

## BOOK REVIEW

# Bert van Roermund, *Law in the first person plural*

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Bert van Roermund, *Law in the First Person Plural: Roots, Concepts, Topics* (Cheltenham: Edward Elgar, 2020), 304p.

### Introduction<sup>1</sup>

In one version of the story of the social contract, individuals in the ‘state of nature’ decide to give away some of their natural freedoms to a sovereign, in order to receive something else in return. Instead of always having to be on their guard for ruthless robbers and killers that roam the amoral world, they can now rely on some level of safety and security granted to them by the sovereign. They have traded away the right to rob and kill, for protection against non-law-abiding citizens. Social contract stories like these, and many other variants, have been topics for discussions and resources for academic debate for centuries. Is it, for instance, rational to sign the contract if you are uncertain whether others will do the same? And how does such a process go in practice? Should everyone sign at once, or is there room for a somewhat longer, iterative process? And what is the status of the sovereign after the contract has been signed? Are there limits to his freedom, or is he authorized to do everything he deems required? And what roles do law and democracy play, in the end?

In one of his recent works, Bert van Roermund contributes to this debate by presenting a rereading of Rousseau’s social contract theory. In his elaborate, detailed, and at times, complicated book Van Roermund deals directly or indirectly with many of the exemplary questions asked above. In this review I first summarize Van Roermund’s analysis of sovereignty, based on his careful reading of Rousseau. I will then discuss issues of representation and reflexivity. This will help to make more sense of where I look at thirdly: Van Roermund’s ontological rendering of the ‘body politic’, the entity that is crucial to not only a proper understanding of Rousseau’s political philosophy, but to every political philosophy. I will conclude by presenting my thoughts on Van Roermund’s body politic, and by listing some themes left undiscussed, but which can be found in the book as well.

1 I received financial support from the Dutch Research Council (NWO 313-99-330). I received material support for the writing of this review from Dirk-Jan Visser’s ‘Atelier aan de Middendijk’, Usquert, the Netherlands. I thank Annemarie Balvert for her comments on an early version of this text.

## 1. Sovereignty, Rousseau, and Van Roermund

As mentioned, one version of the social contract story explained the individual's motivation for signing it as follows: it is in the individual's own best interest to sign the contract because not doing so would make him even worse off. In different and slightly more sophisticated versions, signing the contract is advantageous because it results in more than the mere removal or neutralization of some unpleasant features of living in a stateless world. The sovereign, there, is understood as the aggregation of all who signed the contract. Because of this, it is also obligated to promote what can be called a more positive form of liberty or freedom.<sup>2</sup> Individual interests and autonomy are not merely traded away for safety, but protected *and*, in this collective form, maintained and promoted.

Even more advanced versions of this story saw the light in a period in Western history when religious authority began to fade away, and modern states started to emerge. Theorists like Thomas Hobbes tried to come to terms with the mess Europe was in these days by thinking through the legitimacy of the new political constellations, and sought inspiration in the idea of the sovereign individual.<sup>3</sup> The sovereign individual, like the state, was considered to be in full control of his life, and also capable of doing whatever he intended to do.<sup>4</sup> The capacity to act freely is therefore an important characteristic of the sovereign individual. The sovereign agent (whether state or individual) is free to do whatever it wants and is not dependent nor affected in this freedom by other actors. Sharon Krause summarizes the most general and often implicit features of the sovereign actor in the following way:

‘We hold to a sovereigntist view of agency to the extent that we identify agency in the ideal case with being in control of one's action, where the content of one's will defines the meaning of the action, and one's effects manifest one's own reasoned choices rather than the wishes of others or the random effects of chance.’<sup>5</sup>

Crude sovereigntist views on agency and identity are often present in versions of the social contract story, and Krause is one of the authors that takes issue with such ideas in her Arendt-based critique. Van Roermund, by contrast, draws from one of the ‘classic’ theorists himself to come up with his own criticism of sovereign-

2 See e.g. Jürgen Habermas, ‘Three Normative Models of Democracy’, in *The Inclusion of the Other: Studies in Political Theory*, ed. Ciaran P. Cronin and Pablo De Greiff, Studies in Contemporary German Social Thought (Cambridge, Mass: MIT Press, 1998), 239–252.

