Continuity and Rupture: Political Judgment in Democratic Representation

Nadia Urbinati
Columbia University

Representation in Democratic Theory and Practice

Studies of electoral processes and public opinion surveys have improved and become remarkably sophisticated in recent decades. In that it is both an aspect of electoral behavior and a mechanism for determining government responsiveness to the public, representation has acquired the status of a democratic institution in political science, and particularly in studies of American politics. This despite the fact that representation is not associated exclusively with democracy (since it historically pre-dates democratic states and can also exist in non-democratic states) and its relationship to democracy is permanently subject to debate. In H.L.A. Hart's words, "a definition which tells us that something is a member of a family cannot help us if we have only a vague or confused idea as to the character of the family." Democratic representation is vague in this sort of way.

Institutionally speaking, the term refers to politics within the state itself, rather than to a form of democratic participation, since it owes its democratic credentials to electoral authorization and accountability, events that tell us how representation starts and ends, not what it is. "Democratic theory has little to gain from talking the language of representation, since everything necessary to the theory may be put in terms of (a) legislators (or decision-makers) who are (b) legitimated or authorized to enact public policies, and who are (c) subject or responsible to public control and free elections." In other words, the main concern of democratic theory should be the citizens' "opportunity" "to practice direct democracy" in a representative system, rather than representation. According to Jane Mansbridge, in order to successfully address the issue of the norms appropriate to a representative system, the first order of business is to "assume" that "representation is, and is normatively intended to be, something more than a defective substitute for direct democracy." The implication being that democracy theorists intuitively define the democratic norm as direct citizen rule (face-to-face democracy) rather than representation, the consolidation of representative institutions and the reliability of electoral behavior surveys notwithstanding.

Significant historical examples invalidate the "defective substitute" argument. I cite two cases where democratization took the path of representation, one pertaining to civil society the other to state institutions. The first example, the social movements that swept Europe during the late 1960s, is relatively recent. Although they were associated with assemblarism and the call for direct democracy, most of the time they began by denouncing either the lack of, or the emptiness of representational rights in the workplace, the university, and the high schools. Issues of representativity, not direct democracy, defined the democratic character of those social movements. This was particularly true in Italy, where factory strikes followed the dismantling in the 1950s of the workers' representative structures, a management decision whose purpose was to control the organization of the productive processes (scheduling, hiring and firing criteria, wages, benefits, and environmental policy). When strikes began in the fall of
1969, Italian industrial relations were despotic in the classical sense of the word, and resembled European absolutist states before the parliamentary revolutions. Furthermore, the workers' claim for inclusion in the factory system of representation was foundational rather than simply instrumental. It implied a radical transformation of how collective objectives became issues of common interest and how people wanted to be recognized within the framework of extant power relations.

The Italian case recalls the way the protagonists of the first constitutional revolution saw their struggle for political representation. Their demand that legislative power be transferred from the king to an elected parliament, and furthermore that seats in the House of Commons be assigned in proportion to the population of the counties of England amounted to a claim for popular sovereignty. "If therefore the knights, citizens and burgesses sent by the people of England to serve in parliament have a power, it must be more perfectly and fully in those that send them. But (as was proved in the last section) proclamations, and other significations of the king's pleasure, are not laws to us."

Algernon Sidney was arguing against Robert Filmer, whose defense of absolute monarchical sovereignty pivoted on the idea that the parliament should be consultative not representative, thus explicitly linking representation to a popular (democratic) redefinition of sovereignty.

Mark A. Kishlansky's careful work on the birth of the electoral process in seventeenth-century England has revealed a chronological and functional link between three phenomena: the adoption of the electoral method to appoint lawmakers, the transformation of the elected from delegates to representatives, and the emergence of party-like or ideological alliances among citizens. Although elections have been regarded as an aristocratic institution since Aristotle, in modern states the electoral process stimulated two movements that became crucial to the subsequent process of democratization. On the one hand, it touched off a separation between society and the state, or better saying a transition from *symbiotic* relationships between the delegates and their communities to forms of unification that were thoroughly *symbolic* and politically constructed. On the other, the disassociation of the candidates from their social classes or positions foregrounded the role of ideas in politics, or, as I shall argue below, the idealizing function of the process of representation. As a result, representation can be reduced neither to a *contract* (of delegation) sealed by elections nor merely to the *designation* of lawmakers because its nature consists in being constantly recreated and dynamically linked to society.

In sum, modern history suggests that the genealogy of democratization began with the representative process. The democratization of state power and the unifying power of ideas and political movements brought about by representation were interconnected and self-reinforcing. Elections have made political representation essential to popular (democratic) sovereignty. Kishlansky's analysis of the English case implies we revisit the role of elections and representation in democratic theory. When liberal constitutionalism first appeared in the eighteenth century, political leaders and theorists thought that the dualistic space of citizens and representative institutions created by elections was the *sine qua non* of impartial and competent decision-making because it protected the deliberative setting from both the tyrannical passions of the majority and the particular interests of factions and minority opinions.
This belief permeated the writings of authors as diverse as James Madison and Edmund Burke, who encouraged, as it were, an elitist transmutation rather than a rejection of Rousseau's general will by making it the rational achievement of selected virtuous citizens. The general interest or the unity of the political order could exist and be preserved on the condition that its authoritative interpreters were severed from external influences. Burke and Madison transferred to the assembled representatives the characteristics that Rousseau attributed to the assembled citizens. The problem is, though, that since leaders and institutions are vulnerable to social influences rather than impartially detached from them, the dualism does not function as it was intended by the theorists of the well-ordered republic. Only if representatives were impartial, virtuous, and competent *motu proprio* could insulating their will from the citizens solve the problem of partiality and corruption. If that were the case, though, elections would be pointless.

