

# Rousseau on the Risks of Representing the Sovereign\*

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## Rousseau über die Risiken der Repräsentation des Souveräns

**Abstract:** In this paper I propose a critical reading of Rousseau's critique of representative politics on new grounds; that is to say, not in the name of more participatory democracy versus representative democracy, but in the name of representation as part of democratic politics rather than an expedient. Rousseau's political view suggests us a healthy mistrust in, or guarding attention to a system of indirectness (representative democracy) that makes opinion (*l'opinion*) and thus judgment central and even more important than the will, and in this way opens the door to new forms of political presence (passive rather than active) and of inequality (that of voice and indirect influence). Contemporary plebiscite of the audience and the unbalanced power of the means of opinion formation are the loci of the kind of "indirect" power that Rousseau's mistrust in representation allows us to see in their perverse potentials.

**Keywords:** Sovereignty, Participation, Representation, Opinion, Inequality

**Schlagwörter:** Souveränität, Partizipation, Repräsentation, Meinung, Ungleichheit

## 1. Within the Modern Tradition of Sovereignty

In his attack on the representative revolution, Robert Filmer raised a question that was to become central in the ensuing debate on political representation and can be used to introduce Rousseau's doctrine of sovereignty. How, Filmer asked, can it be claimed that the people retain its "natural liberty" if they do not give the representatives "instructions or directions what to say or do in parliament"? (Filmer 1991, p. 56-57). For the sovereign to preserve its supreme power, delegates must not become representatives. Filmer was of course making a case for the absolute sovereignty of the king. Yet his argument could be applied to a collective sovereign as well. "Sovereignty," Rousseau wrote in 1762, "cannot be represented for the same reason that it cannot be alienated. It consists essentially in the general will, and the will cannot be represented. The will is either itself or something else; no middle ground is possible. The deputies of the people, therefore, neither are nor can be its representatives; they are nothing else but its commissaries. They cannot conclude anything definitively" (Rousseau 1964, p. 429-430; Rousseau 1987, p. 198).

In these few sentences Rousseau makes essentially two claims: popular sovereignty is an act of the will, and the will can be delegated but not represented because representation entails alienation. Rousseau confined representation rigor-

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ously to the bounds of a principal/agent relation and stripped the delegate of any political role. In legal usage, mandate is a fiduciary contract that allows the principal to temporarily grant an agent her power to take certain specified actions but does not delegate her will to make decisions. This was Rousseau's model of "representation" in the legislative setting. It was consistent with a voluntarist politics and a juridical notion of sovereignty.

Rousseau's logic has mesmerized supporters of strong democracy as well as skeptics who doubt both the possibility of democratizing representative government and the feasibility of direct self-government. The question is, however, why Rousseau's premises should go unchallenged and, moreover, whether their outcomes foster full participation and curtail the political influence of the delegates vis-à-vis the sovereign.

As I argue in this article, the most authoritative theorist of direct government and the founding father of participatory democracy denied that the delegates could have a legislative role, *not* delegated politics. Indeed, despite the fact that he thought representative government violated popular sovereignty, he didn't propose lottery or rotation (traditionally associated to democracy) and furthermore did not reject elections in the legislative sphere. Rousseau restated Montesquieu's idea that lottery was democratic and election aristocratic and concluded with Aristotle that whereas all positions requiring only good sense and the basic sentiment of justice should be open to all citizens, positions requiring "special talents" should be filled by election or performed by the few (Rousseau 1964, p. 429-30; Rousseau 1987, p. 198). Hence Rousseau excluded both democracy *and* representation. Only direct ratification by the citizens distinguished his mix-government republic from today's representative government. Rousseau's true antithesis to representation was a delegated politics with direct (but silent) ratification, not a full-fledged participatory polis. The contemporary view that representative government is a mix of aristocracy and democratic authorization may be seen as the late child of Rousseau's model. In fact, Rousseau's model is closer to Schumpeter's one than Schumpeter himself thought. This is the main argument I intend to propose in this chapter.

Elections can be a feature of both direct and indirect governments. The ancient Athenians and the Romans used elections and Rousseau thought elections should be used in the republic to fill positions both in the legislative and the executive. Clearly, it is not election per se, but the statutory rendering of the function that elections enact that defines the character of representative government since it is the way representation is implemented that reveals what elections produce or, in other words, how sovereignty is conceived and what the sovereign's responsibilities are.

The difference between direct and represented government pertains to forms of delegated power rather than to whether government uses election or not. Rousseau's model of political institutions is consistent with a delegated (as non-deliberative) democracy versus a representative (as deliberative) democracy. It is based on popular sovereignty as a unitary act of the will the citizens perform either by electing law-redactors or lawmakers with instructions or by voting on the laws directly. Delegation, unlike representation, means that the delegates discuss and deliberate but do not have the last word; they opine but do not want. As per Carl Schmitt's reading of Rousseau, this is the only condition under which representa-

tion “may be regarded as a specifically democratic method” (Schmitt 1928, p. 257). The fact is (as Rousseau correctly argued) that this has nothing to do with *political* representation, although is a delegate form of politics.

## 2. Either Delegates or Representatives

Let first try to clarify how Rousseau conceived representation. This issue is a *vexata quaestio* in Rousseau scholarship, which has to come to terms with the fact that he violated the maxim of direct self-government a few years after he formulated it. As we know, he went from a radical denial of representation in *Du Contrat Social* (1762) to the endorsement of delegation in the *Projet de Constitution pour la Corse* (1765) and the *Considérations sur le Gouvernement de Pologne* (written between 1771 and 1772).

Most scholars have interpreted this as a shift “for practical reasons”, not however a principled rejection of the norm of direct participation. Some scholars have gone further and argued that he eventually came to accept representation also as a matter of principle because what he called “elective aristocracy” was in fact “merely another name for parliamentary or representative government”. Finally, Rousseau’s oscillation between denial in theory and acceptance in practice has been taken as symptomatic of the contradiction internal to democracy itself: it is what the *Contrat social* says it is, but can at best be realized in the way the *Gouvernement de Pologne* proposes. Representative institutions are realistically necessary but normatively weak and undemocratic. The paradox of Rousseau’s model is that it is the point where theorists of participatory democracy and theorists of electoral or elitist democracy converge (Fralin 1978, p. 1-11; Miller 1984, p. 128; Manin 1997, p. 165; Masters 1968, p. 411-413; Derathé 1970, p. 79-80; Barber 1994, p. 145, n. 6).