3 Raymond Geuss, *Philosophy and Real Politics* (Princeton and Oxford: Princeton University Press, 2008), 21.

4 See e.g. Michel Foucault, ‘Society Must Be Defended’, in *Ethics: Subjectivity and Truth*, vol. 1, Essential Works of Foucault 1954-1984 (London: Penguin Books, 1994), 59–65; Michel Foucault, ‘Truth and Power’, in *Power*, vol. 3, Essential Works of Foucault 1954-1984 (London: Penguin Books, 1994), 111–133.

5 Sharon R. Krause, *Freedom beyond Sovereignty: Reconstructing Liberal Individualism* (Chicago: University of Chicago Press, 2015), 3.

ty. According to him, standard accounts of sovereignty are lacking because they do not acknowledge the complicated and multifaceted concept and practice of agency. Moreover, they disregard the inherently relational character of our individualities or selves. As Van Roermund writes: '[A] s individuals we are plural'. (...)'.<sup>6</sup> Though these conclusions might not be so different from those of authors like Krause, his arguments for them are. What, then, are these arguments?

The book starts with a game theoretical rendering of Rousseau's principle of reciprocity. Imagine three actors: A, B, and C, all with different interests.<sup>7</sup> A, for instance, wants to pursue a career in finance, while B prefers to study social contract theories, and C wants to become a programmer in Silicon Valley. How and in what way would they act in the social contact story? From a game theoretical perspective, whether the different actors like it or not, it is inevitable that in pursuing their individual interests, they are directly or indirectly dependent upon each other. B needs a financial infrastructure to look for, and buy, expensive editions of the *Leviathan* or *Du contrat social*. A requires psychological-philosophical insights into the behaviour of his competitors. C, finally, needs the intellectual and technological resources to be able to fight its way onto the Google campus.

Because of the interdependency of everyone's interests, Van Roermund explains, it is unwise to try to maximize your own interest only, and it is important to acknowledge and recognize the interests of fellow actors as well. Both B and C will need to study some logic, and A would have to develop an interest in the financial infrastructure needed to be able to organize the required programming courses. All actors thus have an interest in the furthering of the interests of other actors. This recognition of the interdependency of interests amounts to what can be called the 'principle of reciprocity', and its acknowledgment motivates actors to also try to establish the conditions that will allow all actors to try to satisfy their desires. And '[t]his means, among other things, that each of them should have both the capability and the opportunity to articulate and argue their self-interest in relation to the interest of the others'.<sup>8</sup> Private and common interests are thus intimately, if not logically, interconnected. The acceptance and support of this connection should be understood as the establishment of the principle that is central to Rousseau's, and Van Roermund's argument: that of reciprocity.

It is important to note here that in this reading of the social contract, wherein the recognition of mutual interests is fundamental, the attempt to only maximize one's own interests will not only fail in practice, but would also be in tension with the concept of individual interests itself. Private interests exist by virtue of the existence and establishment of public interests.<sup>9</sup> The contract signed by our three actors is thus not an *instrument* used to be able to seek a career in the City or academia, but is a necessary precondition for them to be able to have interests in the

6 Bert van Roermund, *Law in the First Person Plural: Roots, Concepts, Topics* (Cheltenham and Northampton: Edward Elgar, 2020), 172.

7 Van Roermund, *Law*, 20–21.

8 Van Roermund, *Law*, 21.

9 Van Roermund, *Law*, 24.

first place. If private and public *interests* are mutually dependent, what then does that imply for A, B, and C themselves, or their *individualities*? First, our three actors' positions are in principle similar. There's no hierarchy between them, and their relationship can be characterized as 'horizontal'.<sup>10</sup> Second, this horizontal relationship and the implied acknowledgment of the principle of reciprocity, establishes a sovereign in the form of what Van Roermund calls a 'first person plural "we"'. Before we develop this notion further in the next section, let me briefly summarize the argument construed so far: the contract signed by virtue of the acknowledgment of the principle of reciprocity amounts to the establishment of the famously notorious sovereign, but this time with a slight conceptual twist.

