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Condorcet's Democratic Theory of Representative Government

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ABSTRACT: The basic theoretical premise of this article is that representation does not necessarily imply a break with democratic principles. Its goal is to challenge the traditional liberal-elitist approach to representative government according to which this system is a mixed regime that is not identifiable with democracy since its main institution, election, is a mechanism that is inherently aristocratic, although it can be implemented in a democratic way. I question this powerful argument by questioning its main assumption: the idea that representative government, since its 18th-century inception, has had a linear and univocal history which was essentially undemocratic. I go back to the age of the French Revolution and analyse Condorcet's plan of constitution in order to prove my case. Condorcet devised institutional mechanisms and procedures that were able to make representative government democratic by overcoming the polarization between representation and participation and making them related forms of political action constituting the continuum of decision-making and opinion formation in modern democratic society.

KEY WORDS: *Condorcet, deliberation, French Revolution, participation, primary assemblies, representation, representative democracy, sovereignty*

An Oxymoron?

Representative government, since its inception in the 18th century, has been defined from the standpoint of a view of democracy as *immediate democracy*, a view that a priori excludes indirect forms of political action and is entrenched in a voluntaristic conception of sovereignty.¹ This has induced its supporters as well as its critics to deem its relation to democracy as extremely ambiguous. Elections and representation account for this ambiguity. Representation is a pragmatic device that facilitates political decision-making in large states. However, it displaces sovereignty, which cannot be represented. Elections, while they can have a democratic foundation, transform sovereignty into a source of authorization. In a democracy, although functional distinction between rulers and ruled is allowed,

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the principle of equality and identity of the body politic cannot be breached, and the people are politically autonomous and equal insofar as no intermediary institution separates their wishes and their decisions. This explains why, by definition, democracy can better flourish in small territories and among individuals whose private interests do not distract them from their public duties. Limited space, and unlimited (citizens') time are essential. In a delegated political system, though, the only thing the people are supposed to do is to appoint lawmakers. Political space and time (the time citizens devote to politics) are proportionally inverted: as the former increases, the latter diminishes.

These tenets, which contemporary theorists of representative government presume more or less implicitly, are the main obstacles to a democratic understanding of representation. Their conceptual coordinates lay at the core of the constitution and the theory of the modern state and were outlined by Montesquieu and Rousseau, the first theorists to argue (for divergent reasons) that an unsolvable tension exists between democracy, sovereignty, and representation.

Montesquieu merged self-government (sovereignty) and direct government (democracy) in a formulation that has become paradigmatic: a government is democratic if 'the people as a body have sovereign power' *and* if 'the people alone . . . make laws'. Jean-Jacques Rousseau, who separated the political foundation of the state from the various forms of government, thereby distinguishing sovereignty from democracy, used Montesquieu's formulation to define the body politic or the republic.² The two theorists approached problems of sovereign identity and the sovereign exercise of power differently and yet reached conclusions that were surprisingly similar. Montesquieu separated representation from democracy, and Rousseau representation from sovereignty. Montesquieu argued that a state where the people delegated their 'right of sovereignty' could not be democratic and must be classified as a species of mixed government and in fact an aristocracy. Rousseau saw such a state as non-political from the start and illegitimate because the people lost their political liberty along with the power to vote on legislation directly: unless all citizens were lawmakers, there were no citizens at all. In both cases, democracy and sovereignty excluded representation.

History seems to prove theory right. Bernard Manin has recently contended that implementation of the government of the moderns was accompanied by an awareness of its undemocratic nature and actually occurred 'in explicit opposition to government by the people'.³ The purpose of representative government was to prevent, rather than to implement, democracy which was largely identified with popular mobilization and mob rule, and was singularly unappealing to 18th-century constituents.⁴ As their respective revolutions drew to a conclusion, French and American leaders looked for devices to prevent anarchy and the tyranny of the many, and to stabilize the legal order. They were aided by Montesquieu's view that democracy excluded representation and by Rousseau's theory that sovereignty and representation were mutually exclusive.

theoretical tenet nor the conceptualization of representative government has changed. Gaetano Mosca, Robert Michels, and Joseph Schumpeter endorsed Rousseau's general will as the norm of democracy only to conclude, predictably, that democracy was an illusory ideal used by the ruling class to conceal the invariably elitist character of parliamentary regimes. From a theoretical point of view, a 'represented democracy', although technically feasible, is an oxymoron, while direct democracy, although the norm, is impractical.⁵ Democracy can only be electoral, Giovanni Sartori argued; but the function of elections is 'not to make a democracy more democratic, but to make democracy possible. Once we admit the need for elections, we minimize democracy for we realize that the system cannot be operated by the *demos* itself'.⁶ Lately, Manin has renewed the conviction of the Federalists and Emmanuel-Joseph Sieyès that representative government does not belong to democracy. A 'machinery that combines democratic and undemocratic parts', the government of the moderns resembles a mixed constitution because its legitimacy does not require the people's presence or participation in the deliberative process. Universal suffrage has not altered its undemocratic nature. In fact its institutional devices 'have remained the same'.⁷ Representative government seems to have no history. Its identity seems to be frozen in the choices made by its founders in the 18th century.

Successful as it is, the mixed government paradigm and the electoral rendering of representative democracy do not exhaust the meaning of representation and democracy, and the possibility of a different approach and different institutional solutions. Despite the substantial uniformity of the paradigm of representative government in the last two centuries, the dualistic space (citizens–representative institutions) that elections create has not always been seen as an ideal solution. It was designed to create the condition for impartial and competent decisions, protect the political order from the tyrannical passions of the majority and defend it against the particular interests of factions. However, since institutions (and leaders) are permeable to social influences, rather than impartially detached from them, that dualism hardly serves its intended role.⁸ It is thus both timely and constructive to approach the subject of political representation from the perspective of democracy rather than as a betrayal of it. Yet, in spite of the growing literature on representation and democratic deliberation, the conception of representative government is still anchored in theoretical bases that presume a view of democracy that does not contemplate representation.⁹

In order to better understand representative democracy, I will focus on some of the authors who have given us the vocabulary and the arguments of what we call representative government. Rather than a monolithic entity, the theory of representative government formed, since its birth, a complex and pluralistic family whose democratic wing was not the exclusive property of those who advocated for participation against representation.

One feature of this comprehensively democratic view of representative government dates back to the French Revolution. It emerged as a third way

between Sieyès's liberal-elitist view and Robespierre's ultra-democratic project. Condorcet's *Plan de Constitution*, written between 1792 and 1793, was the first and most sophisticated example of a political architecture that astutely combined different participatory practices and made the entire nation into what was in fact a 'people of representatives'. In what follows I shall focus primarily on the foundations of Condorcet's idea of representative democracy. My main goal is to highlight the theoretical and institutional impact of the transition from the identification of sovereignty with an act of will and decision to the view of sovereignty as a permanent work of criticism, surveillance and consent reconstruction within which judgement and deliberation play a central role. This will give me the opportunity to elucidate representative democracy as an original form of democracy, not as a second-best form or as an oxymoron, and not even as a mixed regime kind of government.

The choice of the authors and events has both conceptual and contextual reasons. If it is true that 'representative government remains what it has been since its foundation', then a challenge to its main tenets demands that we go back to its very foundation and question the idea that representative government had a simple and linear story. The constellation of models of representative government that emerged during the French Revolution prove that there have been important attempts to conceive a political order within which the electoral and aggregative moment was not a substitute for democracy and a synonym for representative democracy. They exemplify the inner ramification of the representative system into an undemocratic branch and a democratic one.

