct the notions that man is separate from nature and the subsequent inequalities that Rousseau illuminates in the *Discourse on the Origin of Inequality*, will ultimately come through making a connection with the land that we live on, live from, and return to, as animals in the circle of life.

The need for this realization at this time stems from the fact that for the first time in nearly 10,000 years, the Earth’s environment has become unstable after a long period of relative stability. In a 2009 groundbreaking study, it was revealed that the planet’s “tipping points” and the planetary boundaries that define safe operating spaces for life and humanity on Earth are in danger of being exceeded. Identifying nine processes that can alert us to imbalance or reassure us that we are maintaining within a safe space that remains at a distance from thresholds; the article warns us that we have already exceeded the thresholds of two processes – the rate of biodiversity loss and the nitrogen cycle. We have surpassed the threshold for a safe operating space regarding the process of climate change, while we are nearing the

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<sup>104</sup> Koons, 2012: 384.

<sup>105</sup> Koons, 2012: 385.

threshold for stratospheric ozone depletion, freshwater usage, ocean acidification, and the overall planetary changes in land use.<sup>106</sup> Koons provides a warning concerning these thresholds on Earth: “Ecosystems are nonlinear systems that do not gradually decline, but instead reach ‘triggering thresholds, ecological heart attacks, where they suddenly collapse and die’.”<sup>107</sup>

This warning from earth’s operating spaces ought to be a signal to shift our view of nature. We must realize that there are not actually two natures, as argued by Meyer, but rather, there is only one – the one we all live in and to which we owe our existence. This chapter has shown that the nature and society dichotomy has perpetuated to a point where our own existence and survival is threatened. Rousseau recognized this dichotomy between nature and society in the works of his fellow contract theorists in which he criticized their inability to separate the social characteristics of man from those in the original man that lived in the state of nature. In his criticisms, he was attempting to deconstruct the dichotomy between nature and society and the social construction of inequality, as well as the bourgeois social construction of nature. Practically, this dichotomy of nature versus society can be deconstructed in modern society through experiential learning and the development of place, so that one can protect and connect with the community and environment around them.

In the following chapter, the idea of the interconnectedness of humans and nature will be furthered through the development of place into the common good. The common good, as Rousseau sees it, is the ability to feel pity and empathy for those who share the environment and community around us, in order to determine what allows the community to flourish and achieve overall well-being. Rather than focusing on the economic growth of society, his ideas refer to the overall elevation of the morals, virtue, and health of all humans. Threats to the common good will be shown through a case study of hydraulic fracturing which demonstrates the interconnectedness of humans and nature while highlighting a growing threat to all biological flourishing and well-being. Finally, the potential for a renewal in self-preservation, as advocated by Rousseau, will be highlighted in recent examples of government contracts and

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<sup>106</sup> Johan Rockstrom et al. “A Safe Operating Space for Humanity.” *Nature* 461(24), 2009: 472-473.

<sup>107</sup> Koon, 2012: 352.



enactments that protect and promote the common good of the biological community, in the United States and beyond.

## CHAPTER 3

### ROUSSEAU AND THE COMMON GOOD

Rousseau views nature as inextricably linked to humanity. He believes that in order to attain the good life with good morals, the false dichotomy between nature and society must be deconstructed. Further, he saw his contractarian predecessors as trapped within this nature versus society dichotomy, from which they were unable to escape. Rousseau believed that if one could recognize that we are part of nature and the natural world through the first principles, that each individual would carry this essence with them into the social world to make good moral choices not only for themselves but also for the community around them. In modern society, the practical application of this principle would be to recognize a sense of place and thereby living as one with nature and society. A sense of place can be developed through experiential learning in the environment where one lives, as discussed in the previous chapter. Developing a sense of place has the potential to unlock the internal ability to recognize that one lives in a more encompassing society that includes the “built environment”, the “urban environment”, and the “natural environment.” Rousseau would see the sense of place as equivalent to his idea of the common good, in which one decides what is best for all life around them in order for the community to attain well-being and to flourish as a society.

The concept of the common good has been through many transformations since its initiation into the modern social world. Before expounding on the common good as Rousseau envisions it, it is important to cover the evolution of the concept of the common good through its inception as a collective good, to the economical interpretation of public interest or the public good, and then to the prospect of future global common goods. As with the various interpretations of nature in chapter 2, the common good is also a term that is seen through a multiplicity of visions that carry various meanings for different people. Rousseau’s interpretation of the common good is grounded in the classical conception in which “the good is realized in the natural relationships in and through which human beings achieve their well-

being,” – as denoted by Thomas Aquinas.<sup>108</sup> Other modern ideas mirror this thought, such as that of Jacques Maritain who believes that “the common good is constituted by goods that humans share intrinsically in common that they *communicate* to each other, such as values, civic virtues, and a sense of justice.”<sup>109</sup> Another classical conception is advanced by Louis Dupre, and combines the need of a cohesive and just community into the definition by stipulating the common good is only attainable if it is good for the community as well as for each member.<sup>110</sup>

Coexisting with these classical ideas of the common good is also the concept of a collective good. Although this is not necessarily identical to the common good, it is a good that is brought about by collective action. Severin Deneulin and Nicholas Townsend illuminate the similarities and differences between common good and collective goods. They are both similar in that they each require shared action to exist, and common goods “cannot be chosen by individuals alone.”<sup>111</sup> They differ, however, in the sense that the former common good is an intrinsic good and the latter represents a good that is accidental in nature. A collective good is accidental because the benefits arrive along the course of the shared action. This is similar to what Bruce Douglass argues is a second aspect of the common good (the first simply being the classical conception) as seen by Thomas Aquinas – that “the benefits in question are shared goods. They had the effect of contributing to the well-being of individuals, but they could not be reduced to private advantage.”<sup>112</sup>

Similar to a collective good, and still not necessarily a common good, is the public interest or the public good. This conception was borne out of liberalism and is rooted in individual interest. Sheldon Wolin describes this form of good as “essentially private” and Douglass explains this notion as purely meaning “an aggregation of private interests.”<sup>113</sup> As we saw in the previous chapter, private interests are

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<sup>108</sup> Severin Deneulin and Nicholas Townsend. “Public Goods, Global Public Goods and the Common Good.”

*International Journal of Social Economics*, 34(1-2), 2007: 27.

<sup>109</sup> Deneulin and Townsend, 2007: 27. Italics in original.

<sup>110</sup> Deneulin and Townsend, 2007: 27.

<sup>111</sup> Deneulin and Townsend, 2007: 29.

<sup>112</sup> Bruce Douglass. “The Common Good and the Public Interest.” *Political Theory*, 8(1), 1980: 105.

<sup>113</sup> Douglass, 1980: 107.

rooted in *amour propre* and find their manifestation through vanity and an unhealthy social desire. These private interests are, according to Rousseau, expressed through an individual will. An aggregation of private interests, which is the will of all, does not necessarily translate into a common good. Opposed to the common good's classical conception that "the good is realized in the natural relationships in and through which human beings achieve their well-being," *amour propre* is not driven by a natural instinct and is rather a social sentiment that leads to greed and corruption.<sup>114</sup> The idea of public interest has been utilized in order to explain a purely personal and subjective interest that is imposed on society as a good for all. Thus, this was a good imposed on society concerning the private well-being of individual citizens through a protection of material well-being – namely private property and property rights.<sup>115</sup> Douglass considers this as a pursuance of personal "selfish advantage" that commenced during monarchical times wherein "the politics of interest was universal."<sup>116</sup>

The final good that has evolved from the classical conception of the common good is that of the global common good. While this is a common good as defined by the classical conception, it is articulated on a grander scale and allows for the good to be considered for all peoples of the world. Arguing that the classical conception of the common good is outdated, while specifically referring to Aquinas' interpretation, Lisa Cahill "proposes the concept of the 'global common good' which she defines as 'participation of all peoples in a diverse and differentiated, yet solidaristic and collaborative world society'."<sup>117</sup> In our modern and highly populated society, the grandiose scale of a global common good may be out of reach. As explained in more detail later, there are ways to build up to a global common good, as there are ways to facilitate democracy on a large scale.

This chapter advocates for a resurfacing of the classical conception of the common good in modern society, as Rousseau presents in *The Social Contract*. While revisiting Rousseau's first principles of man from chapter 2 – specifically self-preservation, well-being, pity, and *amour de soi* – I will explain

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<sup>114</sup> Deneulin and Townsend, 2007: 27.

<sup>115</sup> Douglass, 1980: 107.

<sup>116</sup> Douglass, 1980: 107.

<sup>117</sup> Deneulin and Townsend, 2007: 15-16.

Rousseau's notions of the common good which will introduce the alterations of these first principles that have taken root in the social world. Likewise, a review of *amour de soi* will lead into the development of vices and the societal based passions of *amour propre*, which have developed from the original characteristics and principles from the state of nature. The chapter will then take a practical turn in order to show how the *amour de soi* and *amour propre* exist in the modern world. Following the explanation of the contract's practical placement in society, a case study reviewing hydraulic fracturing in the United States will help illuminate areas in which the common good has been compromised for the attainment of desires driven by *amour propre* – namely wealth, greed, esteem, material goods, and corruption. This section will then lead into an exploration of the potential for the renewal of self-preservation that Rousseau advocates for in the *Discourse on the Origin of Inequality*, through a realization of the common good in a community. Finally, this potential for renewal will be explored in the modern world with such government documents as the Rights of Nature that were instated into Ecuador's Constitution in 2008, the City of Pittsburgh's Bill of Rights for city residents adopted in 2010, and the City of Santa Monica's unanimous city council vote for a Community Bill of Sustainability Rights.

#### THE SOCIAL CONTRACT AND THE CLASSICAL COMMON GOOD

As explained above, the classical conception of the common good has a number of objectives that allow for human flourishing and well-being. These common goods are intrinsically and naturally good, which contribute to natural and human well-being, rather than protecting private property, which is used as a substitution for material well-being. Rousseau recognizes his notion of the common good as rooted in the social order, and not in nature, as the common good is founded on human convention as a social creation. The common good is an idea that has grown in the social world from the first principles of original man as Rousseau uncovered in the state of nature. In other words, the common good is an ideal and principle that allows for the protection of the self, as in Rousseau's ideas of personal survival and preservation within the original man. In order to protect ourselves as humans, we must protect the nature and environment around us, in order to live in a habitat that allows all species to flourish. The common good represents a collective and social well-being through preservation of the community as a whole,

through feelings of pity and love for self and others. Like the feelings of pity for members of the same species in the state of nature, the social turn this compassion has taken still holds the preservation and flourishing of all, for the benefit of all, as the key to the good.

In the political realm, however, these values begin to take on different meanings for different people, based on their internal balance of *amour de soi* and *amour propre*. Before introducing the vices and the advancement of *amour propre* in some individuals, it is important to first expand on Rousseau's notions of pity, compassion, and conscience which will lead to a discussion of the dangers of living a life based on desire and of want. As introduced in the previous chapter, Rousseau requires that one maintain a particular internal balance of *amour de soi* and *amour propre* when in the social world. Rousseau displayed the proper balance that is necessary in *Emile*, wherein if one can nurture the correct balance of pity and self-preservation (thereby developing a natural sentiment in man rather than social), then, Rousseau argues, one will retain their virtues in society and not fall victim to the whim of public opinion and societal trends.

Rousseau sees man as naturally good, and man's passions can only be enslaved through "poor government and corrupt society."<sup>118</sup> This is what Rousseau means in the opening of *The Social Contract* when he states that: "Man is born free, and everywhere he is in chains. He who believes himself the master of others does not escape being more of a slave than they."<sup>119</sup> In other words, when one is born, they are immediately a part of the social construct of inequality as well as entrenched within the dichotomy between nature and society. While still an adolescent, the inequalities imposed on adults may not be apparent, but undoubtedly, the social order will take its toll later in life and the growing child will eventually fall prey to public opinion and the overtaking passions of desire. These desires, or sense of appetite, come from the feelings of *amour propre*, or self-love, which arises in youth when the adolescent "awakens to the existence of others and begins to make judgments as to how he exists relative to them."<sup>120</sup> When the free will of individuals, a principle that arose from the state of nature, is used with license in the

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<sup>118</sup> Scholz, 2001: 82.

<sup>119</sup> Rousseau, 1987: 141.

<sup>120</sup> Charvet, 1974: 86.

social world, it can lead to a ravenous appetite for greed, success, corruption, and subordination. Although one may feel freedom through ruling over others, he is still a slave for Rousseau, who believes that “to be driven by appetite alone is slavery,”<sup>121</sup> as subordination and enslavement only lead to corruption. In a social world, a good government is to regulate the laws for the common good of the whole people, and obedience to these laws is considered as personal liberty.

Rousseau’s prescription in *The Social Contract* is a way to overcome the downfalls of poor and corrupt governments through bringing the people together based on the common good of all. When the social took hold of original man and revenge began to run rampant, the need for regulation and laws entered reality. Through the desires of *amour propre* and notions to self-entitlement of esteem, the natural had begun its descent in order for the social to take its place in history. When man arose from the state of nature, and social man began to form, the social contract was created which successfully allowed for the natural to subside while allowing for the passions of the social to develop. As the creation of reason began to take hold in social man, Rousseau explains this drastic transition for humans:

This passage from the state of nature to the civil state produces quite a remarkable change in man, for it substitutes justice for instinct in his behavior and gives his actions a moral quality they previously lacked. Only then, when the voice of duty replaces physical impulse and right replaces appetite, does man, who had hitherto taken only himself into account, find himself forced to act upon other principles and to consult his reason before listening to his inclinations... What man loses through the social contract is his natural liberty and an unlimited right to everything that tempts him and that he can acquire. What he gains is civil liberty and the proprietary ownership of all he possesses.<sup>122</sup>

In the absence of a poor or corrupt government, under the rule of a moral and proper Sovereign, the license to follow desire should subside in exchange for the creation of a community and a society that is based on the common good of all. The social contract is not a document that everyone signs, as has been an issue of contention for centuries; rather, it is a human convention that is based on the fact that humans are ruled by a government, a social order, social instincts, and social faculties.

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<sup>121</sup> Rousseau, 1987: 151.

<sup>122</sup> Rousseau, 1987: 150-151.

For a social contract to be cohesive and to be naturally good, it is necessary for the people that make up the citizenry to uphold the natural inclinations and instincts they gained in the state of nature – pity, *amour de soi*, self-preservation, and well-being. These natural instincts are the basis of all that is naturally good. For a society to be naturally good, the people must maintain a healthy balance of the naturally rooted instincts from the state of nature, as well as the socially induced qualities that have been borne out of the transition from the state of nature and expanded in the social world. So what allows for the social faculties to rise from these natural instincts? How do these sentiments grow in society out of the natural? How do we balance our internal loves of *amour de soi* and *amour propre*?