Reading Rousseau through the principle of reciprocity allows Van Roermund to do at least two things. It first helps to explain why actors in the state of nature would sign a contract and constitute a sovereign. Second, it prepares the grounds for what I think is a more interesting project: an analysis of the kind of entity that is being brought about when sovereignty is established. Though I am aware that game theorists might want to hear more about whether Van Roermund's rendering of the choices A, B, and C really solve the prisoner's dilemma they are in (and it is a shame that no objections to the argument are considered<sup>11</sup>), I want to focus on the second project: the constituting of a first person plural 'we', as discussed in part II of the book.

## 2. Representing 'the' people

Just like the problems of the social contract and that of sovereignty, the issue of representation is something hard to avoid when discussing political in- and exclusion. It is thus no surprise that Van Roermund was required to also take a stance in this debate when trying to conceptualize the relationship of the people and the sovereign, and the people with itself (the 'first person plural "we"'). And just like many others he needs to deal with, and find an alternative to, kinds of representation that have become untenable. These are 'mimetic',<sup>12</sup> 'dyadic',<sup>13</sup> or in Van Roermund's own words, 'co-referential', forms of representation.

10 Van Roermund, *Law*, 23.

11 It is probably possible to tweak the set-up of the argument in such a way that it fails to show the interdependency of individual interests. How to deal with, for instance, actors that actively deny the existence of, or resist to the principle of reciprocity? I expect, however, that Van Roermund would argue that such 'Hobbesian fools' would perform some sort of Habermasian 'performative contradiction' by trying to exclude themselves from a project they, by doing so, actually include themselves. See Jürgen Habermas, *Moral Consciousness and Communicative Action*, ed. Christian Lenhardt and Shierry M. Weber Nicholsen, *Studies in Contemporary German Social Thought* (Cambridge, MA: MIT Press, 1990), 100. Though, obviously, my expectation might be unwarranted.

12 F.R. Ankersmit, *Aesthetic Politics: Political Philosophy beyond Fact and Value* (Stanford: Stanford University Press, 1996).

13 Thomas Fossen, 'Constructivism and the Logic of Political Representation', *American Political Science Review* Vol. 113, no. 3 (August 2019): 824–837, <https://doi.org/10.1017/S0003055419000273>.

Before I will spell out Van Roermund's response to this question, it is interesting to note that it bears resemblances to Thomas Fossen's recent account of political representation. Fossen distinguishes between 'dyadic' relations of representation wherein X represents Y in a seemingly unambiguous way, and 'triadic' ones, where X represents Y as Z.<sup>14</sup> Fossen argues that this second form of representation allows for more detailed analyses of representationalist relationships, because it forces the interpreter to pin-down exactly *how* such relationships are constituted, and *how* Y is being characterized. Fossen's and Van Roermund's projects both have different aims and conceptual foundations: the former presents a pragmatist account of political representation in general, while the latter unpacks the idea that 'the people rule over themselves'. I nevertheless take it to be useful to see how their accounts compare, and start this by considering the following statement:

A: 'We thank you for not littering at this airport.'<sup>15</sup>

When you hear this statement through the airport hallway, a couple of things happen. First, you attribute the voice of the individual uttering the sentence, to the collective of 'airport authorities', rather than to the individual who made the statement. Second, you understand this and other similar speech acts as attempts of actors to unify *themselves* through the uttering of such statements, as 'airport authorities'. Third, if you happen to care about the reduction of waste at the airport, the statement also makes reference to you, as one of the actors interested in not littering in this area. Statement A thus allows a number of actors to refer to themselves by making reference to individuals, whose interests converge with the interest of a collective, *without directly and unambiguously referring to themselves*. Put differently: the 'we' of the authoritative speech act refers not only or merely to the airport authorities themselves, but to everyone that has a reciprocal interest in the content of the statement. But, because we are discussing speech acts here, who exactly is referring to whom remains ambiguous and will depend on how the statement is taken up by its (self-attributed) audience.<sup>16</sup> Van Roermund here presented an analysis of what Fossen would call a triadic representationalist relationship wherein a variety of actors in different roles are implicated. But also consider the opposite situation, where a collective of actors who signed the contract *is* able to unambiguously make reference to themselves by issuing statements like B: 'We want waste reduction'. The actors here refer to themselves as the collective desiring waste reduction. The collective would subscribe to what Van Roermund calls the 'co-reference thesis'<sup>17</sup> and what Fossen would label as a dyadic representationalist claim. Both amount to the same: those who rule and those who are ruled, have the same referent (the people). Reading representationalist claims like B (and A) as co-referential or dyadic decreases their complexity to a large degree – there are only two different roles to be played by the same actor. It is not unintuitive to character-

14 Fossen, 'Constructivism', 824.

15 Van Roermund, *Law*, 102.

16 If you, for instance, do not care about waste reduction you probably 'will not include yourself in the 'we' of statement A, although this might bring you into a conflict with the authorities whose territory you entered.