The Longue Durée of the Democratic Project in the Age of Representation

Witness to times of extreme political instability, Condorcet devised an institutional order that is one of the most democratically advanced and imaginative Europe has produced in the last two centuries. His mature political ideas are condensed in the plan he submitted to the National Assembly on 15 and 16 February 1793. Interpreted by its contemporaries as 'the last word of the social system of the Girondins', the constitution was essentially Condorcet's own work.¹⁰ The unfortunate context of its birth, namely the trial of the king, the war and the a priori unwillingness of the Montagnards to agree on a constitution written by someone they regarded as a friend of their enemies, militated against Condorcet's plan. The climate of tumultuous intolerance at the Convention made discussion practically non-existent. Submitted to the Assembly for final approval, Condorcet's proposal was strategically disregarded by the Jacobins and finally discarded by the Girondins themselves. Only partially discussed and soon rejected, it was mercilessly attacked by Saint-Just and Robespierre in the Assembly and the press and not supported by his friend Sieyès, who had good reasons not to back a

poly-archy.¹¹ The constitution that was passed at the end of June 1793 (but never implemented) did not bear Condorcet's name, although it endorsed some of his proposals without being equally democratic and protective of rights, as Condorcet himself complained.¹²

Recognized in his lifetime as the last of the *philosophes*, Condorcet's reputation as a political theorist did not survive his death. Identified as a party man, although he was not one, and remembered above all as a victim of the Terror, Benjamin Constant's acknowledgement of him as the father of the distinction between the liberty of the ancients and that of the moderns, and John Stuart Mill's appreciative mention of his defence of women's emancipation did not spare his political ideas from oblivion. Regarded as a precursor of republican France, historians and theorists have judged Condorcet's accomplishment as a political leader as either a naive attempt to strike a compromise between Girondins and Jacobins or a strategy to use democracy in order to limit democracy.¹³ Radical scholars have mistrusted his legalistic rendering of popular participation and pitted his representative democracy against the democratic view of the radical wing of the Revolution. Liberal scholars have found his plan too complicated and tilted towards direct democracy and have turned to Sieyès's ideas of representation as more realistic and consistent with the liberty of the moderns.¹⁴

Condorcet's theoretical ideas were no more successful than his political role in the Revolution. Most contemporary political theorists associate his name with the application of inverse probability calculus to voting (the jury theorem) and identify his work with an 'axiomatization of Rousseau's General Will' or rather Rousseau's claim that, given the norm of unanimity, majority decisions are the closest to the 'truth'.¹⁵ The last philosopher of the French Enlightenment left his most lasting mark on social choice theory and the logic of collective action – the paradox being that Condorcet's less democratic writings have become the privileged texts in the Condorcetian reading of Rousseauian democracy.¹⁶ Yet his status as a founding father of political science meant he was ostracized from political theory, where his contribution to political thought is generally reduced to abstract rationalism and equated with the ideology of a linear progress and an optimistic cosmopolitanism. For better or worse, Condorcet's name is primarily associated either with his pre-revolutionary essays on the application of mathematical calculus to elections or with his last work, the *Esquisse*, written once his political role in the Revolution was over and as *ante-mortem* testament.¹⁷ Political theorists have largely ignored his mature political ideas, and in particular his comprehensive view of the constitution and democratic deliberation and representation.

All in all, Condorcet's contribution to modern democracy has been judged from the point of view of its defeat and the bankruptcy of constitutional democracy in the French Revolution.¹⁸ The failure of his plan has been made exemplary of the fatal contradiction thwarting the French Revolution and his thought: 'the rationalist discourse of the social utopia' versus the 'voluntarist discourse of the

general will', the tension between political equality and representation, between democracy (and republicanism) and liberalism.¹⁹

My aim is neither to reconstruct Condorcet's political thought nor to assess its place and meaning in the French Revolution. Rather, my goal is to pursue the search for the principles of *representative democracy*. Condorcet is an interesting example of a third-way solution that defies the two mirror-like radical approaches that have marked the debate over modern democracy since the 18th century: the mystique of sovereignty as presence and the allegedly objective realism of electoral democracy and the death of sovereignty.²⁰ It is no surprise that Robespierre raised the same objection to Condorcet's plan that Constant would later raise against the Jacobins: that of distracting the citizens from their social occupations and enslaving them with too much political participation.²¹

Rather than reading Condorcet's constitutional project from the point of view of its defeat or as an offshoot of Rousseau's doctrine, I analyze it as an independent project of democratic government. I propose studying it from the perspective of its 'longue durée' implications in the belief that the consciousness and understanding of its meaning is relevant to us in a deeper sense, as women and men of an epoch inherently marked by the democratic utopia to which Condorcet contributed, and by the dissatisfaction with the way democratic institutions have been implemented and work.

My reading is informed by the works of Lucien Jaume, Gabriele Magrin and Pierre Rosanvallon. They suggest studying Condorcet's political ideas as a contribution to modern democratic constitutionalism and emphasize its uniqueness and heterodoxy in relation to the doctrinal tenets of republicanism, liberalism, and democracy. Although he embraced a republican view of the political order, Condorcet did not indulge in the myth of the static perfection of the city of the ancients but believed that the moderns had the chance to institute political freedom in more secure, stable, and tolerant ways. Although he rejected the 17th-century doctrine of God-given natural rights (and deism more generally), Condorcet translated sovereignty into the language of rights and conceived the constitution as the founding process of a legal and political order whose goal was to facilitate 'the most complete enjoyment of their [citizens'] rights'.²² In his mature political thought, he looked to a fallible-but-perfectible human reason for the normative principles that could link legality and legitimacy. Finally, although he believed the legitimacy and security of representative institutions depended on consent, he did not think democracy meant the identity of self- and direct government, and consent meant parliamentary majoritarianism.

Two Models of Representative Government

American and French revolutionaries coined the terms *representative government* and *representative democracy*.²³ The former had a better fortune though, and although both terms were sometimes used synonymously, the more perceptive

political leaders were aware of their semantic difference.²⁴ Sieyes avoided using them interchangeably, and probably had doubts about the cogency of a 'representative' democracy since he believed elections instituted a regime wherein 'authority comes from the top and confidence from the bottom'. In his mind, representative government was a *mélange* of 'ce qu'il y a de bon dans la démocratie, dans l'aristocratie, et dans la monarchie'.²⁵ Sieyes thought of legitimate government as the outcome of an electoral act of transferring of the unitary will of the nation to the legislative body and promoting deliberation within it; either all the citizens participated directly in the formation of the laws as in 'brute' democracy, or they must immediately renounce their right to make the laws themselves.²⁶ *Tertium non datur*.

On the other hand, Condorcet wanted his representative constitution to be an alternative to the mixed regime scheme and to regulate the creation of authority 'from the bottom'. While both leaders were driven by an identical and contextually determined desire – to put an end to the state of permanent revolution and to reconcile legitimacy and legality – only Condorcet suggested 'legalizing' the revolution in order to end it. Whereas Sieyes planned to substitute representative government for democracy, Condorcet tried to redefine the relationship between sovereignty, democracy and representation in order to counter two threats: the 'tyranny of the few' and the potential for disruption of the legal order by spontaneous popular mobilizations.

Sieyes and Condorcet developed two paradigmatic models of representative government, one *dualistic* and the other *dialectic*. The former was based on a chronological polarization between extra-institutional constituent power and constituted power, the former absolute but inexpressive without the latter, and the latter derivative but de facto the only voice of the sovereign nation. The political role of the citizen was essentially that of electing a 'professional' class of politicians.²⁷ Sieyes's representative government was the superstructural reflection of the civil-as-economic society. It was a *grande machine politique* managed by the active professional few with the confidence and for the good of the politically passive, although socio-economically active, many.²⁸

On the other hand, Condorcet attempted to create a flexible relation between participation and representation and to prevent random fluctuation of the people between a state of depoliticized passivity and a state of extra-legal mobilization. Representative democracy designated a comprehensive political movement of *circularity* between the state and society and provided sovereignty with the 'legal means' to regulate the *continuum* of the decision-making process, linking the citizens and the legislative assembly.²⁹ Condorcet's constitution designed a political order that was horizontal and acephalous (parliamentary, not presidential) and rigorously based on the centrality of the legislative power, a power held by a multiplicity of actors and performed in multiple times and within a plurality of spaces. The function of legislation was performed within assemblies – elected assembly *and* assemblies of the citizens (*assemblées primaires*) – and was held by

the representatives *along with* (not instead of) the citizens who ‘enjoyed’ both the electoral right and the right to revoke or censure the laws (constitutional and ordinary). Although in ordinary legislation only the representatives could pass laws, their ratification was not the final act of legislation.