Throughout Rousseau’s works, he holds one capability as the key to living a good life and maintaining a proper balance of natural and social, and it is also the one “universal, active, inner force for good” – conscience.<sup>123</sup> This virtuous development of sentiment is the absolute driver of inner transformation from the natural to the social along with the physical transition from the state of nature into the social world of society and government. Cooper explains this virtuous transformation of sentiments using Emile’s natural education and development of higher capacities to describe how his “higher capacities can be made to extend and/or deepen *amour de soi* and to shape *amour propre* in such a way as to make the source of loving rather than irascible social passions.”<sup>124</sup> Cooper further describes virtuous transformation, or sublimation, of conscience as being the determining factor of whether a society can collectively make “civilized goodness.”<sup>125</sup> Conscience is the link between the natural disposition of *amour de soi* and the social world and facilitates the realization of the virtuous qualities from the state of nature. If the sublimation is incomplete and one’s conscience does not lead toward virtuous qualities, then *amour propre* can become stronger and can lead to a path of corruption. Rousseau’s conception of conscience is not dissimilar to other visions of the idea, as it is the natural voice of reason that deciphers whether a person acts in a moral manner. In other words, it is the universal, “inner source of moral judgment that expresses approval and disapproval through a variety of feeling

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<sup>123</sup> Cooper, 1999: 84.

<sup>124</sup> Cooper, 1999: 82-83.

<sup>125</sup> Cooper, 1999:83



states.”<sup>126</sup> This source of moral guidance, for Rousseau, is the force that “prescribes general rules of conduct and even provides individuals with detailed guidance before they act; and it repays them, accordingly – that is justly – with either contentment or distress, afterward for a long time to come.”<sup>127</sup>

However, conscience is not all a man needs to do well and to be good – as conscience requires man to be aware of it and then to listen and heed its warnings too. As to not solely rely on conscience to direct one’s actions for the good, humans must uphold the sentiment of compassion as well. Pity, or *amour de soi*, is a natural principle from the state of nature, and compassion is the social faculty that grew out of this instinct. Beyond feeling pity for members of the same species, compassion is the social advancement of the natural feeling which “has the power to move us to acts of generosity, clemency, and gentleness,” and also has the ability to fight against the increase of the “evils brought on by excessive *amour propre*.”<sup>128</sup> Compassion is a step beyond pity – which Rousseau explains as the impetus for natural man to take care of the young and old while pursuing his own good and harming others as little as possible – and additionally we as social humans are to put “ourselves in the place of the sufferer and identif[y] ourselves with him.”<sup>129</sup> This emotion of feeling the pain, suffering, or happiness of others is what we consider as empathy. Empathy, pity, and compassion are the foundational natural sentiments that Rousseau believes all social virtues – such as generosity, mercy, and humanity – arise from in the social order of man.<sup>130</sup>

The point where *amour propre* enters the social world is when pity could be considered as turning bad, or wrong. To clarify, pity can turn bad when compassion is recognized and conscience is heard, but the excessive yearning that comes with desire dampens the inner good in order to fulfill individual wants and desires. This is when *amour propre* has overcome the virtuous notions of *amour de soi*, and when *amour de soi* and *amour propre* have become imbalanced due to the enslavement of desire. In the *Discourse on the Origin of Inequality*, Rousseau describes the moment when the balance is destabilized

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<sup>126</sup> Cooper, 1999: 83.

<sup>127</sup> Cooper, 1999: 84.

<sup>128</sup> Dent, 1992: 51.

<sup>129</sup> Charvet, 1974: 18.

<sup>130</sup> Charvet, 1974: 18.

through reason, imagination, and language. At this moment when *amour propre* entered the faculties of nascent social man, the sentiment of jealousy entered the human mind to facilitate the transformation of amours.<sup>131</sup> These individual desires that were created with *amour propre* work to suppress feelings of compassion, pity, and the overall good morality associated with *amour de soi*. Without working to maintain the proper balance of amours, the scales will be tipped between faculties and desires, as Rousseau warns in *Emile*: “How pitiable you are going to be, thus subjected to your unruly passions!...As a result of having wanted to follow only your passions, *you will never be able to satisfy them.*”<sup>132</sup> How, then, do we maintain this balance? If nature and conscience are humanity’s guiding values, and so many are alienated from nature while ignoring the voice of conscience – how do we guide the amours to goodness? In *Reveries*, Rousseau reveals that in lieu of nature in social man, as suppressed by social faculties, virtue is the sentiment that ought to guide man in civil society, in the social world. Although this sentiment is unnatural, it allows one to feel internally subordinated to duty.<sup>133</sup> Virtue facilitates the notion of being good for oneself – as in self-love of *amour propre* – into the virtuous ability to be good for others in society. Cooper recommends a governance of *amour propre* in the civil state by the naturalness of *amour de soi* in order to affectively re-naturalize the denatured citizen of the social world.

If *amour propre* is not well governed by the naturalness of *amour de soi*, then vices brought on through desire and the enslavement of passions are introduced into the human faculties. Before the evil of vice can enter the human’s will (or desire), the strength of *amour propre* must first overcome the naturalness of *amour de soi*. This is accomplished through the introduction of other sentiments that grow out of *amour propre* to inflict one socially while further alienating them from the natural. The primary sentiment that can disrupt the balance of *amour de soi* and *amour propre*, is pride. All humans in the social world have some level of pride that exists within them, but it is precisely this level of pride that can disrupt the scales that balance the amours. Pride can easily lead to vanity, which allows the individual will to take over the internal virtues of humans, and eventually leads to a path of corruption. It is important to

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<sup>131</sup> Rousseau, 1987: 56.

<sup>132</sup> Cooper, 1999: 107. Italicized in original.

<sup>133</sup> Cooper, 1999: 106.

note, however, that some level of pride in the social world is necessary. Although it is not a natural sentiment, it empowers one to feel compassion for others in a community and to “provide the basis for widespread civic virtue and public-spiritedness”— which are qualities necessary for a successful and equitable social contract and to combat against the evils of corrupt government and subordination.<sup>134</sup>

Within *amour propre*, pride and vanity are the two branches that must also remain in balance. Cooper explains these two sentiments as both referring to one’s need to feel worthy – of having a sense of self-worth.<sup>135</sup> Obviously this is rooted in the self-love of *amour propre*, but further, the levels of each sentiment are discovered in the pursuit of this self-worth – they are defined by the means used to attain the ends. Cooper deciphers this further by clarifying:

When the standard governing an individual’s pursuit of self-esteem is rooted in reality – when one’s sense of self-worth depends upon achieving something whose value is real and not merely a product of opinion – pride is at work. When the standard is rooted in appearance or opinion, one is ruled by vanity.<sup>136</sup>

As we can see, pride is a more natural sentiment and it is more tied to reality as attaining something that is tangible rather than trying to satisfy the whims of public opinion, as with vanity. Ultimately, Rousseau provides a formula that allows humans in the social world to keep these sentiments of *amour propre* in line, with the standard that, “[s]elf-love is good when it extends or deepens existence and bad when it does the opposite.”<sup>137</sup> Thus, pride is only good when it ultimately contributes to serving a higher purpose – such as existence, well-being, and the healthy flourishing of all beings, life, and nature.

Vices such as pride and vanity can lead to the imbalance of *amour de soi* and *amour propre*, and in turn, they transform into greed. It is critical to keep these vices in check, as they work to combat and suppress the natural as well as the good virtues that are necessary for a cohesive social contract. These vices also stand for temptation, as Rousseau believes that evil will prevail if allowed for those taken with *amour propre*: “So much more profitable to these is the ignorance of vice than the knowledge of virtue is

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<sup>134</sup> Cooper, 1999: 129.

<sup>135</sup> Cooper, 1999: 163.

<sup>136</sup> Cooper, 1999: 163.

<sup>137</sup> Cooper, 1999: 171.

to those.”<sup>138</sup> Further, the character of one’s *amour propre* ultimately determines one’s political behavior and governs the political choices that one makes. The following sections of this chapter will evaluate the reality of the common good in the United States to evaluate actions driven by *amour propre* and *amour de soi* in modern society.

### THE PRACTICAL APPLICATION OF THE COMMON GOOD

As reviewed in the introduction to this chapter, there are many conceptions of the common good today, and many are being added in order to fit the arguments of those introducing the adapted and updated concepts. In order to determine what is considered as the common good in modern society, it would be useful to investigate a modern social and political document that has interpreted and enforced the common good legally for centuries. This document is the Constitution of the United States of America along with the subsequent Bill of Rights, and has been the primary equivalent to a practical and tangible social contract for Americans since its inception. Specifically, contained within the preamble of the US Constitution and adopted with the original document in 1789, is the General Welfare Clause:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.<sup>139</sup>

This preamble, in conjunction with the doctrine of state police power, which “includes the authority states retain to promote health, safety, and general welfare,” in theory, represents a document advocating for the protection of the common good of its people.<sup>140</sup> Unfortunately, this has not been enforced and upheld as strongly as the Founders likely intended it to be.

Essentially, what this legal document and social contract means is that the government has been instituted in the United States, and the welfare of the people is a primary concern and responsibility of the government. Over time, due to conflicting Supreme Court cases that questioned other aspects of the

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<sup>138</sup> Rousseau, 1987: 53.

<sup>139</sup> Alpheus Thomas Mason and Donald Grier Stephenson, Jr. *American Constitutional Law: Introductory Essays and Selected Cases*. 14<sup>th</sup> ed. Pearson: Upper Saddle River, NJ, 2005, 701.

<sup>140</sup> Mason and Stephenson, 2005: 322.

Constitution – such as taxation and eminent domain – the police power’s strength remains weak, but continues in its existence nonetheless. In *Brown vs. Maryland* (1827), less than a century into the contract’s life, Chief Justice Marshall referred to the police powers as “residual,” due to the lessened rights provided with it because of the economic importance of taxation and eminent domain (or more directly, property).<sup>141</sup> With that being said, the doctrine has been eroded further by the judicial discrepancies over the vested rights provided by the Constitution. Vested rights emphasize “the sanctity of private property and demands that legislation not unduly or unreasonably restrict rights of ownership.”<sup>142</sup>

This doctrine will be discussed in more detail in the following chapter in the section regarding property, but it is important to note that the economic implications within vested rights tend to supersede the natural rights contained in the protection of health, safety, and the general welfare of the people. It is a tangible reflection of the abilities and faculties within *amour propre* that have overtaken the good of all – the common good – within our modern social society. It is a manifestation of the suppression of and alienation from wilderness and nature. On another level, also to be explained later, is the role that greed and consumption have played as values held in modern society, which the government upholds and protects, over the people who make up its citizenry. These doctrines are antinomies and this tension represents the balancing act that plays out in modern society between *amour de soi* and *amour propre*. As will be shown in the following section, this internal tension occurs within each individual when determining the good of society. The balance of *amour de soi* and *amour propre* within each person determines the political decisions that one will make: a decision focused on the good of all and the common good, or one that benefits that individual personally without regard to the good of all – otherwise known as the personal good or individual will. To be clear, however, one can have a personal good that aligns with the common good, but the individual will (or particular will) is generally based on desire: which is thus ruled by the social passions of *amour propre*.

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<sup>141</sup> Mason and Stephenson, 2005: 322.

<sup>142</sup> Mason and Stephenson, 2005: 322.

## CASE STUDY: HYDRAULIC FRACTURING AND THE COMMON GOOD

What does the common good look like in modern society? If we recall in the beginning of the chapter, a common good is considered as something that is equally for the good of all, and specifically, it must be intrinsically good. Further, it must be rooted in the natural sentiment of *amour de soi*, to be morally good. Taking Rousseau's first principles of self-preservation, well-being, pity, and *amour de soi*, we can deduce that anything which promotes life, flourishing, happiness, good-health, and compassion ought to be considered as something held commonly good. If existence is the highest good of natural man, and social man as well, it would be logical to suggest that clean air, clean water, clean land and habitat, and biodiversity would all be manifestations of the common good as they benefit all forms of life, equally, in flourishing. The following analysis will investigate the risks of hydraulic fracturing in order to determine if the extraction technique can be considered as a common good.

Natural gas is commonly touted as a clean bridge fuel and public good that will lead us away from the era of fossil fuels into the widespread usage of renewable energy.<sup>143</sup> It is also framed as lowering overall costs of natural gas to American families. Specifically, one industry supported website claims that each US family will save \$900 in 2014;<sup>144</sup> presumably the savings are created from elevated natural gas production and decreased natural gas prices that will consequently create more jobs in the United States. Using Deneulin and Townsend's description of global public goods (i.e. that through a shared community enterprise, something can be a public good if the good of the community is developed through that shared enterprise) we can investigate further if hydraulic fracturing can be considered as a public good. The United States is an important focus as the nation is currently increasing the natural gas supply with shale plays far beneath domestic soil, with a fracking boom that is already well underway.

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<sup>143</sup> Zachary Lees. "Anticipated Harm, Precautionary Regulation and Hydraulic Fracturing." *Vermont Journal of Environmental Law*, 13, 2012.

<sup>144</sup> CRED. "Frequently Asked Questions." Coloradans for Responsible Energy Development. Studyfracking.com. 2013 <http://studyfracking.com/faq/>.

## WATER CONSUMPTION AND WASTEWATER

The most important ingredient in fracking fluids is the fresh water base used for mixing chemicals to create the fluids necessary frack each well. According to the federal Environmental Protection Agency (EPA), around 35,000 wells are drilled and fracked per year, and the water used annually is up to 100 billion gallons.<sup>145</sup> Each well uses anywhere from 50,000 to 7.8 million gallons of water per fracturing treatment.<sup>146</sup> Depending on the geology of the well along with other factors, only a portion of the potentially radioactive flowback water (i.e. produced water in the depressurized stage that follows the active frack treatments) is recoverable at the surface.<sup>147</sup> Estimates vary widely, but 15% to 80% of the flowback is recoverable; while the remaining amount stays within the well.<sup>148</sup>

Fresh water used to mix with fracking fluids and proppants (i.e. usually silica sand, but can also be other forms of granulated particles, such as coffee grounds) is sourced from a variety of locations, based on the region being fracked. In most states, operators are not required to report the sourcing of fresh water for fracking, although, the majority of water in riparian states (i.e. the Midwest and East Coast) is pulled from surface and/or groundwater in the area. In more arid regions, such as Texas and parts of Colorado, trucking or pipelining in the water may be necessary.<sup>149</sup> However, other sources are being sought out for water, due to an expected increase in drilling and water usage for fracking in the upcoming years. Antero Resources is currently looking into building a pipeline that would carry water nearly 75 miles from the Ohio River to the company's drilling sites, in hopes to cut water costs per well by \$600,000.<sup>150</sup> In Texas, "water wildcatting" has become an issue for some, and a "lucrative business" for

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<sup>145</sup> Sandra Rintoul. "Analytical Method Provides Safe Hydraulic Fracturing." *Pollution Engineering*, August 2012.

<sup>146</sup> Hannah Coman. "Balancing the Need for Energy and Clean Water: The Case for Strict Liability in Hydraulic Fracturing Suits." *Environmental Affairs*, 39(131), 2012.

<sup>147</sup> Timothy T. Eaton. "Science-based Decision-making in Complex Issues: Marcellus Shale Gas Hydrofracking and New York City Water Supply." *Science of the Total Environment*. 2013, 461-462.

<sup>148</sup> Coman, 2012.

<sup>149</sup> Jean-Philippe Nicot and Bridget R. Scanlon. "Water Use for Shale-Gas Production in Texas, U.S." *Environmental Science and Technology*. 46, 2012: 3580-3586.

