

Sovereignty and Political Representation

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‘C’est le mot de *représentation* qui, mal compris, a brouillé toutes choses; et le mot a été mal compris parce qu’on s’est formé une idée fausse de la souveraineté et de la liberté’¹. (Guizot 1851: 84)

Abstract

Modern Time – the period from 1500 to 1800 – began by adding to political thought the notion of sovereignty and ended by enriching it with what is nowadays understood as political representation. These two notions have traditionally been seen as the two pillars supporting both modern democracy and our conviction that popular sovereignty is what makes our contemporary democracies into the best political system ever conceived. However, the big problem is that sovereignty and political representation are hard to reconcile with each other: the relationship between the two of them is much like that between the two partners in a marriage permanently on the verge of divorce. This essay tries to explain why this is so and why Rousseau was basically right when intimating as much already in his *Du Contrat Social*. It does so by considering the relevant aspects in the history of political thought from the Middle Ages down to the so-called doctrinaire liberals of the beginning of the 19th century. Doing so compels us to recognize a basic inconsistency at the very heart of our modern democracies and its nasty consequences for the position of the people’s representatives.

Keywords: sovereignty, political representation, representative democracy, Bodin, Rousseau, doctrinaire liberalism

1. Introduction: the problem

With the emergence of the political order of early modernity two new concepts made their entry on the scene of political thought: the notion of sovereignty and that of political representation. It could be argued that these two notions if taken together go a long way to demarcate the medieval political order from the modern state as it developed since the beginning of the 16th century down to our own time.

Saying this is certainly not meant to imply that the Middle Ages did not know their own equivalents of these two notions. But their role was far less prominent then and their meaning much different from how we presently understand them. Take sovereignty. In the Middle Ages the term was rarely used and, if so, suggestive of a scale on which certain classes of individuals could only be said to be either higher (or lower) located than others. In clear opposition to this exclusively relationalist view of sovereignty Bodin indicated in his *Les six Livres de la République* a well-defined *ne plus ultra* on that scale. And he identified it with the nation's legislator – which still is how we ordinarily think of sovereignty. Next, it is true that the Middle Ages had its own variant of political representation in the assemblies of the three Estates to which each sent its own representatives in order to negotiate with the prince. But these assemblies of the Estates have as little in common with our modern parliaments as a Medieval cathedral with the Washington Capitol.

Last but not least, in the Middle Ages no effort was made to define the relationship between sovereignty and representation (as these notions were understood at the time). Instead, each had its own domain of application and there was little or no overlap between these two domains. So there was no need to explore their relationship nor even to suppose that there should be any such a meaningful relationship between the two at all.

This changed with the emergence of the modern state and the birth of constitutional thought. The latter was expected to give us a definition of the modern state, of its tasks, its legitimacy, its rights, duties and the limits of its power that should, above all, be free from internal contradictions. For any such contradictions in how we conceive of sovereignty and representation – as the pillars on which the modern state rests – might give rise to obscurities in the use of the state's quite considerable powers and thus invite the illegitimate use of the state's power. Western political theory and the practice of the modern democratic state are ordinarily assumed to have been sufficiently successful in remaining free from any such fatal obscurities. No better example of this belief than the much cherished notion of 'popular sovereignty'. For does that notion not express a perfect harmony between the notions of sovereignty, on the hand, and that of the political representation of the (sovereign) people, on the other?² (Bodin 1994: 12) Is that notion therefore not the ultimate triumph of the reconciliation of the notions of sovereignty and political representation having, furthermore, the advantage of fostering the cause of freedom, legitimacy and that of the just society?

In this essay I wish to question that near to universal consensus – at least as far as the role of the notions of sovereignty and political representation in our political universe are concerned. At this early stage of my argument, I shall suffice with the observation that there is already some *apriori* ground for having one's doubts here. For were the notions of sovereignty and of representation

not developed at different times, and to serve wholly different purposes? The notion of sovereignty was a 16th century invention and, above all, meant to pave the way for absolute monarchy. The notion of political representation, in its turn, was developed in the 18th century in order to implement the transition from absolute monarchy to democracy. And could there be a deeper gap than the one between absolute monarchy and our contemporary democracies that were the result of a long and bloody struggle with absolute monarchy? Must Tocqueville not have been basically wrong when insisting so much on the continuity between absolute monarchy and (contemporary) democracy? Was he not blind, when upholding this thesis, to absolute monarchy's affinity with sovereignty's ties with autocracy and democracy's only too apparent discomfort with both of them? So might Kelsen not be right after all, when insisting (in the words of Nadia Urbinati) that representation sanctions 'the death of sovereignty'³ (Urbinati 2011: 40) and, hence, that the attempt to reconcile the two notions is, indeed, much like trying to square the circle? Is sovereignty not suggestive of the priority of the consistency of the legal order, whereas representation is primarily interested in making the electorate's wishes manifest, whether these are consistent with each other or not? And, above all, who is to be the judge of consistency here? Logic, law, history or what happens to work in practice?

Several political theorists since the 18th century adumbrated already the incompatibility of the two notions⁴ but without correctly grasping its most serious consequences for the theoretical foundation of what has come to be understood in our times as 'representative democracy'. (Morgan 1988: 45) Rousseau was clearer about this than any of his contemporaries. Probably because he was more sympathetic to popular sovereignty than any of them, and therefore more sensitive to the conceptual inconsistencies of that notion than most of his contemporaries. Hence, when probing the reconcilability of the notions of sovereignty and political representation we'd best return to these 18th century debates while paying extra attention to Rousseau's role in them.

Finally, when focusing on the political philosophy of two centuries ago a *fabula de te narratur*. Underneath the treacherously smooth surface of the walls of our political houses there are many cracks and fissures that we have inherited from our chequered political and constitutional past. And if we wish to prevent the walls of that house from falling down upon us, we'd better find out about these cracks and fissures. And this is now more true than ever in the last half century. Western democracies are not in a good shape – neither in this, nor on the other side of the Atlantic. The most optimistic assessment would be to say that we are living in a period of transition. If that assessment is correct we'd have even more good reasons to be well-informed about hidden cracks and fissures in the political walls of our present democratic home. For whoever decides to rebuild his house should be well aware of the weak spots of that house in its present state in order to avoid it from crashing down when

starting to rebuild it.

2. Sovereignty and political representation in the Middle Ages

In the Western Middle Ages the political order was not a closed one in the sense of there being a clear and well-defined pre-existing framework in terms of which the inhabitants of that order can define themselves and their relationship to others. Put differently, reciprocal relationships were all there was and there existed no fixed system of political coordinates against which these relationships could objectively be defined. The medieval public order was like an ocean and where fishes have only themselves to tell them where they are. Conversely, the modern public order is rather like an aquarium where each individual fish primarily locates itself by establishing its distance from the aquarium's surface, its sides and its bottom.

This has its consequences for the notions of sovereignty and political representation. As Bertrand de Jouvenel emphasized, the Middle Ages knew an 'échelle des commandements' and a complex system 'des droits étagères' enabling the inhabitants of the medieval political order to establish whether someone was 'higher' ('senior') or 'lower' in that order. (Jouvenel 1955: 219) But it did not allow one to speak of the 'highest' or 'lowest' inhabitant of that order, since one simply did not possess the criteria for defining what would count as 'highest' or 'lowest'. As in arithmetics, where we can always tell whether one number is higher or lower than another, without there being a highest or lowest number. Hence, from a conceptual point of view the medieval political matrix is wholly unexceptional. The disadvantage is, however, that having to fix one's place in that order exclusively on the basis of one's relationships to others is a far more clumsy and uncertain procedure than if one can rely on just a few objective political coordinates for doing this⁵.

The absence of such objective coordinates may explain why in the Middle Ages political discussion about issues in the public sphere had an ineradicable tendency to shade off into juridical disputes fought out in terms of private law (unless, of course, one preferred to settle the matter by force). Public law itself provided insufficient reliable beacons for settling such disputes and private law was therefore the obvious alternative to turn to. Private law occupied large part of the domain we nowadays assign to public law. This also explains why the Middle Ages were a period where lawyers and public notaries had a prominence in public life only to be equalled by the contemporary USA. And, finally, why Fukuyama is certainly right when crediting the European Middle Ages with having discovered 'the rule of law'. (Fukuyama 2011) Though it would be more appropriate to speak of the 'the rule of laws' (in the plural) or of 'the rule of *a* law' than of the 'rule of law'. For in the Middle Ages individual

laws were just as little the components of some larger comprehensive whole, as those subjected to these laws were the components of one all-encompassing and well-defined public order.

We will find much the same picture for political representation. For though that notion was no less current in the Middle Ages as that of sovereignty, it also had a much different meaning than it acquired in modern times. There surely was such a thing as political representation in the Middle Ages as when, for example, the prince summoned the representatives of the third Estate in order to obtain from them the financial means for warfare, his foreign policy or for some other costly enterprise. At such occasions we find two parties encountering each other rather than cooperating on some topic of shared public interest recognized as such by both partners⁶. (Wilson 1973: 36-38) It was more or less like this: normally both the prince and the third Estate went their own way; but if the prince needed the financial support for some business of his own (and with which the Estates often felt little urge to identify themselves) he convened the Estates around him and then, if all went well, some arrangement acceptable to both was worked out. And were the Third Estate's representatives willing to go along with the prince's demands, they would often ask in return from the prince the promise to grant certain privileges or immunities to the corporate bodies that were represented by them.