The choice of election as a method of selection proves two things: neither the people nor the government can count on luck for good lawmakers, and there is no such thing as a naturally preselected and self-referential aristocracy. Although elections are a formally limited method of control because they are *post-factum* (and only indirectly anticipatory), they testify to the fact that in a democracy representatives cannot *and* never should be insulated from society. Historically speaking, this was why elections were synonymous with democracy and why the call for representative institutions was synonymous with the people's claim for sovereignty. Electoral competition has two outstanding virtues, not one: while it teaches the citizens to rid themselves of governments peacefully as theorists of "minimalist" democracy rightly claim, it also makes the citizens participate in the game of ridding themselves of governments.

Thus, the right to vote does more than prevent civil war. It engenders a rich political life whose goal is to promote competing political agendas and condition the will of the lawmakers. It encourages the broad development of extra-electoral forms of participation, although it cannot guarantee that political influence will be distributed equally. Furthermore, it highlights the paradox of the instrumentalist view of representation, which on the one hand refers to the people's opinion as the source of legitimacy, and on the other claims that representatives make good and rational decisions as long as they shield themselves from "a forever-gullible popular opinion." At the heart of this paradox lies the often unspoken, formalistic view of citizens' participation as the electoral minimal verdict of the sovereign and a narrow view of democratic deliberation as a process that involves and refers exclusively to the elected with the consequence of achieving an "incomplete and distorted view" of what the representatives are and should do. Election turns out to be a mechanism to authorize a professional class (a new aristocracy) to deliberate over the heads, or behind the backs of the citizens whose only function is to "accept" leaders and never interfere with them while they are in business.

**Integration and Crises**

Important attempts have been made to encourage a non-formalistic interpretation of political representation. In fact, since its constitutional inception, representative government has belonged to a complex and pluralistic family, whose democratic wing was not the exclusive property of those who advocated participation against representation. Eighteenth-century American and French revolutionaries used two terms
to denote their innovative enterprises: “representative government” and “representative democracy.” Although the terms were sometimes used synonymously, the more perceptive political leaders were aware of their differences. For instance, Emmanuel-Joseph Sieyès avoided using the latter and thought that the sovereign nation was politically mute outside the electoral booth and its will inexpressible without and outside the representative assembly. The Marquis de Condorcet, on the other hand, thought that the sovereign citizen had the rights and should have the "legal means" to be active whenever he/she deemed it "useful or necessary." Appointing representatives was not the only function attached to the “droit de cité,” and the democratic character of representative institutions did not simply consist in the act of authorization by an otherwise mute sovereign nation.

Retrieving Condorcet's insight, I shall argue that the specificity and uniqueness of modern democracy is based upon, but not confined to, the casting of "paper stones" by means of the ballot. It lies in the circular movement between the state and society created by elections or the continuum of the decision-making process that links the citizens and the legislative assembly. This is the rationale of the discourse theory of popular sovereignty and the precondition for a democratic interpretation of representation. It is an essential starting point. It does not, however, complete the picture of the democratic process of representation, because while, in Habermas’s words, it stresses communication as "the socially integrating force" unifying the inside and the outside of the parliament, it is insufficiently attentive to the moments of rupture of that communication, moments that bring the contribution of representativity to the democratic legitimacy of representation to the floor by default.

In Hegel’s style, Habermas’ idea of a circulation of power unifying state and society explains states of normality or organic stability better than states of crises. When the continuity between the representatives and the citizens is interrupted, the latter are likely to generate extra-parliamentary forms of (self-)representation. Their aim is not to take back the decision-making power or reaffirm direct government by the people, however, but to disclose and denounce the political distance between the "real" and the "legal" nation and finally to reclaim a re-equilibrium of the communicative poles of state institutions and society. This highlights the two faces of representation: procedural (electoral authorization) and political (reflective adhesion to society through time); and speaks for the permanence of the sovereign people’s presence in the form of political judgment, rather than the will. Benjamin Constant described these two levels in a captivating way when he distinguished representation of people’s opinion (elections) from representation as durée (“those changes in public opinion that might [occur] between one election and the next.”)

Making room to judgment in the politics of the sovereign is primed to have some relevant implications. In a remarkable 1789 essay on types of despotism, Condorcet classified the kind of arbitrary rule likely to arise in a government in which lawmaking results from citizens' consent to be represented as "indirect despotism." Indirect despotism, or the despotism of "the legislative body occurs when the people are no longer truly represented or when it [the legislative body] becomes too unequal" to them. This new form of arbitrariness is not tyrannical in the traditional sense since it does not take the form of a violation of constitutional rules. Indirect despotism therefore does not justify violent disruption of the legal order. It does, however, justify forms of political mobilization that
signal and point to the need to overcome the divorce existing within the symbolic unity of citizenry and restore the circulation of judgment and opinion that should unite state institutions and the citizens. A democratic theory of representation must be able to explain this event and thus make room for a conception of sovereignty that is not identical with the basic act of the will or electoral authorization, but encompasses forms of negative power such as political surveillance and consent readjustment through the entire intra-electoral time. Hence, it needs to amend both the minimalist and the deliberative definitions; the former, because focusing on voting as the temporary resolution of political conflict tells us where the authorized "will" to make laws is located, but does not provide us with the complete picture of the democratic game; and the latter, because focusing on the integrating force of communication sheds insufficient light on the issue of representativity, a quality that is both a matter of degree and oscillation and an ideological construction.