In the only book-length study of Rousseau’s conception of representation, Richard Fralin challenged this standard opinion that direct ratification means that Rousseau gave priority to participation. He argued that Rousseau was just as ambivalent about representation as he was about participation, and actually thought that direct and indirect participation should be complementary rather than mutually exclusive. This led him to suggest that the Poles should institutionalize “direct participation in the dietines,” or at the local level, and “representation in the diet,” or at the national level (Fralin 1978, p. 11, 5-6). Rousseau’s dual commitment testified to his lack of sympathy for assembled people and his lasting belief that a good republic should contain and limit it. It was not theoretical reasoning that convinced him to question the legitimacy of representative assemblies but the endorsement of Geneva’s political institutions as a model.<sup>1</sup> And Geneva was a very moderate republic in which indirect democracy checked direct democracy.

It seems to me that Fralin proposed us a convincing reading, although he explained the ambiguities of Rousseau with reason of practical implementation,

1 It was no accident that he changed his mind on representation in mid-1754, (when he extended the “right of legislation” to “all citizens”), just after he completed his study of Geneva’s system of government (Fralin 1978, p. 134-35; Rousseau 1964a, p. 27).

while I suggest and actually argue that theoretical reasoning is essential in Rousseau's approach and moreover that there is no discrepancy between theory and practice in his writings, for the simple reason that he drew a sharp distinction between delegates and representatives. If carefully interpreted, the title of chapter fifteen, book three of the *Social Contract* leaves no room for misinterpretation: "Deputies or Representatives," where "or" is the key word, although a tricky one since it can suggest both equivalence *and* disjunction. However, the content of the chapter indicates that it is the latter that reflects Rousseau's mind, not the former. To him delegation is legitimate *insofar as* it is different from representation. The title of the chapter should thus be read as saying: *Either* deputies *or* representatives. Rousseau's words in the chapter support this interpretation: The "deputies of the people, therefore, neither are nor can be its representatives; they are merely its agents. They cannot conclude anything definitively."<sup>2</sup>

It would thus be incorrect to say that he admitted representation for practical purposes but bound it to the people's instructions. His analysis of representation was a chapter in his criticism of the theory of the alienation of sovereignty bequeathed to the moderns by the natural law tradition (Derathé 1970, p. 252-64).<sup>3</sup> In his vocabulary, like that of the theorists of absolute monarchy he relied upon, delegation was a form of direct decision by other means, while representation defined a reallocation of sovereignty. Like Jean Bodin and Robert Filmer, Rousseau thought that only the contract of alienation defined representation. *This*, not delegation, was sovereignty's *bête noir*, the remnant of a patrimonial conception of the state the moderns had inherited from the Middle Ages and Hugo Grotius theorized in *De Jure Belli ac Pacis* in which, reasoning from the logic of Roman private law, had argued that the people could alienate their freedom just as a person could legally alienate his property because sovereignty could be held "either with full property right (*jure pleno proprietatis*), or with usufruct only (*jus usufructuario*)" (Grotius 1925, 2: chap. 22, sec. 11).<sup>4</sup> In Rousseau's mind, representation

- 2 "Les députés du peuple ne sont donc ni ne peuvent être ses représentants, ils ne sont que ses commissaires; ils ne peuvent rien conclure définitivement" (Rousseau 1964, p. 429-430). Helena Rosenblatt had called attention on the extraordinary similarity of Rousseau's dualism between legislation through representation and direct voting by the people and the *Représentations* or the list of grievances that Geneva's bourgeoisies submitted to the General Council in 1734, in which one reads that being "born free," the people of Geneva would soon be reduced to "slavery" if did not have the right to assemble periodically and to approve taxes; in linking liberty and sovereignty, the document was framed in the same language as the *Social Contract* (Rosenblatt 1997, p. 132).
- 3 The text in which Rousseau expressed a more benign opinion on representation is the *Lettres écrites de la montagne* (letter VIII in particular) in which he stressed his opposition against popular initiative so as to induce Vaughan (1962, 2:187-188) to argue that he reduced the legislative power of the people to impotence.
- 4 According to Launay (1989, p. 434), the Genevan document against the *Représentations* was the main enemy behind Rousseau's theory of sovereignty's indivisibility and inalienability. This document used the argument of the natural law to define Geneva as a "mixed" republic or an "aristo-democracy" in which "the essential rights of sovereignty" were "shared" by the various components of the people; the opposite solution (direct ratification by the people) would be "pure democracy" or a government in which the "multitude" was outside (before) the contract and thus free to change any law as it pleased. With his theory Rousseau wanted to show that the assembly of the people could retain the right of ratification without the system becoming a "pure democracy" (Rosenblatt 1997, p. 134-135).

would rekindle the logic of natural law because it claims, absurdly, that sovereignty can be alienated like any other property and that its alienation would not alter the identity of its owner. Thus since “popular sovereignty,” “the general will,” and “political freedom” are synonymous, it would be paradoxical to attribute to two different institutions – the sovereign and the representatives – the task of performing the same political activity while pretending they are different. The fact that delegates deliberate *and* ratify proves that a transfer of freedom and power has occurred such that the delegates are no longer delegates but sovereigns (Merriam 1999, p. 23).<sup>5</sup>

Thus, when he wrote in the *Social Contract* that representation was a modern institution, Rousseau referred precisely to the feudal tradition and meant to say not that the ancients were unaware of the distinction between the actor and the function, but that the ancients did not apply the logic of *res privata* to *res publica*. His conviction that the Roman tribunes were ‘representatives’ who did not “usurp the functions of the people” was consistent with his idea that the ancients understood ‘representation’ correctly because they used it to institute the functions of government, not alienate their sovereignty. They did not use it instead of popular assemblies (Rousseau 1987, p. 198-199).<sup>6</sup> Representation was both modern (post-Roman) *and* a sign of feudalism, thus regression.<sup>7</sup> It was part of the natural law tradition against which Rousseau opposed his theory of the social contract as an act of *constituere* versus *alienare*. With the *pactum unionis* that was also *pactum subjectionis* (because the community gave itself the power to make laws and subject all to them at the same time) individuals created their legal equality, a normative grammar that set the model and limits of all subsequent relations and contracts in public matters (Rousseau 1964b, p. 807).