Self-evidently, this type of deal agrees with what was said a moment ago about the medieval legal system. In the first place, the money paid to the prince by the third Estate had the character of negotiable subsidies rather than of regular taxes. Secondly, these privileges and immunities *sui generis* typically had the form of exceptions from previous, public agreements and, hence, of private contracts between the prince and private partners. Thirdly, this underlines the perennial tendency of the feudal legal system to move from generality to fragmentation and specific arrangements (whereas, reversely, universal validity is a *condition sine qua non* of the modern state's legislation – at least until the emergence of neo-liberalism in our own time). In sum, the privatization of the public domain was the basic drift of the medieval legal order.

From the perspective of political representation the picture as is follows. The relevant interaction between the prince and the Third Estate's representatives had the character of an agreement between two private partners and where the trajectory between the Third Estate's representatives and whom they represented was basically outside the prince's reach. The prince could not interfere with how these representatives represented the towns, guilds, or constituencies represented by them. So to the extent that we identify 'government' with the prince's prerogatives, political representation was not an ingredient in it. And, reversely, as late as 1677 a member of the House of Commons could still argue that 'we do not take ourselves to be part of the government, for then the government is no monarchy'. (Morgan 1988: 45-46) In fact, there is a compel-

ling logic in this way of looking at things. For if the people's representatives are part of the government we may agree with John Winthrop's rhetorical question quoted already in note 4: 'if the people are governors who shall be governed?'

However, it would be overhasty to consider this to be a rhetorical question only. For, as Morgan points out, this type of deal between the prince and the Third Estate's representatives can only work in practice if the prince may expect those represented by the representatives to respect the deal. (Morgan 1988: 47) And that will inevitably require that the representatives have the means of enforcing on their grassroots the deal made with the prince. Admittedly, representatives are deputed to the prince on the basis of a binding mandate – but even that does not alter the fact that it is *they* who put their signatures under the deal and who are responsible for its proper implementation. And that implies, in its turn, that these representatives ought to possess a certain 'authority' (however defined) over their grassroots, so that an alternative, or rather, parallel kind of government is spontaneously born in the relationship between them. The relationship between the prince and the people's representatives thus quietly generated a wholly new political hierarchy between the people's representatives and their grassroots⁷. (Jouvenel 1955: 223) In this way the medieval legal and political order automatically invited its own nemesis and the emergence of the modern state as its rival. A rival that would, in the long run, prove to be immensely more successful than itself. For what we nowadays understand by representative democracy is closer to how the Third Estate's representatives relate to their grassroots than to how the medieval prince relates to either these representatives themselves or those represented by them.

Such have been the dialectics of political representation in the transition from the Middle Ages to modernity. And then Winthrop's question becomes the impasse that it is down to the present day: how to project the dichotomy between governors and governed on that between the medieval representative and whom he represented? Whatever answer one gives to that question is, in the end, an ugly political lie.

Finally, even though a return to the medieval notion of representation is wholly unthinkable, this should not make us forget that in at least one respect it is conceptually superior to its modern successor. For it clearly distinguished between the people's representatives and the prince, whereas the representative in our representative democracies is *both* representative *and* legislator. This is a truly major weakness of our modern political systems. For from a logical point of view these two functions are irreconcilable: one cannot both sincerely *plead* the people's case in the way we expect a representative to do this and *decide* about it as well. Nor can the solicitor in a law-suit be the judge in it at the same time. The solicitor compelled to play the role of the judge will be tempted to irresponsible interpretation of the law; and the judge having to act as the defendant's solicitor is unlikely to serve his client well. Similarly, the people's rep-

representative will, as representative, find it hard to see the public interest and, as legislator, to hear the wishes of the electorate. The people's representative being forced to this continuous shift in roles is certainly one of the most serious flaws in our representative democracies – not only from the perspective of the representative, for that matter, but also from that of the citizen who can never be sure in what quality he is being addressed by his representative. Is he listening to a trusted friend defending his case till the very end, or to a severe and sovereign master? Or, third possibility, should he just acquiesce in always being addressed in two tongues by his representatives?

Next, we should observe that the medieval notion of sovereignty and that of political representation can peacefully coexist together. Conceiving of sovereignty as a political hierarchy, without there being a fixed point on that hierarchy to which all those comprised by that hierarchy can unequivocally be related, neither supports nor stands in the way of the medieval theory and practice of political representation, and *vice versa*. No inconsistencies are to be expected from having both together.

But such inconsistencies became inevitable with the transition to the modern (democratic) state.

3. From the Middle Ages to the early modern period

Though the medieval notion of (popular) sovereignty and political representation as sketched above would survive until the end of the *Ancien Régime*⁸, (Frailin 1978: 26) a basically new conception of both came into being with the transition from the Middle Ages to the modern period. In the Middle Ages one might argue that the indisputable fact that some political institutions ranked higher than (any) other(s) did not imply the consistency of the notion of the highest political authority. Admittedly, if one wanted to one could name such an authority – the Pope and the German Emperor being the most likely candidates – but this was an occasion for disputes about diplomatic *préséances* rather than a palpable legal and constitutional hard fact. 'Higher' and 'lower' was all that was needed. Just as we nowadays reject (with the exception of philosophers like Alvin Plantinga) St. Anselm's ontological argument according to which it should logically follow from the indisputable fact of the hierarchy of beings that there should also be a *highest* and supreme being – 'id quo nihil maius cogitari potest' (i.e. God).

But St. Anselm made his entry in the political realm – so to speak – in the 16th century in order to found the modern state. A clear and distinct definition was now given of what would count as the highest political authority, namely the sovereign. As we all know, this definition was proposed by Bodin in his *Les*

six livres de la République of 1576 as follows:

‘but person who are sovereign must not be subject in any way to the commands of someone else and must be able to give the law to subjects, and to suppress or repeal disadvantageous laws – and replace them with others – which cannot be done by someone who is subject to laws or to persons having power or command over him’, (Jouvenel 1955, 230) or, more briefly, ‘we may thus conclude that the first prerogative (*marque*) of a sovereign prince is to give law to all in general and each in particular’. (Bodin 1583: 223)

Hence, according to this definition, in a commonwealth the power that can be defined as the Anselmian ‘*id quo nihil maius cogitari potest*’ is, basically, its legislator. Admittedly, when using the notion of sovereignty it will be necessary to distinguish the context of the relationship between the sovereign and those subjected to it from that of the relationship between different sovereigns (or sovereign states). In the latter case the definition given by Bodin makes no sense, of course¹⁰ (Philpot 2001: 16) But when it comes to defining the nature of sovereignty within one individual state, Bodin’s definition has lost little of its plausibility and cogency over the last four to five centuries. Thus Kelsen still defined sovereignty in a manner coming close to Bodin’s definition:

‘the statement that sovereignty is as an essential quality of the State means that the State has supreme authority. “Authority” is usually defined as the right or power to issue obligating commands (i.e. laws F.A.)’¹¹. (Kelsen 1946: 383)

Even more so, the idea of popular sovereignty is as widely accepted nowadays amongst both ordinary citizens and experts on constitutional theory as the idea that the people’s will is expressed by the legislator. Taking these two ideas together results, indeed, in the view that the sovereign is the legislator.

Further support can be given to Bodin’s definition of sovereignty if we recall under which circumstances it came into being and what purposes it was intended to serve. It has often been pointed out that Bodin’s definition was, at least partly, an answer to the civil strife between Catholics and Huguenots in the France of the second half of the 16th century. So the need was felt of an authority that could lift itself above the warring parties and settle the dispute between them, before the nation would perish in a hopeless gesture of religious suicide. And, indeed, whatever one may think of royal absolutism, once the prince was granted the sovereign powers Bodin had claimed for him, peace could gradually be restored again in countries that used to be torn apart by religious civil war. Moreover, Bodin’s conception of sovereignty explicitly restrained the prince’s authority to his own territory so that rulers no longer felt tempted to meddle in the internal struggle of other countries. The doc-

trine 'cuius region, eius religio', formulated already in the Religious Peace of Augsburg in 1555, could only now become part of actual political practice. It resulted in what has come to be known in the last few decades as 'the Westphalian system'¹².

