



AV

Komparatistik

Jahrbuch
der Deutschen Gesellschaft
für Allgemeine und Vergleichende
Literaturwissenschaft

2017

Aus dem Inhalt: Joachim Harst, Christian Moser, Linda Simonis: Languages of Theory. Introduction • Maria Boletsi: Towards a Visual Middle Voice. Crisis, Dispossession, and Spectrality in Spain's Hologram Protest • Peter Brandes: Poetics of the Bed. Narrated Everydayness as Language of Theory • Annette Simonis: Stephen Greenblatt and the Making of a New Philology of Culture • Dagmar Reichardt: Creating Notions of Transculturality. The Work of Fernando Ortiz and his Impact on Europe • Michael Eggers: Topics of Theory and the Rhetoric of Bruno Latour • Nicolas Pethes: Philological Paperwork. The Question of Theory within a Praxeological Perspective on Literary Scholarship • Achim Geisenhanslüke: Philological Understanding in the Era After Theory • Joachim Harst: Borges: Philology as Poetry • Regine Strätling: The ›Love of words‹ and the Anti-Philological Stance in Roland Barthes' »S/Z« • Markus Winkler: Genealogy and Philology • Christian Moser: Language and Liability in Eighteenth-Century Theories of the Origin of Culture and Society (Goguet, Smith, Rousseau) • Linda Simonis: The Language of Commitment. The Oath and its Implications for Literary Theory • Kathrin Schödel: Political Speech Acts? Jacques Rancière's Theories and a Political Philology of Current Discourses of Migration • Helmut Pillau: »Ein großer weltlicher Staatsmann wider alle Wahrscheinlichkeiten.« Gertrud Kolmar und Jean-Clément Martin über Robespierre • Pauline Preisler: Die abstrakte Illustration. Paul Klees »Hoffmanneske Märchenszene« und E. T. A. Hoffmanns »Der Goldene Topf« • Nachruf, Rezensionen.

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von Joachim Harst, Christian Moser und Linda Simonis

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Christian Moser

Language and Liability in Eighteenth-Century Theories of the Origin of Culture and Society (Goguet, Smith, Rousseau)

I.

Theory's engagement with language on the one hand, with literature's potential to generate knowledge that is theoretically relevant on the other, has a long history. One of its roots lies in the approach to culture and society developed by enlightenment anthropology and philosophy. In this paper I intend to analyze the function attributed to language in eighteenth-century theories of the origin of culture and society. What we nowadays call 'cultural theory' is genealogically related to these early investigations into the constitution of human society. Social theories of the enlightenment first emerged in the contexts of a secularized universal history and the nascent discourses of anthropology and the philosophy of history. They often took the form of a 'conjectural history': speculations about the origin of society and its institutions; the origin of government, of law, and of social inequality; all of them linked systematically to the origin of language. While present-day cultural theory no longer harbours this obsession with origins, it still carries with it a rich legacy of enlightenment thought, not least its idea that social structure and linguistic structure are interconnected. Therefore it seems apposite to trace back current 'languages of theory' to eighteenth-century 'theories of language' and their interplay with 'theories of society.'

The larger context of this paper is furnished by my research on the semantics of barbarism in eighteenth-century cultural theory.¹ The concept of barbarism has a long and protracted history dating back to Greek antiquity. In the eighteenth century, however, the semantics of barbarism underwent a significant transformation. Attempts were made to differentiate systematically between savage, barbarian and civilized people. At the beginning of the century, the terms *savage* and *barbarian* were still mostly treated as synonyms. There were no clear criteria for demarcating them semantically. But as the century wore on, increasing attempts were made to distinguish barbarism from savagery. The barbarian possessed a different moral character, belonged to a different form of society, was at a different level of cultural and linguistic development than the savage. But this meant that the old antithetical and spatial structure that had prevailed

1 See Christian Moser. "The Concept of Barbarism in Eighteenth-Century Theories of Culture and Sociogenesis." *Barbarian: Explorations of a Western Concept in Theory, Literature and the Arts*. Ed. Markus Winkler in collaboration with Maria Boletsi, Jens Herlth, Christian Moser, Julian Reidy and Melanie Rohner. Vol. 1: *From the Enlightenment to the Turn of the Twentieth Century*. Stuttgart, Weimar: Metzler, 2018 (forthcoming). The following analysis is a revised and extended version of a subchapter of this study (chapter 2.1.2.6: Barbarian Origins of Language and of Contractuality).

since Antiquity, which marked off the sphere of the familiar from the barbarian Other, establishing a hierarchy in which the former is superior to the latter, had begun to unravel. Previously, barbarism had always formed part of an asymmetric conceptual opposition² that initially set the Hellenes apart from the barbarian Persians or Scythians, then the Romans from the barbarian Germans, the Christians from the barbarian heathens and finally the Europeans from the barbarian inhabitants of the New World. In enlightenment discourses on barbarism, by contrast, the term *barbarian* no longer functioned as a clear-cut concept of enmity and exclusion. Contrary to the *savage*, who succeeded to the *barbarian* as a figure of extreme otherness and was associated exclusively with non-European people³, the term *barbarian* was applied predominantly to the Eurasian context, designating a primitive stage of development of one's own (European) past. Thus, the concept of barbarism was temporalized and historicized.

One of the fields in which this conceptual shift took place was stadial theory. Stadial theory reconstructs the development of different forms of human society in correlation to changing modes of subsistence.⁴ This theoretical approach underlies the dominant type of enlightenment historiography—what the historian of ideas J. G. A. Pocock has coined “the narrative of civil government.”⁵ The narrative of civil government marks a hybrid combination of political and juridical philosophy, anthropology, political and cultural history.⁶ It is decid-

2 See Reinhart Koselleck. “Zur historisch-politischen Semantik asymmetrischer Gegenbegriffe.” *Vergangene Zukunft. Zur Semantik geschichtlicher Zeiten*. Frankfurt a. M.: Suhrkamp, 1989, pp. 211-59.

3 See J. G. A. Pocock. *Barbarism and Religion*. Vol. 2: *Narratives of Civil Government*. Cambridge: Cambridge University Press, 1999, pp. 316-17 and J. G. A. Pocock. *Barbarism and Religion*. Vol. 4: *Barbarians, Savages and Empires*. Cambridge: Cambridge University Press, 2005, pp. 157-58.

4 See R. J. Meek/D. D. Raphael/P. G. Stein. “Introduction.” *The Glasgow Edition of the Works and Correspondence of Adam Smith*. Vol. 5: *Lectures on Jurisprudence*. Ed. R. J. Meek/D. D. Raphael/P. G. Stein. Oxford: Clarendon Press, 1978, pp. 1-42 and Wilfried Nippel. “Die Antike und der Fortschritt der Zivilisation.” *Griechen, Barbaren und “Wilde”*. *Alte Geschichte und Sozialanthropologie*. Frankfurt a. M.: Fischer Taschenbuch, 1990, pp. 56-78, here pp. 61-70.