Rousseau’s aim was not just to prove that representation could not be a norm of good government, thus. Much more radically, he wanted to disprove that representation could be used as an *expedient* for the exercise of popular sovereignty in a large territory, since it contradicted the three fundamental requirements of popular sovereignty: *unity* of the sovereign power; *inclusion* of all the subjects in the sovereign body; and *reciprocity* or relation of equality among all citizens, ministers and subjects. Indeed, the general will *and* the people were one and the same thing

5 In the Middle Age the inscription of the rule of the contract in the public law was completed. Both religion and secular communities accepted that the decision over the appointment of power was to be regulated by public law and that this appointment entailed that every power of a political kind (to make rules and laws) should bear “the character of the constitutional competence of some part of the Body Politic to ‘represent’ the Whole” (Gierke 1958, p. 61).

6 As for representation, Rousseau was a *discontinuist* much like Montesquieu, who also deemed it a non-ancient institution but a creation of post-Roman or feudal (read “gothic”) Europe like individual liberty as different and opposite to political liberty.

7 As we shall see below, Rousseau’s source was d’Holbach (1781-82) who derived representation and all forms of delegated institution from the “old German nations”. D’Holbach’s source was Tacitus’ *Germania* (1999, § 11) which described the forms of representation and parliamentary institutions used by the German tribes. But Montesquieu was the first to construct the theory of the government of the moderns or non-Latin (representative versus direct government) based on Tacitus (1989, bk. 11, chap. 6.) A further important source is that of Jean Louis de Lolme (or Delolme) who in 1771 wrote a defense of English representative government against the myth of direct ruling (see the first English edition of his work, *Constitution of England*).

because had “one and the same interest” and were born together; before the sovereign was constituted there was only a multitude of independent interest-bearers (pre-political individuals) with no agreed upon norms to regulate their interactions as free and equal beings.<sup>8</sup> The practice of representation would artificially recreate a multitude of independent interest-bearers and make their private will the law of the state. Finally, according to Rousseau, an all-inclusive body politic was not enough to guarantee the convergence of utility and justice. Unlike Hobbes, he did not interpret the political pact as a way of artificially creating inequality of power in a condition (the natural one) of perfect equality. Since he assumed that individuals were naturally different from one another, his goal was to create a public space within which the relation between individuals could be one of reciprocity and equality: each must be (included as) both a sovereign and a subject in order for all to enjoy the same rights with no imbalance of power among them. This condition only would make it rational for individuals to enter the social contract.<sup>9</sup>

Representation would split the people into two classes: those who made and obeyed the laws and those who only obeyed and hinder equality, so that all the members would be equal as subject but not as sovereign. As a result, it could not ensure that some would not be penalized for not belonging to the ‘right’ group and the legislative power not used to make decisions that would distribute costs and benefits unequally and discretionarily. Representation could not deliver what the social contract promised: that “justice and utility do not find themselves at odds with one another.” This damned it even as an expedient. That large and populous republics needed representation simply proved that republics had to be kept small in order not to force their citizens “to relegate to others” their “right of legislation” or sovereignty.<sup>10</sup> Federalism and imperative mandate, not representation, were Rousseau’s pragmatic answers (or the expediciencies) to the geo-political order of the moderns.

In conclusion, the essays on Corsica and Poland are not exceptions to the rule set up in the *Social Contract*, but a consistent implementation of the rule since delegation is not a kind of representation but a kind of direct government. Both the magistrates in Rousseau’s ideal well-ordered republic and the delegates in his constitutional designs belong to the same genre: that of a *contract of commission*. “The deputy, every time he opens his mouth in the Diet, every time he takes any action there of any kind, must see himself on the carpet before his constituents” (Rousseau 1964c, p. 979-980; Rousseau 1985, p. 36-37). The delegates give the people their opinions on an issue, but opinions have no authoritative power of their own unless the people mark them with a “*déclaration publique et solennelle*” of their will (Rousseau 1964b, p. 807-808). To sum up: according to

8 On Rousseau’s paradoxical idea that the sense of the common could emerge by pre-contractual actors (self-effacing Hobbesianism) see Riley (1987, p. 110) and the critical answer of Cohen (1986, p. 281-283).

9 Independent individuals agree to enter the contract to protect their persons and goods (Rousseau 1987a, p. 27; Rousseau 1987, p.141; Miller 1984, p. 61-62).

10 For an analysis of the linkage between liberty (moral and political) and the general will see Neu-houser 1993; for an interpretation of the general will as conscious expression of the general good see Cohen (1986, p. 276-288).



Rousseau, representation is a contract; like any contract, it can be either a contract of alienation or a contract of delegation or service; if the people are to retain their sovereignty only the latter is admissible.

We can see Rousseau's logic in action in the debate on the constitutional form of the Parisian municipal government, which took place in the summer and fall 1792, when the idea and practice of *representative democracy* were born in France. The fundamental issue at stake was the relation between popular sovereignty (the citizens of Paris in this case) and the representative institutions of the city government. The greatest challenge to the Fauchetins – the party of Jacques-Pierre Brissot and le Marquis de Condorcet that sponsored representative democracy – came from the Cordeliers, the party that argued for the sovereignty of the districts against a representative Municipal Assembly. The Cordeliers thought that elections should institute delegates, not representatives. In language Marx would revive eighty years later during the Commune, they argued that if the districts (the people of Paris) were to retain their sovereign power the representatives who set in the Municipal Assembly could only be “administrators” or “delegates” – it was thus wrong to describe them as “representatives” because representation entailed a transfer of sovereignty, not delegation. The Cordeliers were adapting Rousseau's model for the government of Poland to the government of Paris, correctly understanding it as non-representative. “Our representatives are absolutely not, as in England, the sovereigns of the nation [...] It is the title of Representatives of the Commune which causes the misunderstanding [...] it seems to us that in this sense the word as stated is improper, and that they have cruelly stretched the meaning of words; henceforth, we believe no other words could serve us better than *administrator*” (Kates 1985, p. 51).

### 3. Two Models of Unification

The issue of the unity of the sovereign is fundamental in the investigation of the subterranean links between theories of sovereignty and models of representative government. An interesting way to approach it is by comparing the answers Montesquieu and Rousseau gave to the main political problem of their time: that of arresting the splintering effect of social interests and pluralism. The choice of Montesquieu is not arbitrary since he was the spokesman for the parliamentary theory of representation and in fact the first main theorist of representative government as a hybrid of democracy and aristocracy, hence the natural adversary of Rousseau's design.