But if this were the whole truth about the merits of Bodin's definition one might have abandoned it again after religious peace and territorial integrity had been achieved in Europe. In fact, the definition lost nothing of its value. The explanation is that with the transition from the Middle Ages to the early modern period European society rapidly grew more complex in almost each conceivable respect. Adducing examples would be stressing the obvious. The result was that society was badly in need of legislation in order to bring order in all these new economic, social and political realities. Common law and the laborious Bartolist attempts to adapt Roman Law to the realities of (medieval/feudal) society were now insufficient for coping with all these new realities. To put it all in one word, whereas in the Middle Ages the prince could afford to be a judge only, he now had to become a legislator. And this put on the agenda the problem how to account for new legislation constitutionally and legally and to whom should be granted the right to provide for new legislation, and under what conditions. This was the challenge to which Bodin's conception of sovereignty gave a most appropriate answer¹³. (Schmitt 2005: 8)

Placing Bodin's theory of sovereignty against this background may help us overcome much of the resistance that many have felt against it. In the first place, Bodin notoriously argued that sovereignty is one and indivisible (a doctrine that would be reiterated by the French revolutionaries of two centuries later). For when considering the possibility of 'dividing the rights and marks of sovereignty and composing a state that was aristocratic, royal, and democratic all at once', Bodin goes on to say: 'but I answer that no such state has ever existed and that none can be made or even imagined because the prerogatives of sovereignty are indivisible'. Obviously, this was meant by Bodin to be a rejection of a mixed government. Franklin discerns in Bodin's argument an apology of royal absolutism (Bodin 1576: xxii) – and combining the indivisibility of sovereignty with the repudiation of mixed government is certainly making a strong case in favor of royal absolutism. Nor do I wish to deny that Bodin, being a child of his time, favored royal absolutism as the most obvious implementation of his conception of sovereignty. But we need only see how the passage quoted just now continues in order to recognize that this cannot be the last word about it:

'For the part that has the power to make law for everyone – that is, to command or forbid whatever it pleases without anyone being able to appeal from, or even to propose, its commands – that part, I say, will forbid the others to make peace or war, to levy taxes, or to render fealty and homage without its leave (...)' (Bodin 1994: 104)

If we do not allow ourselves to be blinded by Bodin's indeed deplorably harsh language, we can only agree with him. Or are we willing to grant to any institution in our contemporary democracies outside the legislative body (however defined) the right to make laws, declare war or conclude peace and to levy taxes, while bypassing that legislative body? That would mean the end of our democratic states¹⁴ (Krasner 1999: 13) – and not of democratic states only, for no state would survive such a demolition of the legislative power.

Second, some commentators read in Bodin's support of royal absolutism even a defence of despotism. And, again, it is true that Bodin uses harsh words for expounding his case:

'if the sovereign prince is thus exempt from the laws of his predecessor, much less is he bound by laws and ordinances that he has made himself. For although one can receive law from someone else, it is as impossible by nature to give oneself a law as it is to command one's self to do something that depends on one's own will. (...) Just as the pope never ties his hands, as the canonists say, so a sovereign prince cannot tie his hands'. (Bodin 1994: 12-13)

But, once again, appearances deceive here. In the first place, Bodin immediately goes on to say after this passage that the prince is bound to respect divine and natural law. Next, Bodin clearly distinguishes between laws and contracts and confirms that the prince is obligated by the contracts that he made with his subjects¹⁵. (Bodin 1576: 36) In fact, Bodin's claims for the sovereign do not go beyond the unexceptionable demand that the sovereign – understood as the legislator – is not bound by existing law. That is to say, he may issue new laws, repeal existing laws he considers at odds with the public interest or adapt them to new circumstances. This is what was needed when Europe entered a new phase in its history and when the creation of new laws was a *conditio sine qua non* for preventing the public and the private domain from disintegrating into a complete chaos. And this task of the sovereign legislator has, since then, become ever more urgent. Think of the legislation that is nowadays needed for the internet, the media, bio-science, eugenetics, euthanasia or financial products. More than ever does Bodin's sovereign legislator stand between us and civilization's ruin in legal chaos.

The embrace of Bodin's notion of sovereignty and of the sovereign legislator also meant the end to the medieval conception of representation. As we saw a moment ago the medieval conception excluded the possibility of there being a common ground to the representative and the prince. Such common ground could be argued to exist between the representative and the towns, guilds or constituencies he represented. But, as we have seen in the preceding section, the relationship between the prince and the representative of the Third Estate (or of any of the three Estates) was much like the encounter of the ambassa-

dors of two foreign powers. Agreement between the two of them was to be most warmly welcomed – but nobody could actually enforce such a satisfactory reconciliation. However, acceptance of Bodin's notion of the sovereign meant the introduction of a unique centre of gravity in the political domain, and to whose gravitational pull both the prince and the representative had to obey. The result was that the prince – or, rather, the person or group of persons to whom powers of legislation were granted – was now to be located in that centre of gravity, whereas the people's representatives were forced in an orbit around it. And, since then discussion about the nature of the modern state became a discussion of how to clarify the relationship between that centre of gravity, of the people's representatives moving around it and, lastly, the people itself.

One obvious answer was to model the relationship between the legislator and the people's representatives on what one had inherited from the Middle Ages. This is the case with the Hobbesian notion of the representative. Private law had been the model for how in the Middle Ages the relationship between the prince and the people's representatives were to be defined. And so it is with Hobbes's conception of political representation:

'a Person , is he, whose words and actions are considered, either as his own, or as representing the words and actions of an other man, or of any other thing to whom they are attributed, whether Truly of by Fiction. When they are considered as his own (...), then he is called a *Naturall Person*: And when they are considered as representing the words and actions of an other, then he is a *Feigned* or *Artificiall* person. (...) Of Persons Artificiall, some have their actions and words Owned by those whom they represent. And then the Person is the Actor; and he that owneth his words and actions is the AUTHOR: in which case the Actor acteth by Authority'. (Hobbes 1651: 83-84)

So the context of a solicitor and the person represented by him is here the model for the relationship between the State and the persons – viz. the State's subjects – that the State can be said to represent. Private law still is the model for public law – as was the case in the Middle Ages. And yet Hobbes's account of the representative was, at the same time, part of one of the most powerful defences of modernist public law ever devised. In other words, the birth and the introduction of the modern notion of sovereign put the highest pressure on the conception of political representation – with the implication that, sooner or later, one of the two had to give way to the other. In Hobbes's case the political domain is now unified under the *aegis* of one indivisible sovereign power, while, at the same time, much of what he had hoped to achieve with this was undone again by his reliance on the medieval, mandatory conception of representation in order to explain how this sovereign could represent the nation. If

we focus on the main line of Hobbes's argument sovereignty drives out representation; but if we look under the stones of some of his more technical arguments it is the other way round.

However, in the course of the 18th century and during the French Revolution the tensions between sovereignty and representation gradually built up and we may then discern in the writings of Burke, Rousseau, Sieyès, Constant and of the doctrinaire liberals either explicit or implicit attempts to force the issue in one way or another.

4. Burke

Whereas Hobbes's argument on representation in the *Leviathan* was a peculiar medieval remnant in a thoroughly modernist political philosophy, it is the other way round with Burke. Because of his impatience with 'idle, metaphysical speculations' Burke was not much interested in the legal and constitutional niceties of the notion of sovereignty. Nevertheless, at the relatively rare occasions that he uses that word, or hints at it and seems to use it with any precision, he chooses a for 'a sort of middle' between the medieval and the modern conception of sovereignty¹⁶. (Burke 1865: 313) There is, in his view, a sovereign constituting the source of the nation's legality (and that is the modern part), but this source cannot be located at any one particular place in the nation's constitution (which is reminiscent of the medieval conception of sovereignty):

'as long as the well-compacted structure of our Church and State, the sanctuary, the holy of holies of that ancient law, defended by reverence, defended by power, a fortress at once and a temple, (...) as long as the British monarchy, not more limited than fenced by the orders of the State, (...) as long as our sovereign lord the king and his faithful subjects, the lords and commons of this realm, – the solemn, sworn, constitutional frank-pledge of this nation, (...) as long as these endure, so long the Duke of Bedford is safe, and we are all safe together, – the high from the blights of envy and the spoliations of rapacity, the low from the iron hand of oppression and the insolent spurn of contempt'. (Burke 1865: 20, 211)

Sovereignty is here located in the nation's constitution, or rather, in how the constitution summarizes how Church and State, King, lords and commons have cooperated with each other since times immemorial. Nevertheless, this impossibility to pin down the exact location of the sovereign in the nation's constitution granted to Burke a freedom of manoeuvre that he all too eagerly exploited if needed; thereby avoiding an open conflict with his much more pronounced views on political representation.