5 See Pocock. *Barbarism and Religion* Vol. 2 (note 3).

6 On the hybrid character of this complex mode of historiography see Pocock. *Barbarism and Religion* Vol. 2 (note 3). 7-25 and Lucas Marco Gisi. *Einbildungskraft und Mythologie. Die Verschränkung von Anthropologie und Geschichte im 18. Jahrhundert*. Berlin: Walter de Gruyter, 2007, who focuses on the productive combination of anthropology, mythography, and the philosophy of history. For more general studies on enlightenment historiography and the eighteenth-century beginnings of modern historicism see Friedrich Meinecke. *Die Entstehung des Historismus*. Ed. Carl Hinrichs. München: Oldenbourg, 1959; Ernst Cassirer. *Die Philosophie der Aufklärung*. 3rd ed. Tübingen: Mohr, 1973, pp. 263-312; Michèle Duchet. *Anthropologie et histoire au siècle des lumières*. Paris: Maspero, 1971; Peter Hanns Reill. *The German Enlightenment and the Rise of Historicism*. Berkeley, Los Angeles, and London: University of California Press, 1975; Karen O'Brien. *Narratives of Enlightenment: Cosmopolitan History from Voltaire to Gibbon*. Cambridge: Cambridge University Press, 1997.

edly secular in its outlook, substituting divine providence by the principle of an immanent teleology that directs human history towards the goal of civilization. Narratives of civil government retrace the evolution of human society, from its earliest beginnings in primitive hunter-gatherer-communities to its allegedly most complex and highest development: urban civil society. Such narratives betray a totalizing and universalizing tendency in several respects: firstly, they are based on a holistic concept of human society, focusing not only on the sphere of politics, but also taking into account the development of language, legal systems, technological progress, economical and cultural factors. Secondly, they seek to delineate a temporal totality, encompassing the entirety of human history from the original state of nature to the most recent accomplishments of civilization. Thirdly, their outlook is totalizing also in spatial terms. Though eurocentric in their bias, they highlight the interconnectedness of national histories and attempt to integrate them within a global framework, taking account of the histories of non-European, especially Asian, North African and American peoples.⁷ The *telos* of these narratives is civil society, as realized in the nation states of eighteenth-century Europe. Civil society is marked by the institution of private property, a sophisticated legal system, a balanced political structure, an accomplished literary culture, and an economy of free trade.

Within this overarching teleological framework, eighteenth-century narratives of civil society distinguish between savage, barbarian and civilized stages of social evolution, relating them to differences concerning climate and geographical environment on the one hand, to diverse modes of subsistence on the other: savages are hunters and gatherers who live in small, egalitarian communities, whereas barbarians are nomadic pastoralists who develop a primitive form of property, establish hierarchical political structures and subsist not only by stock breeding, but also by raping and plundering their neighbors. Hence the state of barbarism is turned into a transitory historical phase that mediates between primitive savagery and the advanced state of civilization. As a “*middle stage*”⁸ that links the civilized present to the prehistoric era of savagery, barbarism cannot simply be relegated to some distant time or place beyond civil society. Rather, narratives of civil government argue that barbarian institutions constitute the germs of civilized accomplishments and continue to exert their influence even within civil society. By stressing historical continuity, the proponents of stadial theory cast doubt on a fundamental tenet of early modern political philosophy—the idea that human society originates in a social contract. The figure of the savage ‘natural man’ who constitutes society by engaging in a legally binding compact is disparaged as a mere fiction. Contrary to Thomas

7 See O’Brien, *Narratives of Enlightenment* (note 6), pp. 1-2: “What they [sc. enlightenment historiographers] share is the cosmopolitan (rather than universalist) recognition that all nations are endowed with valid histories and identities which intersect with, and complete, each other, but that individual states or nations are not, in themselves, intelligible units of historical study.”

8 Margaret Mary Rubel, *Savage and Barbarian: Historical Attitudes in the Criticism of Homer and Ossian in Britain, 1760-1800*. Amsterdam: North Holland, 1978, p. 33.

Hobbes, John Locke and Samuel Pufendorf, most authors of narratives of civil government do not believe in a foundational legal act that abruptly terminates the solitary state of nature and substitutes a carefully crafted social system for the anarchy of a *bellum omnium contra omnes* at one fell swoop. By contrast, they insist on the gradual emergence of legal and political structures, and since barbarism marks the transition between primitive savagery and civilization, they attest it a pivotal role within this evolutionary process.

However, enlightenment narratives of civil government do not only differ from contractual theories of political philosophy with regard to their view on the origin of society. They also establish a different type of discourse that inaugurates new techniques of representation and innovative forms of theorizing. Whereas theories of social contract, in keeping with their legalistic bias, often emulate the form of the juridical treatise, narratives of civil society constitute a hybrid genre that combines philosophical reflection with the factual account of history and the ethnographic description of customs and manners. Though they discard the hypothetical fictions of natural law, they are far from eschewing fictional representation altogether as a means of constructing historical continuity. Where historical evidence or ethnographic data is lacking, ‘conjecture’—elements of speculative fiction—steps in as a legitimate supplement that fills the gaps within the narrative.⁹ Contrary to the treatises of early modern political philosophy, narratives of civil society strive to tell a gripping and convincing story. They possess a proto-literary quality. Here, narrative and conjectural fiction are not reduced to the function of illustrating or exemplifying abstract points of theory. Rather, they are recognized as modes of theoretical reflection in their own right. Jean-Jacques Rousseau, whose views on language and society will be analyzed below, marks a case in point. Rousseau discusses the concept of the intermediate barbarous stage in his *Discours sur l’origine et les fondements de l’inégalité parmi les hommes* (written in 1753, published in 1755) and in the *Essai sur l’origine des langues* (written between 1753 and 1764, published posthumously in 1781). In terms of content and the history of their genesis, these texts are closely related. The roots of the *Essai sur l’origine des langues* lie in a speculative reflection on the origin of language, which Rousseau initially wrote for the *Discours sur l’origine de l’inégalité*, but which he removed from the finished text prior to publication.¹⁰ In the *Essai*, Rousseau correlates the genesis of languages with the evolution of

9 The term conjectural history was coined by the Scottish historian Dugald Stewart to describe the methodology applied by thinkers such as Jean-Jacques Rousseau, Adam Smith and David Hume in their attempts to reconstruct archaic states of human development. See Aaron Garrett. “Anthropology: the ‘original’ of human nature.” *The Cambridge Companion to the Scottish Enlightenment*. Ed. Alexander Broadie. Cambridge: Cambridge University Press, 2003, pp. 79-93. On conjecture as a basic constituent of enlightenment historiography see Gisi. *Einbildungskraft und Mythologie* (note 6), pp. 319-57.

10 On the genesis and composition of the *Essai*, see Jean Starobinski. “Avertissement sur la publication, la composition et les sources manuscrites de l’ouvrage.” Jean-Jacques Rousseau. *Essai sur l’origine des langues où il est parlé de la mélodie et de l’imitation musicale*. Ed. Jean Starobinski. Paris: Gallimard, 1990, pp. 191-200, here pp. 193-98.

modes of subsistence and forms of society. The *Discours*, meanwhile, even after the excision of the passage that was to become the nucleus of the *Essai*, includes voluminous remarks on the origin and development of human language. In both texts the departure from the state of nature is linked with the evolution of the faculty of language; both devote a great deal of attention to the transitional phase between the 'savage' state of nature and that of civil society. Further, both the *Discours* and the *Essai* grant considerable space to conjectural fiction. In fact, a third (patently literary) text develops out of these fictional elements: the epyllion *Le Léviste d'Éphraïm*, which Rousseau wrote in 1762 after his flight from Paris (published posthumously in 1781). He planned to publish the epyllion in book form along with the *Essai sur l'origine des langues*.¹¹ It was intended to illustrate Rousseau's theory of the origin of language and in particular his view of the barbarous developmental stage of humanity. Yet there is more to this narrative than its illustrative function; it cannot simply be subordinated to the theory. In fact, it brings out contradictions and problems concealed by the theoretical discourse, while at the same time attempting to resolve them in its own way. This literary fiction thus signifies a specific mode of reflecting on barbarism and on the origin of language.

II.