<sup>150</sup> TCE: Americas. "Fracker Looks to Tap the Ohio River." *The Chemical Engineer Today*. September, 2013: 11.

others.<sup>151</sup> This practice has become common in the Eagle Ford shale play in Texas, where “some landowners are receiving anywhere from ten to eighty cents per barrel of water,” meanwhile, there is no legal recourse for the affected neighbors when their groundwater supply has been depleted.<sup>152</sup>

Although not all flowback is recovered from the well, the wastewater that is retrieved needs a location for disposal or treatment for reuse. Once again, the locations for disposal vary according to the geology of the region. The produced water contains a high salt content as well as fracking chemicals (i.e. biocides and other constituents), and in the Marcellus shale region, produced water contains naturally occurring radioactivity from the shale.<sup>153</sup> Ultimately, this means that the produced water is not safe to discharge into surface waters and in order to be treated by publically owned treatment works (POTWs), specifically in Pennsylvania, “the amount of oil and gas wastewater must not exceed 1% of the average daily volume of waste handled by the POTW.”<sup>154</sup> In the West, where the geology is rocky and the climate is arid, deep underground injection wells are the norm for wastewater disposal. Nearly 90% of all wastewater is injected underground.<sup>155</sup> Conversely, in Pennsylvania, there are only 7 wells suitable for underground injection of wastewater. Thus, Pennsylvania has been motivated to look for alternatives in dealing with wastewater. The most typical solution is to dispose of the produced water in other states and locations. In fact, between “2008 and 2011, Marcellus Shale development had occurred to some extent in 34 Pennsylvania counties. However, wastewater from this activity had been treated and/or disposed of in over 70 counties across the region, including in Ohio, West Virginia, and Maryland.”<sup>156</sup> In one year, from 2010 to 2011, produced water that was trucked from Pennsylvania to Ohio for injection well disposal

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<sup>151</sup> Taelor A. Allen. “The South Texas Drought and the Future of Groundwater Use for Hydraulic Fracturing in the Eagle Ford Shale.” *St. Mary’s Law Journal*. 44, 2013: 513.

<sup>152</sup> Allen, 2013: 513.

<sup>153</sup> Barry G. Rabe and Christopher Borick. “Conventional Politics for Unconventional Drilling? Lessons from Pennsylvania’s Early Move into Fracking Policy Development.” *Review of Policy Research*, 30(3), 2013: 321-240.

<sup>154</sup> Kelvin B. Gregory, Radisav D. Vidic, and David A. Dzombak. “Water Management Challenges Associated with the Production of Shale Gas by Hydraulic Fracturing.” *Elements*, 7, 2011: 181-186.

<sup>155</sup> Shariq, Linsey. “Uncertainties Associated with the Reuse of Treated Hydraulic Fracturing Wastewater for Crop Irrigation.” *Environmental Science and Technology*, 47, 2013.

<sup>156</sup> Brian G. Rahm, Josephine T. Bates, Lara R. Bertoia, Amy E. Galford, and David A. Yoxtheimer. “Wastewater Management and Marcellus Shale Gas Development: Trends, Drivers, and Planning Implications.” *Journal of Environmental Management*, 120, 2013: 109.



increased from 26 million gallons to 106 million gallons.<sup>157</sup> These injection wells have also been linked to the increased earthquake activity in Oklahoma and earthquakes near the Youngstown, Ohio area ranging from 2.7 to 4.0.<sup>158</sup> Most recently, there is an ongoing investigation to see if an earthquake in Greeley, Colorado was correlated with any wastewater injection wells in the area.

Lacking adequate disposal and/or treatment facilities, Pennsylvania has looked to utilize the produced water for other uses, such as de-icer for roads in the winter.<sup>159</sup> Another solution for produced water in partial usage in California and Wyoming, is the application of produced water for livestock and agricultural watering – if the wastewater contains less than 35 mg/L of oil and grease. Although the chemical’s effects on the uptake of crops has not yet been studied, under the Clean Water Act’s Subpart E of 40 CFR Part 435, the National Pollution Discharge Elimination System (NPDES) provides the ability for the reuse of produced water from oil and gas operations west of the 98th meridian, for agricultural and livestock watering.<sup>160</sup> There are a lot of uncertainties associated with these types of activities. For usage of wastewater on crops and livestock in the west, the uncertainties are high, including: “the quantity of [treated wastewater] applied as irrigation, the concentrations and toxicities of chemical constituents in [treated wastewater], and the bioaccumulation characteristics of exposed crops;” which requires more time to study these uncertainties in order to reveal potential long-term effects.<sup>161</sup>

## THE BOOM AND BUST OF FRACKING

Natural gas production and consumption in the United States is quickly increasing, and is set to take over coal as the primary source of domestic electricity consumption by 2035. In 2012, natural gas contributed to 30% of the electrical supply in the US, falling just short of coal at 37%.<sup>162</sup> Many areas have experienced the drilling boom that follows successful exploratory wells in the shale plays that contain

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<sup>157</sup> Charles W. Schmidt. “Estimating Wastewater Impacts from Fracking.” *Environmental Health Perspectives*, 121(4), 2013: 117.

<sup>158</sup> Rabe and Borick, 2013.

<sup>159</sup> Jason Schumacher and Jennifer Morrissey. “The Legal Landscape of “Fracking”: The Oil and Gas Industry’s Game-Changing Technique is its Biggest Hurdle.” *Texas Review of Law and Politics*, 17, 2013: 239-303.

<sup>160</sup> Shariq, 2013.

<sup>161</sup> Shariq, 2013: 2435.

<sup>162</sup> United States Energy Information Administration. “AEO 214 Early Release Overview.” EIA. 2013, [http://www.eia.gov/forecasts/aeo/er/early\\_elecgen.cfm](http://www.eia.gov/forecasts/aeo/er/early_elecgen.cfm).

natural gas: from the Marcellus shale boom in Pennsylvania and surrounding areas to the boom in Garfield County on the Western Slope of Colorado. In the beginning of 2007, half of Colorado's drill rigs were located in Garfield County.<sup>163</sup> By the end of 2013, *The Denver Post* reported that the bust in Garfield County had begun and only one drilling company now remains in the Piceance Basin. Evidence of the past boom can be witnessed in the remaining 10,000 actively producing wells in the area, lay-offs, and drilling support companies (i.e. water haulers, well monitors, etc.) left without a market for their businesses.<sup>164</sup> As one Encana spokeswoman stated, "We're taking a break from drilling... We're not taking a break from production." The bust was not inflicted because the shale ran out of gas; rather, it was simply that the activity of drilling had ended. The companies are still gaining profits from the gas produced; however, the support industries in drilling and other local businesses are no longer needed, which essentially creates a bust for the local area.

The boom and bust cycle associated with fracking has occurred in other regions as well. Despite the thriving fracking industry in Texas, areas of the Barnett shale play have experienced the bust that Garfield County, Colorado is currently feeling. While many locations are still experiencing the beginning of the boom, Texas is feeling the effects of the frack bust. With over 14,000 wells drilled in the Barnett shale since 2000, drilling in Texas has "all but stopped" due to plummeting natural gas prices.<sup>165</sup> An additional problem compounding the cease in drilling, is the 100,000 "defunct wells in Texas that remain uncapped, many of them surrounded by the kind of toxic sludge that drillers once routinely dumped in unlined pits."<sup>166</sup> The contaminated land around these defunct and polluted wells is also known as brownfields. These brownfields will continue to pose a hazard to the health of the public and the local environment until the contamination is completely remediated, and further, Shutkin warns of the

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<sup>163</sup> Valerie J. Brown. "Putting the Heat on Gas." *Environmental Health Perspectives*. 115(2): 2007, 76.

<sup>164</sup> Nancy Lofholm. "Hard Times, Deep Worries." *The Denver Post*. December 22, 2013: 1B, 4B.

<sup>165</sup> Nate Blakeslee. Fracked into a Corner? *Texas Monthly*, October 2012: 22.

<sup>166</sup> Blakeslee, 2012: 22.

spreading of contamination to neighboring locations as well as the “attractive nuisance” that unsecured, or uncapped, wells present to nearby children, pets, livestock, and wildlife.<sup>167</sup>

As the drilling boom associated with fracking is spreading, the risk of bust is always close behind as we see above with Western Colorado and the Barnett shale in Texas. Currently, the Bakken shale play in North Dakota as well as the Niobrara shale play in the Denver-Julesburg region – Colorado, Wyoming, Nebraska, and Kansas – are both in the drilling boom portion of the cycle. Since the boom began, North Dakota has surpassed both California and Alaska to become the United States’ largest oil producer after Texas.<sup>168</sup> The state has enjoyed low unemployment rates, a stable housing market, and a state budget surplus with the boom. In fact, truck drivers have the potential to make \$80,000 annually, and local businesses and restaurants are thriving, offering high hourly wages to incoming employees.<sup>169</sup> There have even been “reports of exotic dancers leaving Las Vegas to dance in Williston, North Dakota, with claims that some exotic dancers had earned as much as \$3000 per night.”<sup>170</sup>

The Niobrara shale play in the Denver-Julesburg region of Colorado has brought a similar drilling boom to northern part of the state. Colorado is far more populated than North Dakota, yet, particular areas of Northern Colorado are seeing an increase in drilling, particularly north of Denver in the geological region that extends through Weld County on the east side of US Interstate 25. In 2013, the gas and oil industry along with private companies in this area spent \$4 billion in drilling costs and, according to *The Denver Post*, they intend to increase the drilling and spending throughout 2014.<sup>171</sup> Greeley, Colorado, in Weld County, is also enjoying increased revenues and the lowest vacancy rate on apartments it has seen in two decades, while receiving investments that benefit the local fire and school districts as well as local homeowners, according to the president of Upstate Colorado Economic Development.<sup>172</sup> Although, it

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<sup>167</sup> Shutkin, 2001:64

<sup>168</sup> Edwin Dobb. “The New Oil Landscape.” *National Geographic*, 223(3), 2013.

<sup>169</sup> Joshua P. Fershee. “North Dakota Expertise: A Chance to Lead in Economically and Environmentally Sustainable Hydraulic Fracturing.” *North Dakota Law Review*, 87(485), 2011: 485-504.

<sup>170</sup> Fershee, 2011: 493.

<sup>171</sup> Mark Jaffe. “The Next Oil Boom.” *Denver Post*, December 15, 2013b: 1K, 7K.

<sup>172</sup> Jaffe, 2013b.

must be noted that not all local Greeley residents are onboard with the fracking boom that is occurring in their community.

Coexisting with the boom is the darker side of fracking, which includes higher crime rates, violence, and overpopulation in areas are not equipped, nor prepared, to handle the drastic change in their communities. In Williston, North Dakota, not only has the boom put a strain on local infrastructure and community members; but it has also increased pressure on the Williston Police Department to keep up with the influx of new people. Alongside the sharp increase of traffic accidents and traffic misdemeanors, both up 30%, is the “increased levels of drug use, domestic violence, and prostitution,” while the local schools are trying to cope with the overcrowding of nearly double the normal student population.<sup>173</sup> Highlighting the fact that “benefits from the oil boom are being widely dispersed,” a 2013 *National Geographic* article recently illuminated the reality in North Dakota from the “big city” traffic jams in farm country with fracking related vehicles to the displaced locals who can no longer afford the fivefold increase in rents and buyouts of apartments by local oil companies to house workers.<sup>174</sup> Not only do these areas risk the effects that a bust could bring on to the local communities, but the social costs ought to be weighed against the economic benefits that drilling booms will bring in order to determine if natural gas is a common good, or a common bad.

#### HEALTH EFFECTS AND RISKS OF HYDRAULIC FRACTURING

One of the highest profile issues in the fracking debate is the potential for water contamination. Water contamination has many routes in fracking, including: groundwater or aquifer contamination due to unstable cement casings in the well head, well blowouts from faulty equipment at the well head, accidental spills, improper waste disposal into lakes and streams, geological uncertainty, and defective liners for produced water storage pits.<sup>175</sup> It is important to note here that in cases of drilling and actual

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<sup>173</sup> Fershee, 2011: 494.

<sup>174</sup> Dobb, 2011: 56.

<sup>175</sup> Charles Davis. “The Politics of “Fracking”: Regulating Natural Gas Drilling Practices in Colorado and Texas.” *Review of Policy Research*, 29(2), 2012b: 177-191. This listing of facts also includes a citation from Robert Holahan and Gwen Arnold. “An Institutional Theory of Hydraulic Fracturing Policy.” *Ecological Economics*, 94, 2013: 127-134.

fracking operations, the industry has criticized and questioned all studies and reports that have been released regarding any instances of aquifer or groundwater contamination from fracking fluids; yet there have been many reports and complaints of water contamination, litigation in multiple states, and contested findings of contamination. Further complicating the issue is the fact that it is common for some residual, historical methane to exist in some water wells and aquifers in the Marcellus shale region.<sup>176</sup> A study by Dr. Robert Jackson from Duke University recently found methane existing in 115 of 141 tested shallow drinking water wells; however, the study does not actually prove that hydraulic fracturing caused the contamination of the wells.<sup>177</sup> Conveniently, geochemical analysis has now been able to find specific methane and strontium signatures (i.e. chemical traits that are specific to gas and oil operations), that links shallow drinking water well contamination to natural gas due to natural migration and seepage of the gas.<sup>178</sup> Although now under fire from the industry and some legislators, the EPA did find a linkage between unsatisfactory well integrity and polluted groundwater in Pavillion, Wyoming.<sup>179</sup>

Another easy path for contamination into waterways is through faulty equipment. One case cites that direct exposure from faulty equipment released fracturing fluid directly into a pasture, and within one hour killed 17 cattle.<sup>180</sup> Exposure to petroleum hydrocarbons in fracking fluids and produced water have been known to cause reproductive issues, lesions of internal organs, dermatological problems, and neurological problems in animals such as cows, horses, goats, llamas, chickens, dogs, cats, and koi.<sup>181</sup> Likewise, fracking can cause nearby wildlife to suffer from many health and habitat issues. One study found that not only do mule deer tend to relocate to areas without gas and oil development, but the survival rate for mule deer near gas and oil operations decreased, as did the study area's deer population

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<sup>176</sup> Eaton, 2013.

<sup>177</sup> Mark Fischetti. "Fracking and Tainted Drinking Water." *Scientific American*, 309(3), 2013.

<sup>178</sup> Stephen G. Osborn, Avner Vangosh, Nathaniel R. Warner, and Robert B. Jackson. "Methane Contamination of Drinking Water Accompanying Gas-Well Drilling and Hydraulic Fracturing." *PNAS*, 108(20), 2011.

<sup>179</sup> Mike Mitka. "Rigorous Evidence Slim for Determining Health Risks from Natural Gas Fracking." *JAMA*, 207(20), 2012.

<sup>180</sup> Michelle Bamberger, and Robert E. Oswald. "Impacts of Gas Drilling on Human and Animal Health." *New Solutions*, 22(1), 2012.

<sup>181</sup> Bamberger and Oswald, 2012.

by 45% in one year.<sup>182</sup> The authors of this study also link the importance of animal health as an indicator for human health, mostly due to the rapid rate of reproduction in cattle, specifically. Similarly, Theo Colborn from the Endocrine Disruption Exchange in Paonia, Colorado believes that wildlife can provide insight on the effects that such chemicals may have on humans, before the problems become widespread in the human population.<sup>183</sup> Endocrine disrupters are commonly found “widely distributed in the environment and found in many industrial products, such as pesticides, plastics, and detergents, these synthetic chemicals can affect animals and possibly humans, in minute quantities, disrupting development and fertility in subtle ways.”<sup>184</sup> Endocrine disrupters such as benzene and other carcinogens are found in the fumes and vapors caused by the well completion process.