A striking illustration of Burke's cavalier dealings with the notion of sovereignty is his criticism of Dr Price's comparison of the Glorious Revolution of

1688 with the French Revolution of 1789 at the beginning of his *Reflections on the Revolution in France*. Even Burke is forced to recognize that ‘there was at the Revolution, in the person of William III, a small and temporary deviation from the strict order of a regularly hereditary succession’ (Burke 1790: 253) – but discerning here merely ‘a small and temporary deviation’ would, to the people actually having witnessed the events of 1688, undoubtedly be the understatement of the year. So by locating sovereignty at some indefinite place of the English constitution Burke succeeded to reduce the Glorious Revolution to an event of little consequence – while extolling it elsewhere as the supreme manifestation of British freedom. Even more problematic is his description a little later of James II as ‘a bad kind with a good title, and not an usurper’. (Burke 1790: 261) If Burke had called James an usurper (a fairly appropriate characteristic from the perspective of the political order created by the Glorious Revolution, so why was that already too much for Burke?) he might have argued that James abused of *that* part of the nation’s sovereignty entrusted to the king. Not a very convincing and elegant argument, but having at least the virtue of paying respect to constitutional logic. But when explicitly denying that James *had* been an usurper – thus smuggling away whatever sovereignty is to be attributed to the king - sovereignty begins to splash through the nation’s constitution most unpredictably and irresponsibly¹⁷. (Wilson 1973: 37) Self-evidently, this is just about the last thing that Burke should have wanted to legalize. What he had in mind, without explicitly saying so, was that in 1688 Parliament had, at least in practice, the right to exchange James II for William III. And then his tendency to spread sovereignty evenly over all of the constitution would, in the end, have narrowed down to parliamentary sovereignty. That is undoubtedly an honorable and consistent point of view¹⁸, but Burke nowhere gives a formal argument in favor of it.

This brings me to the modern part of Burke’s political philosophy: his theory of political representation. Burke expounded his views on representation in a speech to his voters in Bristol. The speech probably cost him his re-election, so that the Marquis of Rockingham had to find him a rotten borough in order to ensure his presence in the House of Commons. The well-known relevant passage goes as follows:

‘certainly, Gentlemen, it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and most unreserved communion with his constituents. (...) But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion. (...) But *authoritative* instructions, *mandates* issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to

the clearest conviction of his judgment and conscience, – these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our Constitution’. (...) Parliament is not a *congress* of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but Parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole – where not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member, indeed; but when you have chosen him, he is not a member of Bristol, but he is a member of *Parliament*. (Burke 1866: 95, 96)

In two respects this is a fundamental rupture with the medieval conception of representation. The representative is now no longer tied by a binding mandate to whom he represents and, next, he represents no longer the constituency delegating him to Parliament¹⁹. (Morgan 1988: 49) One can well discern in this, again, an embrace of parliamentary sovereignty – all the more so, since we observed a moment ago already Burke’s penchant for that type of government. Accepting it results in the embrace of a particular variant of aristocracy – viz. parliamentary aristocracy.

Now, again, conceptually nothing is wrong with aristocracy as a form of government and where a certain minority possess sovereign authority. This is a type of government that one can consistently choose for. No problem about that. But there are two difficulties with Burke’s construction. In the first place we must now ask what consequences this will have for Burke’s constitutionalist view of sovereignty as discussed a moment ago. For Burke’s notion of representation makes the voter enter on the political scene as well. And then the voter is undeniably part of ‘the constitution’ as well. But if, on Burke’s terms, sovereignty is located in the constitution, it must follow that sovereignty is just anywhere on *all* of the trajectory running from the king to the humblest of his subjects. But, as we know, what is everywhere, is in practice nowhere. So that would mean the dissolution of the notion of sovereignty. When faced with this difficulty Burke would probably fall back on his thesis of parliamentary sovereignty. But if so, what meaningful role could representation then possibly have in an aristocracy? If it has any, then aristocracy is no longer a real aristocracy but some variant of democracy instead. And if it has none, representation is mere pseudo-democratic window-dressing for what is, in fact, an aristocracy. As was clear already to all those political theorists from the end of the 18th century down to the present stating that what we nowadays so fondly call representative *democracy* is, in fact, an elective *aristocracy* (see also Ankersmit 2011).

Hence, either sovereignty is granted to an aristocracy (parliamentary or of some other denomination) – but then both medieval and modern representation are, again, mere window-dressing intending to make us blind to actual

aristocratic realities. Or one opts in favour of representation. And in the latter case two possibilities present themselves, viz. medieval and modern representation. In medieval representation sovereignty would drop out of sight because it would clearly be ridiculous to present the towns, guilds etc. as represented by their representatives as the sovereign. The other possibility is modern political representation. But here representation has to give precedence to sovereignty since, as we saw a moment ago, a representative democracy is, in fact, an elective aristocracy. And this allocation of sovereignty nullifies the role of representation. So sovereignty and representation mutually exclude each other. This, then, is the impasse into which Burke's argument will inevitably lead us – and that Rousseau would have pointed out to him, if he had been familiar with Burke's political thought.

5. Rousseau

If in Burke's case representation drives out sovereignty, it is the other way round with Rousseau – though, as we shall see, with a quite important qualification. Rousseau's conceptions of sovereignty and political representation have been most intensively discussed since the publication of the *Du Contrat Social* two and a half centuries ago. So one could not reasonably pretend to add anything of much substance to all that has been said about Rousseau's relevant views. Nevertheless, I believe that one aspect of Rousseau's criticism of political representation has, up till now, insufficiently been appreciated. More specifically, the target of Rousseau's criticism in *Du Contrat Social* of 1762 was *medieval* representation and not the *modern* variant – and that may help explain why we need not share the almost universal surprise at Rousseau's conditional embrace of that modern variant in his political writings after 1762 such as his *Considérations sur le gouvernement de Pologne*.

So let's begin with having a look at the well-known and much-discussed passage on representation in the *Du Contrat Social*:

‘La souveraineté ne peut être représentée, par la même raison qu'elle peut être aliénée; elle consiste essentiellement dans la volonté générale, et la volonté ne se représente point: elle est la même, ou elle est autre, il n'y a point de milieu. 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. (...) Le peuple anglois pense être libre; il ne l'est que durant l'élection des membres du parlement; sitôt qu'ils sont élus, il est esclave, il n'est rien. Dans les courts moments de sa liberté, l'usage qu'il en fait mérite bien qu'il la perde’. (Rousseau 1962: 302)

Almost all commentators on Rousseau read in this passage a rejection of

what is called in this essay ‘modern’, or Burkean political representation²⁰. (Guizot 1851: 82, 83)

It is not hard to explain why. In the first place, if understood in this way, Rousseau’s argument makes eminently sense. For in the Burkean conception of political representation, where the representative is no longer tied by a binding mandate to those whom he represents, the representative has the power to enact laws not approved of by his voters. And since we all know Rousseau to have been an ardent and relentlessly consistent advocate of popular sovereignty, we would have expected him to object against this aspect of ‘modern’ representation. Secondly, Rousseau explicitly refers to political representation in the England of his own time and that we shall all immediately associate with ‘modern’ representation as discussed by Burke²¹. (Urbinati 2011: 30)

However, this interpretation is only part of the whole truth. So much becomes clear if we look at the passages directly *before* and *after* the famous one that was quoted just now. For it follows from these passages that Rousseau is discussing here not what has come to be known as representative democracy, but medieval representation. Thus right before the well-known passage expresses his disagreement with how the nation was represented in the Middle Ages by the three Estates; and right after it he goes on to say ‘l’idée des représentants est moderne: elle nous vient du gouvernement féodal, de cet inique et absurde gouvernement dans lequel l’espèce humaine est dégradé, et où le nom d’homme est en déshonneur’. So Urbinati is undoubtedly right when saying that when Rousseau ‘wrote in *Du Contrat Social* that representation was a modern institution, Rousseau referred precisely to the feudal tradition’. (Urbinati 2011: 34)

When subsuming this insight into her own interpretation of the well-known quote Urbinati argues that Rousseau had wanted to express in it his condemnation of the confusion, typical of the feudal system, of *res privata* and *res publica*. And one cannot doubt for a moment this to be part of the truth. For the distinction between private and public interest and the necessity of preventing the latter to be swamped by the former is a theme that runs through all of *Du Contrat Social*, if not through all of Rousseau’s political writings. But the emphasis of Rousseau’s argument is clearly elsewhere; it is, after all, a statement about the impossibility of the representation of sovereignty, for this is what it most explicitly states (‘la souveraineté ne peut être représentée, (...) la volonté ne se représente point’), or, rather of *popular* sovereignty – obviously this was what Rousseau continuously had in mind when writing *Du Contrat Social*. So taking all this together, we should not read the passage as a rejection of ‘modern’, Burkean representation, but as saying that the notions of sovereignty and medieval representation are incompatible with each other.

It should be added, that this need not necessarily entail that Rousseau should be hostile to the very idea of the medieval representative being tied to

whom he represents by a binding mandate. In fact, Rousseau seems to have been well aware that this is as close as one can get in an imperfect world to respecting the will of the people – as long as the people is not in the position to express its will itself (as is the case in a small city-state). All Rousseau says, and wants to say here is that this type of representation cannot be reconciled with Bodin's notion of *sovereignty*, and that he embraces himself. And we can only agree with him here. For Bodin's conception of sovereignty pulls all of the political domain together within one whole – and then the medieval representative inevitably becomes the battleground between the sovereign legislator and the electorate represented by its representatives. As we have seen, medieval representation had the great merit of being consistent with itself: the representative was never forced to abandon his role as representative and to decide, *too*, about his contribution *as* a representative. Any such decision had, or would be made by those whom he represented and to whom he was tied by a binding mandate. But, as Rousseau emphasized, this implied the impossibility of sovereignty. All you had in the medieval system in the place of sovereignty were negotiations between the prince and the Third Estate's representatives. There was no sovereign power above the two of them having the right to interfere in any way in such negotiations. The political hierarchy simply ended with the two of them.