The perspective I am advancing prefigures some important changes in how representation has been and is interpreted vis-à-vis democracy and sovereignty. On the one hand, the idea of representation as a process contradicts the static paradigm of contract that confines the relationship between representatives and represented to democracy as electoral authorization. On the other, and consequently, it challenges the modernist doctrine of sovereignty as an act of the will that has embodied the language of the contract of representation. Therefore any analysis of the status and norms of democratic representation leads inevitably to the meaning of sovereignty and the kind of participation it presumes. This is the issue I shall study in what follows.

The statement that sovereignty should be seen in relation to the entire spectrum of political activities brought about by representation does not mean that the role of suffrage, or the correct implementation of voting procedures, should be ignored. However, it should be clear that violations of voting procedures signal a deeper crisis in the democratic process than a deficit of representativity; they must be treated as grave exceptions rather than ordinary issues in democratic theory. This is because the achievement of universal suffrage – which entails a combination of several factors, namely one-person-one-vote, secret balloting, equal counting of votes, simultaneous national voting, and secrecy until the moment all ballot boxes have been closed – signals the beginning rather than the end of the history of democracy. The constellation of activities that create, sustain, and contest political representation signal instead that democracy is actively in place. This essay focuses on this stage. It is articulated in two ideal parts, one pertaining to the will (analysis of Rousseau’s conception of sovereignty) and one pertaining to judgment (recuperation of Kant’s transcendental schematism.)

**Rethinking the Modern Concept of Sovereignty**

Representative government has been superimposed on a conception of democracy as immediate democracy – immediacy being the time dimension wherein the event (decision) and the actor (the people) mingle. This conception excludes a priori indirect forms of political action and remains necessarily entrenched in a voluntaristic definition of politics. From this perspective, the conclusion that representation violates democracy (and sovereignty) is both predictable and predetermined. The fact is that Rousseau's paradigm leads to unintended consequences, namely state-led professionalized politics and the political impoverishment of citizenship. As Hannah Arendt well understood, if
the assumption is that "the people" are a singular and univocal entity (a "body"), then "the people" in a representative government will simply be a collection of individuals united by an artificial and potentially dreadful myth such as "the nation," or by the logic of interest-seeking promotion through the electoral process and parliamentary bargaining. As the history of nationalism proves, these two possibilities are not necessarily mutually exclusive. At any rate, using Rousseau's paradigm of popular sovereignty to define democracy cripples the possibility for a democratic theory of representative government.

Elitist theorists have made Rousseau's conception of sovereignty the norm of modern democracy in order to trap democracy in the cul-de-sac dualism of either the "unrealistic," "classic doctrine" of the general will or the "realist" rendering of the will of the people as the factual will of an elected class. They claim that sovereignty is an ideological fiction whose aim is that of concealing the fact that political decisions are value relative anyway, and democracy is a method to select an elite, not an end in itself or a value.

Criticisms of representative government reflected the extraordinary impact of this Schumpeterian trend in post-World War II renaissance of liberal-democracy. The mixed government model that elitist theorists adapted to contemporary society, Arendt wrote in the last chapter of *On Revolution*, is actually "an oligarchic form of government" based on the gratuitous assumption that the passion of the many not to be ruled is worse than that of the few to rule. Arendt thought that if politics was to be protected from attempts to identify it with state apparatuses (Hobbes) or economic instrumentality (liberalism and Marxism), it must be disassociated from sovereignty, a category she saw as irredeemably ontological and identical with the coercive power of the state, and moreover inherently inclined toward the instrumentalist view of politics implied within the Schumpeterian theory of representative government.

The discourse of the exhaustion of the sovereign state as an effect of globalization has given new momentum to the anti-sovereignty (and anti-representative) argument. In recent years, both democratic theorists attempting to reconcile democracy with representation and radical theorists identifying democracy with a movement-led and anti-representation politics have proposed disassociating sovereignty from democratic theory. Iris Marion Young argues that democratic representation can be explained without any reference to sovereignty. In fact, insofar as it amends politics of the metaphysical residue of the "will of the people," representation matches the self-legitimizing and self-reflecting character of the democratic process. Authorization is the key to a democratic view of representation provided we do not reduce it to an isolated act (the election), as liberal-elitists or Schumpeterians do, but see it as "a relationship between the constituency and the representative" that creates us (our constituency) as a political unity. Process of authorization versus authorization as a simple act of decision: this is the democratic turn that representation has contributed to enact with the consequence that, since "there is no constituency prior to the process of representation, no people who form an original unity they then delegate onto the derivative representative," there is actually no such thing as sovereignty.