The shift in the semantics of barbarism that can be observed in eighteenth-century theories of culture and society also affects its relation to language. Originally, the Greek term *bárbaros* was an onomatopoeic word, suggesting the unintelligibility of an alien idiom and the inarticulateness of its sounds.¹² Thus, the speech of the barbarian was not acknowledged as a language, it was reduced to the status of noise. Barbarism signified non-language. In enlightenment theories of culture, by contrast, as barbarism is elevated to a key stage in the evolution of social institutions, it is also credited with effecting a decisive progress in the development of language. Some eighteenth-century theories of language even associate the stage of barbarian pastoralism with the origin of human language proper. According to these theories, articulated language consisting of spoken words which refer to specific conceptual entities was invented by barbarian shepherds. In his *Essai sur l'origine des langues* Rousseau, for instance, argues that the primitive hunters and gatherers of the savage stage of cultural evolution lacked such a language: "Dans les premiers tems les hommes épars sur la face de la terre n'avoient de société que celle de la famille, de loix que celles de la

11 Cf. *ibid.* p. 194.

12 On the onomatopoeic roots of the term and their effects on its semantics see Markus Winkler. "Methodical and Theoretical Introduction." *Barbarian: Explorations of a Western Concept in Theory, Literature and the Arts*. (note 1, sub-chapter 1.2.1: From *bárbaros* as Language- and Affect-Related Word to *barbarismus* as Rhetorical Term).

nature, de langue que le geste et quelques sons inarticulés”.¹³ Here, it is not the barbarian but the savage who produces inarticulate noise in lieu of meaningful language. Such language is an achievement of the barbarian pastoralist. Gesture and noise are replaced by articulated sounds only when several families have gathered together at a spring or well in order to water their livestock and when, as a consequence, the incestuous coupling of siblings prompted by the natural drive of procreation within isolated savage families has given way to passionate love between members of different families: “Là se formèrent les premiers liens des familles [...]. Là se firent les premières fêtes, [...] le geste empressé ne suffisoit plus, la voix l’accompagnoit d’accens passionnés, le plaisir et le desir confondus ensemble se faisoient sentir à la fois”.¹⁴ Spoken language as a medium of desire is the product of the pastoral mode of life. Linguistic difference that allows to distinguish between sounds and words comes into being at the same time as sexual difference and the taboo of incest, which makes a distinction among the members of the other sex and introduces the social institution of marriage.¹⁵ According to Rousseau, the barbarian stage marks the simultaneous origin of linguistic difference, gender difference, love between the sexes and the institution of the family.

Another eminent eighteenth-century theorist of language, the German writer and philosopher Johann Gottfried Herder, establishes an even closer connection between the pastoral mode of subsistence and the invention of language. In his *Abhandlung über den Ursprung der Sprache* (1772), he famously refers to the example of the sheep in order to illustrate how human beings coined the very first meaningful word of their language. Among the abundance of sensual data received by the mind of archaic man in his first encounter with a sheep—the whiteness of the animal’s color, the softness of its fleece, its bleating voice—he fixes upon one sensation. This is transformed into a linguistic sign, a “Merkzeichen”, which stands in for the entire animal.¹⁶ The ambivalent German term “Merkzeichen” signifies a memorative sign which allows the human being to reproduce the experience at will in his memory, but it also refers to the mental activity of *aufmerken* (i. e., to focus one’s attention on something) and thus to the cognitive process that turns the complex of sensual data into a concept. It is no coincidence that *sheep* figures as the first human word in Herder’s theory of language. The sheep is the paradigm of a gregarious animal suitable for domestication. By singling out the sheep, the primal scene of language

13 Jean-Jacques Rousseau. *Essai sur l’origine des langues où il est parlé de la mélodie et de l’imitation musicale. Œuvres complètes*. Vol. 5. Ed. Bernard Gagnebin/Marcel Raymond. Paris: Gallimard, 1995, pp. 371-429, here p. 395.

14 *Ibid.* pp. 405-6.

15 In the *Essai*, incest marks the ordinary mode of procreation among savages: “Il faut bien que les premiers hommes épousassent leurs sœurs. Dans la simplicité des premières mœurs cet usage se perpetua sans inconvenient tant que les familles restèrent isolées” (*Ibid.* pp. 406).

16 Johann Gottfried Herder. *Über den Ursprung der Sprache. Werke in zehn Bänden*. Vol. 1. Ed. Ulrich Gaier. Frankfurt a. M.: Deutscher Klassiker, 1985, here pp. 722-29.

formation is located firmly in the context of pastoral nomadism. In his seminal work of cultural history, the *Ideen zur Philosophie der Geschichte der Menschheit* (1784-91), Herder makes this connection even clearer. Here, the act of designating the sheep is presented as paradigmatic of the human subjugation of nature. Designating the sheep, Herder argues, is a first and indispensable step in the process of domesticating the animal and thus of appropriating it and its resources (its milk, its wool and its meat):

Der Mensch z. B. der von den Tieren ein Merkmal der Benennung faßte, hatte damit auch den Grund gelegt, die zähmbaren Tiere zu bezähmen, die nutzbaren sich nutzbar zu machen und überhaupt alles in der Natur für sich zu erobern: denn bei jeder dieser Zueignungen tat er eigentlich nichts, als das Merkmal eines zähmbaren, nützlichen, sich zuzueignenden Wesens bemerken und es durch Sprache oder Probe bezeichnen. Am sanften Schaf z. E. bemerkte er die Milch, die das Lamm sog, die Wolle, die seine Hand wärmte und suchte das Eine wie das Andre sich zuzueignen.¹⁷

One and the same mental act of signification thus gives birth to a linguistic medium of communication, an epistemic instrument of cognition, a new mode of subsistence and a primitive form of property. Tellingly, Herder links this crucial achievement, which constitutes human culture as an autonomous sphere over and against nature, to barbarian pastoralism and not to the cultivation of land.¹⁸ It is the barbarian nomad who is credited with the creation of the symbolic order of culture.

Thus, more is at stake in eighteenth-century theories of language than the origin of mere systems of communication. According to these theories, linguistic structure, epistemic order and social organization are interconnected. Speculations about the origin of language are linked systematically to the origin of society and its institutions: the origin of property, of marriage, and of the first legal forms devised to safeguard these institutions. As Rousseau argues in the *Essai*, the springs and wells where families first gathered together and formed primitive societies are also the places where the first covenants were made, the first oaths were taken and the first contentions arose: “c'est là que commencèrent et leurs traittés et leurs querelles”.¹⁹ These places of assembly also mark the prototype of a public sphere. Therefore, the stage of barbarism is associated with language as medium of the public, of social bonding and of proto-legal

17 Johann Gottfried Herder. *Ideen zur Philosophie der Geschichte der Menschheit. Werke in zehn Bänden*. Vol. 6. Ed. Martin Bollacher. Frankfurt a. M.: Deutscher Klassiker, 1989, p. 356.

18 Herder thus counters the etymology of the word culture (Kultur): the Latin term *cultura* originally refers to the cultivation of land—the act of turning a stretch of wilderness into a plot of arable land. See Hartmut Böhme. “Vom Cultus zur Kultur(wissenschaft). Zur historischen Semantik des Kulturbegriffs.” *Kulturwissenschaft – Literaturwissenschaft. Positionen, Themen, Perspektiven*. Ed. Renate Glaser/Matthias Luserke. Opladen: Westdeutscher Verlag, 1996, pp. 48-68.

19 Rousseau. *Essai* (note 13), p. 403.

contractuality. In the barbarian phase of cultural history, language achieves a binding power—the power to create a primitive public sphere, to forge social bonds and to generate elementary forms of legality. To be sure, eighteenth-century stadial theories of culture do not conceive of barbarian society as the product of a social contract. Rather, they link the stage of barbarism to the gradual emergence of ‘contractuality’ as such, that is, of proto-judicial modes of liability, such as the oath, the bond, and the covenant. These modes of liability are coupled with specific linguistic forms. Barbarian practices of social bonding correspond to certain elementary legal and linguistic forms.