Condorcet’s goal was to set in motion a permanent relation between the *inside* of the state and the *outside*. This would make citizens’ participation essential to both the functioning of representative government and the preservation of political liberty; it would make it a source of stability and of innovation. His aim was to be the Montesquieu of democracy, so to speak, and make citizens’ participation a checking power over the voted laws and the constituted powers. Thus, while Condorcet acknowledged that representative democracy fitted the character of civil society better than immediate democracy, he did not use, like Sieyès, the argument of the division of labour to justify the selection of a political class above a depoliticized *état social*. Like his friend Thomas Paine, Condorcet thought that representation perfected simple or immediate democracy not because it solved the problem of people’s incompetence by transferring their sovereign power elsewhere or because it made the government functional to the ‘needs of society’, in Sieyès’s words.

Representation was not the locus of the general will but a work of political synthesis that belonged to both the electors and the elected. It filtered and collected knowledge and competence from ‘the interests of the parts’ of society, enacted a process of political and symbolic unification of the sovereign, and created a ‘whole’ in which every one could recognize her- or himself.³⁰ Representation was a strategy meant to ensure that the growing interests within civil society could be ‘used’ for the ‘interest of the public’.³¹ It was supposed not to replace participation but to act together with participation. ‘By grafting representation upon democracy, we arrive at a system of government capable of embracing and confederating all the various interests and every extent of territory and population.’³²

Whereas Sieyès’s sovereign nation was politically inexpressive outside of the electoral booth and direct democracy de facto a privilege of the few (‘The body of representatives of a great people deliberates in the same way as a very small people completely assembled together in the public square’³³), Condorcet’s citizens could be active whenever they thought necessary. Sovereignty, once it passed from the monarch to the people, acquired a Janus-faced physiognomy as both the act that made the laws enforceable (positive power) and the legal counter-power of control and rectification (negative power).³⁴ While the representatives exercised the former, all the citizens retained the latter. The citizens held the veto power both informally (through the enjoyment of their civil rights) and formally (referenda). In representative democracy, sovereignty encompassed both the will and judgement: the power to make laws and the power to put laws under scrutiny and finally revoke them.

60 This is a relevant difference from Sieyès’s representative government because

Condorcet interpreted the *état social* not as the depoliticized domain of individual preferences, but as the place where a new form of power that was physically invisible although ideologically powerful, was to arise. Individual rights, the right to free opinion, religion, and association had two complementary functions: they allowed individuals to enjoy their freedom, but they were also tools of an indirect kind of political presence, in the form of criticism, discussion and surveillance of the constituted powers.³⁵ Liberal rights did not merely define an area of action to be protected by the arbitrary interference of the laws. They also allowed for the creation of views and interpretations that would be reflected in the political sphere. In any event, the sovereign was no longer the supreme power located above a society made of atomized subjects, but an expanded power of judgement unifying individuals through both state institutions and civil society forms, formal and informal participation.

Perpetual Innovation and the Sovereignty of Judgement

In *On Revolution*, Hannah Arendt located the novelty of the 18th-century revolutions in the unprecedented intuition that opinion and judgement – heretofore neglected categories of political thought – were factors of liberty because they were factors of stability and innovation.³⁶ She sketched a blueprint of the ideal republic as it was conceived on both sides of the Atlantic but accomplished in neither place, and called it by the Latin term of *constitutio libertatis*, a process of perpetual innovation from the bottom-up in the attempt to preserve the founding principles of republican authority.³⁷

Perpetual innovation was the maxim that inspired Condorcet's project. Its goal was to devise procedures that would allow for the reproduction and preservation of what Paine called democracy's 'perpetual stamina', or the never-ending temporality of a political order based on consent.³⁸ Witness to times of extreme political and institutional instability, Condorcet thought the challenge of a democratic constitution was, on the one hand, to secure the law without making it the object of passive acceptance or, on the other hand, subjecting it to the risk of extemporaneous revisions.

Based on this premise, Condorcet conceived two forms of constitutional amendment: a direct right retained by each citizen and a routine right (general revision every 20 years) intended to guard against the possibility that the citizens would become apathetic and 'indifferent' to politics.³⁹ Spontaneous will was unreliable and specific procedures were necessary to activate the will of the citizens artificially. If institutions and the laws were to be left open to innovation because consent was their source of legitimacy, then the citizens could neither be forced to passively obey the laws, nor be induced to obey them out of an 'enthusiastic' zeal.⁴⁰ This explains Condorcet's rendering of the common will of the people as the citizens' general agreement to the 'common rule' according to which they and their representatives made and reformed the laws. The delibera-

tive transformation of politics was consistent with the democratic principle of 'provisional obedience'.⁴¹

Carl Schmitt was the first theorist to detect the extraordinary innovation of sovereignty's deliberative turn initiated by Condorcet. In his search for the founders of the view of democracy as 'public debate and public discussion' he set out to criticize, Schmitt came across the author of the Girondin constitution and recognized him as the founder of representative democracy. He situated him between Kant's 'belief in the progress of publicity' and Bentham's 'fanaticism' in 'liberal rationality'.⁴² Schmitt did not judge Condorcet's constitutional plan from the point of view of its 1793 failure, but made it the symbol of the anti-decisionist transformation of politics brought about by the Enlightenment.⁴³ In a Kantian move, Condorcet retained Rousseau's identification of sovereignty with the law, but grounded the law in a 'general will' that was in fact an '*idea* of reason' and the expression of judgements 'susceptible of rigorous demonstration' and revision, judgements that all could make, citizens and representatives.

Schmitt's prejudice against the inseparable pair of deliberation and representation allowed him to see an aspect that Condorcet scholars have either not seen or have disregarded, namely that the author of the *Esquisse* was the first constitutional drafter to disprove Rousseau's assumption that direct rule was the necessary condition of political liberty and popular sovereignty. Schmitt saw something that had heretofore been invisible to Condorcet's readers: that giving judgement an active political role betrayed the paradigm of absolute sovereignty. In a deliberative model of democracy, Schmitt lamented, all state actions, whether they spring from the legislative or the executive, could 'no longer' be held in the form of 'command, but only reason'. Evidently, Condorcet represented the latter, since the maxim orienting his plan was not that 'the king [or the people] *personally* is sovereign' but that the '*impersonal* law' is the sovereign.⁴⁴

Political Syllogism and Time Delay

Scholars judged Condorcet a sort of Cartesian Rousseauian, his goal being that of freeing classical republicanism from the intemperance of the virtue in order to convert it into a politics of impartiality and truth-seeking. They complained that, in making the sovereign will dependent upon judgement Condorcet de facto achieved a rationalistic displacement of politics. It is true that Condorcet equated the act of political decision with the result of a syllogism. This is why his place in political theory has been largely identified with the application of mathematics to elections ('He was a Platonist realist, believing in objective moral truth'⁴⁵). However, although Condorcet did want to create the *mathématique sociale* and subject political and moral choices to a calculus, syllogism is not an exclusive characteristic of mathematical thinking, nor did Condorcet think it was.