Yet a democratic theory of lawmaking requires reference to popular sovereignty. However, the idea that representation is a "defective substitute" for democracy derives from a conception of sovereignty that is contextually determined and not unchangeable. It was coined before the development (and appreciation) of democracy and moreover was
inherently unequipped to accommodate itself to the political inclusion of the formerly subjected in the political system. The deficiency of the modernist conceptualization of sovereignty was reflected in the conception of democracy as a practice associated, whether explicitly or not, with a simple act of decision (casting the ballot) and The Social Contract’s conventional image of citizens flying to assemblies (or the polling booth). This is the hidden rationale of the paradox that while political scientists and analysts continue to devise models of electoral behavior, representation is still conceived within the shadow of Rousseau's argument that the people renounce their sovereignty when they elect representatives.

Two centuries ago Benjamin Constant explained why the identification of popular sovereignty with an act of the will is disastrous to representative democracy. In his attempt to counter the democrats, he argued that elections give birth to a government that can make legitimate laws without activating the sovereign. If Rousseau's paradigm becomes the foundation of democratic legitimacy, representative government must be non- or undemocratic because the (sovereign) people makes "its appearance" only "at fixed and rare intervals" like a comet and "always only to renounce" itself. Rousseau's decisionist sovereign can only be reconciled with delegates or representatives who are "commissaries" or "agents" or "proxies" since nobody can act entirely in its place without simultaneously replacing it and thereby annihilating the very relation of representation. The point is that a decisionist sovereign does not necessarily prefigure a participatory polity.

The Unrepresentable Sovereign and Delegated Politics

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"? For the sovereign to preserve its supreme power, delegates must not become representatives. Filmer was of course making a case for the sovereignty of the king. However, his argument could be applied to a collective sovereign as well.

"Sovereignty 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." In these sentences Rousseau makes two basic claims: popular sovereignty is an act of the will, and the will can be delegated but not represented. Rousseau confined representation rigorously 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 (and freedom) to make decisions. This was Rousseau's model of "representation" in the legislative setting. It was consistent with a voluntarist conception of politics and a juridical rendering of sovereignty as ratification.

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 fostered full participation and diminished the political role of the delegates.

The author of the *Social Contract* 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 with 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. Rousseau rejected both democracy and representation. Only direct ratification by the citizens distinguished his well-ordered sovereign with mixed-government republic from today's representative government. His true antithesis of representation was a delegated politics with direct (but silent) ratification rather than a full-fledged participatory polis. The contemporary view that representative government is a mix of aristocracy and democracy is the late child of Rousseau's doctrine.

Elections can be a feature of both direct and indirect governments. The ancient Athenians and the Romans held elections, and Rousseau thought elections should be used in the republic to fill positions both in the legislative and the executive. It is thus not election per se, but the statutory definition of representation that defines the role of elections 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 (non-deliberative) democracy versus a representative (deliberative) democracy. It is based on popular sovereignty as a unitary act of the will the citizens retain 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. According to Carl Schmitt’s reading of Rousseau, this is the only condition under which representation "may be regarded as a specifically democratic method." The fact is (as Rousseau correctly argued) that this has nothing to do with political representation.

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 of the will. And he transferred to the magistrates (and the delegates) of the people all the qualities those theorists had given to the "Judges" and the "Commoners" of the king: judgment and interpretation, or deliberation in the broader sense. Only the qualities associated with the will constituted political liberty (the liberty of the sovereign). They defined representation as delegation and prefigured a minimalist view of sovereignty and an essentially formalistic kind of participation. They finally prefigured a minimalist view of democracy as electoral authorization, a view we are all too familiar with.

Historically, 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 the modern theory of sovereign territorial states. Thomas Aquinas devised quite a clear separation between promulgation and counseling 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. The dualism between sovereignty and representation was perfected in the age of absolutism, when the faculty of ratification was rigorously attributed to the will of the king as the marker of coercive authority, and the faculty of judgment to his ministers ("Judges" and "Commoners"). In fact, the meaning of the adjective "sovereign" changed from "superior" authority to "perfect" authority (*plenitude potestatis*), that is to say from a connotation that was relative to one that was beyond relation. Furthermore, absolute sovereignty went hand in hand with equality (of the ruled) and 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 concentrated authority. Whether monarchical or popular, the sovereign and its delegates respectively embodied two distinct faculties (will and judgment) that engendered two different kinds of participation (authoritative and auxiliary). In this respect, Rousseau was a follower of the monarchist Jean Bodin, rather than the democratic (but not egalitarian) 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. 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. 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 prerogatives of the English monarchy against the parliament's claim for legislative power, adopted a rhetorical style that was even more reminiscent of the *Social Contract*, since it gave the sovereign a spatial and tangible configuration. 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." 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 sovereign, only the few (magistrates or delegates) are entitled to deliberate. "In the presence of the represented, there can be no representation."