Methane is the primary gas within natural gas. A study conducted by Dr. Robert Howarth of Cornell University, now heavily scrutinized and denied by the industry, found losses of 3.6% to 7.9% in shale gas from various releases in the well completion stage, through venting and equipment leakages, in processing, transportation, storage, and during distribution.<sup>185</sup> With the global threat of climate change, it is critical to notice the importance of methane emissions and how they affect our atmosphere. Methane is considered a potent greenhouse gas (GHG), although it has a shorter life in the atmosphere than does carbon dioxide. This latter point is how shale gas can be sold to the public by the industry as a cleaner burning fuel. However, studies are indicating that methane is much more powerful than once believed with recent testing of indirect effects on atmospheric aerosols.<sup>186</sup> These effects on aerosols were observed in March 2011, when Pinedale Town, Wyoming (population of 2,030), experienced ozone pollution totals that measured at higher levels than “the worst day reported by Los Angeles in 2010.”<sup>187</sup> The Front Range

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<sup>182</sup> Bamberger and Oswald, 2012.

<sup>183</sup> Theo Colborn. “Environmental Estrogens: Health Implications for Humans and Wildlife.” *Environmental Health Perspectives*, 103(Supp 7), 1995.

<sup>184</sup> Stephen Bocking. *Nature’s Experts: Science Politics and the Environment*. Rutgers UP: New Brunswick, 2006: 144.

<sup>185</sup> Robert W. Howarth, Renee Santoro, and Anthony Ingraffea. “Methane and the Greenhouse-Gas Footprint of Natural Gas from Shale Formations: A Letter.” *Climatic Change*. Springer Open Access. 2011.

<sup>186</sup> Howarth, et al., 2011.

<sup>187</sup> Davis, 2012b. Population data provided by United States Census Bureau. “American FactFinder.” *US Department of Commerce*, 2010.  
<http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

of Northern Colorado is also experiencing declining air quality, as a study by the National Oceanic and Atmospheric Administration (NOAA) and the University of Colorado, Boulder has recently shown. Not including pipeline and distribution losses, the Denver-Julesburg region is experiencing a 4% loss of natural gas into the air, which occurs during fracking and completion operations.<sup>188</sup> Other chemicals and toxins that are released into the air during the well completion process are hydrogen sulfide, sulfur dioxide, fine particulate matter, ground level ozone, and also volatile organic compounds (VOCs) such as benzene, ethylbenzene, toluene, mixed xylenes, and other known carcinogens.<sup>189</sup>

A large majority of the environmental impacts are directly felt in rural areas where most fracking occurs, such as the potential for water contamination, direct exposure to blowouts or equipment failures, and effects on livestock and agricultural land. Other impacts, such as air quality, have the potential to migrate into urban areas and affect large swaths of people. An upcoming 2014 study reporting the association of natural gas wells and birth defects in rural Colorado, claims that mothers living within a 10-mile radius of the well had a higher chance of delivering a child with congenital heart defects (CHDs) and possibly neural tube defects (NTDs).<sup>190</sup> The upcoming study cited two previous studies, in which one found that mothers in Texas living in swaths exposed to the highest ambient benzene levels had 2.3 times higher chances at delivering a child with spina bifida, compared to areas with lower benzene levels. The study considers 0.9 to 2.33 parts per billion by volume (ppbv) to be high ambient benzene levels. Interestingly, the levels measured in Northern Colorado ranged from 0.6 to 6 ppbv and Western Colorado's levels measured from 0.03 to 22 ppbv.<sup>191</sup> Charles Davis argues that the location of the drilling matters in the sense that aquifers and groundwater in rural areas tend to be a major source of drinking water for rural populations.<sup>192</sup> Further complicating this matter is that at the turn of the millennium, rural

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<sup>188</sup> Jeff Tollefson. "Air Sampling Reveals High Emissions from Gas Field." *Nature*, (online news), 2012.

<sup>189</sup> Bob Weinholt. "The Future of Fracking: New Rules Target Air Emissions for Cleaner Natural Gas Production." *Environmental Health Perspectives*. 120(7), 2012.

<sup>190</sup> Lisa M. McKenzie, Ruixin Guo, Roxana Z. Witter, David A. Savitz, Lee S. Newman, and John L. Adgate. "Birth Outcomes and Maternal Residential Proximity to Natural Gas Development in Rural Colorado." *Environmental Health Perspectives*, (Advance publication, January 28), 2014.

<sup>191</sup> McKenzie et al., 2014.

<sup>192</sup> Davis, 2012b.

counties began to rapidly grow, “attracting thousands of new residents and swallowing up huge tracts of once barren land,” which reversed the decline of rural populations that took hold in the 1990s.<sup>193</sup>

### HYDRAULIC FRACTURING AS A COMMON GOOD

With the extensive list of issues and risks that correlate with fracking, it is difficult to imagine how fracking for natural gas can be a common good, as articulated by Rousseau. Paolo Vineis argues that modern interpretations of the common good believe that “the pursuit of happiness [is] best attained through private initiative, and therefore [through] the private usage of natural resources.”<sup>194</sup> If we use this modern and economic interpretation of the public good – rather than the common good – natural gas does seem to satisfy some facets of this interpretation through job creation, economic gains, cheap energy, and the ability to extend a consumptive lifestyle out for at least the next 50 years. With the case study on fracking risks and dangers above, this extraction process tends to be more aligned with the economic interpretation of common good provided at the beginning of the chapter, which is actually considered a public interest or public good. Koons argues this transition in the meaning of common good to public good could be due to the rise in corporate society since the Industrial Revolution. She contends that: “As law and society were transformed in the twentieth century, the common good became equated with the good of corporations, to be supported without interference from the government.”<sup>195</sup> But can fracking for natural gas even be considered an economic public good, as the industry advertises and claims? According to Deneulin and Townsend, public goods are considered as non-excludable as well as non-rival. To be non-excludable, all must have access to the good and consumption of the good cannot exclude anyone. To be non-rival, “a person’s consumption does not reduce the benefits of someone else’s consumption of the good.”<sup>196</sup> Natural gas, I would argue, does not qualify as a public good under either of these requirements. First, not all people have access to the product, and to consume natural gas, one must have the infrastructure and be able to pay for it. Second, while currently one person’s consumption does

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<sup>193</sup> Shutkin, 2001: 53.

<sup>194</sup> Paolo Vineis. “Public Health and the Common Good.” *Journal of Epidemiology & Community Health*. 68(2), 2014: 97.

<sup>195</sup> Koons, 2012: 362.

<sup>196</sup> Deneulin and Townsend, 2007: 20.



not *seem* to diminish another's ability to consume, for everyone who uses natural gas in the present there will be less (or none) for others in the future.

Firmly, I contend that natural gas is not a common good in the classical conception of the idea either. It is the antithesis to the common good as it not only causes a plethora of health issues for humans and animals, but it also: creates air and water pollution, is highly consumptive of freshwater that cannot be recovered for potable uses, causes surface pollution of the land and overall land use changes, infiltrates into the food chain, causes vehicle traffic and accidents, increases unsustainable development, is a source of light and air pollution, is an economic risk to property values, and it is not assisting with the flourishing of human life and is rather, setting it up for future disaster through dependence on fossil fuels to consumptive luxuries and desires that further feed the passions of *amour propre*. Fracking, as previously stated, is touted by the industry as providing a public good and this is hidden by the fact that it is difficult to see the risks and issues on a broad level, as fracking is a localized issue – it does not occur everywhere – and it does provide a source of jobs and domestic US energy. The overall sentiment in Williston, North Dakota, as portrayed by Edwin Dobb, is that “taking the bad with good may indeed be inescapable, even if the good isn't good for long and the ‘public good’ often favors private interests.”<sup>197</sup> This case study shows that the common good has become endangered through fracking and has taken on a definition that creates an empty misnomer which stands for the opposite of the true meaning of the common good. Thus, the next section will show some potential pathways for renewing the common good in modern society.

#### THE RENEWAL OF THE COMMON GOOD

We are currently at a social tipping point where society and Earth's citizens, although mostly denatured by the social order, must re-naturalize in order to rediscover place and renew the abilities of *amour de soi* and the common good. It is crucial for the further existence for life as we know it. Rousseau saw the necessity for humans to renew these natural instincts, and believed that humans, as animals, have the ability to strengthen our capacities of self-preservation, if threatened: “In any animal I see nothing but an ingenious machine to which nature has given senses in order for it to renew its strength and protect

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<sup>197</sup> Dobb, 2013: 56.

itself, to a certain point, from all that tends to destroy or disturb it.”<sup>198</sup> Hydraulic fracturing may just be severe enough of a threat and risk that these natural instincts will strengthen in order to protect and preserve the human species, as well as all life on Earth.

To be discussed in depth in the next chapter, the people of Colorado seem to have growing and strengthening instincts of self-preservation and well-being. This can be shown through democratic voting to ban hydraulic fracturing in multiple communities across the state. As required by the structure of Rousseau’s *Social Contract*, these popular sovereign acts of the general will – or the will of the people that is based on the common good of all – depict the sentiment of the overall community and through democracy, the government should work to enforce these choices. On another level, various nations and US cities have realized the need to protect life and to renew the common good for the good of all – humans, nature, animals, plants, and all life within the community.

For example, in 2008, Ecuador adopted a new national constitution that contains a section dedicated to the Articles of the Rights of Nature. Not only do these Articles provide humans with fundamental human rights, but they also extend these rights to that of Pachamama, or Nature. The Articles provide nature with the “right to exist, persist, maintain, and regenerate its vital cycles, structure, functions, and its processes in evolution.”<sup>199</sup> Further, and importantly, the Articles provide “every person, people, community, or nationality” agency over making the decisions for what is best for nature.<sup>200</sup> The Articles even contain a provision for the extraction of non-renewable energy sources that assigns the government the duty in making decisions wherein the “State will establish the most efficient mechanisms for the restoration, and will adopt the adequate measures to eliminate or mitigate the harmful environmental consequences.”<sup>201</sup> Finally, the document provides the people of Ecuador “the right to

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<sup>198</sup> Rousseau, 1987: 44.

<sup>199</sup> Global Alliance for the Rights of Nature. “Rights of Nature Articles in Ecuador’s Constitution.” *Global Alliance for the Rights of Nature*, 2014, <http://therightsofnature.org/wp-content/uploads/pdfs/Rights-for-Nature-Articles-in-Ecuadors-Constitution.pdf>.

<sup>200</sup> Global Alliance for the Rights of Nature, 2014.

<sup>201</sup> Global Alliance for the Rights of Nature, 2014.

benefit from the environment and form natural wealth that will allow wellbeing.”<sup>202</sup> This social contract in Ecuador is unprecedented in its inception and shows a clear renewal of the common good that it provides in convention to the people of Ecuador. Furthermore, it shows that the dichotomy that limits one to living in either nature or society can be overcome to incorporate a more holistic view of society.

A second convention and contract is the Pittsburgh City Bill of Rights, which was designed to protect of the health, safety, and welfare of the residents of Pittsburgh by instating a total ban on all hydraulic fracturing activities within the city. Adopted in 2010, the City Council recognizes that fracking “poses a significant threat” to life and “believes that the protection of residents, neighborhoods, and the natural environment constitutes the highest and best use of the police powers” that are possessed by the city.<sup>203</sup> The renewal of the common good and the re-naturalization of the denatured is highly evident in this document as Section 4 provides rights specifically to the Pittsburgh residents as well as the natural environment – and specifically water.

All residents, natural communities and ecosystems in Pittsburgh possess a fundamental and inalienable right to sustainability, access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City...Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh.<sup>204</sup>

As does the Ecuador Bill of Rights, the Pittsburgh City Bill of Rights also allows the residents of the City to vote on behalf of the larger natural community around them. Also unique and groundbreaking in this piece of legislation is the classification of humans and nature as having a “fundamental and inalienable” right.<sup>205</sup> This document takes a unique pathway for a US city, in the sense that it reverses and nullifies the federal law of corporate personhood. This prohibition effectively eliminates the possibility of strong individual wills and/or private interests to prevail over the common good and general will of the people.

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<sup>202</sup> Global Alliance for the Rights of Nature, 2014.

<sup>203</sup> City of Pittsburgh. “An Ordinance to Protect the Health, Safety, and Welfare of Residents and Neighborhoods of Pittsburgh by Banning the Commercial Extraction of Natural Gas with the City; Establishing a Bill of Rights for Pittsburgh Residents; and Removing the Legal Powers from Gas Extraction Corporations within the City.” *City of Pittsburgh*. Alleghany County, Pennsylvania, 2010.

<sup>204</sup> City of Pittsburgh, 2010.

<sup>205</sup> City of Pittsburgh, 2010.

As we will see in the next chapter, this is in contrast to a Pennsylvania piece of legislation that enforces consequences on municipalities within the state that take this form of action – while upholding the private interests and the corporate good.

The final example of legislation that shows the potential for a renewal of the common good is the Sustainability Bill of Rights that was adopted in the City of Santa Monica, California in 2013. Citing the adoption of such Bill of Rights in Ecuador and Pittsburgh, the legislation advocates for and urges governments:

to adopt a new paradigm based upon recognition that both individual human beings and natural communities or ecosystems have fundamental environmental rights which should be recognized by the law, that the health of the world’s populations and ecosystems depends on the full protection of these rights, and that asserted corporate rights can no longer be allowed to take precedence over these rights to human and environmental health and well-being...<sup>206</sup>

Like the Pittsburgh City Bill of Rights, Santa Monica’s Sustainability Bill of Rights allows for the right to clean water for the residents and allows for the residents to act in agency for the natural communities and ecosystems in that the residents are allowed to “bring actions to protect groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City.” Although this piece of legislation does not ban fracking as the Pittsburgh convention, it does, however, pave the way for the citizens to vote and instate a ban, if they use the paths of democracy that has been provided to them.

#### CONCLUDING THOUGHTS ON FRACKING AND ROUSSEAU’S COMMON GOOD

As we have seen, modern interpretations of the common good have expanded to consider other goods as public, held in common, or collective. The classical conception of the common good, according to Aquinas, is when “the good is realized in the natural relationships in and through which human beings achieve their well-being.”<sup>207</sup> Rousseau portrays this conception with his description of the common good, which is in opposition to the various other modern conceptions which insert economics to define the common good in the individual or public interest. I argue with Rousseau for a renewal of the classical

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<sup>206</sup> City Council of Santa Monica. “An Ordinance of the City Council of the City of Santa Monica Establishing Sustainability Rights.” *City Council of Santa Monica*. Santa Monica, California, 2013.

<sup>207</sup> Deneulin and Townsend, 2007: 27.

conception of the common good, for society must return to this notion that includes the larger collective community, in order to maintain within a safe operating space for life on earth. With a dominant focus on economics, the modern mainstream conceptions of public and common goods is perpetuating the destruction of habitats required for life around the planet. Climate change and environmental degradation has been accentuated by the proliferation of hydraulic fracturing. The risks and dangers correlated with fracking place the extraction process in contention with the classical conception of the common good. Although natural gas is touted by proponents of the industry as a public good, I have argued that it cannot fit the definition for public good as it is not non-rival and it is not non-excludable. Through various pieces of government legislation and fracking bans, we can see that there is a renewal of the spirit of the common good through upholding of rights for citizens and nature. Through this advocacy for rights, we can see there is a slight fracture in the façade of the social construct of nature and the dichotomy between nature and society, which is allowing some connections with our natural instincts to further develop that ensure the health, safety, and welfare of the people.