From an historical point of view Montesquieu's work cut across the social philosophy of the *thèse nobiliaire* and of the physiocrats – the idea of a corporate society and an interest-based justification of political institutions – the two main positions that led the representative transformation of the state in France. In Rousseau's time, the author who threw Montesquieu's view in the political debate over the identity and function of the General Estates was d'Holbach. Like the physiocrats, the proponents of the thesis of the *citoyen contributaire*, d'Holbach devised a mix of liberal and republican virtues that linked individuals' interest in private property, trade and entrepreneurship to political rights and the creation of

public interest (Ronsanvallon 1992, p. 46-47). He reformulated *The Spirit of the Laws*’ scheme of a “moderate” regime in which representation figured both as a shield for social interests, a source of information enabling the lawmakers to make good laws, and a source of legislative expertise. However, d’Holbach grounded Montesquieu’s model on a view of representatives as *agents of their constituents* not the general interest (D’Holbach 1781-82, p. 362). In his eclectic and untenable solution, d’Holbach implicitly proposed an imperative mandate similar to Rousseau’s constitution for Poland, although he did not, like Rousseau, base it on an individualistic reinterpretation of political suffrage; rather, he related representation to orders or corporations; to interests rather than individuals.

D’Holbach’s article embodied the central ambiguity of the physiocratic thesis, which embraced a commercialist and individualistic philosophy on the one hand, and perpetuated the *ancien régime* schema of social and political estates on the other.<sup>11</sup> Until his *Discours sur l’économie politique*, Rousseau shared d’Holbach’s positions.<sup>12</sup> Few months later however, he took a quite radical stand, rejecting the position of his fellow Encyclopedist and radically disassociating the sovereign from representation. With this move, Rousseau set himself directly against Montesquieu’s parliamentary legacy and reasserted Bodin’s absolutist legacy.

Montesquieu’s strategy of combining the separation of powers with representation was the first conscious attempt to bridge the unity of state sovereignty and the plurality of an autonomous civil society. The purpose of his model of a moderate monarchy was to reassert the “indivisibility of the supreme power in the hand of the monarch, and the subordination of the ‘intermediary powers’” (Vile 1998, p. 89; Montesquieu 1989, bk. 2, chap. 4). In this Janus-faced context, representation needed free mandate to both guard the autonomy of social interests and make possible the reconstitution of the unity of the legal order. Montesquieu scholars disagree about whether he succeeded in combining Locke and Bodin, liberalism and state sovereignty (Vile 1998, p. 85-91; Althusser 1959, p. 157-159; Schackleton 1961, p. 248-264; Richter 1977, p. 20). However, Montesquieu not only did not discard the principle of a unitary “source of all political and civil power” but moreover approached representation from the perspective of state unity functionality rather than competition between interests.<sup>13</sup> Indeed, although he defended the “intermediary bodies” he did not resort to imperative mandate,

11 Monarchists and anti-monarchists, supporters of the *ancien régime* and innovators alike believed that merchants, landowners, and more generally taxpayers were the backbone of the wealth of the nation as well as the moral representatives of a kind of republican noblesse. Although Rousseau grew increasingly hostile to commercialism, he shared the physiocrats’ ideal of a natural as rational order that combined utility and justice, economic independence and political independence (Weulersse 1985, p. 189-195).

12 However, even in the *Discours sur l’économie politique*, Rousseau did not exclude direct legislation. Like Locke, he deemed consent crucial only to issues related to taxation: “taxes cannot be legitimately established except by the consent of the people or its representatives” (Rousseau 1964, p. 270; Locke 1993, § 140).

13 “Intermediate, subordinate, and dependent powers constitute the nature of monarchical government, that is, of the government in which one alone governs by fundamental laws. I have said intermediate, subordinate, and dependent powers; indeed, in a monarchy, the prince is the source of all political and civil power” (Montesquieu 1989, bk. 2, chap. 4).



the most useful and cogent strategy to protect *les corps*, as we have seen above (Shackleton 1961, p. 279).

Montesquieu's defense of social pluralism did not mean to recognize the prerogative of the intermediary bodies against the state. It meant searching for a balanced solution that would guarantee civil liberty *within and under* the law of the state. This solution became canonical in the liberal theory of representative government and the true alternative to Rousseau's model of sovereignty and delegation. Montesquieu's justification of representation was functional (an expedient to cope with the incompetence of the general public) rather than simply material (an expedient to cope with the size of the state).<sup>14</sup> Representation could solve the problem of making the laws general in a broad and varied social environment wherein political competence and interests were unevenly distributed. Representatives could legislate for the general interest in a way interest-holder individuals could not. Political inequality was not principled, but functional; it rested on a basic legal equality and was an extension to politics of the practical logic of division of labor operating in commercial society.

Montesquieu's model was the target of Rousseau's switch from representation to delegation and moreover his revisiting of Bodin (and Hobbes). This countermove explains the originality of Rousseau's use of the imperative mandate relatively to its *ancien régime* advocates while confirming the fact that his main goal was to create a unified legal and political order within an individualistic and egalitarian society, rather than making room for participation.<sup>15</sup> Rousseau defended delegation with instructions once he had introduced an innovation that turned the *ancien régime* model upside down. He applied pure delegation (Bodin's solution) in an individualistic and atomistic context or a sovereign body preemptively purged of all intermediary sources of authority (Hobbes' criterion) (Derathé 1970, p. 264-266). Only under these conditions would the imperative mandate not be a divisive tool and a way of preserving a social hierarchy of communitarian authorities and organic solidarities.

In a body politic made of rigorously equal individual units, there may be two ways to protect the sovereign from the risk of fragmentation. The first way is epitomized by Hobbes: representation as authorization made *una tantum* by each individual simultaneously to state representatives (*persona publica*) who retain and preserve the unity of judgment and the will (deliberation and decision) on the condition that the subjects are kept out of politics and deprived of not only the will but also political judgment. The second way is epitomized by Rousseau: inclusion of the subjects within the sovereign politics but on the condition that judgment and the will be the separate provinces of two distinct groups, the magistrates (or delegates) and the people respectively. The implication of this extremely important move is not hard to be figured out: the identification of politics (the

14 d'Holbach endorsed the same view and while he accused the "esprit de Corps" of destroying the "esprit patriotique," he acknowledged that the people, while not competent to judge issues, were competent to judge the merits of the candidates (1998, p. 166-170).

15 "His insistence that the sovereign people should make the laws in person, was in the interests of an undivided and unlimited sovereignty" (Osborn 1964, p.182).

sovereign power) with the will makes representation either impossible or illegitimate. The question is that the interpretation of the sovereign power as will power is not for the sake of democratic politics but to guarantee the unity of the coercive power of the state (the abolition of any authority between the law and the citizen), as Bodin had anticipated. A decisionist sovereign is unfriendly to representation and to a robust view of participation as well.