It is interesting to notice that in Rousseau's case, will and judgment (ratification and deliberation) also prefigured two different kinds of rationality, not simply two different faculties. While the rationality of the few resembled political wisdom and action in the classical sense, the rationality of the many was abstract and cognitive reason in the modern sense or the act of discovering the general will on the specific occasion of a
legislative proposal. The former was dialogical reason or a blend of experience, ethical maxims, eloquence, and prudence; it required "talents and virtue," something not all citizens had nor were required to have. The latter was purely analytical reason; it was cognitive rather than interpretative; it operated according to the principles of identity and non-contradiction and produced true/false propositions. It was universal in its minimalist requirements and all individuals had it in equal measure. Rousseau gave knowledge the character of volition, which knowledge does not have, while denying volition to deliberative reasoning (judgment) and wisdom, which in theory should be more capable of shaping the will. It could be said that, when it came to sovereignty, he advanced a radical anti-humanist notion of politics.

Two things can be inferred from this dichotomy. First, Rousseau ascribed an essentially non-political (formalistic) rationality to the sovereign people, while allowing only the few (virtuous and wise magistrates) to participate in the activity of politics in the broader and richer sense. Second, Rousseau understood that, when it came to the will and judgment, only the latter can be represented or performed indirectly (he could thus say that the government is the only legitimate representative of the sovereign). Hence, his strategy of directness can be interpreted as a strategy intended to strip the sovereign of judgment or deliberation in order to make room for it at the delegated level – which played a central role in his well ordered republic – rather than foster political participation. I would say that direct participation as direct ratification was meant to play a function of containment on popular participation.

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 or direct action. Sovereignty was the same thing as ratification and implied a simple yes/no decision, whereas the delegated power was to opine ("ce n'est pas voter ... c'est opiner"). Consequently, whenever the delegates' function also entailed decision-making power and not simply judgment, deputies were no longer deputies but representatives or sovereigns. 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 juristic sense.

A Privatistic Model of Delegation

It would thus be incorrect to say that Rousseau admitted representation for practical purposes but bound it to the people's instructions. Much more radically, he wanted to disprove that representation could be used as an expedient for the exercise of popular sovereignty. Rousseau’s aim was not just to claim that representation could not be a norm of good government, but moreover to argue that if large and populous republics needed representation, this simply proved that republics had to be kept small in order not to force their citizens “to relegate to others” (commette à d'autres) their “right of legislation” or sovereignty. Federalism and imperative mandate, not representation, were Rousseau’s pragmatic expediencies to cope with the geopolitical order of the moderns. 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. 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. This, not a delegated politics, was sovereignty's bête noir, the remnant of a patrimonial conception of the state the moderns had inherited from the Middle Ages, theorized by Hugo Grotius in *De Jure Belli ac Pacis*. Reasoning from the logic of Roman private law, Grotius had argued that the people could alienate their freedom just as a person could legally alienate his property. Sovereignty could be held "either with full property right" (*jure pleno proprietas*) "or with usufruct only" (*jus usufructuario*). This was the theoretical background of Rousseau's contraposition between sovereignty and representation.

This means that the expression direct democracy generally associated with Rousseau's theory of pure delegation, although pertinent, obfuscates the purpose of imperative mandate or pure delegation: to make sure that the sovereign had absolute power to command obedience to its laws, not to expand the role of participation. Like Bodin, Rousseau thought that the law could only have authority if its source was undivided, unique, homogeneous, and unmediated. The fact that he contemplated only one form of legitimacy (the popular one) did not undermine Bodin's theorem, which was actually the basis of the alleged incompatibility between sovereignty (and democracy) and representation. Rousseau, who has been accused of being the theorist of totalitarian democracy and holding a pan-political conception of society, devised, as Hegel first noticed (and criticized), a privatistic kind of state foundation. It might seem paradoxical to argue that an author who so strictly gave priority to the public over the private modeled the public on norms regulating private relations. Yet he conceived delegation in a way that was essentially privatistic and yet consistent with his theory of political freedom.

Rousseau's moral and political philosophies held that the will constitutes the actor's nature, whether the actor is an individual or the body politic, and whether the decision to be made is moral or political. He defined political sovereignty according to the coordinates of Cartesian metaphysics: like reason in relation to the self, the will (freedom as power) constituted the substantive attribute of the sovereign, which could not exist without it. Ontological reason and normative reason coincided, so that to possess a will was to exist and to be free. The adjective “political” applied both to power and freedom and coincided with the fact of the existence of the actor and the act of decision-making by the actor. This equation allowed him to turn his argument against the patrimonial theory of the state against representative government, since both made the same "mistake": both conceived sovereignty as an attribute that could exist apart from the body (the substance) of the sovereign.

The metaphysics of an unmediated presence entailed the conclusion that representation would rekindle the logic of natural law because it claimed, absurdly, that sovereignty could be alienated like any other property and that its alienation would not alter the identity of its owner. Thus, since in Rousseau's vocabulary "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.
This does not prevent the "master" from using the services of others – Rousseau thought a master who wanted to do everything himself was tyrannical. However, the master/servant relation (a scheme the *Social Contract* applies to delegation) is one of subordination rather than equality, which is why it is not political or creative in the sense of lawmaking we have just explained. There is no contradiction between treating delegation as a private relation. If we recall that Rousseau separated the sovereign and the government, the former legislating and the latter executing, we might say that, from a legal point of view, he saw all the sovereign's functions as services performed by dependent agents or servants. This is what distinguishes the position of the magistrate (and the delegate) from that of the citizen who is never in a dependent relationship, either with his fellow citizens or with the state, even when he obeys the law, since all are equally subject to the laws they have made. But delegates are only and always dependent. Hence Rousseau was right to say that they do not act politically and have a private type of relationship to their sovereign just as they do to their servants. Delegates are administrators, judges, experts, and wise leaders, but not political actors in the lawmaking sense Rousseau attributed to political action. This means that they cannot claim a share in decisions unless they simultaneously change their status and usurp the sovereign. A servant who decides in his master's place ceases to be a servant and becomes master of his own activity. Liberty, sovereignty, the will, and autonomy are synonymous. Are they also synonymous with a highly participatory polity?