One of these forms is the oath.²⁰ In his *Lectures on Jurisprudence*, the Scottish philosopher Adam Smith opposes theories of social constitution that link the origin of property to agriculture and sedentariness.²¹ According to Smith, the barbarian herdsman who succeeds in taming wild animals figures as the inventor of property. Property necessitates the introduction of social mechanisms that secure possession: law and jurisdiction, forms of government and of public authority. Smith rejects the idea that societies are constituted by a social contract. But though he insists on the fact that there is no foundational social contract on which the structures of society are erected, he concedes that contractual relations among individuals are the very stuff that civil societies are made of. So if property (and with it, the lineaments of civil society) originates among nomadic shepherds, must this not also be true of contracts? At first sight, Smith seems to deny the fact that barbarian nomads were able to engage in contracts: “We find [...] that in the first periods of society, and even till it had made some considerable advances, contracts were noways binding.”²² In accordance with their volatile nature, their ineluctable mobility, barbarian nomads seem to be unable to commit themselves to the stability of a contractual relation. Smith goes on to specify the reasons for this inability. If their contracts lack the power to bind the contracting parties, he argues, this is due to the fact that they do not possess a medium which grants them permanence and stability. Their contracts are not binding because they suffer from an “uncertainty of language.”²³ Just as the nomads refrain from settling in a fixed abode, they have difficulties to agree on

20 For a current theoretical view of the oath as a proto-legal mode of liability see Giorgio Agamben. *The Sacrament of Language: An Archeology of the Oath*. Stanford: Stanford University Press, 2010 and Linda Simonis’s article in the present volume.

21 Smith’s engagement with stadial theory initially found expression in his lectures on moral philosophy and history of law before a sizeable audience at the University of Glasgow between 1751 and 1764. Two extensive transcripts of the Lectures on Jurisprudence, which he gave in the academic years 1762-1763 and 1763-1764, have survived. On the history of these transcripts and their transmission, see Meek/Raphael/Stein. “Introduction” (note 4), pp. 5-13; Knud Haakonssen. “The Lectures on Jurisprudence.” *Adam Smith: His Life, Thought, and Legacy*. Ed. Ryan Hanley. Princeton: Princeton University Press, 2016, pp. 48-66, here 48-50.

22 Adam Smith. *Lectures on Jurisprudence. The Glasgow Edition of the Works and Correspondence of Adam Smith*. Vol. 5. Ed. R. J. Meek/D. D. Raphael/P. G. Stein. Oxford: Clarendon Press, 1978, p. 88.

23 *Ibid.* p. 88.

settled meanings in their utterances: “Language at all times must be somewhat ambiguous, and it would be more so in the state of society we are talking about. This must render it very difficult to conclude with exactness the intention of the contracting parties”.²⁴ In the age of barbarian nomadism, there is no public language in the strict sense of the term. Each individual speaks his or her own linguistic variant, nobody can be sure to be understood by the other. However, according to Smith, the members of nomadic society hit upon an ingenious expedient to repair this defect of language. They invent the oath—a supplement to, or rather a prototype of the contract that serves to stabilize its meaning. In fact, the oath constitutes the origin of the contract. It marks the primitive form of a mutual obligation characteristic of barbarian society: “Oaths we may observe are most in use amongst barbarous [...] nations”.²⁵ In Smith’s view, the oath is not a performative speech act but rather serves a constative function—it clarifies the contractor’s intention: “Oaths [...] are there thought necessary to signify plainly the will of the person”²⁶; they consist of “a certain set form of words which it [is] agreed express[] the design of the contractor.”²⁷ Smith’s line of reasoning is circular. In order to make binding contracts possible, the would-be contractors must already have concluded a contract—a linguistic contract that fixes meaning by agreeing on a set form of words. The oath is the one linguistic form that possesses a clarity and fixity of meaning. In other words: The oath constitutes the first linguistic sign whose meaning is regulated by convention. Linguistic and juridical convention originate simultaneously. Within a limited domain, the oath transforms the fluid and opaque language of nomadism into a stable and transparent medium—a medium of publicity. In shepherd society, the public originates as a function of language. The oath constitutes a first step towards ‘settling’ the barbarian nomad. The shepherd stage of society thus not only marks the origin of public power, it also marks the birth of an intralinguistic public, a reliable medium for the negotiation of public affairs.

The ingenuity of Smith’s approach to the problem of social and linguistic liability can be gauged by comparing it to the theory of one of his contemporaries. In his treatise *De l’origine des loix, des arts et des sciences; et de leurs progrès chez les anciens peuples*, published in 1758, the French lawyer Antoine-Yves Goguet tells a different story about the origin of legality and contractuality.²⁸ Goguet does not differentiate between three different stages of social evolution, but rather makes the elementary binary distinction between primitive and civil societies, based on the respective modes of subsistence. Primitive societies consist of nomadic hunters and shepherds; civil societies are those who practice agriculture and trade. According to Goguet, the most important event in

24 Ibid. p. 88.

25 Ibid. p. 91.

26 Ibid. p. 91.

27 Ibid. p. 89.

28 This work was quite successful in its time. It was translated into English by the Scotsman Robert Henry (published in Edinburgh in 1761), where it exerted some influence on the protagonists of the Scottish enlightenment. On Goguet and his reception in Britain see Pocock, *Barbarism and Religion* Vol. 4 (note 3), pp. 37-64.

the course of cultural history is the transition from a nomadic to a sedentary life-style. It marks the difference between primitive and civil societies. Primitive societies have no legal order apart from natural law. Its regulations are inscribed in the hearts of all men (“gravés dans le cœur de tous les hommes”) and function as a “lumière intérieure”.²⁹ Consequently, the members of primitive society need not deliberate about promulgating such rules; there is no public debate concerning their institution: “Elles se sont établies naturellement par l’effet des conventions tacites.”³⁰ However, this tacit mode of legislation, this abstention from public deliberation, seems to be the problem that lies at the heart of primitive society. For the natural law that regulates its life and that everybody tacitly agrees upon lacks authority. It is not strong enough to direct people’s actions, it does not inculcate social behavior; therefore, the bonds that hold primitive society together are fragile. Paradoxically, though inscribed in the very hearts of all human beings, the regulations of natural law are not sufficiently known to them: “Elles n’étaient ni assez notoires, ni assez précises, ni assez étendues.”³¹ Law in primitive society lacks force because it lacks notoriety, it is not publicly known. It also lacks precision, which is due to the fact that it is not articulated verbally, it is not put into language.

How can one get out of this predicament? An easy solution seems to offer itself: The people who constitute primitive society should come together and engage in a public negotiation about the law, should clarify the imprecise internal rules of natural law by externalizing them verbally and discussing about them, agreeing on their formulation and their exact meaning. (In fact, this is what Smith supposes to have happened when barbarian shepherds invented the proto-legal form of the oath.) They should transform internal natural into external positive law through public debate and public consent. According to Goguet, precisely such a transformation of natural law into positive law marks the transition from primitive to civil society. However, he imagines this transition to have taken place in a manner totally different from the one I have just sketched. The transition from natural to positive law is not effected through verbal articulation and public debate among the people, but by endowing one person—a king—with the power to issue and apply laws:

Le bien de la société a donc exigé qu’on [...] les [sc. les premiers monarques] mît en état de faire des réglemens propres a perfectionner les premiers établissemens. Je les appellerai LOIX POSITIVES, parce que leur objet est clair & marqué. Elles ont remédié à tous les inconvéniens de la société primitive. Le souverain, en publiant ses loix, instruit chaque particulier des regles qu’il doit suivre [...]. C’est le souverain qui fait l’application de la loi. Réunissant dans sa personne toutes les forces de l’État, il est à portée de tenir la main à l’exécution de ses ordonnances [...].³²

29 Antoine-Yves Goguet. *De l’origine des loix, des arts et des sciences; et de leurs progrès chez les anciens peuples*. Tome I: *Depuis le Déluge jusqu’à la mort de Jacob*. Paris: Desaint & Saillant, 1758, p. 8.