#### 4. The Sovereignty of the Will

Rousseau transferred to the people the qualities modern theorists of monarchical absolutism had given to the king: the will as possession and the mark of power; the will as physical presence in space; and the present as the time dimension of the will. And he transferred to the “agents” of the people all the qualities that those theorists had given to the “Judges” and the “Commoners” of the king: judgment and interpretation – or deliberation in the broader sense (Filmer 1991, p. 96). Only the qualities associated with the will constituted political liberty (the liberty of the sovereign). Both Rousseau and the theorists of monarchical absolutism confined representation to delegation but also prefigured an essentially formalistic sovereignty and a minimalist kind of participation.

The conceptual distinction between will and judgment – attributed to the legislative power and the government (executive and judging functions) respectively – has proceeded along with distinction of state functions. Historians of political ideas and institutions have located its origins in the Roman and medieval juristic tradition and its acme in modern theory of sovereign territorial states (Carlyle and Carlyle 1903-36, v. 5, chapters. 5-6). Thomas Aquinas devised quite a clear separation between promulgation and counseling (or interpretation) and ascribed the former to the legislator and the latter to ministers. The same distinction returned in Marsilius of Padua’s *Defensor Pacis*, which identified promulgation with the solemn ratification of the law by the “multitude”, the only legitimate sovereign, without even distinguishing between the directly assembled multitude and the assembly of the representatives of the multitude.<sup>16</sup> Likewise, Jean Bodin and Robert Filmer strictly distinguished between the legislative act and the debate that preceded it. The former consisted *de facto* in the sovereign act of promulgation, an act that encouraged scholars to highlight the minimalist and formalist nature of modern absolutism (Franklin 1973, p. 164-180).<sup>17</sup>

The dualism between sovereignty and representation was perfected in the age of absolutism when the faculty of ratification was rigorously ascribed to the will

16 Aquinas 1984, Questions 90 and 92; Marsilius of Padua 1956, p. 45. Marsilius’ contribution to the modern category of sovereignty consisted in separating out its sociological aspect (“the people or the whole body of citizens”) from its normative function (the source of legitimacy of the law “regardless of whether it [the sovereign] makes the law directly by itself or entrusts the making of it to some person or persons”).

17 It is however certain that the king of France had always the power of initiating a law he pleased; in that he held more power than Rousseau’s collective sovereign and did not passively endorsed the suggestions of the members of the parliament nor solely rarified the proposals his “counselors” proposed him (Crahay 1983, p. 88-89).

of the king as the marker of authority, and the faculty of judgment to his ministers (“Judges” and “Commoners”).<sup>18</sup> When, in fact, the meaning of the adjective “sovereign” changed from “superior” authority to “perfect” authority (*plenitudo potestatis*), that is to say from a connotation that was relative to one that was beyond relation or absolute. When finally the sovereign gained complete power by endorsing a politics of equality (of the ruled) through the dismantling of the ladder of commands and the hierarchy of wills and responsibilities it implied. The will became the voice of the law, the undivided source and immediate act of that newly concentrated authority. The sovereign and its delegates respectively embodied two distinct faculties (the will and the judgment) that engendered two different kinds of participation (authoritative and auxiliary). In this respect, Rousseau was a follower of the monarchist Bodin, rather than the democratic (but not individualist) Marsilius of Padua.

Bodin’s *Six livres de la république* (1576), one of Rousseau’s seminal sources of inspiration, identified the supreme power of the state with the unitary source of legal obligation and located it in the “moral person” of the sovereign, be it individual or collective.<sup>19</sup> This principle also applied to modern parliaments, which either exercised delegated power or were themselves sovereign. The former deliberated and discussed, made suggestions and drew up petitions, but did not ratify laws, a power reserved for the sovereign (Bodin 1990, p. 23).<sup>20</sup> Montesquieu, drawing on Bodin’s theory of sovereignty, would later argue that representative government was a form of aristocracy, not democracy, and Rousseau that it was not a legitimate government to begin with. Filmer, who utilized Bodin’s doctrine in his ideological defense of the English monarchy against the parliament’s claim for legislative power, adopted a rhetorical style that was even more reminiscent of

- 18 The modern theory of sovereignty renewed the Roman conception of the single master (the Emperor) monopolizing and enjoying the plenitude of power. The rehabilitation of the Imperial Roman tradition is epitomized in the transition from the empire of the law to the empire of the sovereign, or from a law whose authority was based on the agreement of the whole community to a law whose authority derived directly from the will of the king. The Roman Emperor played an important mediating role in this transition. Indeed, even if the constitutional theory of the Roman Empire conceived the authority of the Emperor as given to him by the community (delegated authority,) the Emperor was in fact the legislator. Justinian is a case in point. However, historians have detected the seeds of this transformation in Augustus’ reform, since although it stated that the *Princeps* could not legislate but only make decrees while only the Senate retained the power of making the laws (ratification), in fact the *Princeps* became the only proponent and the only legislator. The paradox was that, owing to the distinction between laws on the one hand and *decreta, mandata and epistola* (that is administrative decisions, proposals, and replies or petitions) on the other, the Senate retained the right to make laws (*senatus consulta*) because none of those initiatives could become a law without its approval, but in fact its power became simply a power of promulgation, all formal and substantially empty, much like Rousseau’s assembled people (Scullard 2000, p. 220).
- 19 In ancient Rome - which Bodin, like Rousseau later on, took to be the model of the republic - sovereignty “remained in the people” even when “its exercise” was delegated to one or more magistrates (Bodin 1992, p. 2-5). Rousseau considered Roman tribunes the only good examples of representation (1997, p. 198-199). On the relevance of the work of Bodin to Rousseau, see Derathé (1970, p. 252-264) and Jaume (1990 p. 18-21).
- 20 Parliaments hold power in trust because “their resolution would be of no effect without her [queen of England] will [...] the Estates have no power of deciding, commanding, or determining anything, seeing that they cannot meet or dissolve without an express command” (Bodin 1990, p.20-21).

*The Social Contract*. When “the king is in place,” wrote Filmer, all delegated powers “ceaseth”. When the “sovereign body” is assembled, says *The Social Contract*, “all the jurisdiction of the government ceases” (Filmer 1991, p. 47; Rousseau 1964, p. 427).