17 Van Roermund, *Law*, 97.

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ize the horizontal relationship the actors that subscribe to the social contract are in as ‘co-referential’. They are a group of individuals who signed a contract which allows them to self-govern *through* a sovereign. Sovereign and public are here co-referential, and direct democracy is around the corner. As the first example pertained to illustrate, however, things are often not that simple, and the co-referential thesis has a number of problems.

When understanding this horizontal relationship of the individuals who signed the contract along the lines of the co-reference thesis where, indeed, the interests of those who rule are equal to those of the rulers, representation disappears from view.<sup>18</sup> You only hear one voice through the speakers in the airport hallway (your own). This not only makes an analysis of the validity and legitimacy of such statements quite superficial – you simply assume that there is a relatively clearly circumscribed collective that has an unambiguous interest in waste reduction.<sup>19</sup> But most importantly, views based on the co-reference thesis would mistakenly conflate the interests of the rulers with those who are being ruled, and by doing so ‘frustrate [...] the very point that the idea of popular sovereignty is attempting to make’.<sup>20</sup> Because, as Van Roermund argues, the interests of the ruled are precisely the things removed from play when they are equated (or replaced) by those of the rulers.<sup>21</sup> This is, as we saw above, in contrast to Van Roermund’s Rousseau-based argument that both private and public interests *converge* but are *not replaced* when reciprocity is acknowledged.<sup>22</sup>

Reading Rousseau ‘co-referentially’ thus does not make sense according to Van Roermund, and it is of great importance to embrace a more complex, ambiguous, and ‘reflexive’ understanding of legislative speech acts. Such an understanding allows speakers to reflexively refer to themselves, and speech acts’ audiences to self-identify with this proposed ‘we’, or to contest the speakers’ attempt to self-refer if they do not.

### 3. Van Roermund and the body politic

Van Roermund’s ‘reflexive’ theory thus increases the number of actors that need to be included when conceptualizing and analyzing legislative speech acts. In contrast to merely have the ‘people’ ruling itself, there are speakers to which one attributed the speech act, subjects who will be doing something, agents who are being referred to in the statement, and also agents who have some stake in the action in question.<sup>23</sup> What had remained underdeveloped so far, according to Van Roer-

18 Van Roermund, *Law*, 98.

19 Van Roermund’s argument conceptually shows that relatively ‘simple’ understandings of self-rule where ruler and ruled conflate do not convince. How authorities thus try to legitimize themselves through the utterance of speech acts is therefore something to be always analyzed and spelled out in theory, but especially in practice by analyzing these utterances.

20 Van Roermund, *Law*, 98–99.

21 See also Van Roermund, *Law*, 254.

22 Van Roermund, *Law*, 47.

23 Van Roermund, *Law*, 141.

mund, are the ontological characteristics of these four ‘distributions’ of the people. This question is taken up in the sixth chapter of the book.

Why Van Roermund wants to say much more about the ontological characteristics of the ‘body politic’ is, however, not obvious, and could also be in tension with his argument about the reflexive and hence irreducible character of the ‘we’ doing democracy. Van Roermund and most democratic theorists accept the democratic regress problem which states that is not possible to definitely determine democratically the group who is allowed to determine who the demos is.<sup>24</sup> Every inclusion, also when taking the principle of reciprocity as criterion, implies the exclusion of possible and actual other members from the community.<sup>25</sup> Attempts to escape this logical and practical impossibility by grounding membership culturally, nationally, spatially, etcetera,<sup>26</sup> are thus *always* bound to fail. If Van Roermund now wants to think through the ontological characteristics of the ‘body politic’, there is a danger his argument ends up reifying the kind of entity the body politic is or should be, which makes him susceptible to such regress problems. And even though he himself is aware of this and writes that he does not defend ‘the ontological priority of the represented over the representatives’,<sup>27</sup> it is worth explicating how he avoids falling into the regress trap. Put differently: we have to get a clear view on what kind of role those ontological commitments play in Van Roermund’s argument. I intend to do so by interjecting a distinction drawn by Noortje Marres between two different problems: the problem of extension, and the problem of relevance.<sup>28</sup>