30 Ibid. p. 8.

31 Ibid. p. 8.

32 Ibid. p. 8.

According to Smith, the binding power of the oath results from an agreement between the contractors about its meaning. The institution of law (or of proto-legal regulations) cannot be separated from the institution of language; the conventionality of law conforms to the conventionality of language. In Goguet's view, by contrast, law acquires its binding force not through verbalization and negotiation, but through the authority of a sovereign, by virtue of his command. The authority of law is not a function of language, but of political power. While in Smith, settling the nomad is a matter of fixing meaning by way of a bottom-up process of verbal negotiation, in Goguet it is the result of establishing the top-down political order of monarchy: "il est toujours certain que c'est l'établissement du gouvernement Monarchique qui a donné aux sociétés une forme fixe & assurée."³³

So Smith seems to conceive of the binding power of the contract as something that emanates directly from its unequivocal meaning, its rational clarity. Its illocutionary force is a function of its transparency: "the first contracts which were binding were those wherein the intention of the contractor was plain and uncontroverted."³⁴ Transparency of meaning is in turn linked to oral language. Contrary to what one would have expected, Smith does not attribute to the medium of writing the ability to fix meanings and to stabilize contractual relations. Far from it, in his view writing obstructs the transparency of meaning characteristic of the spoken word and therefore destabilizes contractual obligations:

At this time no contract could be made but amongst those who actually uttered the words by which the contract was comprehended. An oath can only be taken from one who actually delivers it from his own mouth. A written and signed oath is of no effect. Writing is no naturall expression of our thoughts (which language is,) and therefore is more dubious and not so settled in the meaning.³⁵

According to Smith, the barbarian oath is subject to the imperative of immediacy. He who takes an oath must do so in his own person; he must not delegate it to a substitute such as a piece of writing. Thus, apart from the alleged transparency of meaning resulting from negotiation, there is a second element that defines the barbarian oath. The taker of the oath gives himself as a security. He must vouch with his very person and body for the fulfillment of the obligation he takes upon himself. The bond between two parties that is established by the oath binds them together immediately, bodily so to speak. In the end, transparency of meaning does not suffice to endow the barbarian oath with such a binding power. As Smith concedes, there must also be some kind of ritual, a ceremonial form: "Some solemnity is at first required to make a contract appear altogether binding."³⁶ The barbarian oath does not only serve the function of clarifying and fixing meaning, it is also an instrument of "solemnity." It lends the contract an impressive and memorable form. By means of its solemn ritual

33 Ibid. p. 8.

34 Smith. *Lectures on Jurisprudence* (note 21), p. 89.

35 Ibid. p. 91.

36 Ibid. p. 97.

form, the oath inscribes the contract into the memories *and the bodies* of the contractors. Smith gives a graphic example of the solemnity of barbarian oaths: “Herodotus tells us that the Scythians, when they desired to make a contract entirely binding, drew blood of one another into a bowl, dip’t their arrows in it, and afterwards drank it off.”³⁷ Here the oath that supplements the contract does not have the form of spoken words but of symbolic action. The oath obliges the contractors to literally incorporate the contract and to incorporate each other. Such oaths do not result in rational clarity, rather, they constitute “horrid ceremonies” which produce “fear and terror” in the contractors.³⁸ They imply a superstitious belief in the magic power of blood. The opacity of blood signals a relapse into the irrational sphere of passion and sensuality. Thus, the status of the oath in nomadic society remains undecidable: it is both a medium of barbarous spectacle and of incipient rationality, both a source of symbolic exchange and an act of cannibalistic incorporation, of mutual predatory appropriation. Just as the barbarian shepherd acquires property by means of violent subjugation and rapine rather than by commercial exchange, the oath marks a mode of contractual reciprocity that incorporates the other rather than producing a relational balance.

III.

So Smith conceives of a primitive mode of contractuality specific to the stage of pastoral barbarism. Rousseau elaborates upon this concept in his writings on the history of society and culture. In his *Essai sur l'origine des langues*, he correlates the development of society to the development of human language. The origin of social bonding in the age of barbarian shepherds is linked to the origin of language—and this in turn is associated with the origin of contracts. In his reflections on primitive forms of contractuality, Rousseau takes up a line of thought he also develops in his pedagogical novel *Emile ou de l'éducation*. Therefore, in what follows, I will refer both to the *Essai* and to the *Emile*.

Just as Smith, Rousseau connects the origin of the contract to a primitive mode of the public. The elementary public is based on a special type of language—a “*langue des signes*.”³⁹ This language is not spoken, it constitutes a silent language of visual tokens, gestures, and pantomimic display, a language of things and symbols. According to Rousseau, such visual symbols do not require any interpretation—they immediately reveal their meaning. The “*langue des signes*” is a transparent medium, hence its suitability for constituting a public sphere. The example Rousseau offers is highly significant. He refers to the age when the first contracts were concluded among men:

37 Ibid. p. 97.

38 Ibid. p. 97.

39 Jean-Jacques Rousseau. *Emile, ou de l'éducation. Œuvres complètes*. Vol. 4. Ed. Bernard Gagnebin/Marcel Raymond. Paris: Gallimard, 1969, pp. 239-868, here p. 646 and Rousseau. *Essai* (note 13), p. 376.

Toutes les conventions se passoient avec solemnité pour les rendre plus inviolables; avant que la force fut établie les Dieux étoient les magistrats du genre humain: c'est par devant eux que les particuliers faisoient leurs traittés, leurs alliances, prononçoient leurs promesses; la face de la terre étoit le livre où s'en conservoient les archives. Des rochers, des arbres, des monceaux de pierre consacrés par ces actes et rendus respectables aux hommes barbares, étoient les feuillets de ce livre ouvert sans cesse à tous les yeux. Le puits du serment, le puits du vivant et voyant, le vieux chêne de Mambré, le monceau du témoin, voila quels étoient les monumens grossiers mais augustes de la sainteté des contrats; nul n'eut osé d'une main sacrilège attenter à ces monumens, et la foi des hommes étoit plus assurée par la garantie de ces témoins muets qu'elle ne l'est aujourdui par toute la vaine rigueur des loix.⁴⁰

Obviously, Rousseau evokes a biblical setting for the primitive public constituted by establishing contractual relations. We are in the world of the biblical patriarchs, of Abraham, Isaac and Jacob. At the same time, these patriarchs are marked as nomadic herdsmen. Thus, we are transferred to the shepherd stage of stadial theory—the period in which, according to the Rousseau of the *Essai*, human society and language originated. In this period, society does not possess a government. The gods or God himself is the magistrate. Therefore, in order to gain binding power, contracts must be testified and sanctioned by God. Contracts are concluded in the face of God. In Rousseau's view, however, the face of God is nature. The contractors commit themselves to their deed in the open space of nature. But nature not only attests the presence of God, it also functions as an archive, a medium that records and preserves the contract. The contract is inscribed into nature by means of a commemorative sign, a monument. By marking the earth, it attains a face, a physiognomy: “la *face* de la terre étoit le livre où s'en conservoient les archives.” Allegedly, this act of marking does not constitute a forceful intervention. The landscape is not violently transformed. Rather, the signs used for marking are provided by nature itself—elements of the landscape which are already there, which merely require ‘consecration’, a gentle, non-invasive form or ritual, in order to become legible as signifiers: some rocks, a tree or a spring. The “*langue des signes*” which constitutes public space seems to grow out of nature organically; the medium employed to preserve the covenant constitutes a ‘natural’ form of writing. These marks point to the presence of God and to divine testimony, which secures the binding power of the contract. But it is also a witness in itself—a “*témoin* [] muet [].” Moreover, the sign that is openly placed in the middle of the landscape turns everybody—any passerby who might see it—into a witness of the conclusion of contract. The sign is accessible, visible and legible to all—to the contractors, to God, to the passersby, to all the members of society. By discerning the sign, any passerby is made a witness and guardian of the contract. Thus, the sign constitutes a public—a sphere of maximum openness, transparency and surveillance. Just as in the case of Smith, the transparency of meaning seems to guarantee the binding power of the contract. The sign attains an illocutionary force by virtue of the transparency it generates. It embodies the omniscient vigilance of God and