62 Despite his rationalism, he was as aware as Aristotle of the fact that deliberation was very different from a scientific syllogism because it always dealt with prob-

ability. Cesare Beccaria had raised this issue in discussing deliberation from the perspective of whether it was possible to make rules for juries in which the probability of not condemning an innocent person was as high as possible.⁴⁶ Condorcet applied Beccaria's syllogism model to political decisions and interpreted democracy as the system that better allowed for an extension of the jury method of reconciling numbers and reason to all kinds of public voting because it was based on counting individually separated votes according to the rule of majority. The voter could be treated like the judge because in both cases deliberative procedures had to presume fallible actors who judged according to the same criteria but independently from one another, and who decided on issues that applied to everyone equally.⁴⁷

Deliberation is like a syllogism in which the major premise consists in the rights contained in the preamble of the constitution as the maxims of reason that shape the work of legislation in its entirety, from the making of the law to its censure and revision.⁴⁸ A legitimate law resembles a collective work of interpretation that relies upon 'general propositions' of independent validity (rights are 'an independent truth') and seeks an outcome that is general in its substance and validity (drawn according to the same or 'common rule'⁴⁹). All the citizens can reason and shape their reason in this way. All can understand their rights and apply them correctly; all are able to judge the laws and the representatives.⁵⁰

The syllogism analogy entails that deliberation is more than a pro and con disputation or a bargain-like transaction among given preferences; it is a search for the best possible solution all things considered. Betterment is its normative horizon, not truth. The general interest is the aim of deliberation in a never-ending work of application of the norms of reason and justice to every issue and problem faced by any community of citizens. The constitutional frame serves this aim. Its goal is 'to find the probability which, even for a law passed by the smallest majority, gives sufficient assurance that it is not unjust to subject others to that law, and thus it is proper to submit oneself to it'.⁵¹ Clearly, the success of the will of the majority does not tell us much about the nature of its outcome except that the majority has made its will into a law that commands everyone's obedience, no matter whether the law is good or bad. 'When the people of Athens passed a law which decreed the death penalty of those who broke statues of Mercure, can such a law be just?'⁵²

Rousseau would agree with Condorcet, but his theory of legislation as immediate yes/no ratification did not provide for any strategy to counter the will of the assembly; moreover his theory of sovereignty was very pessimistic with regard to the possibility that reflective judgement could direct the will towards just laws. Rousseau thought that the assembly would make good laws provided its members let their natural emotions silence reflection, which he regarded as a vehicle for malice and particular interests (hence his suggestion that judgement be the work of the magistrates or the wise few). Condorcet took the opposite track without, however, resorting to the classical liberal model of bicameralism or judicial

review. He multiplied the times and places of deliberation ('The goodness of the decisions of an assembly depends very much on the manner according to which the questions are discussed'⁵³).

Hence, although identical to Rousseau's in the foundation (the law or justice as impartiality or non-arbitrariness) Condorcet's interpretation of sovereignty as an expression of judgement and construction through public opinion was actually a far cry from Rousseau's model. Where the latter was meant to narrow the time between proposals and decisions, the former envisaged a broad system of delay. Whereas the latter concentrated citizenship in the simple and silent act of voting, the former made citizenship a complex right that activated a broad mechanism of delay by frequent renewal of the legislature, referenda and calculated interruptions in assembly deliberation. 'We therefore needed to find procedures which could prevent the *dangers* of excessive haste, without at the same time rendering speedy decisions completely impossible', and which could make parliamentary deliberations secure.⁵⁴ '[N]obody wants a bill read by one deputy in the assembly to be submitted to an immediate vote and become a law that obligates 26 millions of persons.'⁵⁵

Representative democracy can thus be described as a government that activates the dual nature of sovereignty as a *constitutive guideline* to, and a *limit* on, political power as legislative power. Based on this premise, Condorcet distinguished within the comprehensive exercise of sovereignty among a *souveraineté déléguée* (ratification power in ordinary legislation) and *souveraineté de surveillance* (revocation power held by the citizens along with the informal exercise of public judgement). Given that political rights were the condition for the construction of the decision-making process, not simply a contractarian artifice (a function) for the creation of the legislative setting as Sieyès thought, delegation was not the only context within which deliberation could be exercised.⁵⁶

Political rights rendered all citizens agents of consent, both when consent was requested to institute an actuating function (electing representatives) and when it entailed an evaluative or negative function (repeal of existing laws). Direct and indirect forms of political activity were intrinsically intertwined while citizenship was a right that comprises several rights together. Condorcet's proposals, Jaume wrote, 'témoignent d'une *politique de la raison*, au lieu d'une politique de la volonté du peuple', wherein 'reason' means citizens' capability 'de juger et de critiquer'.⁵⁷ On these grounds, Condorcet suggested the formation of several primary assemblies where citizens would meet within each department or territorial subdivision to exercise their rights of sovereignty and deliberate together according to nationally uniform procedures.

The Multiple Times and Places of Sovereignty and Deliberation

Alien to our political experience yet a familiar part of our theoretical vocabulary, Condorcet's *assemblées primaires* deserve to be examined not as a historical remnant but as the product of the institutional imagination that democracy has inspired in the age of representation. The views Condorcet tried to implement are similar to those of Jürgen Habermas and other contemporary scholars of deliberative democracy. Yet they are more institutionally oriented and convey an ideological freshness and practical sensitivity that seems to have faded from today's copious academic production on democracy.

Condorcet's proposal for primary assemblies was not his own invention, but drew on an existing French tradition, particularly Turgot's pre-revolutionary proposal for reform of the municipalities. He made some crucial changes to Turgot's model regarding the purview of the assemblies (political not merely administrative) and the manner in which representatives were to be elected (direct, rather than indirect, election). However, he derived the three basic functions he ascribed to the primary assemblies from that model: creating the conditions that allow the will of the representatives to 'conform' to society (principle of political representativity); making local knowledge a resource in the creation of the political agenda and an element of the 'true interest of the nation' (principle of circularity and participation); and preventing corporate interests from taking over national politics (principle of equality).⁵⁸

Unlike Rousseau's direct republic and Sieyès's representative government, Condorcet's constitutional democracy does not contemplate any real break between the social (personal) and the political (public): 'the man' and 'the citizen' are porous identities that communicate and interplay. The democratic character of representation is based on this interplay. Condorcet's primary assemblies were an attempt to solve the problem of atomization implied within the de-personification of sovereignty. A people of voters or a nation of electors is not in itself more capable of political initiative than a people subjected to an absolute king. A mass of disassociated individuals, his friend Jacques-Pierre Brisot wrote during those same years, is falsely democratic, and in fact 'tranchant et despotique'. Rather than being a sign of individual independence and freedom, the absence of legal forms of communication left the citizens dangerously exposed to the unequal distribution of political skills and organized interests. The purpose of primary assemblies was to shield citizens from unanimous plebiscitarianism, the despotic hegemony of the few, and the atomistic consequence implied within the transformation of sovereignty in the right to suffrage.⁵⁹

Although they apparently recall Rousseau's ideal of direct rule, Condorcet's primary assemblies actually reveal an astonishing difference from Rousseau's theory of sovereignty, which presumed that political associations and exchange of opinions in the political sphere of deliberation hindered the understanding of the

general will. Condorcet saw that a polis based on the equal right to vote had to promote the growth of a *terrain spécial*, that of politics – a terrain that could and should be distinguished both from the state and from civil society. As it appears from Rousseau's and Sieyès's models, enfranchisement and electoral rights create *atomes politiques*, not citizens who develop programmes, ideas and political associations. Without extra-state legal means of aggregation 'the sovereign would still be free, but would become mute'. In the 20th century, political parties played the role of unifiers, a role that was 'undoubtedly not formal (*officieux*) yet indispensable' to an electoral regime.⁶⁰ Although very different from the party model, Condorcet's primary assemblies expressed the demand of political spaces that aggregated opinion and were linked to society, but were not corporate organizations of interests.

Condorcet's primary assemblies were not electoral districts only activated on the occasion of general elections, but spaces that gave the citizens a real opportunity to use their political rights whenever they thought necessary. They kept the sovereign in action, so to speak, once the constituting phase was concluded and the constitution approved. In fact, since any citizen could propose a constitutional amendment at any time, it could be said that Condorcet's view of the time of 'strong politics' is never either decisively concluded or separate from ordinary politics. His plan reflects a view of constitutional democracy that is not based on a dualistic conception of politics as foundational and ordinary administration.⁶¹

Primary assemblies were physical sites (neighbourhood headquarters) where any citizen could go to consult the official bulletins of the legislative activity of the national assembly, to present her proposal to amend an existing law; to vote on proposals coming from other assemblies, or simply to select candidates and vote for representatives. They gave the direct presence of the citizens a balancing function by keeping the two powers of sovereignty (legislation and surveillance) within 'the forms the law itself has prescribed' and in permanent relationship.⁶² They also had the civic and symbolic function of politically unifying the multitude of independent citizens-electors, a function that in Sieyès's model was held exclusively by the national assembly.