The problem of extension pops up when discussing the kind and number of entities that should be included in the demos. Should the demos be limited to autonomous human beings only, or are there also other entities roaming around that legitimately demand inclusion? In the last couple of decades scholars from various disciplines have been asking this question, and in the resulting discussions, provided a variety of answers. Some authors argue for the inclusion of animals,<sup>29</sup> others for that of flora,<sup>30</sup> and again others even made cases for the political appreciation of things.<sup>31</sup> One way of understanding these arguments is by seeing them as attempts to broaden the number of entities to be included in our political communities by, for instance, arguing that non-human animals have agency and speech too, or by point-

24 Van Roermund, *Law*, 142.

25 See also e.g. Van Roermund, *Law*, 153, 240–241.

26 As is also done when understanding ‘the people’ unambiguously.

27 Van Roermund, *Law*, 152 footnote 9. See also p. 162

28 Noortje Marres, *Material Participation: Technology, the Environment and Everyday Publics* (London: Palgrave Macmillan, 2015), 142.

29 Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford; New York: Oxford University Press, 2011).

30 Christopher D. jurist Stone, *Should Trees Have Standing?: And Other Essays on Law, Morals and the Environment* (New York: Oceana Publishers, 1996).

31 See e.g. Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham: Duke University Press, 2010); Bruno Latour, *We Have Never Been Modern* (Cambridge: Harvard University Press, 1993); Richard A. Grusin, *The Nonhuman Turn* (Minneapolis: University of Minnesota Press, 2015); Diana H. Coole and Samantha Frost, *New Materialisms: Ontology, Agency, and Politics* (Durham; London: Duke University Press, 2010).

ing at the important roles things play in our lives. Because animals act and things affect, the argument goes, they are less different from human beings than we think they are, and because of that, they should be included.<sup>32</sup> As Marres argues, however, extensionalist approaches not only broaden the amount of entities to be included and as such radically democratize political participation, they also put pressure on key components of most democratic theories like agency, autonomy, self-determination, and possibly even sovereignty.<sup>33</sup> The extension of the demos by broadening the number of ‘acting’ entities could in the end result in the conclusion that no entity is really suited to ‘act’ in the moral-legal manner as demanded for by our theories of democracy.<sup>34</sup> Moreover, mere extension ignores the question of whether the dominant criteria for inclusion (e.g. agency, autonomy) are really appropriate, or legitimate. A meager reproduction of the status quo looms around the corner.

The problem of relevance is different. Rather than extending the demos by attributing capacities to entities that so far have been excluded or ignored, the problem of relevance foregrounds empirical processes of participation and political inclusion and exclusion.<sup>35</sup> Contrary to presupposing that the current criteria for inclusion are legitimate and should be applied to more-than-human entities, participation-related problems should be studied empirically, and possibly with the research subjects themselves.<sup>36</sup> How this exactly works is not something to be spelled out in detail because that, to a large extent, also depends on the participation of actors within the practices studied. Trying to determine beforehand how issues should be understood, or how communities should be delimited, would place us right back into the extensionalist framework.

In sum: there are (at least) two different ways of incorporating ontology, or the material constitution of the people, in one’s political theory. One pays attention to the world of non-human entities because it wants to broaden the amount of entities to be included in the demos. The other emphasizes the importance of in-depth empirical studies of processes of political inclusion/exclusion, because it considers those as the moments when politics is being done. The first is susceptible to the democratic regress problem. The second, due to its procedural character, to lesser degree,<sup>37</sup> though its emphasis on empirical analysis could result in a ‘deflation’ of

32 That arguments like these should not be underestimated show the recent granting of rights to rivers in New Zealand and India. Van Roermund makes references to these acts on p. 262, but see also this recent dissertation by Laura Burgers, *Justitia, the People’s Power and Mother Earth: democratic legitimacy of judicial law-making in European private law cases on climate change* (PhD diss., University of Amsterdam, 2020).