The need for the direct presence of the sovereign (spatial configuration) in the legislature was indicative at once of the sterility of judgment and its representability. The king had to retain his seat in the parliament, but not in the court, because the judge made decisions that, like any act of judgment, applied only to particular cases and in conformity to existing laws.<sup>21</sup> Whereas the parliament was speechless without the king (and in fact was a private congregation summoned by the king at his pleasure and only when he needed it) the judge could make his judgment authoritative only without the king.<sup>22</sup> Thus the maxim: sovereignty is the work of the will and delegated politics is the work of judgment; whereas ratification defines the form of participation proper to the former, deliberation defined the latter’s.<sup>23</sup>

The distinction between delegates who are and are not representatives is thus predicative of both the juridical relationship they institute *and* the kind of power they exercise. When Rousseau writes that when the delegates vote in the assembly, this “[c]e n’est pas voter” but “c’est opiner” (Rousseau 1964b, p. 845), he is saying two things: first, the delegates do not make authoritative decisions; and second, the delegates exercise only the faculty of judgment, not the will. Judgment is weak power because parasitical on laws or rules it does not itself create; this makes it transferable without liberty and equality risk violation. Whenever they are given the power to make decisions, deputies are no longer deputies but representatives *or*, in Rousseau’s reasoning, sovereigns.

- 21 Will and the judgment served also to distinguish between law and decree. Laws flowed from the will; decrees from judgment; both were equally legally binding decisions but differed in that the former only was endowed with full creative power, the power to transform proposals into authoritative commands. Decrees were instead parasitical on laws since they were meant to implement a general law. Ratification defined the pattern of behavior or the norm prescribing the action in general and abstract terms. Interpretation and judgment were crucial in the act of implementation or to subsume particular actions and circumstances (Aquinas 1948, Question 90, Third and Fourth Article). In Rousseau’s words, the law “cannot name specific persons,” but the decree takes the particular and the contingent as its object. Thus the former only needs to be the voice of the sovereign (Rousseau 1987, p. 161).
- 22 “[...] the ordinary duty of a counsellor is to advise the king what he himself shall do [...] the counsellor in the king’s presence gives his advice;” As soon as the sovereign takes the power to judge in its own hand, its presence annuls the magistrates’ “And the ordinances that are made there, receive their establishment either from the king’s presence in parliament – where his chair of state is constantly placed – or at least from the confirmation of him” (Filmer 1991, p. 96). The sovereign has “the right of judging in the last instance [or final appeal]” and when it decides to exercise that right directly it steps symbolically into the court and silences the judge (Bodin 1992, p. 67).
- 23 “In the presence of the represented, there can be no representation” (Wokler 1995, p. 65). In his Letter to d’Alembert (1758), three years after he had abandoned the idea that a legitimate government could be representative, Rousseau opposed public ‘direct’ festivals to comedies by professional actors ‘representing’ people’s sentiments and emotions before a passive audience. One may be tempted to read Rousseau’s opposition as a polemical answer against chapter 16 of Hobbes’ *Leviathan*. On Rousseau’s aesthetic argument against representation see, Dugan and Strong 2001.

Hence the norm: although judgment can be made “in the name of” (because in the absence of) the sovereign, the will cannot be declared “in the name of” (and in the absence of) the sovereign (Filmer 1991, p. 96). This yields the juridical definition of political participation in proper sense: Only ratification requires direct presence by the sovereign. When the people replaced the king, the result was Rousseau’s theory of direct participation: “the people cannot be represented in the legislative power. But it can and should be represented in the executive power, which is merely force applied to the law” (Rousseau 1987, p. 199). Only the authority that makes decrees can be represented (the executive and the judiciary) without danger of “denuding” the sovereign.

To sum up: sovereignty entailed possession such that whether the monarch or the assembled people were the sovereign, their delegates could not be sovereignty’s “owners and possessors”. Sovereignty entailed physical presence and spatiality so that the power to transform a proposal into a law required non-deferred action and it was the same thing as ratification (a simple yes/no decision,) whereas the delegated power was to opine. Hence the maxim: Representation is a contract; like any contract, it can be either a contract of alienation or a contract of delegation or service; if the people are to retain their sovereignty only the latter is admissible. For the republic to be legitimate, representation must be non-political or pure delegation in the juridical sense.

## 5. The Travel Agent and a Minimalist Participation

It is a commonplace that Rousseau countered representation with direct participation. However, participation is a tricky word. It can be interpreted in a number of ways, and be an object of both mystification and vilification. The more its meanings are expanded to include various degrees and forms of political activity and influence, the harder it is to give participation a juridical coefficient. Yet, if the point of participation is to make decisions authoritative, participation consists essentially in the act of approval or refusal, that is to say authorization. Rousseau might have had this difficulty in mind when he chose to give people’s participation a juridical meaning and identity, rather than a politically extended one. Like the signature on a work of art, sovereignty as will power means essentially *authentication*.

To give a trivial example, the relationship between Rousseau’s sovereign and delegates can be compared to the relationship I have with my travel agent when I decide to take a vacation. I can give him a more or less detailed list of preferences and a certain amount of freedom to come up with some options. The only thing I need to do directly is decide to have a vacation. Without this fundamental decision the travel agent’s work would be meaningless. Yet it is not a kind of decision that requires my ongoing and active participation. It demands neither my competence nor my effort. My decision-making power is not curtailed because I don’t check the prices of airlines and hotels myself. Of course I enjoy positive liberty because in addition to the negative liberty to which my passport entitles me, I also have the means and opportunity to exercise my right to exit (money and free time). But the word “positive” doesn’t mean anything extraordinarily rich beyond

the fact that I am the *source* of the decision and the *ratifier* of the option the travel agent proposes me.

The stock image of Rousseau as a proto-totalitarian democrat notwithstanding, Rousseau's strict delegation should not be confused with any deeply politically active or mobilizing kind of sovereignty. His citizens do not need to do all the jobs entailed by the actualization of positive freedom themselves in order to enjoy positive freedom.<sup>24</sup>

The delegates are to the people like ambassadors to the state they represent. They do the 'dirty' work their sovereign needs done in order for its plans to work, but lack formal power to make decisions in the sovereign's place. However, they have significant discretion to explore the best means to achieve the sovereign's chosen end and even to suggest the kind of end the sovereign might want to choose. As Carl J. Friedrich put it, an ambassador's authority means that "his power also extends beyond the power to which he had claim as the representative of the particular government which sent him" (Friedrich 1963, p. 309).

Ambassadors' experience and knowledge enhance the inherent power of their role, so that depending on their personal abilities, they can accumulate much more authority than elected representatives with free mandate, although *de jure* they have no power at all. Like them, Rousseau's delegates have very substantial 'power' although they hold it informally and behind closed doors. Unlike elected representatives, they have access to a range and degree of influence that cannot be easily assessed and formally limited, but is in fact largely discretionary. This was why Immanuel Kant argued that a non-representative form of government cannot be the norm because it cannot guarantee the government of laws, even when all the subjects want the laws (Kant 1991, p. 125-127 and 1991a, p. 74).