Primary assemblies reflect the uniqueness of political rights, which are rooted in the individual will and reason and yet affect the lives of all other citizens and are the expression of a positive power. The right of sovereignty is as individual as any other individual right, but has a power to affect the collective like no other right.⁶³ Condorcet mixed both voice and silence in the right of suffrage because he saw it as both a right of individuation that distinguished the individual from the demos and a right that brought the members of the demos to collaborative interaction. Primary assemblies reveal the deliberative character of politics: they allow for communication that gives each citizen a chance to make competent political decisions. Yet they are consistent with the individual nature of suffrage, and while they allow for public deliberation, they ensure that the final act of resolution is performed in silence and secrecy.

Citizens qualified for primary assemblies by their citizenship and their domicile (one year of domicile was reputed sufficient for a person to acquire citizenship rights). This conveys the two characteristics of democratic identity whose inclusiveness is universal and yet locally specific for the participation it entails. One might say that the two registers for assembly membership testify to Condorcet's dissatisfaction with Sieyes's legal fiction of the nation and the abstract identity of the elector. Primary assemblies collected the sovereign opinion from the particular places in which the citizens empirically lived and formed their opinions. Yet they were not local or particular in character. The purpose of their local aspect was to link the citizens to the political life of the national community and vice versa, not to federalize the sovereign or particularize the law.

When Condorcet's plan was discussed in the National Assembly, both Saint-Just and Sieyes accused it of smuggling federalism.⁶⁴ Sieyes did not directly comment on Condorcet's plan in the National Assembly. However, judging both by his 1791 discussion with Paine and the reference he made in his 1795 speech to the 1793 constitutional debate, it seems that Sieyes was aware of the difference between his own view of representative government and Condorcet's representative democracy. The former ensured the unitary identity of the sovereign nation because it granted the people only the power to elect representatives; the latter, instead, committed the 'great prejudicial error' of assuming that the people needed to delegate only those powers they could not exercise themselves.⁶⁵ This would open the door to federalism.⁶⁶

The moderate Sieyes and the radical Saint-Just were in perfect agreement in criticizing Condorcet's plan of 'federalism'.⁶⁷ Their accusation rested on the assumption that democracy and representative government were two very different systems, and that sovereignty was a unity that could not accommodate itself to a broader process of deliberation without risking federalization. Sieyes and the Jacobins took *The Social Contract* as their guide on this account, although for opposite reasons. Once the plurality of opinions was 'porté sur la place publique' in the form of individual secret voting, Sieyes argued, only a unitary representative body could give them voice and create 'de tous ces avis isolés une volonté commune à la majorité'.⁶⁸ The alternative was thus between nation-state unity and democracy: either France would remain a unitary state and in this case could not be a democracy; or it had to be transformed into a federation to be made democratic. Accordingly, Condorcet's plan of primary assemblies was federalist because it was democratic. The primary good of the unity of the sovereign demanded the renunciation of democracy.

Condorcet's original intuition was that, in order to escape the dilemma of federalism, democracy in a large state should consider profound administrative autonomy in order to give residents the right channels for dealing with local policies and keep the national agenda free of the 'intérêts locaux et particuliers'.⁶⁹ He denied that the administrative departments were representative and, on the other hand, that the representative assembly was a collection of local issues. By

separating the general (political) and the local (administrative) Condorcet acknowledged Rousseau's fundamental norm that citizenship is the impersonal agency of the law, but meanwhile tried to reconcile representative government with the idea that the space of popular sovereignty should be small and the *res publica* close to the citizens.

Condorcet solved Rousseau's dilemma of spatial limitation by making each assembly's act of deliberation reflect itself in the action of the other assemblies. Whereas simultaneity in space and time (the raising of hands) was Rousseau's requirement for legitimate decisions, in Condorcet's case the simultaneity refers to the effects of the exercise of political rights: no assembly, neither the local ones nor the national one, acts 'each by itself' or contains or impersonates the sovereign, or imposes its opinions on the rest of the country.⁷⁰ Every time an assembly deliberates, the result of its deliberation becomes the object of scrutiny by and in the other assemblies. Since any law can be revoked, it can be seen as the beginning of the legislative process rather than its end. Like a stone thrown in the water, any decision creates a wave of deliberation. No act of the will is the last one, absolute and unique because sovereignty does not reside exclusively in the will but also in the judgement over the pronouncement of the will. *In this sense* popular sovereignty is fictional, rather than holistic and substantial. It is fictional not in the sense that it is unreal, imaginary, expedient or pure illusion, but in the sense that it does not have a physical location or a body, individual or collective, nor does it have a privileged unitary space and time.⁷¹ It is fictional because it resides in the criterion of judgement (the maxim of generality) that presides over the making of a law and the evaluation of an existing law and in the circular relation that like a permanent current links each citizen to the representative institutions through the laws, the only real content of politics. Simultaneity describes the *durée* or time-span, not the immediacy of the decision or the space wherein the decision acquires the character of the law. It pertains to the reflexive effect that any decision has over the entire political system.

Condorcet's primary assemblies actualize and allow for the reconceptualization of sovereignty in terms of a permanent reconstruction of the *obéissance provisoire*. In Carré de Malberg's words, representative government does not displace sovereignty but subjects it to a radical process of depersonalization: sovereignty belongs to nobody in particular. It does not belong to the people who in electing representatives, not pure delegates, acknowledge it is not their master. It does not belong to the representatives either, who, despite having the power of ratification, do not have the power to produce any ultimate obedience or an obedience that is immune from contestation and revocation. Judgement presides over all political action and actors, and is in fact the ever active sovereign.⁷²

To return to the issue with which I began this article, for representative democracy not to be seen as an oxymoron it needs to be freed from the choice between participation and representation with which democracy has been identified since Rousseau. The analysis of old constitutional plans such as Condorcet's is relevant

to contemporary democratic theory because it can provide interesting leads to this goal. If we follow its general idea that representative democracy is antithetical to *immediateness*, not citizens' participation in the legislative function, then representative democracy can be reinterpreted as a comprehensive system of mediated sovereignty. Condorcet was the first theorist and political leader to understand and give constitutional form to the idea that the circulation of judgement and opinion from civil society to the state is an essential component in the making of a democratic representative government.

Notes

I would like to thank the anonymous readers of the *European Journal of Political Theory* for their helpful and encouraging comments.

1. The expression *démocraties immédiates* was used by le Marquis de Condorcet in 1790 to distinguish between direct *and* representative democracy. As I shall explain in what follows, this distinction allowed him to bring the latter within the category of democracy rather than the category of aristocratic government or mixed government, and distance his position from that of Sieyès and the American Federalists.
2. Charles Louis de Secondat, baron de Montesquieu (1989) *The Spirit of the Laws*, tr. Anne M. Choler, Basia Carolyn Miller and Harold Samuel Stone, book 2, ch. 2. Cambridge: Cambridge University Press. Jean-Jacques Rousseau (1987) *On the Social Contract or Principles of Political Rights*, in *Basic Political Writings*, tr. Donald A. Cress, book 1, ch. 6. Indianapolis and Cambridge: Hackett.
3. Bernard Manin (1997) *The Principles of Representative Government*, p. 232. Cambridge: Cambridge University Press.
4. On the negative judgment of democracy, and Athens as its classical and only example in particular, see Luciano Guerri (1979) *Libertà degli antichi e libertà dei moderni*, pp. 47–80. Naples: Guida. Jennifer Tolbert Roberts (1994) *Athens on Trial: The Antidemocratic Tradition in Western Thought*, pp. 179–93. Princeton, NJ: Princeton University Press.
5. On the two antithetical views of democracy in Schumpeter's work: John Medearis (2001) *Joseph Schumpeter's Two Theories of Democracy*. Cambridge, MA: Harvard University Press. Medearis argues that, even though we conventionally connect Schumpeter's name to a conservative and elitist conception of democracy, Schumpeter 'had' not one but two views of democracy, one of which was radical or 'transformational'. I think that this reasoning is somehow misleading because it suggests that Schumpeter *held* also a radical conception of democracy. Yet Schumpeter did not hold a radical view of democracy (the Rousseauian paradigm); rather he assumed this radical view to be the norm of democracy in order to prove his theory of democracy as electoral competition by and selection of the political elite. He did more or less what Vilfredo Pareto and Robert Michels did before him: he endorsed a superlative view of democracy just to stress that democracy is either pure utopia or an ideological fiction created by the ruling class. Schumpeter, Pareto and Michels made the radical political culture of their times (and the Socialist parties that backed it) play a conservative role. They adopted, as it were, a guerrilla strategy and fought their main adversaries with their adversaries' weapons. This made them unquestionably different from the traditional conservatives of their time, and as much radical as their ideological antagonists.
6. Giovanni Sartori (1965) *Democratic Theory*, p. 108. New York: Praeger. This statement does not appear in the 2nd and revised edn.