The Travel Agent and a Minimalist Participation

Participation is a tricky word. It can be interpreted in a number of ways, and be an object of both mystification and vilification. However, 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 decision-making authoritative, participation consists essentially in the final 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. His sovereignty 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. 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 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."

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.

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. 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. 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. It could even be said that Rousseau allowed the people to exercise sovereignty directly because sovereignty was not such a complex and difficult job. The only inviolable rule was that the citizens should vote on issues directly, and their votes were counted individually and equally. Rousseau 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's view can be used as an *a contrario* argument that representation exists on the condition that it gives visibility to political deliberation, which, thanks to representation, becomes thoroughly public and subjected to the judgment of all. This crucial aspect provides important evidence for my earlier suggestion that representation defies the dualism between the inside and the outside of the state. Simply put, it exists on the condition that the citizens are always present in some form and their judgment is always influential. Secondly, representation presumes an extended view of participation, one that also includes the work of surveillance and interference by the citizens through words and deeds, written ideas and social actions by movements and political groups. 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 view traditionally associated with sovereignty—either direct ratification or electoral verdict—which has dominated the debate on representative government, cannot comprehend the complexity of democratic participation and politics. As a result, it seems that the real choice is not between the existential presence of the sovereign and the absence of sovereignty altogether, but between conceptions of popular sovereignty that are either purely juridical or broadly political.

**Political Process vs. Contract**

Since representation has a political function (lawmaking), we must abandon the logic of the contract implied by sovereignty as the will to define it. However, just because representation cannot be regulated and checked like a 'contract' of delegation does not mean that elections are the only checks available to the citizens. Rousseau is right in saying that representation cannot be a contract. Yet just because political representation can only exist in the juridical form of a non-legally bounded mandate, some other form of 'mandate' is needed. In this sense, it is incorrect to posit a radical dualism between imperative and free mandate if the latter is meant to be both political and legal. The very fact that representatives play an active (legislative) role implies that they cannot be disassociated from the electors; it implies a political 'mandate.'

Two factors are at play in representative institutions: the formation of the legislative setting itself (the internal perspective of state institutions) and its representativity (the external perspective). In his analysis of representative government Rousseau detected (and criticized) the former, but did not mention the latter. His blinkered perspective is understandable; if representatives are indeed "commissioners," their representativity is not an issue, only their competence is. Yet, as I have anticipated above, representativity is a crucial issue for a democratic understanding of representative institutions because it indicates the need for political oversight of representation and confirms that sovereignty should be reinterpreted, not dropped altogether. To clarify this point I need to briefly show how political representation is unique and why it cannot be understood as an act of mere authorization or a contract. There are at least three reasons why this is the case.

1. Because representatives make laws that all citizens, not only those who elected them, must obey, political mandate means that representatives represent the entire nation, not just the constituency that elected them. This in turn means not only that their mandate is not based on a contractual relation, but moreover that it is based on a flagrant violation of the contractual mandate. It also means that we cannot bypass the point of view of the "will of the people" and stress only the relationship between the representative and her constituency, as Young seems to suggest; the particular and the general are both constitutive of democratic representation.

2. The juridical mandate makes the representative directly responsible to her client and legally obliged to be accountable to her. But the political representative is not responsible to any of those who voted for her insofar as she has no legal obligation to be accountable to her electors, nor is she in a kind of individual relation to them. The reason political representation cannot include a legal (imperative) mandate is not just that this would hinder deliberation in the legislative setting, although this is the argument most contemporary scholars of electoral accountability prefer. This is an instrumental
argument that presumes a narrow view of deliberation that focuses primarily on the
decision-making process within the legislative body. The normative argument is that
without free mandate, the decisions of the representatives would subvert and displace the
general nature of the law and transcribe the particular wills they represent directly into
the norms of the state, thus imposing the will of some on the entire body of citizens. So
the sources of the prohibition of legally-bound mandate, and the very specificity of
political representation, are the democratic norms of political liberty and equality.
Mansbridge's maxim, "representation is, and is normatively intended to be, something
more than a defective substitute for direct democracy," rests on the fact that
representation is not a contract but an original form of political participation.
3. The juridical representative has only those powers the client grants him. But
electors have no legal power to make their instructions compulsory. This means that
political representation deals in promises (with a moral commitment on the part of the
elected, and, at most, their prudential calculus in seeking reelection or simply the
tempting desire of being popular). It deals with what I would call an ideological,
interpretative, or artificially created similarity between the representative and her
electors. The democratic character of representation germinates from the paradox that,
although a representative is supposed to deliberate about things that affect all members of
the polity, she is supposed to have a sympathetic relation only to a part. In substance, a
relation of ideological sympathy and communication between the representative and her
electors is necessary precisely because political representation must exclude legal checks
and is not a contract.