Although Rousseau rejected political representation, he did not replace it with an equal amount of direct politics by the sovereign people. The paradox of his model of an unrepresentable sovereignty is that delegated power plays the greatest role in the life of the state and is kept out of citizens' sight and control. As Judith Shklar argued, the wise magistrates do almost all the work in his republic while the sovereign does very little (Shklar 1969, p. 170, 188).<sup>25</sup> Citizens should be "content to approve the laws and to decide as a body and upon the recommendation of the leaders" because they do not need to be particularly intelligent or well informed (Rousseau 1987a, p. 28). They instinctively know the difference between right and wrong and can make good judgments in the general interest, but somebody has to call their attention to the need for a specific law or policy (Shklar 1969, p. 201; Rousseau 1964d, p. 294).

It could even be said that Rousseau let the people to exercise sovereignty directly because sovereignty was not such a complex and difficult job. The only in-

24 "For the rest, a deputy's constituents, provided he has done nothing contrary to their expressed wishes are not going to deem it a crime if, speaking merely as a good citizen, on some unforeseen topic concerning which they have made no decision, he has expressed an opinion" (Rousseau 1964c, p. 98; Rousseau 1985, p. 37).

25 Along a similar line of thought, Dahl has argued that since inclusion in the whole process of decision-making was not Rousseau's criterion of political equality, he "may, in fact, have anticipated Schumpeter's solution" (Dahl 1979, p. 114).



violable rule was that the citizens should vote on issues directly, and their votes were counted individually and equally. He did not say, however, that political freedom requires the assembled citizens to propose, discuss, and draft the laws. It certainly requires that they give the seal of legitimacy themselves. But it is preferable (and in fact a requirement of good government) that somebody else, not the citizens themselves, do the preparatory work that legislation entails (Rousseau 1964c, p. 978).<sup>26</sup>

Rousseau's view can be used as an argument *a contrario* that representation exists on the condition that it gives visibility to political deliberation which, thanks to this institution, becomes thoroughly public and exposed to the sight and judgment of all. This crucial aspect provides important evidence to my earlier suggestion that representation defies the dualism between the inside outside of state institutions, will and judgment, and extends publicity in the domain of state politics. Simply put, representation exists on the condition that the citizens are always present in some form and their judgment, not only their will, is always influential. Secondly, it presumes an extended view of participation, one that also includes the work of surveillance and interference by the citizens with the work of the magistrates through words and deeds, written ideas and social actions by movements and political groups.<sup>27</sup> As Condorcet well understood, judgment is an essential component of popular sovereignty in a representative democratic society, although unlike the will it is not formally authoritative.

If judgment is to be included in the definition of sovereignty, participation must be redefined. The legalistic and formalistic view traditionally associated with sovereignty – either as direct ratification or electoral verdict – which has dominated the debate on representative government since its liberal inception, cannot comprehend the complexity of democratic participation and politics. The power of influence, contrary to that of the will, is exquisitely indirect and can only exist in public. As a result, it seems that the real choice is not between the existential presence of the sovereign and the absence of sovereignty, but between conceptions of popular sovereignty that are either purely juridical and private-like or broadly political and public.

## 6. The Unavoidable Power of Doxa

Rousseau's norm of political legitimacy claims that decisions are just and true as long as they are made by individuals who do not cooperate or even communicate (although they de facto need to cooperate and communicate because are weak and imperfect). The paradox of his norm of "political association" is that the actual association of men is its main enemy and obstacle. Yet if popular sovereignty

26 "The dietines should draft the instructions to their deputies (nonces) with great care, with an eye both to the topics listed in the convocation and to the current needs of the state or the province" (Rousseau 1985, p. 36).

27 In a democratic society, participation can take a variety of forms (citizens' inventiveness is an important aspect of the democratic character of politics) whose effectual strength can hardly be mathematically calculated like votes, although can be diagnosed (Ackerman and Fishkin 2004, p. 153-154).

means anything at all, it means the broad current of decision-making along with all the discussion that lead up to the vote and influences how people think (the magistrates as much as the citizens). Precisely because citizenship is an artificial status and the law an expression of artificial reason, Rousseau argued that the sense of authorship is important. The way this feeling develops and expresses itself is also crucial though; but he did not explore it.

If, as Condorcet argued, the sense of political authorship is strengthened not merely by the fact that everyone votes, but by the fact that everyone *knows* that they have all contributed to “prepare for a common decision,” communication between the inside and outside of state institutions rather than polluting the act of the will, as Rousseau feared, endows the decision with the character of a public and collective enterprise (Condorcet 1968, v.12: p. 342-352). This involves examining the issues, forming personal opinions, evaluating probable consequences, and associating with others to identify problems, propose solutions, or simply criticize decisions. It requires *listening to* others’ opinions and evaluations, revising them and reducing them in order to craft a position that is more general and can garner broader consent. This type of complex work *does* take place in Rousseau’s republic, but only among the few whose deliberative activism allows them to develop a sense of unity and *esprit de corps*.

Of course, citizens also need to be involved in common activities and develop a sense of unity (the “fourth law” has this meaning, after all). The question is that in Rousseau’s republic the people are not supposed to be “educated” through deliberative activism or participation in political associations. The people’s sense of unity is constructed outside the political domain properly defined: by symbolic rites such as public ceremonies, festivals, and songs; in a word by non-rational as non-political (that is not regulated by formal procedures) events. Just as we are not told how the magistrates deliberate when they meet, we do not know what citizens do when they are not assembled. In both cases such knowledge is completely irrelevant to sovereignty.

The elite strengthen their unity through speech and reflection (and lack of responsibility for the outcome, since the people not them, decide anyway) while the citizens strengthen it through patriotic emotions (and total responsibility for the outcome, since they are asked to say ‘yes’ or ‘no’). Rousseau’s model is Plato’s guardianship within which the few only practice reasoned discussion while the many are convinced by means of “noble lies”. Thus his alternative to a true representative assembly is competent and political participation of the few along with patriotic, and formally non-political, participation of the many. Universal and direct ratification does not fill the political void in which Rousseau’s citizens live.