I have attempted to show in this chapter that Rousseau's first principles – self-preservation, well-being, pity, and *amour de soi* – have been transformed in society into the social traits of conscience and compassion. These faculties are rooted in *amour de soi* and work toward the community development of the common good. The negative characteristics of *amour propre* – pride, greed, and corruption – have been induced by humanity's entrance into society from the state of nature, are ultimately driven by passion and material desires. If the amours can be properly balanced and maintained, Rousseau feels that there is the chance for a society to overcome the dichotomy of restricting one to live in nature or in the social world. Next I attempted to explain how Rousseau's conception of the common good can be brought closer to practice with a case study of hydraulic fracturing. From this case, it can be deduced that this form of energy extraction works against all aspects of the common good to advance the passions and desires of *amour propre*. In order to apply practice to theory further, the legal application of the common good was illuminated in such government documents as the Ecuador Constitution, the City of Pittsburgh's Bill of Rights, and the City of Santa Monica's Community Bill of Sustainability Rights.

Rousseau feels as if one must attain the moral ability to realize the common good in order to determine the general will. In the following chapter, the legal representation of the common good will be explained with Rousseau's notions of the general will, as expounded in *The Social Contract*. Through a proper balance of *amour de soi* and *amour propre*, one has the potential to recognize the common good. The common good, as will be argued, is actualized through a majority rule act of popular sovereignty in which the result reflects the general will of the community, according to Rousseau's *Social Contract*. The Sovereign must then enact the general will of the people as law. In order to effectively portray a practical example of the general will in action, examples from the case study on hydraulic fracturing will be utilized again. However, due to the improper balance of *amour de soi* and *amour propre*, it will be shown that in the case of fracking, the Sovereign is currently captivated by the passions of *amour propre*, which highly endangers the cohesiveness of the social contract.

## CHAPTER 4

### THE THEORETICAL AND PRACTICAL GENERAL WILL

Thus far it has been shown that Rousseau has a naturally rooted conception of the common good and of the morals and principles of humans in society. By finding the proper balance of *amour de soi* and limiting the desires of *amour propre*, one may be able to overcome the dichotomy that limits one to living either in nature or the social world, in order to realize that humans are a part of nature and we live in multiple layers of reality in which we are surrounded by the urban environment, the built environment, as well as the natural environment. In other words, we are able to recognize place in the community where we live which, therefore, may facilitate the ability to recognize what is commonly good for all members to promote flourishing and well-being in one's community. Further, it was shown that hydraulic fracturing is antithetical to promotion of well-being and the common good of a community, which is being recognized in such US cities as Pittsburgh and Santa Monica.

In *The Social Contract*, Rousseau sees the common good as expressed through the general will of the people. This idea is based on Rousseau's argument in the *Discourse on the Origin of Inequality* where he sees private individuals as being the sole magistrates who ought to sanction the laws of the people themselves.<sup>208</sup> In order to do this effectively, according to Rousseau, humans need to live a simple lifestyle that is prescribed by nature. Otherwise, he argues, "most of our ills are of our own making" – referring to the passions of *amour propre* taking over which is the root of our social problems.<sup>209</sup> He believes that "human understanding owes much to the passions," which he feels are lesser social faculties than the capacity of humans to reason.<sup>210</sup> These passions and desires are the causes of strong individual wills, which are typically contrary to that of the common good, and, often times, to the general will as well. Rousseau is clear in his idea that the common good of society may be realized through the general will, and that it ought to be for the good of all, not only for expressing individual wills, passions, and desires:

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<sup>208</sup> Rousseau, 1987: 28.

<sup>209</sup> Rousseau, 1987: 42.

<sup>210</sup> Rousseau, 1987: 45-46.

“[O]nly the general will can direct the forces of the state according to the purpose for which it was instituted, which is the common good. For if the opposition of private interests made necessary the establishment of societies, it is the accord of these same interests that made it possible. It is what these different interests have in common that forms the social bond, and, were there no point of agreement among all these interests, no society could exist. For it is utterly on the basis of this common interest that society ought to be governed.”<sup>211</sup>

Rousseau is not naïve, and does not think that it is entirely impossible for the general will to be aligned with an individual will. However, it is critical that the general will is based on that which is good for the society – for all humans, animals, and nature included – for the social contract to be effective and cohesive. As will be discussed later in the chapter, the general will is opposed to Rousseau’s notion of the “will of all,” which refers to the private interests of individual wills that form an aggregate. Although at times this private will may supersede the general will, Rousseau feels that these expressions of desire into law will not be durable or long lasting. When the common good does prevail, the general will can force these passion-driven individuals to accept a law which they feel oppresses their freedom.

In this chapter, an elucidation of Rousseau’s conception of the general will from *The Social Contract* will lead to the modern contention and debate over the meaning of his ideas for the popular sovereignty of the people. Although many argue that Rousseau does not directly advocate for direct democracy, I will show through the course of his works that he does, in fact, promote direct democracy through popular sovereignty, rather than taking a more representative form as some scholars argue. However, as introduced above, Rousseau does see the danger in *amour propre*, and the corruption of private interests in the expression of individual wills. If overcome by the expression of the common good, private wills may feel as if they are being oppressed, and as if their freedom has been taken from them. Rousseau’s solution for this feeling is that those with dominating individual wills ought to be forced to be free. Initially, this view may seem authoritarian, but through using the majority rule structure of the US government as an example, it will be shown that minority rights exist to alleviate the threat of authoritarianism in this notion. If the majority common good as expressed through the general will is for the good of the community, than the individual desire was only a private interest. As will be shown in this

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<sup>211</sup> Rousseau, 1987: 153.



chapter, clearly existing in modern society are the individual interests that are mostly based on private property rights and the driving passions of *amour propre*.

In Colorado, local initiatives have been introduced to the people allowing for local decisions on whether they feel hydraulic fracturing will be beneficial or detrimental to their local communities through direct democracy. Through acts of sovereignty by the people, the cities of Longmont, Broomfield, Lafayette, and Fort Collins have each enacted laws that ban fracking within each jurisdiction. These acts of the general will have been challenged based on the individual denial of certain private property rights – in the case of fracking, the encroachment of property rights are mostly based on split estate issues: surface versus sub-surface property rights. Since these bans and moratoriums on fracking were chosen by the general will in certain Colorado cities, the industry and state government have begun litigation proceedings against these communities regarding the bans, with the argument that local control in gas and oil operations is unlawful based on the 1992 Colorado Supreme Court Case, *Voss vs. Lundvall Bros, Inc.* Rousseau, ultimately, would argue that these issues can only be solved through a monarchy, rather than a democracy. Size matters for Rousseau, as he feels that a large country can only be ruled by a King. However, the particular form of representative democracy in the United States has a structure that allows for direct democracy in each municipality and jurisdiction, which can build to the federal level. This format of democracy will ensure that even in a highly populated nation, each community has the ability to enact the common good of their local society through the general will, in order to assure that each community will flourish and improve their well-being.

#### ROUSSEAU'S SOCIAL CONTRACT AND THE GENERAL WILL

*The Social Contract* is Rousseau's most renowned book which entails his perception of a practical political solution to counterbalance the passions of *amour propre*, to alleviate the potential for corruption in order to advance the lawful notions of the common good, and to portray his vision on the development of society after man left the state of nature to pursue societal bonds with fellow humans. Rousseau believes that once humans have formed a body through his interpretation of the social contract, "one cannot harm one of the members without attacking the whole body," which refers to the "two-fold

relationship” that Rousseau sees humans in society as holding a duty and an interest with all other members of one’s community.<sup>212</sup> In *The Social Contract*, upon entering into the contract, Rousseau clearly delineates the order which he believes society ought to follow:

At once, in place of the individual person of each contracting part, this act of association produces a moral and collective body composed of as many members as there are voices in the assembly, which receives from this same act of its unity, its common *self*, its life and its will. This public person, formed thus by union of all the others formerly took the name *city*, and at present takes the name *republic* or *body politic*, which is called *state* by its members when it is passive, *sovereign* when it is active, *power* when compared to others like itself. As to the associates, they collectively take the name *people*; individually they are called *citizens*, insofar as participants in the sovereign authority, and *subjects*, insofar as they are subjected to the laws of the state.<sup>213</sup>

Rousseau explains above that the sovereign is considered as the body politic made up of individual citizens, when it is active. In other words, the people of the community (or society) make up the sovereign power when it is active – when it is expressing the general will through voting. However, as will be discussed later, Rousseau also uses the term Sovereign to depict the leader of a nation, who enforces the will of the people and institutes the general will as law.

As eluded to above, Rousseau argues the reason why humans enter the contract is to lessen the potential for corruption and societal passions that can override the good of the people. In the two-fold relationship of duty and interest amongst humans, he believes that the “voice of duty replaces physical impulse and right replaces appetite” to invoke natural principles and virtues which are rooted in *amour de soi* – thus creating a feeling of pity and interest in others.<sup>214</sup> As mentioned earlier, Rousseau firmly believes that the appetite and passions of *amour propre* lead to slavery, but abiding by the law that the community has made for itself, on the other hand, is liberty.<sup>215</sup> This civil right to liberty and the right to “proprietary ownership” of all that one possesses are the ways in which Rousseau envisions corruption being combatted in modern society. This two-fold relationship of society creates natural mutual obligations amongst members – natural because “their nature is such that in fulfilling them one cannot

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<sup>212</sup> Rousseau, 1987: 150.

<sup>213</sup> Rousseau, 1987: 148-149.

<sup>214</sup> Rousseau, 1987: 150.

<sup>215</sup> Rousseau, 1987: 151.

work for someone else without also working for oneself,” which presents a true vision of equality amongst citizens within a society.<sup>216</sup> If this relationship is upheld, then, Rousseau argues, the general will always will be right, as long as all citizens “constantly want the happiness of each” member of the community. Happiness, for Rousseau, is found in the flourishing and well-being of society, as found in the common good and expressed as the general will of the sovereign body politic.

An act of sovereignty, for Rousseau, is one which prohibits a hierarchy between a “superior and an inferior,” and rather, is a contract, or convention, that is based on the equality of the individual with the whole of the community. He envisions this body politic as occurring when several humans in a community consider “themselves to be a single body,” in which they hold in common a “single will” that concerns their “common preservation and the general well-being.”<sup>217</sup> Therefore, the act of sovereignty by the body politic, or the people, is considered legitimate, “because it has the social contract as its basis; equitable, because it is common to all; useful, because it can have only the general good for its object; and solid, because it has the public force and the supreme power as a guarantee.”<sup>218</sup> Due to the lack of hierarchy and the fact that “no man has a natural authority over his fellow-man,” Christopher Bertram argues that “since force produces no right, conventions remain as the basis of all legitimate authority among men.”<sup>219</sup> Not only is this convention legitimate, equitable, useful, and solid – but it is also upholds the principles and morals of nature and natural man and expresses them in the realm of modern society. This genuine compassion and caring for fellow humans and life around us are values that are rooted in *amour de soi*, and, moreover, are the internal emotions which invoke a sense of place and respect for all that surrounds us.

The general will is the act of sovereignty that depicts the interest of the community, based on their mutual obligations and collective decisions. These collective decisions are an aggregate of each member of society, as they are to vote on the common good individually with the votes to be tallied

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<sup>216</sup> Rousseau, 1987: 157.

<sup>217</sup> Rousseau, 1987: 203.

<sup>218</sup> Rousseau, 1987: 158.

<sup>219</sup> Christopher Bertram. *Routledge Philosophy Guidebook to Rousseau and the Social Contract*. Routledge: London, 2004: 53.

collectively. Charles Taylor explains this act of sovereignty through the expression of the general will as “[p]art of the background understanding that makes sense of our act of voting for each one of us is our awareness of the whole action, involving all citizens, each choosing individually but from among the same alternatives, and the compounding of these microchoices into one binding, collective decision.”<sup>220</sup> This microchoice, Taylor further explains, is the general will of the people, which “is created openly, in the sight of everyone.”<sup>221</sup> Beyond voting generally, in what form is the general will specifically expressed in a democracy? Some would argue that Rousseau simply meant a majority rule act of popular sovereignty, which is an argument I am sympathetic with, as will be shown. Yet others feel that Rousseau meant that the people were not to vote on laws generally – only that the representatives make the laws and the people vote for their representatives, as the US representative democracy governmental system is currently structured. While still others feel that Rousseau really intended to take a more authoritarian form of democracy, which will be explained below.

#### ROUSSEAU’S NOTIONS OF POPULAR SOVEREIGNTY AND DEMOCRACY

Popular sovereignty is considered as “the notion that the will of the people is to be discovered at the ballot box, not merely in a document framed in 1787, and that *the people’s will should at all times prevail*.”<sup>222</sup> In fact, popular sovereignty was so crucial to the founding of America, that in the opinion of *Marbury vs. Madison* (1803), Chief Justice John Marshall grounded his decision on “two fundamental innovations of the American Revolution’s ideology” – popular sovereignty and the constitution.<sup>223</sup> The Federalists and the Anti-Federalists debated over which form of popular sovereignty America should utilize during the Founding, and the subsequent practices of political life. The usage of majority rule instilled a general fear for the potential of a tyranny of the majority amongst the Founders: “[t]hus, while it is clear that democracy must guarantee the expression of the popular will through majority rule, it is equally clear that it must guarantee that the majority will not abuse its power to violate the basic and

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<sup>220</sup> Charles Taylor. *Modern Social Imaginaries*. Duke UP: Durham, NC, 2004: 24.

<sup>221</sup> Taylor, 2004: 122.

<sup>222</sup> Mason and Stephenson, 2005: 326. Italics added.

<sup>223</sup> William M. Weicsek. *Liberty under Law: The Supreme Court in American Life*. The Johns Hopkins UP: Baltimore, 1988: 37.

inalienable rights of the minority.”<sup>224</sup> In Federalist #10 of *The Federalist Papers*, Madison expressed this fear of tyranny of the majority as considering it a “superior force of an interested and overbearing majority.”<sup>225</sup> However, with the instatement of the US Constitution, the Framers adopted measures that would mindfully limit the majority (i.e. the Electoral College in presidential elections) while also protecting the rights of the minority. Hence, majority rule has been the effective form of tallying the general will through popular sovereignty since the inception of the country under a social contract that determines the structure of the government.

Some commentators argue that Rousseau only advocates for a representative form of democracy, rather than a more direct form of democracy – wherein the people, or the sovereign body politic, vote on the people who will represent them and make law based on what that individual sees fit for the whole.<sup>226</sup> Rousseau very implicitly states his opinions on representation of the sovereign in *The Social Contract*:

Sovereignty cannot be represented for the same reason it cannot be alienated. It consists essentially as the general will, and the will does not allow of being represented. It is either itself or something else; there is nothing in between. The deputies of the people, therefore, neither are nor can be its representatives; they are merely its agents. They cannot conclude anything definitively. Any law that the populace has not ratified in person is null; it is not a law at all. The English people believes itself to be free. It is greatly mistaken; it is free only during the election of the members of Parliament. Once they are elected, the populace is enslaved; it is nothing.<sup>227</sup>

This passage from within Book III is clear in explaining Rousseau’s stance on representation: it becomes a way for social and political responsibility to wane, except for when electing those to represent the people. In the past decades, many have interpreted Rousseau as a proponent of representative democracy in order to justify our current United States political system. Taking what they claim is a more pragmatic

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<sup>224</sup> Eric Chenoweth and James P. Young. “Majority Rule/Minority Rights: Essential Principles.” *Democracy Web*, Democracyweb.org, n.d.