To conclude my comments on the third reason, I would say that the political
representative is required to share her ideas and views only with her electors, not with the
whole nation as a unitary body, as in plebiscitarian and populist democracy, in order to
acquire the moral legitimacy to make laws for all. The process of representation puts an
end to the sovereign as an ontological collective entity and envisions sovereignty as a
unifying process that is inherently plural. The representative is a representative of the
nation because and insofar as is the expression of a part of the nation. Representative
democracy is opposite both to a delegated democracy and to en masse kinds of
representative identification of the people with the person of the leader, like, for instance,
in populist or plebiscitarian democracies. Thus, political representation breaks with the
logic of homogeneity and identification although it is not a process of fragmentation but
unification. The interpretation of sovereignty is pivotal to clarify and understand this
process.

Representativity is the essential component that makes representation democratic
and the key to a revised notion of popular sovereignty. In democratic politics,
representation does not mean "acting in the place of somebody," but being in a political
relation of sympathetic similarity or communication with those in the place of whom the
representatives act in the legislature. The assumption of this (idealized) kind of sympathy
(which is the foundation of the advocacy aspect of representation) is reflected in the
statute that regulates how the deputies vote in the representative assembly. Except in
clearly specified cases (which pertain to decrees, not laws), the voting record must be
made public. Electors need to know what the representatives do and say and how they
vote in the assembly because they need to compare their judgment to their own judgment.
Representativity explains the semantic complexity of the institution of representation,
which is entirely political. This is the case because representation is not a contract but a
lawmaking function. Moreover, it presumes a view and a practice of popular sovereignty
that includes forms of participation and unifying actions that are not identifiable with or
reducible to the juridical unitary act of ratification or the will (whether direct or
electoral). As Hanna Pitkin wrote more than thirty years ago, "Political representation
does have something to do with people's irrational beliefs and affective responses, and it
is important to ask when people are satisfied by their representatives and under what
circumstances they feel they are not being represented." It is therefore accurate to say that
representative democracy does not contemplate any real break or dualism between "the
man" and "the citizen," both of which are in fact porous identities that are in continuous
communication and interplay. This mix of formal and informal participation, of
authorization and partisanship, means that representation is capable of opening up
important avenues of participation, rather than obstructing it.

"As if" Judgment, Fictional Reality, and the Unifying Role of Ideas
Reference to representativity and the role of 'ideological' construction in representation
would require a broader analysis. Suffice it here to say that the idea that representation
should be studied from the angle of the political process it engenders does not mean
excluding reasoned arguments from the politics of representation or making politics a
domain of ideology and manipulation. While it is important that people believe in the
ideas that their representatives symbolize, democratic representation entails not merely
acceptance, but critical acceptance. As Pitkin put it: "It is important to ask what makes
people believe in a symbol or accept a leader, but it is equally important to ask when they
ought to accept, have good reason for accepting a leader." The question of whether we
have reasons to believe that a representative represents us is one in which the symbolic
and the rational converge, and what distinguishes democratic representation from mere
acceptance of a leader.

Hence, a further distinction must be made between political representation and the
contract of delegation. If the latter presumes that the representative belongs to or is
existentially part of the community he represents, the former assumes that the
representative is entirely constituted by and through the relationship with her
constituency, and her belonging itself is an idealized and artificial construction. This
means, as Young has also stressed, that political representation is more than an act of
authorization, although it depends on that act. Its complexity foregrounds an issue that
contemporary theorists of democracy seem hesitant to face: the realignment of the
deliberative theory of democracy with the ideological and rhetorical characteristic of the
language of politics in the constitutive process of representation.

Ideology is not necessarily identical with trickery and manipulative propaganda, although
it can also be that. Following Quentin Skinner, I use the word "ideology" to designate the
use of normative ideas and values in order to legitimize behavior and the active function
of political ideas in the interpretation of social and cultural beliefs and interests and to
advance social visions. Popular sovereignty plays this type of ideological role insofar as it
constitutes the basic criterion in relation to which democratic citizens judge their
representatives and their policies, criticize asymmetries of power existing in society, and
finally shape their political language, associate, and raise their claims. The ideological
function of judgment is the paradigm in relation to which the idea of sovereignty acquires
political significance in representative politics and overcomes the strictures of the ontology of the will and presence and the formalistic approach it entails. I refer to Immanuel Kant, not Karl Marx, to re-evaluate the role of ideas and ideology in representative democracy and the place of judgment in the re-conceptualization of sovereignty. We need Kant's notion of transcendental schematism to amend Rousseau's realism of the will. Transcendental schematism produces as if reasoning, which is a form of judgment that operates on issues whose ideal dimension is the only form of determination, issues that are entirely artificial and humanly malleable, autonomous from the world of nature and ungraspable with analytical reasoning and scientific epistemology. Kant dubbed the power to make as if inferences "imagination," and described it as spontaneous and creative. Imagination is the ability to represent an object that is not present in an intuitional or empirical sense (spatial and temporal), but is present in and to the mind. Imagination renders transcendental schematism productive judgment, as opposed to cognitive judgment, which is reproductive.