But when medieval representation was forced within the unitary model implied by Bodin's notion of sovereignty the clash between representation and sovereignty became inevitable. And that clash manifested itself mainly in the position of the people's representative. The representative now had to represent the people *and* to decide about the proposal he had made as the people's representative. It was as if the medieval representative had transgressed, so to speak, the magic line always separating the medieval prince from the Third Estate's representatives.

It has been the great merit of Rousseau's focus on medieval representation to make us see that this involves a major inconsistency. As long as one is oblivious of medieval political representation and has in mind representative democracy only, one is likely to remain blind to that inconsistency. Only against the background of Rousseau's analysis one will recognize the impropriety of combining representation and the exercise of sovereignty in the people's representative and that is a standing invitation to confuse these two basically different constitutional tasks. It will depend on the circumstance whether this confusion will result in the abuse of (sovereign) power by the representative, or whether it will rather weaken him in the exercise of his constitutional assignments and responsibilities. With regard to the latter option we should realize ourselves that performing a task built around a major inconsistency is never easy. So in general the representative will be weakened by the inconsistency rather than discover in it an occasion for the abuse of power. Political history shows this expectation to be correct.

These considerations are, of course, in agreement with the common wisdom that Rousseau considers political representation and sovereignty to be irreconcilable with each other. I'd like to add three brief comments at this stage. In the first place, if a political philosopher of Rousseau's status comes to such a decision we can not out of hand dismiss his conclusions as ill-considered and irrelevant. So this irreconcilability is not only of interest within the context of the study of Rousseau's political writings, but we should also ask ourselves what consequences his argument should have for contemporary reflection on the nature of the democratic state. Secondly, in our genealogy of representative democracy we tend to emphasize democracy's origins in classical Greece at the expense of representation in the Middle Ages. Rousseau makes clear that political representation in the Middle Ages deserves more attention than is presently paid to it. Thirdly, as we shall see in a moment, Rousseau did not stop with his thesis of the inevitable tension between sovereignty and political representation. Without recanting in any way his argument as expounded above, he succeeded in creating that much distance between representation and sovereignty as was needed to prevent the two notions from flying at each other right away.

In order to see this we must recall what was the absolutely basic question Rousseau had wanted to answer in *Du Contrat Social*:

“trouver une forme d'association qui défende et protège de toute la force commune la personne et les biens de chaque associé, et par laquelle chacun, s'unissant à tous, n'obéisse pourtant qu'à lui-même, et reste aussi libre qu'auparavant". Tel est le problème fondamental dont le *Contrat Social* donne la solution". (Rousseau 1962: 243)

Indeed, this gives us the framework within which Rousseau develops his political philosophy in *Du Contrat Social* determining how we should understand his conception of political representation. Characteristic about this framework is that it suggests a movement from an initial situation, via some violent shake-up of that initial situation – viz. the phase of association – to a return to it at a higher level and where the individual's initial liberties are restored to him in a higher, socialized manifestation²². (Kelsen 1929: 12)

This is the matrix of much of Rousseau's work and that we will encounter not only in his political philosophy but in his philosophical anthropology and in his philosophy of history as well: in all these cases an initial pure unity is split up – and then all of Rousseau's philosophical effort and acumen is devoted to the question whether this split can be undone again and, if so, to what extent. Or not, of course. Ordinarily Rousseau tends towards pessimism; but he is far too subtle a philosopher to fall prey to sweeping generalizations²³. (Kelsen 1929: 6)

Horowitz captures the movement quite well when describing how it works

on the level of both the human individual and on that of the history of civil society:

‘the savage supplies a prototype, in the immediacy of his psychic life, of human happiness. It should be understood that a prototype is not an ideal but an original pattern. Rousseau’s ideal of happiness – as it will be encountered in the *Émile* – is a dialectical return to the psychic equilibrium of the savage’. (Horowitz 1987: 131)

Or, as Horowitz puts it elsewhere, the socialization of the savage by his entry into the social order effects a kind of ‘personality-split’, alienating him from his true self. (Horowitz 1987: 127) Rousseau had argued in the second *Discours* that this personality-split is the source of all the evils of civil society²⁴ (Ankersmit 2002: 60-91) and that can be summarized in the victory of ‘amour propre’ over ‘amour de soi’. A society thus comes into being in which individuals have lost their anchors in themselves, so to speak, and which explains why they can only live in constant emulation with, and at the expense of others. Again the fate of the human individual and that of civil society are much similar – as if the ontogenetic history of the individual recapitulated the phylogenetic history of civil society, to put it in Ernst Haeckel’s terminology.

Ideally, this split is what politics should try to overcome. It could be overcome if there had been just one person who had experienced this personality-split, so that a reconstitution of its former self on a higher level would have been relatively easy and the challenge for one individual only. As Rousseau puts it:

‘I would have wished to be born in a country where the sovereign and the people could have only one and the same interest, so that all movements of the machine always tended only to the common happiness. Since that would not be possible unless the people and the sovereign were one and the same person, it follows that I would have wished to be born under a democratic government, wisely tempered’. (Frailin 1978: 53)

However, to put it in Heideggerian terms we are ‘thown’ in a civil society (Kelsen 1946: 8) constituted by the mechanisms of ‘amour propre’ and its social equivalents, so that only under some very special ‘laboratory-circumstances’ (such as depicted in the *Émile*) the personality-split can be overcome. But the important thing is that it *remains* possible: Rousseau’s political logic does not radically exclude that possibility.

So let us now return to political representation while bearing all this in mind. Then we will find here, again, the matrix expounded a moment ago. Crucial here is the notion of the ‘volonté générale’ as contrasted with the ‘volonté de tous’. The former expresses the general interest as undistorted by

private interests (Rousseau 1962: 250) Self-evidently, private interest effect in the political domain what ‘amour propre’ does for the individual and in civil society – both result in a personality–split alienating the individual from himself. And Rousseau’s logic then compels us to recognize the ‘volonté générale’ as the will that can restore the body politic to its pristine unity. This may shed some new light on Rousseau’s famous categorical indictment of political representation quoted above already: ‘La souveraineté ne peut être représentée, par la même raison qu’elle peut être aliénée; elle consiste essentiellement dans la volonté générale, et la volonté ne se représente point: elle est la même, ou elle est autre, il n’y a point de milieu²⁵. (Urbinati 2011: 25, Fralin 1978: 81) Now, note that Rousseau explicitly says here that sovereignty cannot be represented *because* it can be alienated. It follows from this that sovereignty *can* be represented in case it is *not* alienated²⁶. (Rousseau 1962: 252, 250) And this undoubtedly *is* the case if the sovereign expresses the ‘volonté générale’, because of Rousseau’s claim that ‘la souveraineté (...) consiste essentiellement dans la volonté générale’.

So, to conclude a long and complex argument, commentators of Rousseau (such as Urbinati) are surely right when claiming that the general drift of Rousseau’s political philosophy is the view that sovereignty and political representation exclude each other. However, they do not *logically* exclude each other, but only because *historical and social considerations* prevent their reconciliation. The qualification is important, not only for a better understanding of Rousseau, but also for that of the relationship between the notions of sovereignty and political representation and for a discussion of that relationship in the early 19th century (to which I shall turn in a moment).

In 1978 Richard Fralin published a thoughtful book in which he carefully analyzed all that Rousseau had said about political representation throughout his career as a political philosopher. Fralin was struck by the fact that whereas Rousseau uncompromisingly rejected representation in his major political text *Du Contrat Social*, he seemed to have been much more accommodating towards representation both before and after 1762. (Fralin 1978: 10) Before 1762 his ideas about representation had not yet crystallized out and he therefore tended to go along with the effort of the Encyclopaedists (such as d’Holbach) to replace representation by the three Estates by something more modern and close to what we nowadays understand by political representation. (Fralin 1978: chapter 1) Then comes the radical condemnation of representation in *Du Contrat Social* in 1762 – and one would have expected that this would set the tone for all his later pronouncements about the subject. But the reverse is true. In the case of his *Considérations sur le gouvernement de Pologne* (1771) one might still argue that that country’s huge size and its difficult political situation forced Rousseau to add some water to the undiluted wine of representation – though one will be surprised to learn that he even defended the *Liberum Veto* that eve-

ryone in the 18th century already knew to be the main source of the country's political paralysis. (Fralin 1978: 185) Surely, it is hard to conceive of how anyone so insistent about the unity and the indivisibility of sovereignty as Rousseau could be ready to such an absurd concession.