40 Ibid. p. 646.

the human public. The sign functions as a living eye, an *œil vivant*, to quote from Rousseau's novel *La nouvelle Héloïse*.⁴¹ Significantly, Rousseau mentions springs and wells as prominent examples of signs that warrant the validity of contracts. As we have seen, springs and wells—the places where nomads lead their herds to give them water—play a crucial role in the *Essai*. This is where primitive people gather together and found society; this is where spoken language originates. The clear water issuing from the well refers to the transparency of meaning established by the “*langue des signes*.” It is opposed to the opacity of blood that flows when the body is wounded, when nature is violated by means of an invasive inscription (as in the example of the Scythians mentioned by Smith). But wells also figure as eyes of the landscape. Wells and springs provide nature with eyes and therefore with a face. As natural signs, springs and wells allow for face-to-face communication between man and nature, man and God. Signs such as wells constitute a ‘natural writing,’ which is contrasted by Rousseau to the artificial writing developed in civil society. Rousseau speaks of the “*vaine rigueur des loix*”—the vain rigor of laws encoded in books, in the artificial signs of writing. These opaque signs lack illocutionary force—they do not have any binding power. In order to enforce the written laws of civilized society, its government must resort to supplementary means, to “force” on the one hand, the threat of physical violence and punishment, to “*intérêt*” on the other hand, the incitement of self-interest by rewards and bribes.⁴² Goguet's sovereign monarch is such a supplementary source of power, which authorizes the law from the outside (and thus, in Rousseau's view, arbitrarily). Rousseau's barbarian society, by contrast, does not require the coercive means of a state apparatus in order to enforce contractual obligations. The signs employed for ‘inscribing’ the primitive contract are powerful in themselves.

So Rousseau, just as Smith, repudiates (alphabetic) writing as medium for preserving covenants. Contrary to Smith, however, he does not oppose the feebleness of the written to the power of the spoken word. Rather, he envisages an alternative, more ‘natural’ and more immediate mode of inscription which not only fixes the contract and guarantees the transparency of its meaning, but also grants its binding power. The gentleness and non-invasiveness attributed to this barbarian form of inscription with regard to the primal scene of covenant-making is merely an apparent one, however. Closer inspection reveals that the binding power attributed to the “*langue des signes*” is the result of a brutal act of violence devised to terrorize and overawe contractors into complying with their obligations. As in Smith, the barbarian contract is inscribed into the bodies of

41 In the novel, the literary character M. de Wolmar, paradigm of the enlightened and virtuous sage, expresses his desire to become the silent witness and surveillant observer of human society in order to read in its members' hearts: “*J'aime à lire dans les cœurs des hommes [...]. La société m'est agréable pour la contempler, non pour en faire partie. Si je pouvois changer la nature de mon être et devenir un œil vivant, je ferois volontiers cet échange.*” Jean-Jacques Rousseau, *Julie, ou La Nouvelle Héloïse. Œuvres complètes*. Vol. 2. Ed. Bernard Gagnebin/Marcel Raymond. Paris: Gallimard, 1964, pp. 5-745, here p. 491.

42 See Rousseau, *Emile* (note 39), p. 645 and Rousseau, *Essai* (note 13), p. 428.

the contracting parties. The example Rousseau gives to illustrate the “langue des signes” makes this clear:

Quand le lévite d’Ephraïm voulut venger la mort de sa femme, il n’écrivit point aux Tribus d’Israël; il divisa le corps en douze pièces et les leur envoya. À cet horrible aspect ils courent aux armes en criant tout d’une voix: *non, jamais rien de tel n’est arrivé dans Israël, depuis le jour que nos pères sortirent d’Egipte jusqu’à ce jour.* Et la Tribu de Benjamin fut exterminée.⁴³

Here, Rousseau refers to the story of the Levite of Ephraim told in the Book of Judges of the Old Testament. In order to obtain retribution for the rape and murder of his wife by members of the tribe of Benjamin, he sends a part of her dismembered body to each of the other tribes of Israel. By dismembering the body, the Levite inscribes a message into it and transforms it into a signifier—a sign that says all without the aid of words (“le signe a tout dit avant qu’on parle”).⁴⁴ The dismembered body refers to the violence committed not only to the Levite’s wife, but also to the entire people of Israel by the heinous crime of the Benjaminites. Her fragmented body symbolizes the body politic of Israel and its impending destruction through the defection of the tribe of Benjamin. It reminds the tribes of the covenant that binds them together and calls for their loyalty to the alliance. Paradoxically, it is a dismembered body that recalls the act of covenant-making out of which an integral body corporate arose. The Levite must symbolically reenact the violence committed by the Benjaminites in order to reanimate the original covenant. His horrid deed reveals the violence required to form an alliance and to make a covenant binding in the first place. Tellingly, the tribes respond to this terrifying symbolic appeal by renewing their vow *unanimously*—by speaking with *one* voice (“en criant tout d’une voix”).

To conclude, though the society of barbarian shepherds does not originate in a foundational social contract and does not possess an abstract body of laws, it is held together by certain pre-legal modes of liability such as the covenant and the oath and by a proto-linguistic “langue des signes” which functions as their medium. These primitive stipulations are preserved in an embodied form: they are inscribed either into the body of the earth inhabited by the respective social group or into the bodies of the contractors.⁴⁵ According to Rousseau, the binding force exerted by such pre-legal forms of contractuality and such proto-linguistic symbols is extraordinary. They create a strong social cohesion. Thus, they constitute a preform of the social contract that underlies developed civil

43 Rousseau. *Essai* (note 13), p. 377.

44 *Ibid.* p. 376.

45 On body-marks such as scarifications, tattoos etc. as archaic modes of inscribing the social contract or covenant see Pierre Clastres. “Of Torture in Primitive Societies.” *Society Against the State*. Trans. Robert Hurley in collaboration with Abe Stein. New York: Zone Books, 1987, pp. 177-88; Christian Moser. “Das Gespenst der inskriptiven Gewalt. Der Gesellschaftsvertrag als Schreibszene.” *Die Schreibszene als politische Szene*. Ed. Claas Morgenroth/Martin Stingelin/Matthias Thiele. München: Fink, 2012, pp. 35-61.

society. The barbarian covenant differs from the civilized contract with regard to the mode of exchange it puts into effect. Contractuality always implies an exchange of material or immaterial goods, of rights and obligations.⁴⁶ In civil society, this legal trade is rationalized. Rights and obligations are made calculable. In barbarian society, the exchange that takes place between the contracting parties obeys an economy of excess. Just as barbarian rape and plunder are supplanted by an economy of free trade in civilized society, the excessive give and take of pre-contractual barbarian liability is replaced by a just balancing of titles and obligations in civilized contractual law. This at least is the picture drawn by eighteenth-century stadial theory.

IV.

The social function of pre-legal barbarian contractuality and the specific mode of exchange it implies are illustrated by a short narrative fiction authored by Rousseau and entitled *Le Léviste d'Éphraïm*. In this epyllion, Rousseau elaborates upon the drastic example of the dismembered body presented in the *Essai*. He tells the story of a barbarian people which, as a consequence of a heinous crime, lapses into an almost genocidal civil war that threatens to exterminate one of its tribes and so to dismember the entire body politic. This threat is barely averted and in the end the alliance between the tribes is reconfirmed. However, Rousseau indicates that reconfirmation of the alliance does not mark a return to some primal scene of covenant-making. Rather, it marks a progress on the scale of civilization (albeit, as is typical of Rousseau, an ambiguous one) involving social change: a transformation of the status of patriarchal authority accompanied by a modification of the structure of the covenant.

At the beginning of the epyllion, Rousseau makes it clear that ancient Israel is to be seen as a barbarian society in the sense of stadial theory. It is not subjected to the rule of law and it lacks governmental institutions:

Dans les jours de liberté où nul ne régnoit sur le peuple du Seigneur, il fut un tems de licence où chacun, sans reconnoître ni magistrat ni juge, étoit seul son propre maître et faisoit tout ce qui lui sembloit bon. Israël, alors épars dans les champs, avoit peu de grandes villes, et la simplicité des ses mœurs rendoit superflu l'empire des loix.⁴⁷

Rousseau's description of ancient Israel as not being ruled by laws seems odd, given the fact that (as can be gleaned from the Old Testament) its first great leader, Moses, received the law directly from God in token of his covenant with the chosen people. But here as in his philosophical writings Rousseau disregards

46 Michel Foucault. "*Il faut défendre la société.*" *Cours au Collège de France (1975-1976)*. Ed. Mauro Bertani/Alessandro Fontana. Paris: Gallimard, 1997.