33 Marres, *Material Participation*, 111–112.

34 See also Krause who worried about the lack of reflexive capacities of things, and their inability to respond to norms. Krause, *Freedom*, 48–49.

35 Marres, *Material Participation*, 143. See for another ‘praxiological’ approach Michael Lynch, ‘Ethnomethodology and the Logic of Practice’, in *The Practice Turn in Contemporary Theory*, ed. Theodore R. Schatzki, Karin Knorr Cetina, and Eike von Savigny (London: Routledge, 2001), 140–157.

36 Marres, *Material Participation*, 152.

37 Although this distinction becomes hard to sustain the more one is interested in ‘problems of relevance’ over ‘problems of extension’. See Marres, *Material Participation*, 151.



philosophy, or theory.<sup>38</sup> Where, then, to place Van Roermund's restoration of 'our sense of ontology regarding the polity'<sup>39</sup> on the extensionalist-relevance continuum?

#### 4. Doing ontology with Van Roermund

But first, a step back. Why was Van Roermund interested in analyzing the body politic's ontological character? Remember that the airport authorities in statement *A assumed* that there was a collective with the converging interest of reducing waste in the airport, and that they issued statement *A* to *initiate* the (re)establishment of that collective. By doing so, the airport authorities 'presuppose[d] the plural self yet to be established'.<sup>40</sup> Drawing from Claude Lefort, Van Roermund explains that this 'we', that is so central to political communities, can never completely be filled or definitely circumscribed. The 'wholeness of the People' always remains an initiative or attempt, rather than a conclusion.<sup>41</sup> This conceptual political black hole is often criticized by those who *do* think there is some sort of essence or foundation to a political community, or people who think that something like that is at least needed to get the process of politics off the ground. One of them is Pierre Manent, who is placed opposite to Lefort by Van Roermund. Manent criticized the idea that democracy should concern itself with procedures and their results only, and that a lack of paying attention to traditions of political communities (read: nation-states) would endanger their self-government.<sup>42</sup> Van Roermund seems to share some of Manent's worries, and takes up his criticism by transforming it into a question: 'what is bodily in a democratic body politic?'<sup>43</sup>

Van Roermund's answer is twofold, and concerns a theory of political boundary-drawing, and the related aim to increase the number of different entities that should be considered to belong to the body politic. While these two components are highly interrelated for Van Roermund, if not interdependent, I discuss them here for heuristic reasons separately.

First, drawing from Carl Schmitt, Maurice Merleau-Ponty, and a bit of Karl Marx, Van Roermund conceptualizes what could be described as an embodied form of political action. Doing politics – taking initiative, establishing communities, including/excluding – is an inherently bodily affair.<sup>44</sup> It requires an intentional *agent* (or self) to use his *body* to get things done in the *world*. The body should be understood as an 'interface' between one's identity and the world, and changes in either one of these phenomenological components, affect the two others. Not only identities thus change over time, but bodies as well. Because there is always a body in

38 Marres, *Material Participation*, 160.

39 Van Roermund, *Law*, 165.

40 Van Roermund, *Law*, 144, 154.

41 Van Roermund, *Law*, 156.

42 Van Roermund, *Law*, 158, 254.

43 Van Roermund, *Law*, 160.

44 Van Roermund, *Law*, 165.

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between a self and the world, identities are not directly in touch with the world. This allows Van Roermund to characterize the interactions between bodies and the world as, to an extent, beyond representation.<sup>45</sup> This, to recall, to offer an answer to Manent who was looking for a political community, a body politic, prior to the representational process.