Anyway, one would have anticipated a much different story for the *Lettres écrites de la montagne* (1764). Did he not openly declare to have had Geneva in mind when writing *Du Contrat Social*? Indeed, was Geneva not the kind of state ideally suited for applying that book's main principles? And was Rousseau not extremely well informed about Genevan political institutions and their history thanks all the research he had done for writing his *Lettres*? However, in the *Lettres* Rousseau comes strangely close to Burke's views on political representation. For in contrast to the advocacy of popular sovereignty (not to be confused, of course, with the modern conception of representative democracy) in *Du Contrat Social*, Rousseau now argues in favour of the sovereignty of the *Grand Conseil* representing the Genevan bourgeoisie²⁷! (Rousseau 1962:302) And he even goes as far as denying to the people the right of legislative initiative, thus emphasizing, like Burke, the autonomy of the representative with regard to the people he represents, while reducing the people's constitutional role to the mere ratification of what was decided by its representatives. (Fralin 1978: 109) In agreement with all this he is now – unlike in the *Du Contrat Social* of only two years before – amazingly friendly about England. (Fralin 1978: chapter 8)

How to explain this amazing *volte face*? Undoubtedly, Fralin will partly be right when saying that Rousseau simply changed his mind. And why not; don't we often do so ourselves? After all, 'il n'y a que les imbéciles qui ne changent pas d'avis'. On the other hand, Rousseau's change of mind is probably less profound if we take into account what was said above. For, as we have seen, though Rousseau's condemnation of political representation followed from his claim of the irreconcilability of representation and sovereignty, his argument still left room for political representation under ideal circumstances. Very little, but nevertheless *some* room. This permitted to him some freedom of manoeuvre when having to apply his political philosophy to the inexorability of hard political fact.

6. Sieyès, Constant and the doctrinaire liberals

What Rousseau had put on the agenda of political philosophers would occupy theorists for quite some time. It was generally recognized that the problem was not only of an academic interest but also had its immediate implications for the actual functioning of the representative democracies emerging in 19th

century Europe. Crucial for their proper functioning was, self-evidently, that there should be absolute clarity about the constitutional role of the people's representative. For the people's representative was the lynchpin of all of that system – and any obscurity in his status and constitutional assignments could wreck all of it. It will not be hard to grasp that discussions of the representative should focus on how the representative could be both the people's representative and, at the same time – in his capacity as legislator – its sovereign. Obviously, the notion of popular sovereignty epitomized all the contradictions in the circumscription of representative's constitutional functions. So what solution was more natural than to return somehow (with Hobbes, albeit more consistently) to the medieval model of representation and to radically pull apart again representation and legislation (or sovereignty)? This, then, was the remedy prescribed by Emmanuel Sieyès.

The main idea here is as follows. In the first place there should be, according to Sieyès, a Tribune²⁸ elected by the people tied to it by a direct mandate. This Tribune will 'objectively' register the people's wishes and desires and it has no autonomy whatsoever with regard to the electorate. Next, there will be an executive, also elected by the people in agreement with Rousseau's proposal's in *Du Contrat Social*. Finally, there will be a legislative, again elected by the people. In the sessions of the legislative deputies from the Tribune and the executive will debate the pros and cons of proposals submitted to it by the Tribune – and after having heard both parties the legislative will come to a decision²⁹. (Sieyès, 22-23)

Admittedly, at first blush this most ingenious construction seems to solve the problem posed by modern representation: it may seem that the contradiction at the heart of the representative has been eliminated with this separation between the Tribune and the legislative. For in Sieyès's proposal the representative is *either* representative (as member of the Tribune) *or* legislator (as member of the legislative) – and never both at one and the same time. So it may seem that Sieyès's proposal – if carried out – would protect our existing representative democracies from the accusation of actually being elective aristocracies³⁰ (Ankersmit 2002: 206-213) But in the context of our present discussion the weakness of the system is that it only *partly* separates sovereignty and representation. For the members of the legislative are *both* elected by the people *and* decide in the end about the discussions between the deputies of the Tribune and the executive. Hence, with regard to *them* the whole problem will reassert itself anew – and I confess to see no remedy for this within the framework of Sieyès's argument.

So let us now have a look at how Benjamin Constant dealt with the problem. Constant's views deserve our interest here since they are explicitly framed as a response to Rousseau. In fact, Constant is in the habit of seeing the French Revolution – and, above all, Robespierre's regime of terror – as a kind of labo-

ratory experiment enabling us to find out what must have been wrong with Rousseau's political philosophy. Self-evidently, this gives a specific slant to his argument since he tends to focus on how Rousseau's views on sovereignty and representation might invite abuses of sovereign power as exemplified by Robespierre. The main culprit proves to be Rousseau's notion of sovereignty. Or rather, *every* appeal to or embrace of sovereignty. He only rarely uses that term himself and prefers a more or less close equivalent of his own, viz. 'autorité sociale'; a vague term nowhere clearly defined and that had best be seen as a notion of sovereignty from which all the teeth have been drawn. So where Sieyès's answer to Rousseau had been to put representation and sovereignty as far apart as possible, Constant's proposal is to render the latter notion politically innocuous.

It is not easy to summarize Constant's relevant views since they are sometimes quite confusing³¹ (Holmes 2011: 3). Thus he begins his attack on Rousseau's notion of the 'volonté générale' by objecting that any form of government – such as theocracy, monarchy or aristocracy – is only legitimate if it has the support of the 'volonté générale'. (Constant 2011: 101) Clearly, Constant does not have in mind here Rousseau's 'volonté générale' formulating the dictates of the sovereign, but the decision about who or what will be the sovereign – two things Rousseau always carefully kept apart³² (Rousseau 1962: 260) (even though it is not inconceivable that Rousseau, when pressed, would ultimately agree with Constant that any constitution should have the support of the greatest possible majority of the people). A similar problem presents itself when Constant addresses what he considers the major weakness of Rousseau's political philosophy, namely Rousseau's insistence that there are no limits to the powers of the legislator³³. (Wilson 1973: 38) Precisely this, as Constant emphasizes, made possible Robespierre's regime of terror; no such execrable abuses of power would have been possible if the proper limits had been respected to all exercise of sovereignty. Two considerations are in point with regard to Constant's argument.

In the first place, such abuses can only be prevented *if there is a sovereign power prohibiting them*. The *Déclaration des droits de l'homme et du citoyen* of 1789 Constant refers to here himself is not a revelation inspiring anyone's actions and all of a political system as soon as it had happened to enter someone's mind (such a that of Jérôme Champion de Cicé). For in order to prevent and to punish any infractions on it, it will need the ratification of public institutions such as the *Assemblée Nationale* in August 1789. So without an institution having the *sovereign authority* to enforce it and having the duty to account for how it made use of its authority, it will remain an empty piece of political rhetoric. And then the inevitable question is: where does this authority come from? Why should we obey to it? And in what way does any answer to that question settle the issue of sovereign authority? This brings me to a second –

and more relevant consideration. The decisive flaw in Rousseau's argument was, according to Constant, the assumption that if in the original contract everyone gives himself to everyone else everyone gives himself to no one in particular. However, as Constant goes on to say:

'l' action qui se fait au nom de tous étant nécessairement de gré ou de force à la disposition d'un seul ou de quelques-uns, il en arrive que se donnant à tous, il n'est point vrai qu'on ne se donne à personne. On se donne au contraire à ceux qui agissent au nom de tous. De là suit qu'en se donnant tout entier, l'on n'entre pas dans une condition égale pour tous, puisque quelques-uns profitent exclusivement du sacrifice du reste'. (Constant 2011: 116)

Now, Constant amazingly repeats here Rousseau's own argument. For all of Rousseau's suspicions with regard to representation had, as we have seen above, their ultimate source in his distrust of people speaking 'in the name of others' – and whom they say to represent! Put differently, we have no reason to assume that Rousseau would have been any less outspoken than Constant in condemning Robespierre's regime of terror as an appalling example of what may happen when representatives believe themselves to be the incarnation of sovereign power.

Let us now turn to Constant's theory of political representation. First of all, one will then come to the somewhat perplexing discovery that in all of the 859 pages³⁴ (Constant 2011b) of his major work on political philosophy (even having the words 'gouvernement représentatif' in its title), Constant nowhere addresses political representation. But, fortunately, he does so at some other occasions; most importantly in his well-known speech on ancient and modern liberty of 1819. Constant characterizes representative government there as a 'modern' discovery³⁵, just as Rousseau had called representation a 'modern' institution because of its origins in the Middle Ages. But it is also 'modern' in the sense of being the political system in which modern citizens – unlike those of classical Athens of Rome – no longer have the time for discussing and deciding political issues themselves and thus prefer to leave this to their representatives. As Constant puts it:

'Hence the need for the representative system. It is nothing but an organization by means of which a nation charges a few individuals to do what it can't or doesn't want to do itself. Poor men look after their own affairs; rich ones hire stewards. (...) The representative system is a mandate given to a certain number of men by the mass of the people who want their interests to be defended but don't have the time to defend them constantly themselves. (...) The people who resort to the representative system so as to enjoy the liberty that suits them, should exercise an active and constant surveillance over their representatives, and reserve for themselves the right – at times they aren't too far apart – to discard them if they betray their trust, and

to revoke any powers they have abused³⁶. (Constant 2011b: 12)

Obviously, this sounds immensely reasonable and a perfectly acceptable picture of the practice of our contemporary representative democracies. But it elides the real theoretical problem. For suppose there is such a conflict between the people and the people's representatives hinted at by Constant. Who will then send away the latter? The people – perhaps by beginning a revolution against its governors? Or in a more peaceful way, presumably by an appeal to an institution to which it can make its grievances known and which has the power to act upon that? And, fortunately, such an institution exists already: Parliament. But, unfortunately, this is precisely the institution against which the people then revolts and which, apparently, takes a different view of the matter at stake than the people. For if not, there would not be a conflict between the people and its representatives. So this will not get us out of the problem occasioned by Constant's rosy picture of representative systems, and then the conceptual clash between representation and sovereignty will reassert itself. The Burkean theorist will probably opt for representation in Constant's account of representative democracy and his Rousseauist rival for sovereignty. While the only merit of Constant's way of framing the dilemma is that it is so vague as to make as to make the dilemma and all that is involved in it invisible.