This basic premise allowed Kant to redescribe Rousseau's general will in terms of a fictional idea (als ob) or a guide to judgment and a parameter of political behavior. As if reasoning is operational in practical thought because it is a guide to action; it is influential in an indirect, although relevant, way. It is an aid to the development of desirable actions or a set of inferences that are functional to the performance of some desirable actions. Thanks to fictions or the presumption of existence of some ideas or values, principles are transformed into a guide to actions for the achievement of what they command or claim. A presumption of existence, as if reasoning has nothing to do with truth/false categorization but is essentially oriented toward normative, right/wrong reasoning. It is a teleological inference that allows us to derive maxims or instructions for behavior. Cesare Beccaria (whose theory of public judgment played an important role in the eighteenth-century conceptualization of representative government) provided an early example of how fictional judgment could be applied to public reason when he argued in Dei delitti e delle pene that a jury should act as if the defendant were innocent in order to avoid making mistakes or declaring the defendant guilty by mistake. The presumption of innocence is an as if reasoning (a fictional reality) that leads the judges to pay attention to the facts or particulars so as to interpret them according to, or to subsume them under, a general law or general principles – in other words, to judge them correctly (although the adjective “correct” is only partially dependent on cognitive judgment or the analytical truth). As if or the presumption of existence makes the judgment on actual facts synonymous with prudence or practical wisdom. It defines the use of reason for the sake of realization (of just decision) rather than knowledge.

Sovereignty is an as if of this kind: its entity is ideological and fictional, not existential. Yet without this presumption of generality, laws can neither be made nor applied, neither evaluated nor judged. Sovereignty is a scheme of reasoning that makes all citizens into participants in the same project as if they were in the assembly, although their empirical location is elsewhere and their public functions different and varied. As we read in the Metaphysics of Morals, within the dimension of judgment, relations (both to others and to things) acquire a nonphysical character. Presence no more confers the right to political freedom than it does a property right: "I shall therefore say that I possess a field even though it is in a place quite different from where I actually am."

A deliberative notion of sovereignty therefore accompanies a comprehensive
reinterpretation of the notion of the "empire of the general will," or, to follow Kant's seminal suggestion, a rendering of sovereignty not as the voice of an unreflective, existential and immediate will, but as a guide to "reflection" in "the legislative bodies" and (we shall add) in all instances in which opinions are shaped, where laws are voted and in the informal meetings and extra-institutional (but not extra-legal) fora that are permanently active and influence the government and the representatives. As 1793 Condorcet's Plan of the Constitution shows, representation enriches the meaning of sovereignty by activating its double nature as both a constitutive guideline and a limit of or a way of supervising political power. It reiterates that the time of politics, like that of judgment, is three-dimensional. It is a "conversation" between existing laws or practices and the actual conditions of peoples' lives and their opinions, and articulates the potential for future changes and transformations led and inspired by the foundational principles that shape and structure our communal life.

If judgment is introduced into the definition and the understanding of sovereignty, then it appears that the distinct character of representative democracy lies in the character of "the special terrain" of politics. This terrain is special because is different and should be distinguished both from the state (politics as the will) and from economic civil society (politics as interests). Within it the sovereign is permanently in action and the representativity of political institutions is always recreated. This special terrain of politics, inhabited by political groups and movements, provides for the process of unification of the sovereign outside state institutions. It is essential, not optional, to representative democracy since in itself the right to vote only creates political atoms or electors, not citizens who develop programs, ideas, and associations, who constantly reinterpret the status of their polity in the light of its normative foundations and principles. Without extra-state means of aggregation, "the sovereign would still be free, but would become mute."

**A Coda that Is Not a Conclusion**

Representation foregrounds the informal and yet very influential face of sovereignty, an aspect that makes the modern theory of sovereignty unsatisfactory. Revising the voluntaristic idea of sovereignty can have important practical consequence and justify legislative reforms that would make the process of opinion-formation and circulation more faithful to political equality. The recent decision by the United States Supreme Court to affirm the Campaign Finance Law passed by Congress is a positive signal to pursue this course. In Justices Stevens’ and O’Connor's words, the "Congress is not required to ignore historical evidence regarding a particular practice or to view conduct in isolation from its context." Although the secret ballot prevents us from the producing "concrete evidence" that "money buys influence," the secret ballot (the sovereign’s authorization) is not a sufficient indicator of the status of democracy (or the only sovereign voice of the people). Indeed, plenty of historical and empirical evidence is available to lawmakers and citizens showing the connection between the power of wealth and political influence outside and beyond the formal event of elections. The Supreme Court's decision can be read as an explicit invitation to political theorists to turn their attention to the multiple sites of popular sovereignty in a representative democracy. Moreover, it invites legislators and citizens to refurbish their institutional imagination and create ways to improve transparency and public scrutiny in the intricate network of
interdependency between representatives and the represented; regulate and limit the use of private money in electoral campaigns and the lawmaking process more generally; and finally, and even more urgently, protect the independence of state-owned media from the power of ruling majorities and the pluralism of information from the exorbitant influence of private potentates. If judgment is introduced into our understanding of sovereignty, it is clear that a theory of democratic representation must attend to the issue of the circumstances of political judgment, an issue that pertains to the rights of the individual as essential to the rights of the citizens, rather than antagonistic. Citizens’ right to an equal share in the political will goes along with their meaningful chance to form and manifest their opinions and give their ideas a public voice that is strong enough to be heard.

NOTES