Second, interrelated with this characterization of the body politic as an interactive process between identities, bodies and worlds, is an argument for an extension of the body politic conceptually, but also p.ractically. This extension is based on the characteristics of the body politic, and primarily its agency. *If* it is the case that the body politic is an intentional agent, and *if* it is the case that its functioning (note: *not* its being) is (partly) dependent on the world, *then* the world becomes implicated in the acts of the body politic, and because of that, *of* the body politic. What we do and who we are is highly dependent on other agents, whether human-like or more-than-human. Earthquakes, for example, can have disastrous effects on societies and while this might not make them agents, they do, according to Van Roermund, force us to try to ‘come to grips with’ them. Because of that, earthquakes should be incorporated in Van Roermund’s reflexive model of political representation.<sup>46</sup> The ‘we’ that is trying to deal with the havoc caused by the earthquake can and will refer to itself in such a way that the earthquake is incorporated in the referent, because the human ‘we’ and the earthquake ‘we’ have become so closely intertwined.

Van Roermund’s argument thus allows for the inclusion of all sorts of entities, relative to how much they act themselves, or have to capacity to affect human agency. Sometimes, these entities need a bit of help from experts or representatives that translate their response into languages more familiar to humans. Scientists, as spokespersons, have an important role here. One telling example Van Roermund supplies us with are the insects that were ignored when estimating the casualties of the Australian bushfires in 2019-2020.<sup>47</sup> Because of the great importance of insects for the functioning of society, he argues, insects need to be politically represented, and also help us rebuilding and conserving the environment. In sum: our embodied mode of political action has as first implication that the notion of the body politic, due to our interactions with all sorts of non-human entities, has become ambiguous. It, secondly, opened the door for the inclusion of various types of entities, which sometimes even are granted rights of free speech.<sup>48</sup>

There are two questions to ask about these two arguments. First, where to place Van Roermund’s proposal on Marres’ extensionalist-relevance continuum? Second, did Van Roermund present a convincing answer to Manent’s question?

45 Van Roermund, *Law*, 152, 166, 170. See for a related argument based on the societal embedding of individual ‘tacit knowledge’, H.M. Collins, ‘What Is Tacit Knowledge?’, in *The Practice Turn in Contemporary Theory*, ed. Theodore R. Schatzki, Karin Knorr Cetina, and Eike von Savigny (London: Routledge, 2001), 115–128.

46 Van Roermund, *Law*, 180.

47 Van Roermund, *Law*, 192.

48 Van Roermund, *Law*, 192.

First, van Roermund's phenomenological theory of political action can be read as a quite empirical and process-oriented proposal. It does not (directly) prescribe what to do or what to include in the political community. The body politic, seen from this perspective, is an ever-moving and transforming entity directly in touch with the environment, and constantly busy trying to figure out how to deal with the entities it encounters and that, at times, demand inclusion in the polity.<sup>49</sup> In this (read: mine) reading, this body politic can be seen as primarily working on how particular entities and issues could be(come) relevant for its functioning, and less with trying to incorporate those into itself.

On the other hand, and secondly, the kind of phenomenological presuppositions that support this body politic –bodily entrenched intentionality – do seem to set into motion extensionalist maneuvers. Because the body's agency is so intertwined with the world, things affecting the body politic can end up becoming part of the body politic, and often also *should* become part of it. In various sections of the book Van Roermund makes a case for the inclusion of more-than-human beings into the body politic, and the democratic apparatus.<sup>50</sup> This does not mean that inclusion *always* implies the distribution of rights of free speech or possibly even voting rights (via human representatives). It could also mean inclusion in the more indirect manner like what happened with the earthquake. This is the strong 'extensionalists' implication of Van Roermund's body politic. Does this, as Marres argued, then endanger key values like agency or autonomy? I doubt it. Just like Marres did herself,<sup>51</sup> Van Roermund understands the effects of non-human entities not necessarily as *actions* – the earthquake does not act, but 'only' has an effect on our human agentic capacities.<sup>52</sup> By allowing non-human entities to nevertheless have this effect on what we can and cannot do, Van Roermund is capable of questioning the crude conceptions of sovereignty we encountered above. Human agency is far more complicated than such conceptions presuppose, and humans are also less 'in control' than we often think.

What then about Marres' second extensionalist disadvantage, namely, the danger of merely reproducing existing criteria and vocabularies? Agency and intentionality are for Van Roermund the important political capabilities, and he does seem to take these as the political starting point. Though this does not necessarily have to be a problem, it is important to keep in mind what such a starting point implies for one's conception of the body politic, or the people, and compare it with alternative configurations based on other criteria. This to avoid transforming the issue of par-

49 Van Roermund, *Law*, 186.

50 '(...) a democracy worthy of the name also gathers those voices that speak even if they are not talking'. Roermund, *Law*, 176.