We now come, finally to how the doctrinaire liberals further developed the issue at stake in this essay. Rosanvallon writes about the doctrinaire liberal's conception of sovereignty and representation: 'leurs développements sur ce point marquent une rupture brutale avec la plupart des écrits antérieurs. Le terme de représentation prend un sens nouveau chez eux. (...) Ils conçoivent avant tout le gouvernement représentatif comme un opérateur social dynamique'. (Rosanvallon 1985: 55) Though it should be added that they remained quite close to Constant. To begin with, they took over from Constant the idea that citizens delegate their sovereignty to their representatives in a representative democracy³⁷. (Guizot 1851a: 83, 84) Furthermore, the doctrinaire liberal's main thesis of the 'sovereignty of reason' was anticipated already by Benjamin Constant's in his bipartite *Commentaire sur l'ouvrage de Filangieri* of 1822. Two strands can be discerned in the idea of the sovereignty of reason.

In the first place there is a shift away here from the voluntarism of Rousseau's 'volonté générale'³⁸ (Guizot 1851a: 74) towards cognitivism in the sense that the exercise of sovereignty is for the doctrinaire liberals, above all, a matter of finding out what is true, just, prudent and serves the public interest. The doctrinaire liberals reversed Hobbes's (and Rousseau's) 'auctoritas non veritas facit legem'. In the second place, such truths can only be discovered in the interaction between government and society – and precisely this is what political representation aims to reveal: 'c'est le propre du système représentatif, et c'est aussi son plus grand bienfait de révéler sans cesse la la société à son

gouvernement et à elle même, et le gouvernement à lui-même et à la société'. (Rosanvallon, 1985: 55) So representation is a mirror in which society and the government can recognize themselves and discover the social and political truth that should guide the government's actions.

Two more conclusions follow from this. In the first place, this cognitivist turn in how to conceive of sovereignty implies that no one, and no institution could ever claim to be the repository of sovereign truth. All that is left to us is a continuous search for that truth and that will require the permanent dedication of both society and the government. As Guizot puts it:

'La souveraineté de droit n'appartient à personne, parce que la connaissance pleine et continue, l'application fixe et imperturbable de la justice et de la raison n'appartiennent pas à notre nature imparfaite. (...) Ce que je dis, c'est que le gouvernement représentatif n'attribue la souveraineté de droit à personne, que tous les pouvoirs s'agitent dans son sein pour le découverte et la pratique fidèle de la règle qui doit présider à leur action et que la souveraineté de droit ne leur est reconnue qu'à la condition qu'ils la justifieront incessamment'. (Guizot 1851b, 72-73, 82-85)

This is, arguably, the heart of the doctrinaire liberal's liberalism: denying that anyone, or any institution could pronounce his or its views as the ultimate political truth (whereas we should always try to approximate it as much as possible) is, indeed, the most effective and elegant vindication of political freedom one can think of – and that would be repeated by 20th century liberal thinkers such as Popper and Hayek³⁹. (Kelsen 1946: 101) But even more important is a basic change in how to conceive of representation. In the doctrinaire liberal's conception of the sovereignty of reason representation is given the task of collecting the seeds of reason disseminated all over society and of making them find their way to the nation's assembly and to the minds of the politicians having to decide about matters of public interest. Representation no longer has the task here of setting up somehow in the nation's capital a more or less reliable miniature copy of the nation at large, but should rather be thought of as a fine web of canals constructed over all of society's surface and along which all useful ideas for how to run the country are guided to those responsible for public decision-making⁴⁰. (Guizot 1851b: 75) It is this shift in the notion of representation that Guizot had in mind when writing the passage I used as this essay's epigraph.

The perennial tension between sovereignty and representation has now been taken away. In fact, each of the two now supports the other. Representation is needed in order to grant to the sovereignty of reason its concrete content in individual cases of public decision-making; and the sovereignty of reason is needed in order to assure that the political wisdom ('the wisdom of the crowds', as we nowadays like to say) acquired in the process of representa-

tion will triumph in political debate and be realized in terms of political decisions. Both notions – both representation and sovereignty – are now *sociologized* in the sense that they express essentially sociological processes and should no longer be thought of as categories defining the constitutional relationship between the electorate and the state⁴¹. (Guizot 1851a: 68) As Rosanvallon put it: ‘c’est donc sur un mode sociologique que les doctrinaires résolvent le problème posé par la présence-absence de la souveraineté de droit. Ils dépassent les contradictions pratiques de la pensée libérale commune par une sociologie’. (Rosanvallon 1985: 93)

7. Epilogue

After the sociologization of the conflict between sovereignty and representation by the doctrinaire liberals the issue discussed in this essay disappeared from the agenda of political philosophy. It would be overhasty, in my view, to infer that the doctrinaire liberal solution of the conflict was universally accepted⁴². It would probably be closer to the truth to say that the sociologization and historicization of political philosophy in the 19th century made most political philosophers indifferent to what had occupied so much the generation of the Burke’s, the Rousseau’s, the Sieyès’s and Constant’s. And so it has remained to the present day. With one telling exception, though. When declaring war upon the sociologization of constitutional thought with his ‘reine Rechtslehre’⁴³ (Kelsen 1960: 1) (‘pure theory of law’) Hans Kelsen dug up all the old problems again. When discussing the role of the modern (Burkean) representative, he wrote:

‘Ja, mit dieser Unabhängigkeitserklärung des Parlaments gegenüber dem Volke entsteht überhaupt erst das moderne Parlament, löst es sich deutlich von der alten Ständeversammlung ab, deren Mitglieder bekanntlich durch imperative Mandate ihrer Wählergruppen gebunden und diesen verantwortlich waren. Die Fiktion der Repräsentation soll den Parlamentarismus vom Standpunkt der Volkssouveränität legitimieren’. (Kelsen 1929: 30-31)

So how to react to this? Perhaps a practical approach is most recommendable. I mean, can these discussions of almost two centuries ago shed some new light on our present political predicament?

I would tend towards an affirmative answer. It might be argued that our contemporary representatives feel themselves ever more torn apart between their task of representing the people, on the one hand, and their role as legislator, on the other. Two relatively recent developments are of special importance in this context: the de-ideologization of politics in the last two decades and the

quickly increasing technical character of our main political problems. As long as the citizen and his representative were united by a shared ideology and as long as the citizen could have a reasonably accurate grasp of the main political dilemmas of the day, the tension between representation and legislation could remain unperceived. But the time may have come that the representative will have to make up his mind about whether he prefers to be a people's tribune à la Sieyès or the technocratic grandchild of Guizot's representative that is in a permanent search of 'the sovereignty of reason'.

Endnotes

- 1 Guizot 1851a: 84. The most amazing feature of this brilliant book – as well-documented as penetrating – is that out of fifty one chapters only two deal with representative government in Guizot's own time, whereas the remaining forty-nine deal discuss the Middle Ages. The transition from medieval to modern political representation – that will be at stake in this essay – thus sadly falls thus outside the scope of Guizot's argument. This is all the more to be regretted since the doctrinaire liberal view of this transition might well be more interesting than any other in Guizot's time.
- 2 But that very notion of popular sovereignty should already make us suspicious. If the people is sovereign, who are then its subjects? The people? But how can the people be said to both the sovereign *and* the subject of this sovereign master – without doing violence to what we commonly understand by the words 'sovereign' and 'subject'. One cannot obligate oneself, as Bodin insisted: 'nulla obligatio consistere potest, qua a voluntate promittentis statum capit' ('no obligation can exist that depends on the will of the promising person'. (Bodin 1994: 12). Nor can one give oneself laws – *and* abandon the right to change them without ceasing to be a sovereign self. The notion of popular sovereignty is therefore deeply problematic – however sympathetic it may be to us.
- 3 This is how Nadia Urbinati briefly summarizes Kelsen's view on the relationship between these two.
- 4 At the beginning of the period under investigation in this essay one may think of John Cotton (1585 – 1652) to Lord Say and Seal, governor of Massachusetts: 'if the people are governors who shall be governed?' (Morgan 1988: 45) And at the end of the period Guizot ridiculed the theory of popular sovereignty. For, as he exclaims, what kind of theory is this in which 'il y a un souverain qui, non seulement, ne gouverne, mais obéit et un gouvernement qui commande, mais n'est point souverain?'. (Guizot 1851b: 88)
- 5 In fact, from a theoretical point of view, one is then reduced to much the same predicament as that of the Quinean scientist required to test his theories against the web of all existing scientific theories. This, then is where the medieval political order is what one nowadays calls 'anti-foundationalist', whereas the modern political order is 'foundationalist'. And if contemporary neo-liberalism can be seen