<sup>225</sup> Alexander Hamilton, James Madison, and John Jay. *The Federalist Papers*. Clinton Rossiter, ed. Penguin Putnam, Inc.: NY, 1999: 45.

<sup>226</sup> Marini, Frank. “Popular Sovereignty but Representative Government: The Other Rousseau. *Midwest Journal of Political Science*. 11(4), 1967: 451-470.

<sup>227</sup> Rousseau, 1987: 198.

approach, they believe that Rousseau was essentially advocating for representative government.<sup>228</sup> I contend that Rousseau approved of representatives as agents that would enact the popular sovereign microchoices of the general will; however, I do not agree that this should allow the citizenry to alienate their will to a representative. When the people choose to pass on their right to make decisions for the common good to a representative government, even if the representatives are of their choosing, they are still alienating their general will and exchanging it for the individual will of a legislator. The citizens are then slaves to another's will that cannot consider the common good because the general will of the people will be unknown. In other words, the people are forfeiting their sovereignty, their voice, their freedom to the choices and authority of a legislator that may or may not represent their needs. Under Rousseau's notion of the social contract, each individual would cast a vote that expresses their personal will which is shaped by the empathetic notions felt toward their fellow community, or pity, which enlightens the citizen to the common good of the people. This vote would depict the common good of the community based on a majority decision. At this point, as explained before, the Sovereign would enact a law that reflects the common good of society. Rousseau's notion of representation is in contrast to the reality of today's representative government.

During the Founding of the US, George Mason, whom wrote the Virginia Declaration of Rights, feared that the US Constitution would institute a form of "moderate Aristocracy" that would degenerate into an "oppressive Aristocracy."<sup>229</sup> When Alexis de Tocqueville came to America in 1830, he was amazed by the general equality of condition. Tocqueville considered the American colonies of the century prior as "eminently democratic" and was impressed with the equality that became "more strongly marked" by the time of his visit.<sup>230</sup> In Rousseau's explanation on the classification of governments in *The Social Contract*, he speaks of monarchy, aristocracy, and democracy. Aristocracy, Rousseau expounds, is

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<sup>228</sup> Robin Douglass. "Rousseau's Critique of Representative Sovereignty: Principled or Pragmatic?" *American Journal of Political Science*. 57(3), 2013: 735-747.

<sup>229</sup> Hamilton et al, 1999: vii.

<sup>230</sup> Tocqueville, Alexis de. *Democracy in America*. Signet Classic: New York, 2001: 49.

divided into three forms: natural, elective, and hereditary. Of the three types of aristocracy specifically, he believes the elective form is “the best.”<sup>231</sup>

Incorrectly, Frank Marini interpreted Rousseau’s preference of elective aristocracy to apply against all forms of government, rather than just within a comparison of the three forms of aristocracy, as the ‘proof’ he needed to support his pragmatic argument of representative democracy. After listing some of the benefits Rousseau saw in elective aristocracy, Marini makes his mistake in interpretation by stating: “The government which Rousseau called elective aristocracy and which he felt was the best of all governments (subject to his disinclination to consider one absolutely best) is a government which we would call representative democracy.”<sup>232</sup> On this point, however, Rousseau does clarify his “inclination”; in Chapter III of *The Social Contract*, entitled, “Classification of Governments,” he describes aristocracy as restricting “the government to the hands of a small number, so that there are more ordinary citizens than magistrates”<sup>233</sup> This point exposes Rousseau’s true preference in government. Just prior to his description of magistrates in aristocracy, he argues for a higher number of magistrates: “the more numerous the magistrates, the more closely the corporate will approaches the general will, whereas under a single magistrate, the same corporate will is, as I have said, merely a particular will.”<sup>234</sup> As will be shown in the upcoming practical application of the general will, George Mason may have been correct in his premonition of the decline in the strength and equality of the governmental structure in the United States based on the Constitution and founding framework.

#### HYDRAULIC FRACTURING AND THE ROLE OF THE SOVEREIGN

As discussed in chapter 3 regarding the common good, the City of Pittsburgh has enacted a city Bill of Rights which effectively bans hydraulic fracturing within the city limits. Likewise, in Colorado, cities such as Longmont, Broomfield, Lafayette, and Fort Collins have voted through an act of sovereignty to make the microchoice to establish bans on local gas and oil development within their

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<sup>231</sup> Rousseau, 1987: 181.

<sup>232</sup> Marini, 1967: 464-465.

<sup>233</sup> Rousseau, 1987: 178.

<sup>234</sup> Rousseau, 1987: 178.

communities, based on the common good of their fellow members of their community and due to their duty and interest in those living around them. As legitimate acts of popular sovereignty, as with most votes in the US, the choices were made based on majority rule. Under this standard, Fort Collins passed the ban on fracking 56% to 44%, and Lafayette passed the ban 60% to 40%.<sup>235</sup> Other cities across the state are also pursuing the enactment of the general will and are completing the required steps to introduce local microchoices over fracking, such as Loveland, where the decision will be up to residents in an upcoming special election.

Not only have these communities faced obstacles in getting the microchoice on the ballot, but now after the vote has been cast, these cities are now facing lawsuits from the State of Colorado as well as the Colorado Oil and Gas Association (COGA), a private association representing the interests of the industry. In light of the lawsuits, Democratic State Representative Jared Polis penned an open letter to the CEO of COGA, Tisha Schuller. In this letter, he begins by asking COGA to “please stop suing the communities I represent.”<sup>236</sup> He continues by explaining that in a democracy, elections are important. He exposes the private group COGA for spending nearly \$900,000 in political ads and literature to promote fracking in Colorado, in order to defeat the four various ballot measures at the time in Longmont, Broomfield, Lafayette, and Fort Collins – three of which Polis represents.<sup>237</sup> Interpreting Polis in the language of Rousseau, his primary concern over the issue is that the people within these communities have expressed the common good through the popular sovereignty as tallied through the general will; however, the Sovereign is not enacting the will of the people due to economic interests and individual wills. Further, Polis argues that fracking is drastically decreasing home values as well as the “health and quality of life of community residents,” – which is directly in conflict with the common good.<sup>238</sup>

This becomes a further issue since under the US structure of government, local cities and municipalities are at the smallest units of government. These cities and municipalities are held within a

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<sup>235</sup> Mark Jaffe. “Oil and Gas Industry sues Lafayette and Fort Collins on Fracking Bans.” *The Denver Post* (December 3, 2013a).

<sup>236</sup> Jared Polis. Open Letter to the COGA. *Facebook.com* (December 4, 2013).

<sup>237</sup> Polis, 2013.

<sup>238</sup> Polis, 2013.



local county government, and the counties are concentrated into a state government with a variety of districts and jurisdictions within. As mentioned earlier in the chapter, size matters for Rousseau. In *The Social Contract*, Rousseau contends that “[i]n every body politic there is a *maximum* force that it cannot exceed, and which has often fallen short by increasing in size. The more the social bond extends the looser it becomes, and in general a small state is proportionately stronger than a large one.”<sup>239</sup> With a current population of over 318,156,000 people in the United States, according to the US Census Bureau, the nation hardly falls under the category of a small state.<sup>240</sup> However, under the divisive structure of the US government from smaller entities into one large entity – the federal government – the nation has a structure that has the potential to equally and universally enact the expressions of the general will of each community, municipality, or city. In many states, local governments are given widespread authority to enact laws to represent the common good and general will of the people living in a community. Regarding certain economic practices, however, the local governments in some states become far more restrained, if not restricted altogether from making decisions over local control of laws and land use. This is the case in states such as Pennsylvania and Colorado where there exist state laws that restrict the ability of local governments and citizens to make the choice to allow or deny gas and oil operations in their communities.

Pennsylvania has recently enacted a 175 page state law titled the Pennsylvania Unconventional Gas Well Impact Fee Act, better known as Act 13, which has been described as “a return to a much earlier period in American environmental governance when state involvement was far more deferential to industry preference.”<sup>241</sup> The Act was passed in 2012 to amend existing gas and oil regulations in the state and to begin a method of collecting impact fees from the industry.<sup>242</sup> The impact fee instated by the Act, however, is a mechanism to prevent any local government within the state from “taking environmental precautions beyond those set forth in legislation, through the threat of withdrawing revenues in the event

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<sup>239</sup> Rousseau, 1987: 167.

<sup>240</sup> United States Census Bureau. “US and World Population Clock.” *US Department of Commerce*, 2014. <http://www.census.gov/popclock/>.

<sup>241</sup> Rabe and Borick, 2013: 329.

<sup>242</sup> Michael F. Smith and Denise P. Ferguson. “‘Fracking Democracy’: Issue Management and Locus of Policy Decision-Making in the Marcellus Shale Gas Drilling Debate.” *Public Relations Review*, 39, 2013.

of local ‘noncompliance’.<sup>243</sup> Thus, the state is restricting any local government from having autonomous land use authority within their jurisdiction in favor of statewide “aggressive resource development.”<sup>244</sup> Further legislation within Act 13 consists of the lowest impact fees in the US, underfunded environmental programs, expedited permit issuance, and strict limitations on the role of the Pennsylvania Department of Environmental Protection (DEP).<sup>245</sup>

Like Pennsylvania, Colorado holds the precedent in state control of regulation by the Colorado Oil and Gas Conservation Commission (COGCC) based on a 1992 Colorado State Supreme Court decision, *Voss v. Lundvall Bros., Inc.* The state has traditionally allowed local governments some authority in land use and planning decisions, also known as “home rule” powers.<sup>246</sup> The case came to the State Supreme Court upon a series of appeals based on the home rule city of Greeley, Colorado passing an ordinance to ban all gas, oil, and hydrocarbon wells within the city limits. The Court held that home rule power did not cover any decisions regarding gas and oil due to the “state’s interest in efficient development and production of oil and gas.”<sup>247</sup> Therefore, while a local government cannot ban gas and oil activity, the localities are still allowed the authority to decide specific wastewater decisions and are allowed to create setback requirements (i.e. regulations that require drilling to be conducted a certain amount of feet from residential housing and public buildings). The current elected Colorado Governor, John Hickenlooper, has recently adopted and instated new air regulations, in order to address the declining air quality in the state. In an attempt to satisfy the needs of the industry while aiming to protect the public health of citizens in the state, the state air quality commissioners voted to pass stronger rules that regulate both VOC and methane emissions from gas and oil operations, much to the behest of the

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<sup>243</sup> Rabe and Borick, 2013: 331.

<sup>244</sup> Rabe and Borick, 2013: 331.

<sup>245</sup> Rabe and Borick, 2013.

<sup>246</sup> Charles Davis. “Fracking and Sub-state Federalism: State Preemption of Local Regulatory Decisions in Colorado.” Colorado State University, n.d.  
<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CDEQFjAC&url=http%3A%2F%2Fregulation.upf.edu%2Fexeter-12-papers%2FPaper%2520237%2520-%2520Davis%25202012%2520-%2520Fracking%2520and%2520Sub-state%2520Federalism.pdf&ei=TOszUNHqNqq56AHZ84G4Aw&usg=AFOjCNHgBn4jROKfpc41LtEAn4e1O-anMw&sig2=bftRQTTLy698ipkOgf7YA>, pp. 1-18.

<sup>247</sup> *Voss v. Lundvall Brothers Inc. Supreme Court of Colorado*. 830 P.2d 1061 Colo 1992.

industry trade associations such as COGA and the Colorado Petroleum Association (CPA).<sup>248</sup> Colorado is the first state to regulate methane gas in the US, a leading contributor to GHGs in the atmosphere.

Essentially, the state preemption laws such as Act 13 and the precedent set by *Voss v. Lundvall Bros., Inc.* (1992) disregard any notion of the general will through an allowance of absolute license for the industry, regardless of what the people in the communities will. Rousseau would consider the making of laws without the will of the people as a “contradictory convention to stipulate absolute authority on one side and limitless obedience on the other.”<sup>249</sup> Further, Rousseau would see these actions as acts of despotism in which the people have been enslaved:

If scattered men, however many they may be, were successively enslaved by a single individual, I see nothing there but a master and slaves; I do not see a people and its leader. It is, if you will, an aggregation, but not an association. There is neither a public good nor a body politic there. Even if that man had enslaved half the world, he is always just a private individual. His interest, separated from that of others, is never anything but a private interest.<sup>250</sup>

In this passage, it becomes apparent that not only does Rousseau see the danger in a representative government, but also that he strongly advocates against this form of popular sovereignty and government as wrongly expressing the general will as the will of an individual. In these situations, the Sovereign is ignoring the will of the people – the general will – in order to satisfy the material and egotistical passions of *amour propre*. For Rousseau, the practical examples provided above act in direct conflict with the role of the Sovereign, as an entity to oversee and enforce the general will – for might does not make right for Rousseau.

Within the academic literature on fracking, the debate over who ought to control oil and gas development in a location – local, state or federal governments – is prolific throughout the discourse. With mixed laws regarding the regulation of gas and oil operations amongst the states, should the federal government regulate these energy extraction activities? Should there be a national standard with the rampant hydraulic fracturing boom and potentially harmful widespread effects to land, air, water, and life,

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<sup>248</sup> Bruce Finley. “State Toughens Air Rules.” *The Denver Post*, February 24, 2014:1A, 3A.

<sup>249</sup> Rousseau, 1987: 145.

<sup>250</sup> Rousseau, 1987: 147.

or ought the local communities that are directly affected be able to set the standards for their own communities, even if that collective standard is to ban the economic activity altogether? This is the current topic of debate within the literature, in which some scholars believe that regulation is sufficient at the state level, while others argue for federalization of fracking regulation. There is also the more nuanced position of a cooperative federalism or a shared regulatory duty between the federal government and the state. Although this is a common debate in the academic literature on hydraulic fracturing, most authors concede that federal oversight is not likely when taking into consideration the stronghold of state commissions and governments.

In his “policy neutral approach” to fracking, David B. Spence concludes that federal oversight is unnecessary and premature at this point. Yet, in a classic realist orientation, Spence allows room for federal regulation if certain aspects of production posed a national risk or if it would “implicate national interests.”<sup>251</sup> The author reviews the three approaches to fracking regulation: federal regulation, cooperative federalism, and state regulation. He also sees a route for federal regulation of fracking issues, if problems begin to spill over state lines to become interstate issues. In response to Spence’s 2013 article, Michael Burger criticizes Spence for having no support for his implications of natural gas extraction in discussing the national interest. Spence cites implications such as: “the nation’s emergency preparedness, national security, energy security, air quality [in comparison to coal], and climate change policy” which Burger views as “generally support[ing] the promotion of the fracking industry.”<sup>252</sup> Burger sees no conflict between national interest and the federalizing of fracking, which does make Spence’s argument have less strength. Further, Spence’s argument for keeping regulation at the state level, according to Burger, is that the economic costs of federal oversight would outweigh the benefits of natural gas to the industry and to the nation. With a reversal of the exemptions created in the Halliburton Loophole – i.e. the exemption of fracking from federal environmental laws such as: the Safe Drinking Water Act (SDWA),

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<sup>251</sup> David B. Spence “Federalism, Regulatory Lags, and Political Economy of Energy Production.” *University of Pennsylvania Law Review*, 161, 2013: 434.