47 Jean-Jacques Rousseau. "Le Léviste d'Éphraïm." *Œuvres complètes*. Vol. 2. Ed. Bernard Gagnebin/Marcel Raymond. Paris: Gallimard, 1964, pp. 1205-23, here 1208-9.

religious orthodoxy, adapting the biblical story to the end of conveying his idea of social and cultural evolution. Though Rousseau's Israel is not governed by law, it is subject to the pre-legal form of the covenant. Covenants and oaths are the stuff this barbarian society is made of: the covenant between God and his chosen people in the first place, but also the alliance between the twelve tribes as well as many particular alliances between individuals, especially alliances of love between men and women. Thus, the alliance between the Levite of Ephraïm and the young woman from Bethlehem clearly possesses a pre-legal status: he abducted her from her family without asking for her father's consent. Their relationship is not sanctioned by the rites of marriage.⁴⁸ As the Levite himself argues, he made her his own not by engaging in a marital contract (which would have involved the father), but by obtaining her love and by deflowering her, by taking into possession and marking her body: "Quel autre que moi peut honorer comme sa femme celle que j'ai receu vierge?"⁴⁹ The alliance between the Levite and the woman from Bethlehem is based on love, predation and bodily inscription. Significantly, in the Levite's view, the fact that he robbed the woman out of her father's custody does not impair the legitimacy of his property. On the contrary, the combination of predation, love and defloration seems to constitute a particularly powerful bond and a strong mode of ownership—so strong that its violation (the rape and murder of the woman by the Benjaminites) justifies an extreme and excessive form of retribution put into effect by the entire people of Israel. By violating the bond between the Levite and his 'wife,' the Benjaminites imperil the alliance that constitutes the people of Israel as a whole. Thus, the compact between lovers (a sort of engagement or betrothal) must be seen as a model for the pre-legal bond that integrates the tribes of Israel into one body politic.

This interpretation is corroborated by the way the tribes react to the Levite's symbolic appeal for retribution—an appeal, by the way, which is explicitly characterized by the narrator as a barbarian act ("le barbare ose couper ce corps en douze pièces").⁵⁰ Not only do all the tribes (with the exception of Benjamin) respond unanimously: "il s'éleva dans tout Israël un seul cri, mais éclatant, mais unanime: Que le sang de la jeune femme retombe sur ses meurtriers."⁵¹ What is more, the promise of retribution is reinforced by swearing an oath ("par un serment solennel")⁵² or, to be precise, by swearing *two* oaths: The one stipulates that any member of Israel who refuses to partake in the war of retribution shall

48 Rousseau makes this expressly clear: in a footnote (see Rousseau, "Lévite" [note 47], p. 1209) he refers to a law (Numbers 36.8) that forbids the women of Israel to marry outside their tribe if they do not have a brother (as is the case with the girl from Bethlehem). Thus Rousseau seems to contradict his initial statement according to which ancient Israel was not ruled by law. But this incoherence only serves to highlight the ambiguous status of the barbarian society: a society on its way to civil order, in a liminal sphere between lawlessness and legality, governed by proto- or pre-legal forms.

49 Rousseau, "Lévite" (note 47), p. 1210.

50 Ibid. p. 1215.

51 Ibid. p. 1216.

52 Ibid. p. 1217.

be killed, the other ordains that no member of Israel may marry his daughter to a Benjaminite. So, the excessive violence of the rape and murder is not only answered by an excessively violent war of retaliation, but also by an excess of pre-legal bonding. In fact, these oaths exert an exorbitant binding power. They are treated as absolutely inviolable by the people of Israel—to the extent that they threaten to destroy the very corporative unity they are intended to constitute. Having slain the entire population of Benjamin save for 600 men, the avenging tribes suddenly realize that they are about to desintegrate their own commonwealth. Therefore they decide to spare the last surviving Benjaminites, to procure them women and to re-integrate their tribe into Israel. However, the oath obliges them to continue in the path of excessive violence in order to do so. First, they fall upon the expedient of destroying the city of Jabes, the only community outside the tribe of Benjamin which had refused to partake in the campaign of vengeance. So they kill the men of Jabes and transfer their women to the Benjaminites—“comme une proie qu'on venoit de ravir pour eux.”⁵³ Still, 200 men of Benjamin remain unprovided for. An old man from Lebona seems to hit upon a solution to the riddle of how to keep the oath while at the same time procuring women for Benjamin: he proposes to allow the 200 single Benjaminites to assault and appropriate the young women of Israel who are about to return from the festivities at Shilo, thus obeying the letter if not the spirit of the oath which forbids the men of Israel “to give” their daughters to the sons of Benjamin.⁵⁴ With reference to Smith one could also say: The old man from Lebona strives for a more adequate interpretation of the oath which renders its meaning more precisely. Anyhow, the oath constrains the tribes of Israel to practice predation in order to preserve and renew their society. There seems to be a systematic relationship between the pre-legal form of the oath and the economy of rape on which this society is based. Both ‘incorporate’ men and women into the body politic in an immediate, literal way. The oath accounts for the powerful cohesion of the society of Israel, but also for the strong centrifugal forces that threaten to disrupt it. The unswerving solidarity demonstrated by the tribes when called upon to avenge one of its members and the self-destructive violence it unleashes are two sides of the same coin. Therefore the rape of women proposed by the old man of Lebona is no real solution to the problem of social integration. It leads Israel straight back to the original misdeed and cause of the civil war, which was, after all, the abduction of a woman. Israel seems to be caught in a vicious circle of social auto-cannibalism. It is a body politic that constitutes itself by devouring its own members. How can it escape this vicious circle?

Rousseau's *epyllion* seems to suggest a way out. The fathers of the young women of Shilo protest against the abduction of their daughters by the Benjaminites. As

53 Ibid. p. 1221.

54 Ibid. p. 1220. Here literalism—Israel's imperturbable sticking to the letter of the oath—evokes the Pauline dichotomy of the spirit and the letter and its anti-Jewish implications. Rousseau, however, is less interested in these implications than in the interplay between a specific (pre-)legal form, a certain stage in the evolution of language and social structure.

a consequence, the assembly of the people of Israel decrees that these women should decide their fate for themselves (“[elles] décideront elles-mêmes de leur sort”).⁵⁵ This opens up the possibility of renegotiating the terms of the alliance that constitutes the body politic of Israel—for refining and redefining the meaning of the original covenant. The women are no longer to be the passive objects of a social dynamics in which they are either driven by sensual desire to form an alliance of love or the victims of violent rape and subjugation. If they decide to go with the Benjaminites and thus to contribute to re-constituting the body politic, this is a rational choice expressive of their free will. The tribes of Israel have the opportunity of ‘rationalizing’ the alliance, so to speak, of transforming the pre-legal barbarian compact into a full-blown civilized contract. The negotiation that is to result in a new alliance is conducted paradigmatically between the old man of Lebona and his daughter Axa, who is among the young women of Shilo assaulted by the Benjaminites. Axa is in love with Elmacin, a member of her own tribe. So she must choose between the ‘old’ mode of alliance based on love and the new one which involves the renunciation of her personal desire and her voluntary submission to the higher common good. Axa opts for the latter, the other women of Shilo follow her example, and thus the commonwealth of Israel seems to be reestablished on a more stable rational and contractual basis.