7. Manin (n. 3), p. 237. Although, the

‘people’ is certainly a much larger entity in our own day than it was in the eighteenth century . . . there has been no significant change in the institutions regulating the selection of representatives and the influence of the popular will on their decisions once in office. (p. 236)

The name of Sieyès is written in three ways: Sieyès, Siéyès, and Sieyès. I followed Pasquale Pasquino’s suggestion and chose the orthography with no accent: Pasquino (1998) *Sieyès et l’invention de la constitution en France*, p. 197 (preface n. 1). Paris: Odile Jacob.

8. Roberto Gargarella (1998) has pointed to this problem in a convincing way and related the crisis of political representation to the canonical definition and implementation of representative government: ‘Full Representation, Deliberation, and Impartiality’, in Jon Elster (ed.) *Deliberative Democracy*, pp. 260–80. Cambridge: Cambridge University Press.
9. Jürgen Habermas himself does not challenge the canon. However his theory of deliberation is rooted in the principle of popular sovereignty and this prevents it from being a mere illustration of the electoral techniques of aggregation and mediation of interests. Finally, anchoring deliberation on the principle of popular sovereignty allows Habermas to indicate a way out of parliamentarianism and offers me a conceptual basis for arguing that the revision of Rousseau’s paradigm of sovereignty, not the renunciation of the idea of popular sovereignty, is the premise for questioning the main tenet of both electoral democracy and the mixed-government model that representation has an unredeemable democratic nature.
10. P.-J.-B. Buchez and P.-C. Roux (1836) *Histoire Parlementaire de la Révolution Française, ou Journal des Assemblées Nationales depuis 1789 jusqu’en 1815*, vol. 24, p. 101. Paris: Paulin Libraire. The Girondins held the majority in the committee chaired by Condorcet. Although Condorcet was not a party man, Brissot’s party backed his plan when the two wings of the Convention split and the Montagnards radicalized their hostility to Condorcet’s plan. On the independence of Condorcet from the parties, and particularly the Girondins, see Marcel Dorigny (1989) ‘Condorcet, libéral et girondin’, in Pierre Crépel and Christian Gilain (eds) *Condorcet mathématicien, économiste, philosophe, homme politique: Colloque international*, pp. 333–40. Paris: Minerve. On Condorcet’s authorship of the plan see Franck Alengry (1973) *Condorcet: Guide de la Révolution Française, Théoricien du Droit constitutionnel et Précurseur de la Science sociale*, pp. 189–93. New York: Burt Franklin (repr. of 1904 edn).
11. For a helpful depiction of the political environment within which the convention was elected and the constitution written and discussed see Elisabeth Badinter and Robert Badinter (1988) *Condorcet: Un intellectuel en politique*, pp. 483–540. Paris: Fayard. The distinction between *mono-archy* and *poly-archy* was devised by Sieyès in the course of his dispute with Thomas Paine on monarchy (which Sieyès saw as legitimate) and the republics (which Paine and Condorcet saw as the only legitimate form of government). Gary Kates has proposed a useful reconstruction and an excellent analysis of the Paine–Sieyès polemic and its impact on Paine’s second part of *The Rights of Man* in Kates (1989) ‘From Liberalism to Radicalism: Tom Paine’s *Rights of Men*’, *Journal of the History of Ideas* 50: 581–7. As for Condorcet’s position in that polemic, a letter to Sieyès he wrote in early July 1791 has been recently published and commented on by Jacques Guilhaumou (1997) ‘Condorcet–Sieyès: Une amitié intellectuelle’, in Anne-Marie Chouillet and Pierre Crépel (eds) *Condorcet: Homme des Lumières et de Révolution*, pp. 223–34. Fontenay-aux-Roses: ENS Éditions.
12. Condorcet, ‘Aux citoyens français, sur la nouvelle constitution’ (June 1793), in Marie Jean

- Nicolas de Caritat Marquis de Condorcet (1968) *Œuvres: Nouvelle impression en facsimilé de l'édition Paris 1847-1849*, 12 vols, vol. 12, pp. 651-75. Stuttgart-Bad Cannstatt: Friedrich Frommann Verlag, 1968, 12: 651-75.
13. Robert Michels (1962) *Political Parties*, tr. Eden and Cedar Paul, p. 112. New York: Free Press. Keith Michael Baker (1975) *Condorcet: From Natural Philosophy to Social Mathematics*, pp. 243-4. Chicago: University of Chicago Press.
 14. For an interesting reconstruction of the place of Condorcet in post-Second World War political historiography, liberal and radical, see Gabriele Magrin (2001) *Condorcet: Un costituzionalismo democratico*, pp. 7-28. Milan: Franco Agnelli.
 15. See Iain McLean and Fiona Hewitt, introduction to Condorcet (1994) *Foundations of Social Choice and Political Theory*, tr. and ed. Iain McLean and Fiona Hewitt, pp. 32-48. Aldershot: Edward Elgar.
 16. Kenneth J. Arrow (1963) *Social Choice and Individual Values*, 2nd edition, pp. 94-5. New Haven: Yale University Press. Bernard N. Grofman and Scott L. Feld (1988) 'Rousseau's General Will: A Condorcetian Perspective', *American Political Science Review* 82: 567-76. An interesting discussion on Rousseau's and Condorcet's views of democracy can be found in David M. Estlund, Jeremy Waldron, Bernard Grofman and Scott L. Feld (1989) 'Democratic Theory and the Public Interest: Condorcet and Rousseau Revisited', *American Political Science Review* 83: 1317-40.
 17. A recent criticism of Condorcet's rationalism and cosmopolitanism is in Will Kymlicka (2001) *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*, ch. 10. Oxford: Oxford University Press. For a sketch of the familiar image of Condorcet as 'the embodiment of the cold, oppressive enlightenment' in contemporary political theory, see Emma Rothschild (2002) *Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment*, ch. 7. Cambridge, MA: Harvard University Press.
 18. 'Is there any sense in studying the proposals of a leader who lost?' McLean seems to be asking when he compares the winner Madison and the loser Condorcet; his answer points to the jury theorem, which actually seems to be the only lasting and valuable contribution made by this 'man of many parts'. McLean and Hewitt (n. 15), pp. 73-4; but see above all Baker (n. 13), pp. 383-6.
 19. Condorcet epitomizes the 'incompatibility within revolutionary discourse between, on the one hand, the rationalist discourse of the social that found its roots in the physiocrats and the Scottish school and, on the other, the voluntarist discourse of political will that found its principal source in Rousseau's reworking of classical republicanism and the theory of absolute sovereignty . . . Condorcet's idea of "political redemption through reason" was as unrealistic as his vision of a society inhabited by rational individuals', Keith Michael Baker (1989) 'Condorcet' in *A Critical Dictionary of the French Revolution*, ed. François Furet and Mona Ozouf, tr. Arthur Goldhammer, p. 209. Cambridge, MA: Harvard University Press.
 20. For a recent criticism of the image of democracy as citizens' co-presence see Iris Marion Young (2000) *Inclusion and Democracy*, p. 126. Oxford: Oxford University Press. For a disillusioned defence of a realistic view of representative government see John Dunn (2000) *The Cunning of Unreason: Making Sense of Politics*. London: Basic Books.
 21. Maximilien Robespierre commented that the primary assemblies were so pervasive that they would cause the citizens to be disgusted with participation and be brought to 'famine, because it [the plan] does not even dream of an indemnity for the time that the people devote to public business instead of subsidizing their families' (cited in H. Archambault De Montfort (1915) *Les Idées de Condorcet sur le suffrage*, p. 205. Paris: Société Française d'Imprimerie et de Librairies).
 22. Condorcet, 'Exposition des principes et des motifs du Plan de constitution', in Condorcet