Rousseau’s disassociation between the will and judgment shows all the weakness of a rationalist ontology. If political liberty (or democracy) consists in a procedural system of arriving at correct decisions, then political liberty is fulfilled as long as citizens do not communicate among themselves: only under this condition can ratification in the assembly produce the right result. Yet *doxa* relies on communication and comparison of ideas. Unlike analytical reason, *l’opinion* is never the result of one individual’s reasoning and is always *ideologically thick*. However, isolation is the rule in Rousseau’s formal republic because, as his most admired

Spinoza thought, the natural *conatus* pushes each individual toward the fulfillment of his nature, which is always in harmony with both the species and nature as a whole on the condition that exogenous factors (such as opinions and passions) do not interfere.

Going back to the issue of judgment, once applied to democracy, Rousseau's theorem holds that good laws require only *raw* information and, moreover, the *right* amount of such information. Interpretation, opinion and individual judgment are out. This is where Rousseau gestures to what could be called the antinomy of democracy: on the one hand, it is the name of a form of government (the "is"), and on the other it is a rule of reason (the "ought"), not an actual order of the state. Rousseau's politics of silence and the mistrust in civil and political groups and communication are anti-democratic. They are useful heuristically, however, because they highlight the *imperfect* context within which democracy operates – the fact is that it is impossible to tell how much information is needed to make a good law and where the raw information should come from, since no individual is *de facto* neutral because no one is absolutely isolated from others and indifferent to his/her interest or completely virtuous. Not coincidentally, information and the related issues of the ownership of the means of communication and pluralism are the primary, and as yet unsolved, problems of democracy.

Rousseau intuited these problems when he selected his focus: *how to ensure* that the individual will does not affect political decisions. The simple question citizens are supposed to ask themselves denotes a politics of constraint rather than expression. His acceptance of majority rule for ordinary legislation reveals his pessimism about human nature. By the same token, although he understood the relevance of deliberation in practical politics and public opinion, he resorted to a behind-the-scenes strategy and wanted to ensure that deliberators had qualities like virtue and wisdom that were not universally distributed.

The fact is that, since human virtue and public reason are fallible, the meaning of democracy must be expanded to include the social labor of critique, oversight and deliberation, will and opinion. It is better to involve the many in this comprehensive work of deliberation than to rely on sheer luck to elect a few virtuous and good leaders. In sum, representative democracy corrects Rousseau's theory insofar as it restores deliberation to the citizens and makes them the best judge of the "wisdom" of the few. This does not mean dropping Rousseau's intuition that the "general interest" is the source of legitimate laws, but rather reinterpreting it as a criterion of political judgment that circulates throughout the democratic society, rather than solely at the precise and narrow moment of legislation (or election).

Having said that, it would be interesting to compare direct and representative democracy by asking the following question: Which of the two forms of democracy more accurately *represents* the citizens' minds? Direct democracy is a system of decision-making that presents citizens with yes/no questions, and therefore produces decisions that only poorly represent citizens' minds. Direct democracy cannot accommodate pluralism of opinions. "Paradoxically, in relation to [the democratic requirement of] representativity, direct democracy is less representative than indirect democracy" because the way it formulates issues to be voted on

reduces all differences of opinion to two, meaning that democracy as ratification forces the citizens to level and merge their differences (Bobbio 1999, p. 415).

Direct democracy may be based on the direct presence of the citizens, but this very presence is much less representative of their ideas than their indirect presence in a representative democracy. Sieyes revealed this paradox as early as 1789 when he said that forms of collective deliberation that are supposed to take place without individuals either interacting or acting together are an “absurd”. [Like almost all his contemporaries, though, he saw civil associations as a threat to the unity of sovereign authority (Gauchet 1995, p. 64-66).] Deliberation implies a continuum between outer (“la place publique”) and inner worlds (the mind of the citizen); it requires people to reflect on their views in the company of others, even if they make the final decision alone. Absent such a context, if citizens have to think in isolation, each one of them would always have to begin his thinking again every time he has to make a decision (Sieyes 1985, p. 237-238). As a result, direct rule fails to produce decisions that reflect citizens’ views in the making. It is rigorously individualistic and in fact atomistic on the legal level, yet flattens and levels individuals’ different perspectives and visions on the political level. Legally individualistic, it fails politically to reflect individuals’ specificity and uniqueness.

Supporters of direct democracy have surmised that this is positive because it means replacing ideological (party) politics with a politics that is objective and attentive to the “reality” of “concrete questions” (Bordeau 1970, v. 5: p. 250). When ideas are reduced to yes/no options, politics will be liberated from ideology and transparency and objectivity will be achieved. According to Marx, and more crudely Lenin, legislation in a non-representative democracy would be a simple matter of solving technical problems rather than a spectacle of manipulative oratory or a forum for conflicting opinions; it would be an essentially apolitical work of practical implementation and instrumental rationality because it is not driven by interpretive disputes.<sup>28</sup> People with identical interests who dissect practical problems rationally can end up with only two opinions. The evaluation of the better one can be calculated with objective accuracy; there is only one good answer, and dissent is symptomatic of a lack of understanding or knowledge; it is an error, as Rousseau surmised, rather than an injustice.

Yet rationalistic democracy is not ideology free. In fact, the dichotomous yes/no views required by direct voting on issues may be just as ideological as the ideological constructions of the multiple options naturally engendered by representation. The argument that non-representative democracy withdraws the citizens from the “purely ideological struggles that representation creates” and brings politics to the “level of reality and the technical necessity that laws impose” is simply unconvincing (Bordeau 1970, v. 5: p. 250). The myth of objective truth and justice rests on the audacity (or folly) of exiling evaluative judgment from

28 In a socialist society, “representative institutions remain, but there is *no* parliamentarianism here as a special system, as the division of labor between the legislative and the executive, as a privileged position for the deputies;” representative assemblies are no longer “talking shops” but true ruling or “working bodies” (Lenin 1975, p. 211).

politics in order to make politics into the arithmetical (and contestation free) assessment of right versus wrong votes.

Rousseau identified the general will with cognitive rather than judgmental reason because he believed that legitimate government could only be objective to the extent that it did not represent people's opinions. Yet can politics be represented by analytical reason? And to what extent must the personal and the political be segregated so that one does not influence the other? Finally, can there be such a thing as politics apart from representation of opinions and convictions, interpretation and ideological construction? The rehabilitation of representation as a truly democratic institution, rather than an expedient or a second best, coincides with the rehabilitation of politics as the art of gathering consent to proposals that are supposed to respond to problems that concern everyone and arise both from the outside (society) and the inside (the state). It coincides with the appraisal of the role and meaning of ideology (ideas as creative factors) in the making of modern democracy.

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