<sup>252</sup> Michael Burger. “Response: Fracking and Federalism Choice.” *University of Pennsylvania Law Review*, 2013, 150: 162.

the Clean Water Act (CWA), the Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) also commonly known as Superfund, and the Emergency Planning and Right to Know Act (EPCRA) – Spence may be correct in assuming the costs would skyrocket and could potentially make hydraulic fracturing an economically unbeneficial venture. Stephen Bocking claims it is common for many governments and interested parties to refrain from taking action, sometimes justified by uncertainties and unknowns, yet, the delays in action are typically not because, “they are waiting for more accurate predictions... but because they perceive that such action would affect their interests, by reducing economic growth or through impacts on specific industries.”<sup>253</sup> In other words, for the industry and government to admit that fracking for natural gas would cause harm to the environment and the communities around the gas fields and wells, would create more expenses for both entities to regulate the process.

The possibility for interstate contamination and other interstate issues to arise is relatively high, as we saw in chapter 3 regarding the interstate transportation of waste due to Pennsylvania’s lack of disposal locations. This topic is also highly debated within the fracking and federalism literature, and is an argument that supports federalization of regulation as well as a cooperative approach to regulation. Burger argues that due to the “dramatic increases in the scale of fracking operations” there are higher risks of “both direct interstate pollution and cumulative impacts that warrant federal response.”<sup>254</sup> Further, Rabe and Borick utilize the cross-border pollution issues that have been brought on by the lack of disposal locations in Pennsylvania due to the geology of the Marcellus shale. They claim there is “considerable tension” between Pennsylvania and Ohio regarding the transport of produced water across state lines, and the tension has only worsened since the passage of Act 13.<sup>255</sup> Pennsylvania has sought to lease land in New York for further disposal of fracking wastes, while Ohio has increased the fees for disposal in the hope of lessening the amount of produced water transported into the state. Further, New

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<sup>253</sup> Bocking, 2006: 128.

<sup>254</sup> Burger, 2013: 161.

<sup>255</sup> Rabe and Borick, 2013: 337.

Jersey citizens have urged the passing of a ban on out of state produced water disposal, although a waste facility in the state has been accepting the waste.<sup>256</sup>

With the arguments from the academic literature above, the risks discussed in chapter 3, and the unrepresentative actions of the Sovereign in allowing exemptions to federal regulation, there ought to be enough evidence to allow local, yet cooperative, regulation of fracking on a multitude of levels, if not enough to instill a total ban on the extraction process. However, a recent investigation into the human consequences of the fracking boom by the *Houston Chronicle* illuminates the most fundamental reason for a cooperative approach to the regulation of hydraulic fracturing. The newly released investigation was conducted by the *Houston Chronicle* over the past year to reveal the “deadly legacy” of the fracking boom, which reviewed and analyzed 18,000 injury and illness claims from workers in the fracking industry as well as OSHA data regarding accidents since 2007.<sup>257</sup> The investigation found that OSHA only investigates accidents that cause three or more workers to be hospitalized, or in cases of worksite deaths. Lise Olsen translates this limitation as the equivalent of OSHA reviewing only 150 out of 18,000 oil and gas related injuries and illnesses in the past six years, in the state of Texas alone.<sup>258</sup> Shockingly, in 2012, 79 Texans lost limbs through dismemberment, 82 were crushed, 92 had injuries from burns, and broken bones accounted for 675 injuries, as was reported to insurance carriers. More devastatingly, the oil and gas exploration related death toll in Texas peaked in 2012 at 65 deaths for the year. From 2007 to 2012, there were a total of 663 oil and gas exploration related deaths in the United States. This averages out to a little more than 11 oil and gas exploration related deaths per month in the US, over the last 5 years.<sup>259</sup> A portion of the problem can be blamed on a lack of federal OSHA inspectors as well as improper training for oil and gas sites. This problem is furthered when gas and oil companies bar OSHA inspectors from inspections, insisting that OSHA officials obtain an inspection warrant before entry onto

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<sup>256</sup> Barbara Warner and Jennifer Shapiro. “Fractured, Fragmented Federalism: A Study in Fracking Regulatory Policy.” *Publius: The Journal of Federalism*, 2013, 43(3).

<sup>257</sup> Lise Olsen. “Drilling Boom, Deadly Legacy.” *The Houston Chronicle*, February 25, 2014: 1-12.

<sup>258</sup> Olsen, 2014.

<sup>259</sup> Olsen, 2014.

the well site.<sup>260</sup> OSHA has no power when it comes to the continuance of a well site after uncovering “life-threatening working conditions,” as they do not carry the authority to shut down a well site nor drilling rigs. The Texas Railroad Commission does, however, hold this power; but this regulation entity has no lines of communication or any form of coordination with OSHA.<sup>261</sup>

Elizabeth Burleson argues that rather than regulating fracking from one level of government, the various facets of hydraulic fracturing require dedicated and collaborative governance across all levels of government.<sup>262</sup> She cites the Delaware River Basin Commission (DRBC) as an example of this governance. The DRBC has regulated water decisions amongst the states of Delaware, New Jersey, Pennsylvania, and New York, ever since President Kennedy instated the commission in 1961 to satisfy the problems of coordination “among over 75 federal, interstate, state, agencies with mandates covering disparate and overlapping aspects of watershed management along the 330 miles of the Delaware River.”<sup>263</sup> The DRBC is a federal-interstate compact government agency.<sup>264</sup> As seen in the state of Texas and the non-communication between the Texas Railroad Commission and OSHA, it is necessary as well as feasible, to create a system of governance that reaches across all levels of government to address oil and gas concerns in a timely manner, with an open dialogue across all levels and between all actors. Most importantly, however, is the need for all individuals wills to be expressed regarding the issues that affect their own local communities most. The general will is the most important facet of a democracy, and the more citizens that get involved, the more democratic a society becomes. As John Dewey argued, it may be possible to solve the problems of democracy with more democracy.<sup>265</sup>

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<sup>260</sup> Olsen, 2014.

<sup>261</sup> Olsen, 2014.

<sup>262</sup> Elizabeth Burleson. “Cooperative Federalism and Hydraulic Fracturing: A Human Right to a Clean Environment.” *Cornell J.L. & Pub. Pol’y*, 2012, 22(289): 1-69.

<sup>263</sup> Burleson, 2012: 26.

<sup>264</sup> Olsen, 2014.

<sup>265</sup> Dr. William Niemi. “POLs 117 Lecture on John Dewey.” Western State College of Colorado, April 19, 2008.

## ROUSSEAU'S CONCEPTION OF THE INDIVIDUAL WILL

As previously mentioned, Rousseau defines an individual will as a personal interest that is driven by the passions of *amour propre*. These wills are generally rooted in vanity, greed, and driven by corruption as dictated by one's desires. Rousseau uses the terminology "will of all" to explain the aggregate of individual wills that may supersede the general will on occasion. The individual will is contrary to the notion of the general will and the common good in the sense that it does not allow all members to "act in concert and to fulfill the purpose for which [the government] is instituted;" for the common good seeks a "particular *self*, a sensibility common to all of its members, a force or will of its own that tends towards its preservation."<sup>266</sup> Rousseau believes that the general will based on the common good considers a "general interest" while the will of all only considers "private interest and is merely the sum of private wills."<sup>267</sup> In *Reveries*, Rousseau warns against the internal strength of the desires of *amour propre* and the overwhelming passions of attaining one's individual will:

How pitiable you are going to be, thus subjected to your unruly passions! There will always be privations, losses and alarms. You will not even enjoy what is left to you. The fear of losing everything will prevent you from possessing anything. As a result of having wanted to follow only your passions, *you will never be able to satisfy them*. You will always seek repose, but it will always flee before you. You will be miserable, and you will become wicked. How could you not be, since you have only your unbridled desires as a law?<sup>268</sup>

Rousseau feels that if one is overcome by the passions of *amour propre*, they will never be able to attain all that they desire, for they will always want more.

In modern society, however, it is easier to talk about containing the desires of people than it is to accomplish such a feat. There are many forces working against the attainment of the common good in the general will in order to advance society toward the good life. First, and foremost, is the right to private property in the United States. Rousseau delineates his notions of how one can be a member of society and the social contract, while also maintaining proprietary ownership of one's property. This is accomplished through the protection of the state in the sense that the property is held within the boundaries and

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<sup>266</sup> Rousseau, 1987: 176. Italics in original.

<sup>267</sup> Rousseau, 1987: 155.

<sup>268</sup> Excerpt from Rousseau's *Reveries*, as quoted in Cooper, 1999: 107. Italics in original.



jurisdiction of the Sovereign. Yet, with the right of the first occupant, as Rousseau argues, possession of the property does not physically change hands, but rather, it is a right to private property in that “one respects not so much what belongs to others as what does not belong to oneself.”<sup>269</sup> In other words, one cannot take more than what they need in order to live and flourish, as “every man by nature has a right to everything he needs.”<sup>270</sup> Important are the stipulations and rules that Rousseau sets forth to establish the right of the first occupant:

In general, the following rules must obtain in order to authorize the right of the first occupant on any land. First, this land may not already be occupied by anyone. Second, no one may occupy more than the amount needed to subsist. Third, one is to take possession of it not by an empty ceremony, but by working and cultivating it – the only sign of property that ought, in the absence of legal titles, to be respected by others.<sup>271</sup>

Further, Rousseau explains the legal framework for the subdivision of property in that he expressly states that “each private individual’s right to his very own store is always subordinate to the community’s right to all, without which there could be neither solidity in the social fabric, nor real force in the exercise of sovereignty.”<sup>272</sup> Essentially, if private property is subdivided, the right of the first occupant still stands and the common good of the public carries more weight in land use, than does the private will of the individual property owner.

This latter point is essential in the debate over fracking. One major issue within the fracking discourse is that of the split estate. A notion that developed far after Rousseau’s time, the split estate refers to the property ownership of the surface landowner, which is not always the owner of a newer form of private property – subsurface mineral rights. A primary argument used for the proliferation of fracking by the industry is that of private property rights – a property owner ought to have the freedom to develop their land in whatever way they see fit, even if this means they would prefer to sell their mineral rights to the gas and oil industry in exchange for royalties (i.e. payments from the industry that are based on a decided contractual payment or a portion of the profit the industry receives from the fossil fuels obtained

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<sup>269</sup> Rousseau, 1987: 151.

<sup>270</sup> Rousseau, 1987: 151.

<sup>271</sup> Rousseau, 1987: 152.

<sup>272</sup> Rousseau, 1987: 153.

from the property). In some cases, the surface property owner is also the owner of the mineral rights from the subsurface. But in many cases, the owners are different, and, at times, the mineral rights are owned by the industry itself. This creates a subdivision based issue in which the property rights of two different individuals conflict. Further, the subsurface owner must access their property by way of the surface property – which may be against the interest of the surface property owner. Rousseau, in this situation, regardless of the common good, would contend that the right of the first occupant – the surface owner – should stand before any preferences of the owner of the subdivided portion of the property. Moreover, Rousseau would ultimately reject the notion of subsurface ownership due to the fact his first stipulation for private property is that someone may not already occupy the land. Finally, Rousseau would also uphold the value or equality in the sense that “no citizen [or industry] should be so rich as to be capable of buying another citizen, and none so poor that he is forced to sell himself,” or his mineral rights.<sup>273</sup>

Further compounding this issue in the United States are vested rights, as provided in the Constitution. Vested rights are earlier in origin than those of the police power doctrine, as discussed in chapter 3. These rights are “rooted in the notion that property is the basic social institution” and the “guardian of every other right” in the US.<sup>274</sup> Further, it can be argued that the primary function of the government is to protect private property. This is true in the sense of the Sovereign claiming a right to property in order to provide national security and to include the land within the state boundaries. According to Rousseau, though, the reason that government and society arose was to alleviate the dangers of revenge. The main function of government, as Rousseau would argue, is to protect the people while they pursue the common good and then to enact the laws of the people based on the general will. Rather than providing protection of national boundaries, however, it can be seen that vested rights protect one from unreasonable restrictions to the rights of ownership. This allows one to develop their property as they see fit, within the boundaries of the law. The danger in this constitutionally provided right, however, is that the argument could be easily turned in favor of one’s individual will to drill for natural gas on

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<sup>273</sup> Rousseau, 1987: 170.

<sup>274</sup> Mason and Stephenson, 2005: 323.

one's land, in exchange for royalty payments; however, we have yet to see this angle arise within the discourse.

The other force that is working against the attainment of the common good as expressed by the general will is capitalism, generally. The yearning to continually possess more money is part of the passion of greed that is rooted in *amour propre*. In fracking, this temptation is so prevalent in North Dakota, that there are twelve new millionaires created every week through the mineral/royalty economic exchange.<sup>275</sup> Cooper interprets Rousseau to argue that weakness is a form of *amour propre*, whether it is balanced by *amour de soi* or influenced by greed, it opens “a wealth of new needs” – also what Rousseau was alluding to in the passage from *Reveries* above that speaks of one never accomplishing the attainment of one's passions.

#### CONCLUDING THOUGHTS AND THE FORCING TO BE FREE

So what about those who are driven by the passions of *amour propre* and feel that the common good is contrary to their personal good? How should one feel if the yearning for the obtainment of one's desires supersedes the common good of their community and they feel as if the general good has enacted a law that is against their will? Should they follow a law that was enacted against their will or against their vote? Rousseau would argue that, yes, one should follow a law that is enacted against their will and against their vote, as long as the law was chosen through the majority rule of the general will, and is based on the common good. This is what Rousseau sees as forcing one to be free. In *The Social Contract*, Rousseau explicitly states that “in order for the social compact to avoid being an empty formula, it tacitly entails the commitment – that whoever refuses to obey the general will will be forced to do so by the entire body. This means merely that he will be forced to be free.”<sup>276</sup> Bertram argues that “Rousseau's thought here is that it is in each person's interest that the pursuit of self-interest by others be restrained. This suggests that the common interest will always have as part of its content, rules which it would be

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<sup>275</sup> Tom Leonard. “The New US Goldrush that Proves the Anti-Fracking Fanatics have got it all Wrong.” *Daily Mail* London, 2013. <http://ezproxy2.library.colostate.edu:2056/hottopics/lnacademic/>.

<sup>276</sup> Rousseau, 1987: 150.

advantageous to each for all to comply with.”<sup>277</sup> Expounding on Rousseau, Scholz firmly interprets the social contract and the notion of being forced to be free as a part of the binding majority rule decision: “[t]he person who voted contrary to the majority was simply mistaken in his or her understanding of the general will.”<sup>278</sup> Steven G. Affeldt highlights the importance in the objective of forcing one to be free with Rousseau’s argument that if the people do not obey the law, the social contract has the potential to dissolve – or fracture – “by that very act; it loses the status of a people.”<sup>279</sup> This is due to the fact that sovereignty is an inalienable right of the people, according to Rousseau, and if the people do not follow a law based on the general will as delineated by his social contract, then the contract as well as civil society have been fractured and shall dissolve.

This returns us to the situation in the Colorado cities that have voted to enforce a ban on fracking in their local communities. According to *The Social Contract*, the Sovereign is to enact the general will of the people based on the common good and the collective decision of all which is determined by a majority rule vote. However, in Colorado the Sovereign is not enforcing the bans as depicted by the people, and is rather allowing the industry to bring lawsuits against the people who have expressed the common good through the general will. According to Rousseau’s social contract, this has created a violation of the contract, and thus, the social contract has been fractured by the desires produced through the yearning for the economic proliferation of the extraction technique of hydraulic fracturing to all areas with shale, regardless of the will of the people.