- (n. 12), vol. 12, p. 335. The 'Exposition' was part of the *Plan de Constitution, présenté à la Convention nationale les 15 et 16 février 1793* as an introduction to the *Projet de Déclaration des droits naturels, civils et politiques des hommes*, and the *Projet de constitution française*. The 'Exposition' and some parts of the project of constitution have been translated in McLean and Hewitt (n. 15), with the titles 'A Survey of the Principles underlying the Draft Constitution (1793)' (pp. 190–227) and 'Outline for the French Constitution (1793)' (pp. 228–34) respectively. Hereafter I will cite from both the French and the English texts.
23. Scholars attribute the term *representative democracy* to Alexander Hamilton, who used it in a 1777 letter to Governor Morris (Pierre Rosanvallon (1998) *Le Peuple introuvable: Histoire de la représentation démocratique en France*, p. 11 n. 2. Paris: Gallimard). In France (and therefore in Europe) the word probably appeared for the first time in 1787–8 in Condorcet's *Lettres d'un bourgeois de New-Haven à un citoyen de Virginie* (n. 12), vol. 9, even if its usage became more familiar after 1792, with the fall of the monarchy and the election of the new convention to give France a republican constitution (see Gary Kates (1985) *The Cercle Social, the Girondins, and the French Revolution*, esp. ch. 2. Princeton, NJ: Princeton University Press)
 24. In both countries, the implementation of representative democracy began at the local level – township government in New England, and municipal government in Paris after 1789. The main theorists of representative democracy, Jefferson, Paine, Brissot and Condorcet, agreed on some basic issues: that state institutions should be organized so as to facilitate the coexistence of representation and participation; that popular conventions were a model of sovereignty in action or regulated sovereignty as opposed to both extra-legal exceptionality and immutability; and that decentralization, but not necessarily federalism which seemed to be more an expediency to cope with a large territorial state than a value of its own, was a condition of political liberty.
 25. See, respectively, Emmanuel-Joseph Sieyès, 'Dire sur la question du veto royal' (7 Sept. 1789) in (1985) *Écrits politiques*, ed. Roberto Zapperi, p. 236. Paris: Éditions des archives contemporaines. Rosanvallon (n. 23), p. 49. By Sieyès see also 'Bases de l'ordre social ou série raisonnée de quelques idées fondamentales de l'état social et politique (an III)' published in Pasquino (n. 7), p. 186.
 26. According to Sieyès, 'pure' democracy meant 'raw' (*brute*) democracy since it resembled raw materials before human labour transformed and refined them. It meant direct rule, but also an inferior or less perfect way of ruling. It was a system that fit societies that were not yet 'civilized' because they were unfamiliar with the division of labour and a work ethic, still attracted by 'passe-temps agréables' and not appreciative of industry and the abundance of artificial goods stimulated by commerce; Emmanuel-Joseph Sieyès, 'Observations sur le rapport du comité de constitution, concernant la nouvelle organization de la France' (2 Oct. 1789) in (n. 25), p. 262.
 27. 'L'intérêt commun, l'amélioration de l'état social lui-même, nous crient de faire du gouvernement une profession particulière'; Sieyès (n. 26), p. 262.
 28. *Ibid.* p. 250. It is well known that Sieyès applied to politics Adam Smith's social philosophy and in particular the criterion of the division of labour (Pasquino (n. 7), ch. 1). However, in the context of politics, the concept of 'function' has inegalitarian implications because it means 'separation' among *and* hierarchy within the 'profession' of the electors and that of the elected, and results into an asymmetry of power; it implies, as Sieyès himself wrote, the distinction between active and passive citizenship; see Paul Bastid (1970) *Sieyès et sa pensée*, p. 370. Paris: Hachette.
 29. Patrice Gueniffey (1993) *Le Nombre et la raison: La Révolution française et les élections*, p. 149. Paris: Éditions de l'École des Hautes Études en Sciences Sociales.

30. Thomas Paine, *The Rights of Man, Part II* (1792), in (1989) *Political Writings*, ed. Bruce Kuklick, p. 170. Cambridge: Cambridge University Press.
31. See respectively, Sieyès (n. 26), p. 263; Paine (n. 30), pp. 167–70. Paine was a member of the comité de constitution chaired by Condorcet and the co-editor with Condorcet of *Le Républicain ou le Défenseur du gouvernement représentatif* (July 1792); on his impact in Condorcet's constitutionalism see Alengry (n. 10), pp. 197, 211–14.
32. Paine (n. 30), p. 170.
33. Emmanuel-Joseph Sieyès, *Instructions données par S.A.S. Monseigneur le duc d'Orléans, . . . suivie de Délibérations à prendre dans les assemblées de bailliages* (1789) in Sieyès (1989) *Œuvres de Sieyès*, ed. Marcel Dorigny, 3 vols, vol. 1, p. 68 (document 4). Paris: Edhis.
34. Lucien Jaume (1990) *Échec au libéralisme: Les Jacobins et l'État*, p. 20. Paris: Éditions Kimé. Condorcet used the term 'droit négative' (n. 23), p. 78.
35. Condorcet's model was the Constitution of Pennsylvania (whose text was drafted by two of his friends, Paine and Benjamin Franklin) which instituted the council of the censors (Art. 47). The procedure of constitutional revision in ordinary times was, however, indirect in the sense that the citizen formulated the question so as to check whether the majority thought there was agreement on the proposal of having an amendment.
36. 'Opinion was discovered by both the French and the American Revolutions, but only the latter – and this shows once more the high rank of its political creativity – knew how to build a lasting institution for the formation of public views into the very structure of the republic'; Hannah Arendt (1977) *On Revolution*, p. 228. London: Penguin Books (originally publ., 1963).
37. *Ibid.* p. 255.
38. Paine (n. 30), pp. 171–2.
39. 'We also needed to warn the people against the dangers of profound indifference which often follows revolutions, against the effects of the slow and secret abuses which eventually corrupt human institutions . . . We therefore felt it necessary to establish within the constitution a means of reform which was independent of the people's request and which would therefore take place at fixed intervals'; Condorcet (n. 22), p. 407 (tr. p. 223).
40. 'Ce respect pour les lois, ressort nécessaire dans une nation libre, n'est pas un enthousiasme stupide pour les lois établies, une superstition politique qui suspende les progrès de la raison . . . Ce sentiment est la conviction intime qu'il importe au salut public que la loi, tant qu'elle subsiste, soit exécutée; c'est celui qui animait Socrate, lorsque, victime d'un jugement inique, il refusait de s'y soustraire par la fuite'; Condorcet, 'Aux amis de la liberté, sur les moyens d'en assurer la durée' (7 Aug. 1790), in (n. 12), vol. 10, p. 180.
41. Condorcet (n. 23), vol. 9, p. 3; but see also his 'Exposition' (n. 22), pp. 340–1 (tr. pp. 192–3). As noticed by Catherine Kintzler (1984) *Condorcet: L'Instruction publique et la naissance du citoyen*, p. 46. Paris: Le Sycomore, he thought of reason as *reason in action*, not just as a *form for action*. Thus he derived rights from the assumption that reason is fallible. Rights were simultaneously preservative *and* progressive: they recognized the fact that reason can *and* should revise mistakes. Anticipating Habermas's view, Condorcet thought that deliberative democracy was consistent with and received the dual movement of rationality as an actuating procedure *and* a critique of its own outcomes.
42. Carl Schmitt (1994) *The Crisis of Parliamentary Democracy*, tr. Ellen Kennedy, p. 38. Cambridge, MA, and London: MIT Press (originally publ. 1923).
43. *Ibid.* pp. 10–17.
44. *Ibid.* p. 42.
45. McLean and Hewitt (n. 15), p. 32.