Does Rousseau’s Israel really succeed in replacing the barbarian mode of bonding by a civilized social contract? In fact this is not the case.⁵⁶ Axa’s exemplary decision turns out to be less free and less rational than it seems to be at first sight. In her choice, she is guided by her father, who strives to persuade her by the following speech:

Axa, lui dit-il, tu connois mon cœur; j’aime Elmacin, il eut été la consolation de mes vieux jours: mais le salut de ton peuple et l’honneur de ton père doivent l’emporter sur lui. Fais ton devoir, ma fille, et sauve-moi de l’opprobre parmi mes frères; car j’ai conseillé tout ce qui s’est fait.⁵⁷

The old man from Lebona exhorts Axa to renounce her love for Elmacin not only for the sake of Israel, but also for his own sake. Her decision to wed a Benjaminite would spare him public humiliation and shame. Her father’s public and paternal authority is at stake. Thus, rather than being supplanted by rationality, love persists as a principle of social bonding, though no longer in the form of

⁵⁵ Ibid. p. 1222.

⁵⁶ See Rosanne Terese Kennedy. *Rousseau in Drag. Deconstructing Gender*. New York: Palgrave Macmillan, 2012, pp. 38-39, who also doubts that the contract concluded at the end of “Le Lévitte d’Ephraïm” succeeds in establishing a new social order. She compares this contract with the illegitimate social contract that terminates the state of nature in the Second Discourse: “Both are illegitimate in that they are the outcome of violence, war, oppression, and chaos and are premised on the false promises of peace” (Kennedy: *Rousseau in Drag*, p. 39). In my interpretation, the contract is not illegitimate, but pre-legitimate, pre-legal, proto-legalistic. Hence it perpetuates barbarian modes of social bonding.

⁵⁷ Rousseau. “Lévitte” (note 47), p. 1223.

spousal love, but in the form of filial and paternal love. Axa chooses wedlock with a Benjaminite out of love for her father. The new alliance that concludes the epyllion implies a strengthening of paternal authority. While at the outset of the story the Levite and the young woman from Bethlehem disregard paternal authority and thus set in motion a spiral of violence, Axa obeys her father's will. On the other hand, paternal authority has also undergone a transformation in the course of the events. The old man from Lebona is no patriarchal despot who disposes over his daughter against her will. He yields to her the right to decide for herself. However, in yielding to her this right, he also partially revokes it.⁵⁸ Axa does not possess the right to decide for her fate 'by nature,' rather she is *given* this right by her father. The right to decide is a generous gift, a token of paternal love, which demands a gift in return. Axa is indebted to her father; his gift of freedom imposes a "duty" ("devoir") upon her. Insofar as the new alliance between the tribes of Israel is based on this model of paternal and filial love, it is not a rational contract. It still functions within the framework of an excessive economy of gifts, which, according to Scottish philosophers Adam Smith and Adam Ferguson, is typical of the stage of barbarian pastoralism.⁵⁹ Axa owes her life and her freedom to her father and therefore gives them to him in return.⁶⁰ On her father's side, this compact contains an element of risk and of trust: Since the right to decide is a paternal gift, there always is the possibility of the daughter's appropriating this gift without giving anything in return. By entrusting the

58 The specific mode of paternal authority constructed in Rousseau's "Le Lévite d'Ephraïm" and the concomitant representation of the relationship between father and daughter must be seen within the larger framework of an attempt to redefine paternity in eighteenth-century literature. In particular, the genre of the bourgeois tragedy strives to 'feminize' the figure of the father, endowing him with the maternal qualities of a caring, nurturant parent and with tenderness and sensitivity. The relationship between fathers and daughters is thus charged with high affective value. In George Lillo's *The London Merchant* (1731), for instance, the figure with the telling name Thorowgood generously grants his daughter Maria the right to choose her own spouse. She is so much abashed by this token of paternal love and trust that she abstains from making use of it: she renounces the man she loves, Barnwell, who turns out to be the murderer of his own uncle and foster father. Having fulfilled the deed and having received pardon by his dying victim, Barnwell compares himself to the Roman emperor Nero, thus indicating that by murdering a caring and loving 'father', he not only committed parricide but also matricide.

59 See Moser. "The Concept of Barbarism" (note 1), chapter 2.1.2.5 and chapter 2.1.2.6.

60 In other words: Axa sacrifices her freedom in order to secure patriarchal authority. Again, this leads us back to the beginning of the epyllion: when the Benjaminites threaten to do him violence, the Levite substitutes his beloved companion for himself and thus sacrifices her. At the end of the narrative, female self-sacrifice supplements the male sacrifice of women, but also perpetuates a social order based on the violence of excessive gifts (gifts of life). On the foundational function of sacrifice in *Le Lévite d'Ephraïm* see also Melanie Rohner. "Ces tems de barbarie étoient le siècle d'or." Rousseau's *Le Lévite d'Éphraïm* und Bodmers *Menelaus bey David* im Kontext zeitgenössischer anthropologischer Diskussionen." *Comparatio* 8.1 (2016): pp. 59-73, p. 62.

decision to his daughter, the old man from Lebona puts Israel's future at stake.⁶¹ He is a barbarian gambler such as Ferguson and Gibbon describe him in in their depictions of barbarian communities.⁶² The new alliance forged at the end of the epyllion is not a contract but a covenant. According to Thomas Hobbes, a covenant (as distinguished from a contract) is set up when "one of the Contractors [...] deliver[s] the Thing contracted for on his part, and leave[s] the other to perform his part at some determinate time after, and in the mean time be *trusted*".⁶³

To conclude, Rousseau's epyllion does not merely illustrate his theory of the social contract and its gradual emergence in barbarian society. Rather, it problematizes one of its key tenets, namely the transparency attributed to the medium of public discourse and public negotiation out of which the covenant is to arise. As the epyllion demonstrates, this medium is neither transparent nor neutral; it is an instrument of persuasion which serves the interest of patriarchal power. The epyllion thus runs counter to Rousseau's seminal theoretical work of political philosophy, his treatise *Du contrat social*. In this text, Rousseau argues that the social contract and the republican state presuppose a totally transparent medium of public discourse. The will of the people, the *volonté générale*, manifests itself immediately, without critical discussion or negotiation: „le bien commun se montre par tout avec évidence, et ne demande que du bon sens pour être aperçu.”⁶⁴ If the republic requires new laws, this need will be articulated spontaneously, as an immediate expression of what everybody feels: „Le premier qui les propose ne fait que dire ce que tous ont déjà senti, et il n'est question ni de brigues nippéçu de l'éloquence pour faire passer en loi ce que chacun a déjà résolu de faire”.⁶⁵ As Jürgen Habermas comments, in the *Contrat social* Rousseau strives for a democracy without public debate, a totalitarian democracy, a dictatorship of „bon sens“, of communal feeling.⁶⁶ Contrary to the epyllion, the *Contrat social* envisions a public language to end all languages, and a political theory to end all political discourse.

61 On the status of trust in literary representations of barbarian sociogenesis see Tim Albrecht. "Trusting Barbarians? Franz Grillparzer's The Golden Fleece and the Challenge to the Mythography of Empire." *Barbarism Revisited: New Perspectives on an Old Concept*. Ed. Maria Boletsi/Christian Moser. Leiden and Boston: Brill and Rodopi, 2015, pp. 203-19.

62 See Adam Ferguson. *Essay on the History of Civilized Society*. Ed. Fania Oz-Salzberger. Cambridge: Cambridge University Press, 1995 [1767], pp. 96-97; Edward Gibbon. *The Decline and Fall of the Roman Empire*. With an Introduction by Hugh Trevor-Roper. 6 vols. London: Everyman's Library, 1993/94 [1776-89], Vol. I, p. 246.

63 Thomas Hobbes. *Leviathan. Revised Student Edition*. Ed. Richard Tuck. Cambridge: Cambridge University Press, 1996, p. 94, my italics.

64 Jean-Jacques Rousseau. *Du contrat social. Œuvres complètes*. Vol. 3. Ed. Bernard Gagnebin/Marcel Raymond. Paris: Gallimard, 1964, pp. 347-470, p. 437.

65 *Ibid.* p. 437.

66 Jürgen Habermas. *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*. 17th edition. Darmstadt: Luchterhand, 1987 [1962], p. 123.