Rousseau’s notions of the general will allow for the legal expression of the common good in order to allow a society to flourish and for all members to attain well-being and advance toward the good life. It has been shown in this chapter that the sovereignty of the people is an inalienable right, as perceived by Rousseau. The enactment of the general will of the people, as expressed through popular sovereignty of the majority, is required for a cohesive and effective social contract. Although the form of

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<sup>277</sup> Bertram, 2004: 105.

<sup>278</sup> Scholz, 2001: 79.

<sup>279</sup> Steven G. Affeldt. “The Force of Freedom: Rousseau on Forcing to Be Free.” *Political Theory*. 27(3), 1999: 304.

democracy that Rousseau advocates for has been debated in the scholarly literature, I argue here that Rousseau clearly stipulates that he disdains any form of representative government because it will create a decrease in political participation while it increases the advancement of the individual will while society willingly alienates the sovereignty of the people to an individual. It was then shown that the people in some Colorado cities have expressed their general will to outlaw fracking in their communities, where this legitimate act of sovereignty has not been enacted by the Sovereign as required by Rousseau's contract. The passions of *amour propre* in the representatives and the Sovereign have mostly blocked the common good of the people through denying the enactment of a law made by the people for the people, in those communities. The forces working against an effective social contract in the case of fracking are mostly based on the ideas of private property and the greed of accumulation, generally held by subsurface property owners as well as the industry. According to the limits set by Rousseau in *The Social Contract*, the denial of the enactment of the general will as decided by the people is a fracturing of the contract, and thereby the government and civil society ought to be dissolved.

## CHAPTER 5

### CONCLUSION: THE FRACTURING OF THE SOCIAL CONTRACT

Finally, when the state, in the verge of ruin, subsists only in an illusory and vain form, when the social bond of unity is broken in all hearts, when the meanest interest brazenly appropriates the sacred name of the public good, then the general will becomes mute. Everyone, guided by secret motives, no more express their opinions as citizens than if the state had never existed; and iniquitous decrees having as their sole purpose the private interest are falsely passed under the name of laws.<sup>280</sup>

Rousseau concludes *The Social Contract* with a disturbing vision of the dissolution of the social contract. The dissolution of the contract can be caused by a variety of reasons, from the denial of the people's popular sovereignty, to the democratic decision of the citizens to willfully end the contract through an expression of the general will by an act of sovereignty. Scholz highlights the fact that Rousseau sees the potential for all governments to "degenerate naturally."<sup>281</sup> Rousseau has the premonition to see the route for each form of government to dissolve: "When the state dissolves, the abuse of government, whatever it is, takes the common name *anarchy*. To distinguish, democracy degenerates into *ochlocracy*, aristocracy into *oligarchy*."<sup>282</sup> What is interesting in this depiction is that democracy is prescribed to degenerate into an ochlocracy (i.e. government by mob rule), but a recent study warns the United States that the democratic republic that Americans consider themselves to live under is in danger of dissolving into an oligarchy (i.e. government run by a small group of wealthy people).

Martin Gilens and Benjamin Page argue in their extensive study that tests various theories of American politics by looking at a large sample of policy issues from 1981-2002, that the United States is not a majoritarian democracy as the nation is thought to be and rather, their findings "suggest that majorities of the American public actually have little influence over the policies our government adopts."

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<sup>280</sup> Rousseau, 1987: 204.

<sup>281</sup> Scholz, 2001: 78.

<sup>282</sup> Rousseau, 1987: 193.

<sup>283</sup> They believe that “policymaking is dominated by powerful business organizations and a small number of affluent Americans,” and further, “America’s claims to being a democratic society are seriously threatened.”<sup>284</sup> This study found that, contrary to popular thought, the majority does not actually rule in the US, and most of the time, when American citizens advocate for a policy change, it rarely occurs.<sup>285</sup> Further it was found that interest groups – such as Coloradans for Responsible Energy Development (CRED), an interest group who works on behalf of the oil and gas industry – are rarely aligned with the preferences and perceived common good of the average citizen.<sup>286</sup> Typically, these interest groups work on behalf of the “economically elite citizens who wield the actual influence.”<sup>287</sup> With our preconceived notions of how a democracy ought to work in the US, Rousseau would argue that this transition of political influence and the sovereign acts of the body politic falling to the wayside in a hierarchical structure that benefits those who have more money, and therefore more power, is in direct conflict with the rules of nature.

Inequality is the product of the imbalance of *amour de soi* and *amour propre* that is driven by the passions of greed, desire, and corruption. The Gilens and Page study alludes to level of corruption and greed within the government and the representational structure of the United States to enact the individual wills of the elite and the economically powerful – or the will of all – instead of pursuing the common good through the general will of the majority. In *The Social Contract*, Rousseau presents a warning for representatives of the sovereign body politic: “Once public service ceases to be the chief business of the citizens, and they prefer to serve with their wallet rather than their person, the state is already near its ruin...Give money and soon you will be in chains.”<sup>288</sup> This may be seen as enslavement to corruption and loss of representation due to a lack of political participation – which Rousseau also sees as leading to the dissolution of the social contract in the sense that “[c]itizens who perceive their fellows enjoying ‘the

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<sup>283</sup> Martin Gilens and Benjamin I. Page. “Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens.” Forthcoming in *Perspectives on Politics*, Fall 2014: 24.

<sup>284</sup> Gilens and Page, 2014: 24.

<sup>285</sup> Gilens and Page, 2014: 22-23.

<sup>286</sup> Gilens and Page, 2014: 22.

<sup>287</sup> Gilens and Page, 2014: 22.

<sup>288</sup> Rousseau, 1987: 197.

rights of a citizen' while getting away with nor fulfilling the 'duties of a subject' will be tempted to act likewise, and this will lead eventually to the 'ruin of the body politic.'<sup>289</sup> In other words, while the economic elites in the US are enjoying all the freedoms and rights that are provided to citizens, they are accomplishing this with money rather than feeling the pity and communal bonds of a society in order to dutifully respect and think about the interests of fellow living beings in one's community in order to enact the common good through an expression of the general will.

Lucio Colletti would argue that Rousseau is trapped in an "economic regression" in which he lacks the ability to "grasp the dynamic nature of capitalist economic development."<sup>290</sup> But throughout Rousseau's works, it becomes abundantly clear that he did, in fact, recognize capitalism's dynamic nature – which is the reason for Rousseau's warnings against the political domination of money in the politics of modern society. Moreover, Rousseau recognized the inner workings of capitalism, due to his idea that *amour propre* is the internal source of greed and corruption in social man.

As seen in the *Discourse on the Origin of Inequality* and *Emile*, Rousseau focuses on deconstructing the dichotomy between nature and society in order to show that inequality is a social problem that is not rooted in nature – it is a product of *amour propre*. This was expounded on in Chapter 2, "The Dichotomy and the State of Nature." This deconstruction is required, according to Rousseau, in order for humans to live complete and moral lives. Rousseau begins deconstructing the dichotomy by explaining his conception of the state of nature in order to highlight the values and principles that are rooted in nature and stem from man living in the natural world – those that grow from the feelings of pity and *amour de soi*. These first principles – self-preservation and pity – are important for Rousseau because these are the virtues that are necessary to recognize the community around oneself in order to determine that which is commonly good for all of society. These first principles, as Rousseau explained in his educational treatise, *Emile*, are necessary for one to learn the lessons that nature has to offer through experiential learning. By learning from the nature that surrounds us, we develop the potential to

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<sup>289</sup> Bertram, 2004: 80.

<sup>290</sup> Lucio Colletti as quoted in Biro, 2005: 68.



practically apply these lessons through developing a sense and love of place. This experiential learning brings the idea of a sense of place closer to reality, through practice. By gaining a sense of place, in short, humans can recognize that they are surrounded by a community of life and nature, thereby accepting a balance between the ecocentric and anthropocentric worldviews of nature.

In Chapter 3, “Rousseau and the Common Good,” the common good was explained, as conceived by Rousseau. Although the idea has transformed over time, Rousseau’s interpretation is rooted in the classical conception of the common good, in which “the good is realized in the natural relationships in and through which human beings achieve their well-being.”<sup>291</sup> This definition matches Rousseau’s notions because for him, the common good’s purpose is to attain well-being and to flourish with fellow members of society in order to live a good and moral life. After natural man leaves the state of nature and enters society, according to Rousseau, the transformation into society introduces the potential for the societal passions of *amour propre* to develop in humans. The development of these desires can easily consume one to obsess over the pride, greed, and one’s individual will. *Amour propre* drives the individual will to overcome the natural and virtuous traits of *amour de soi*. After one realizes the interconnectedness and inclusiveness of nature, Rousseau feels that *amour de soi* has the capability to keep *amour propre* under control. This allows one to recognize the needs and interests of the community around us. This is due to the two-fold relationship in which Rousseau sees humans in society as holding a duty and an interest with all other members of one’s community.<sup>292</sup> This acceptance of the world around you –having both a natural and social composition – was then shown in practice through such legislation as the Ecuador Constitution, the City of Pittsburgh’s Bill of Rights, and the City of Santa Monica’s Community Bill of Sustainability Rights. By realizing the community consists of all life and nature, including the built environment and the urban environment, the two-fold relationship of interest and duties can extend to what is best for the whole of the community.

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<sup>291</sup> Deneulin and Townsend, 2007: 27.

<sup>292</sup> Rousseau, 1987: 150.

While recognizing one's holistic place in nature and society while maintaining an internal balance between *amour de soi* and *amour propre*, Rousseau believes that the common good can be realized in a society through an act of popular sovereignty, in which the body politic can express the general will through a majority rule vote. The people as private individuals, according to Rousseau, ought to act as the sole magistrates of the law in determining the laws of the people – these laws are to be chosen through the act of sovereignty based on the interests and duties to all others in the community. In other words, the people ought to decide the best laws that will induce the society around them to flourish and that will encourage well-being for all. When the general will has spoken as the sovereign body politic, the Sovereign then enacts the laws chosen by the people. These laws are to be upheld in the best interests of the citizens and are to be obeyed with a sense of ownership because one's community chose those laws. If one does not agree with the laws, according to Rousseau, he has made a mistake in his decisions and he must then be forced to be free. If someone does not like a law because they did not vote on it, they must still abide the law or else the body politic is at risk for ruin. If this was to occur, Rousseau argues that it would cause a dissolution of the social contract and society would be thrust back into a state of nature with the absence of social and political structures. An alienation of one's sovereignty has the potential to create this scenario, as Rousseau sees sovereignty as an inalienable right. Indeed, Rousseau feels that a representative government has the potential to cause this alienation through a gradual lack of political participation.

As was described in the beginning of this chapter, the United States is not so much actually suffering from a lack of political participation as it is experiencing a shift in governmental structure through an oligarchical representative government. The primary importance of economic elites over the common good and general will of the average citizen has led to a hierarchical inequality that is contrary to the laws of nature, as Rousseau would argue. Throughout this work, hydraulic fracturing has been utilized as a case study and example to bring the theory of Rousseau's social contract closer to reality. I attempted to apply theory to practice through a practical application of Rousseau's primary concepts – the state of nature, the natural, the common good, the sovereign body politic, the Sovereign, and the general will. The

proliferation of fracking is due to the political receptivity of the representatives in the US government, and ultimately benefitting from this corruption is the gas and oil industry. Economic interests and the elite have captured the attention of the political representatives of the body politic, and the American democratic structure is in danger of dissolving into an oligarchy that only enacts the will of the few.

### THE FRACTURING OF THE SOCIAL CONTRACT

The case of hydraulic fracturing has illuminated many fissures in Rousseau's conception of the social contract, when looking at the reality of US society and the contract Americans have with the government. First and foremost, the social contract has been fractured through the Sovereign's denial of the general will regarding the microchoices made to ban fracking in various Colorado cities. The Sovereign has further denied of the common good of the people through such legislation as Pennsylvania's Act 13 and Colorado's upholding of the precedent set in the 1992 State Supreme Court case, *Voss vs. Lundvall Bros, Inc.* Although municipalities have attempted to combat the powerful economic interests of the gas and oil industry, few have been entirely successful to date. Although Pittsburgh's ban of fracking has been upheld, as stated in the Act, the State of Pennsylvania can withhold all royalties from the City due to this legislative action against the industry's permissive entry to the shale under Pittsburgh. Likewise, the cities of Longmont, Broomfield, Lafayette, and Fort Collins in Colorado are waiting to see the results and the course of action that is taken by the courts regarding the lawsuits against them from COGA over the bans and moratoriums that were chosen through an act of popular sovereignty based on the general will of the people.

These lawsuits have been driven by the passions of *amour propre* and through the obsession that feeds the desire to pursue one's individual will over the common good of the community. An individual overcome by these desires may prefer to have the freedom to develop their mineral rights in order to gain economic royalties and individual prosperity. This individual will, however, not only causes more economic inequality, but this individual obsession works against the well-being and flourishing of the society as a whole. More than the individuals that strive to become one of this week's new millionaires are the representatives that are driven by the passions of *amour propre*. These individuals pursue the

individual will of economic interests and the elite over the general population for the exchange of wealth and acceptance. The dangers that the individual will presents to democracy are the primary reasons why Rousseau warned against a representative government, and held that the Sovereign must stay committed to the will of the people, rather than the will of all. This is the danger of the alienation of sovereignty.

Finally, Rousseau would argue that fracking has fractured the social contract through endangering the health and welfare of all life and nature in order to attain short-term gains that feed the passions and desires of *amour propre*. These desires urge one to strive for material accumulation – as provided through the excess of cheap natural gas. Through the dangers that fracking poses to the health of those living near the well pads, as well as through many forms of accidents that can occur, fracking is clearly in direct conflict with the well-being and flourishing of all species – especially when coupled with the decreases in safe operating spaces for humanity and the quick onset of climate change.

Not only are these fractures in the social contract witnessed through the example of hydraulic fracturing, but frequently many environmental problems are politically pushed to the wayside in the name of capitalistic progress. Meyer argues that this is a consequence of the mainstream view of environmental issues – which is that each environmental problem falls under a particular “issue area.”<sup>293</sup> This allows the environment to be compartmentalized as an issue to be dealt with after more pressing issues, such as the economy. Meyer illuminates what has already been shown here, that “[t]he consequence of this mainstream view has been that while environmental concerns are now a recognizable part of the political landscape in a great many places, they often have been politically marginalized by powerful economic, social, or national security interests.”<sup>294</sup> If we are to maintain the moral vision that is instilled in Rousseau’s *The Social Contract*, then not only is it necessary for the people to break the dichotomy of living either in nature or society, but also, representatives of the United States must discover their internal balance of *amour de soi* and *amour propre* in order to enact the general will of the people for the good of the whole community. This will work to end the domination of economic interests of corporations and the

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<sup>293</sup> Meyers, 2001: 21.

<sup>294</sup> Meyers, 2001: 21.

elite as well as the political and social domination of the haves over the have-nots, in order to instill equality as a naturally rooted value that stems from *amour de soi*, in order to attain the good and moral life, so as to promote the well-being and flourishing for all. Otherwise, we are facing the dangers of domination by the economic elite in an oligarchical governmental system, the dissolution of society and the social contract as we know it, and insurmountable risks and dangers associated with all related activities of hydraulic fracturing.

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