46. Condorcet, *Essai sur l'application de l'analyse à la probabilité des décisions rendues à la pluralité des voix*, in (1986) *Sur les élections et autres textes*, pp. 21–9. Paris: Fayard (originally published 1785). Cesare Beccaria based his justification of habeas corpus and fair trial on two crucial premises: the delimitation within the legal domain of the spheres of legislation, application and enforcement of the laws respectively; and the depersonalization of the act of judgement. The principle of depersonalization in relation to the 'preferences' and 'emotions' of the judge (hence the claim that forensic cases must be based on verifiable facts and testimonies) led Beccaria to conceptualize judgement in the court in terms of a syllogism of the first figure: 'In ogni delitto si deve fare dal giudice un sillogismo perfetto: la maggiore dev'essere la legge generale, la minore l'azione conforme o no alla legge, la conseguenza la libertà o la pena'; Cesare Beccaria, *Dei delitti e delle pene*, p. 22. Rome: Newton (originally published 1764). On the role of Beccaria in the evolution of the theory of punishment as part of the theory of right and the rule of law in Condorcet's thought see Baker (n. 13), pp. 230–33 and Magrin (n. 14), pp. 56–9.
47. The jury theorem claims that, provided everyone has an equal vote and uses it independent from others, and provided that each voter has a 50–50 chance of getting the right answer, the majority has more chance of being right than any single member of the group. 'Les décisions du jury, comme celles du suffrage politique, doivent en retour être de même nature: droites et conformes à la raison'; Pierre Rosanvallon (1992) *Le Sacre du citoyen: Histoire du suffrage universel en France*, p. 176. Paris: Gallimard.
48. Condorcet (n. 22), p. 354 (tr. P. 199).
49. Condorcet (n. 23), p. 8.
50. See Kintzler (n. 41), pp. 17–22.
51. Condorcet (n. 46), p. 101.
52. Condorcet, *Sur l'instruction publique* (1791–1792) and *Vie de Monsieur Turgot* (1783), of which I am using the edition published in 1786, pp. 226.
53. Condorcet, 'Examen sur cette question: Est-il utile de diviser une assemblée nationale en plusieurs chambres' (1789), in (n. 12), vol. 9, p. 344.
54. In the 'Exposition' of the constitutional plan, he submitted to the assembly three methods for constraining the power of a mono-assembly system, all of them based on time delay or constraint over urgency: dividing up the time of discussion by requiring that 'all legislative acts . . . will be debated twice' the first time in order to see whether the issue is to be accepted for consideration; dividing up the assembly into two 'big committees' so that each of them discusses, but does not vote on, the proposal separately; the third way consisted in requiring two-thirds of the votes in a named ballot 'to declare a matter urgent and to dispense with the legally prescribed intervals'; Condorcet (n. 22), pp. 361–4 (tr. pp. 202–3).
55. From a manuscript annotation written by Condorcet during his chairmanship of the comité de constitution, quoted in Magrin (n. 14), p. 145.
56. On the 18th-century evolution of the theory of natural rights into politically constructed rights and the role of the French physiocrats in facilitating this evolution see Jürgen Habermas (1974) *Theory and Practice*, tr. John Viertel, pp. 83–4. Boston: Beacon Press.
57. Lucien Jaume (1989) *Le Discours jacobin et la démocratie*, pp. 309–10. Paris: Fayard.
58. An extremely lucid exposition of the role of representation and coordination played by Turgot's plan is to be found in Condorcet, in particular pp. 136–51.
59. Jacques-Pierre Brissot de Warville (1789) *Plan de conduite pour les députés aux États généraux*, p. 237. Paris. One of the reasons Condorcet and the Girondins paid so much attention to regulating the work of the primary assemblies was that they wanted to make all the regions of the country perfectly equal and reduce the political role that Paris had in determining the whole country's expression of popular sovereignty.

60. Augustin Cochin (1979) *L'Esprit de jacobinisme: Une interprétation sociologique de la Révolution française*, pp. 80–1. Paris: Presses Universitaires de France.
61. The idea of the two registers of politics, constitutional and ordinary, the former qualitatively superior to the latter, derives from a notion of political autonomy as absolute creation of the will, in Rousseau's sense. For a 'liberal' rendering of this dualism see Jon Elster (1996) *Ulysses and the Sirens: Studies in Rationality and Irrationality*, pp. 93–4. Cambridge: Cambridge University Press.
62. Condorcet, 'Idées sur le despotisme, à l'usage de ceux qui prononcent ce mot sans l'entendre' (1789), in (n. 12), vol. 9, pp. 147–52. On the educational and egalitarian function of the primary assemblies see the sympathetic description of one of the first of Condorcet's biographers, Léon Cahen (1904) *Condorcet et la Révolution française*, p. 68. Paris: Félix Alcan. On the 'liberal' role played by the primary assemblies see Fernanda Mazzanti Pepe (1991) 'Condorcet e Brissot: Sul modello girondino di sistema rappresentativo', in Carlo Carini (ed.) *La rappresentanza tra due rivoluzioni (1789–1848)*, pp. 51–91. Florence: Centro Editoriale Toscano Interuniversitario di Storia del Pensiero e delle Istituzioni Rappresentative.
63. Condorcet, 'Réponse à l'Adresse aux Provinces, ou Réflexions sur les écrits publiés contre l'assemblée nationale' (1790), in (n. 12), vol. 9, p. 530.
64. To my knowledge, the article that offers the best analysis of the local and national meaning of primary assemblies is Mazzanti Pepe (n. 62), pp. 64–9.
65. An analysis of the difference between Condorcet and Sieyès based on Sieyès' speech of 1795 was first proposed by Alengry (n. 10), pp. 194, 482–3, and then by Paul Bastid (1939) *Les Discours de Sieyès dans les débats constitutionnels de l'An III (2 et 18 Thermidor): Édition critique avec une introduction et des notes*, p. 59 n. 36. Paris: Librairie Hachette.
66. By 1789, Sieyès had expressed his strong disagreement with the admirers of the United States, and accused them of attempting to make France into 'une infinité de petites démocraties, qui ne s'uniroient ensuite que par les liens d'une confédération générale . . . Le peuple ou la nation ne peut avoir qu'une voix, celle de la législation nationale'; Sieyès (1985, in n. 25), p. 234, 238. The most informative work on Sieyès in the English language is by Murray Forsyth (1987) *Reason and Revolution: The Political Thought of the Abbé Sieyès*, esp. chs 7, 8 and 9 on Sieyès's theory of representation and his project of representative government. New York: Leicester University Press.
67. 'Voici son [Condorcet's] plan: une représentation *féderative* qui fait les lois, un conseil *représentatif* qui les exécute. Une représentation générale, formée des représentations particulières de chacun des départements, n'est plus une représentation, mais un congrès'; Louis-Antoine de Saint-Just, 'Discours sur la Constitution de la France' (24 April 1793), in (1976) *Théorie politique*, ed. Alain Liénard, p. 190. Paris: Éditions du Seuil.
68. Sieyès (1985, in n. 25), p. 238. We can say of Sieyès what Jaume said of Robespierre: he used 'des propos de Rousseau tournés contre la Représentation, pour affirmer que "la volonté générale" est . . . dans le "pouvoir législatif" élu!' Jaume (n. 57), p. 296.
69. Condorcet (n. 22): *Projet de constitution*, Titre IV, Art. 11.
70. Condorcet (n. 22), p. 347.
71. 'Dans cette politique de la raison, la contradiction entre inaliénabilité et indivisibilité peut en principe être résolue: en définitive, Condorcet est . . . le seul à y parvenir'; Jaume (n. 57), p. 311.
72. R. Carré de Malberg (1920) *Contribution à la Théorie générale de l'État*, 2 vols, vol. 2, p. 169 n. Paris: Librairie de la Société du Recueil Sirey.