51 Marres argues for a distinction between constituting and constituted actions, by labeling the actions of more-than-human actors as having constituting, but not constituted effects. The latter label is reserved for human actions and by doing so, limits the group of agents that should be seen as genuine political actors. See Marres, *Material Participation*, 112–113.

52 See also Van Roermund, *Law*, 262–263. Krause presents a similar argument. See Krause, *Freedom*, chapter one.

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ticipation into one of ‘institutional generosity’.<sup>53</sup> A possibly more stringent question to ask, by contrast, is to what extent the principle of reciprocity still holds when one starts to include in various forms entities whose interests are even more opaque than the average voter, or entities without any interest whatsoever. The example of the Australian insects, I think, is telling here. Why assume that the insects’ interests converge with ours? Do they even want to ‘help’ us rebuild the ecosystems we destroyed? Though focusing on this example might be a bit disingenuous, I do think it is important to ask how the criterion of inclusion to the body politic relates to the principle of reciprocity used to constitute the sovereign in part I of the book. While the acknowledgment of the interdependency of interests was so important for the signees of the social contract, the extent to which something can affect the agency of humans became the criterion for inclusion in the body politic. While these two different modes of inclusion do not necessarily have to conflict, they are not the same and having the capacity to affect does not necessarily entail an overlap in interests (and vice versa). Some extra clarity with respect to this relationship would have been helpful. This especially considering the already difficult task to find and acknowledge our mutual *human* interests, which only becomes more complex when including more-than-human entities as well.

This brings us to our last question about Van Roermund’s ontological ‘restoration’ of the body politic. To what extent did he meet Manent’s challenge? Was he able to supply him with a somewhat more secure foundation from which the representational process could commence? Conceptually speaking, Van Roermund was able to adjust Lefort’s account in such a way that the political black hole postulated by him, had been granted some ontological footing. While the body politic works very hard to become the thing it can never become (a stable, unitary entity), this work or labour is done *in the world*, with and *in interaction with* an infinite number of entities.<sup>54</sup> Though that conceptually adds to what Lefort was missing according to Van Roermund, I doubt Manent would be convinced by this answer. Manent, I presume, wants a body politic that is not constantly changing, one that is not a process, but an ‘achievement’.<sup>55</sup> And this is not something Van Roermund’s phenomenology can supply. I, however, doubt whether it should, and consider its process rather than result-oriented character a strength rather than weakness. Whether Van Roermund should have tried to supply Manent with an answer in the first place, is something I severely doubt.

## Concluding remarks

We started thinking about how we could get out of the state of nature as quickly as possible. We ended up contemplating how and whether we should allow nature back into the state. Van Roermund’s rich book allowed us to make this detour our-

53 Marres, *Material Participation*, 142.

54 See Van Roermund, *Law*, 188 where he writes: ‘My thumbnail critique of Lefort was that the staging is never on stage. Reformulating this critique, we could also say that the staging is the labour that puts up the stage’.

55 See Roermund, *Law*, 186 footnote 152.

selves, on the basis of a classical text. For those with a primary interest in the study of social contract theories and/or Rousseau Van Roermund's book will offer a provocative read. For readers interested in democratic theory, his rendering of the inclusion/exclusion dynamics to be found in his materialized body politic will be of great help. The book, however, is not an easy read and definitely does not offer an introduction to any of the themes discussed.<sup>56</sup>

Some themes were left untouched in this review. Legal scholars might find Van Roermund's argument about the relationship between law and democracy interesting. Van Roermund criticizes Habermas for presenting law as a 'byproduct' (my words) of democracy while his Rousseauian analysis presents them as two sides of the same coin.<sup>57</sup> Lastly, it should be noted that I hardly touched upon part III of the book, wherein Van Roermund applies his framework to three case-studies (embryos and human rights, migrants and nomads, and populism). Scholars with an interest in any of these topics learn from Van Roermund's framework how the legal status of embryos, for instance, should be understood. Part III nicely shows how theory could relate to the world of practical affairs, something not to be taken for granted.

56 Not that it suggests doing so.

57 Roermund, *Law*, 190.