- as a 'renaissance of feudalism' because both privilege the private to the public, the political agenda of anti-foundationalism can be said to further the cause of neo-liberalism. Needless to say, I do not imply that anti-foundationalists, such as Richard Rorty, have been aware themselves of these, in their own eyes undoubtedly perverse political effects of anti-foundationalism.
- 6 Locke remained close to this. Locke deliberately shuns the notion of sovereignty because of its Hobbesian connotations; so that leaves him with only 'trusters' (the citizens) and a 'trustee' (the state) who are expected to trustfully cooperate with each other. This is what he understands by 'government by consent'.
 - 7 And where in a way ominously anticipating modern political representation legislative and executive tasks tend to weld together. Strangely enough Rousseau welcomed such a fusion of the legislative and the executive. (Rousseau 1962: 305)
 - 8 It was still present in the article on representation d'Holbach wrote for the *Encyclopédie*. (Fralin 1978: 26). And as we shall see below even Rousseau's conception of representation heavily relied on it.
 - 9 In agreement with Bodin Charles L'Oyseau defines sovereignty in 1609 as follows: 'or elle consiste en puissance absolue et entière de tout point que les Canonistes appellent plénitude de puissance. Et par conséquent elle est sans degré de supériorité; car celui qui a un supérieur ne peut être suprême et souverain; sans limitation de temps, autrement ce ne serait ni puissance absolue ni meme seigneurie ains une puissance en garde ou depot.' (Jouvenel 1955: 230)
 - 10 Philpott argues that sovereignty is Janus-faced: on the one hand it may refer to the relationship between a state and its subject or an important aspect thereof and on the other to that between different states. Both relationships can be covered by the definition of sovereignty as 'the possession of supreme authority within a territory'. (Philpott 2001: 16) Obviously, the notion of sovereignty is watered down here in order to fit both types of relationships. Krasner opts for an alternative strategy: he distinguishes between four kinds of sovereignty: 1) domestic sovereignty, 2) interdependence sovereignty (i.e. the capacity of governments to control transborder movements, 3) international sovereignty (i.e. states recognize each other as sovereign states) and 4) Westphalian sovereignty (i.e. the variant of 3) that developed in Europe in the period after the Peace of Westphalia in 1648). (Krasner 1999: 9). Krasner's strategy is to be preferred to that of Philpott since it respects the idiosyncracies of domestic sovereignty and a state sovereignty with regard to others. Of course the question arises whether the latter can be modelled on the former. This was attempted by Vattel with his *Le droit des gens* of 1758 in which states were regarded as individuals writ large, so that contract-theories à la Hobbes or Locke could be transposed to the domain of international relations.
 - 11 And elsewhere he wrote: sovereignty 'ist nichts anderes als die Wirksamkeit der staatlichen Rechtsordnung'. (Kelsen 1960: 292)
 - 12 Because the Peace of Westphalia (or of Münster) of 1648 formally codified all these tendencies in international relationships.
 - 13 This may help to explain what truth there is in Schmitt's conception of sovereignty. When expounding his ideas on sovereignty Schmitt begins (like almost anybody else) with Bodin's definition he summarizes as follows: 'sovereignty is the absolute and perpetual power of a republic'. (Schmitt 2005: 8) Hence, he carefully

avoids here Bodin's identification of the sovereign with the legislator; and when commenting on later discussions of sovereignty he associates the sovereign with the state, the law, the rule of law or the sovereignty of law; but, again, never with the legislator. It is not hard to explain why. The notion of the sovereign as the legislator is both the most obvious and believable alternative for his own conception of the sovereign according to which the person or institution having the power of deciding about the exception is the sovereign. So he had to keep that definition of sovereignty out of sight somehow in order to make room for his own. Nevertheless, there is a certain overlap. Schmitt defines the exception as follows: 'because a general norm, as represented by an ordinary legal prescription, can never encompass a total exception, the decision that a real exception exists cannot therefore be entirely derived from that norm'. (Schmitt 2005: 6) The exception is, so speak, 'too large' to allow definition within the existing system of legal prescriptions. And here we may agree with him. But this was a situation that the modern state since the 16th century *continuously* had to deal with because of new economic, social, political and cultural realities and what Bodin's notion of sovereignty succeeded in making possible. *So the exception became the rule* – and then it can no longer be reckoned to be an exception.

- 14 It will now undoubtedly be objected that globalization and 'the pooling of sovereignty' in supra-national organizations such as NATO, the EU or the UN present us with a different picture. But here one may agree with Krasner: 'increases in transaction flows have not made the state impotent with regard to pursuing national political agendas – state control is still very much a reality'. (Krasner 1999: 13) Next, the claim that the transmission of sovereignty from the national to the supra-national level should mean its end is just as patently erroneous as the argument if one hundred people contribute each one book to the formation of a (small) library these books will inevitably cease to exist. In fact, as the history of the emergence of federal states may prove, the procedure may actually result in an increase in sovereign power. Think of sovereignty as water in a glass: does the water disappear if it is poured out from that glass?
- 15 'that a prince who has contracted with his subjects is bound by his promise should thus be beyond all doubt'. (Bodin 1994: 36)
- 16 As he also does with regard to the rights of men – 'the rights of men are in a sort of *middle*, incapable of definition, but not impossible to be defined (Burke's italics)' – and, indeed, if the sovereign, obliged to enforce the respect of human rights, is in 'a sort of middle', these rights must be so as well and *vice versa*. (Burke 1865: 313)
- 17 When finding himself in a roughly similar predicament Locke found a more convincing way out by acknowledging two meanings of the term legislative. On the one hand the term could mean the legislative in the proper sense of the word and on the other the people to which the legislative is accountable. (Wilson 1973: 37)
- 18 As defended by Adam Dicey in his influential *Introduction to the study of the law of the constitution* of 1885 expounding what would become known as the 'Westminster model'.
- 19 Burke had not been the first to make this claim. Morgan mentions in this context Sir Edward Coke, Algernon Sydney and Sir Henry Parker.

- 20 And I must confess to have been guilty of this mistake myself in Ankersmit 2011.
- 21 Urbinati insists that only since the first years of the French Revolution the term 'representation' came to be associated primarily with its 'modern' meaning. (Urbinati 2011: 30).
- 22 As Kelsen puts it: 'Der Rousseausche Gedanke, dass der Untertan seine ganze Freiheit aufgibt, um sie als Staatsbürger wieder zurückzuerhalten, ist darum so charakteristisch, weil in dieser Unterscheidung von Untertan und Staatsbürger der gänzliche Standpunktwechsel in der sozialen Betrachtung, die völlige Verschiebung der Problemstellung angedeutet ist'. (Kelsen 1929: 12)
- 23 One can only agree with Kelsen's assessment of Rousseau as 'vielleicht der bedeutendste Theoretiker der Demokratie'.
- 24 Self-evidently, Rousseau argument here come quite close to Freud's in his *Civilization and its discontents*. For an elaboration of this theme see my 'Freud as the last natural law philosopher' (Ankersmit 2002: 60-91)
- 25 Commentators on Rousseau often follow Rousseau's own example by going from here to the rather academic issue of whether wills can or cannot be represented. But I believe this to be a blind alley leading us away from what really is at stake. (Urbinati 2011: 25, Fralin 1978: 81) and Kelsen's explicit agreement (Kelsen 1946: 85) with Rousseau's thesis of the unrepresentability of the will: 'die Wille ist in Wirklichkeit nicht Übertragbar'.
- 26 This may help us to deal with a glaring contradiction in Rousseau when discussing elsewhere the representation of the *volonté générale*. For in Book II, Chapter III he has a rather naive argument on how the *volonté générale* (defined there by Rousseau as the exercise of sovereign power (252) could be inferred by means of some operation on the 'volonté de tous', whereas a moment before he had stated categorically that wills cannot be represented at all (250). But the contradiction disappears if we assume a representable 'volonté générale' not to be a contradiction in terms even though in practice inaccessible to us because of how civil society distorts our conception of it.
- 27 His insistence here that political representation is desirable for the executive is, of course, wholly in agreement with *Du Contrat Social*. (Rousseau 1962: 302)
- 28 The term is obviously taken from the Roman institution of the tribunate.
- 29 '1. Il y aura, sous le nom de tribunaat, un corps de représentants, au nombre de trois fois celui des départemens, avec mission spéciale de veiller aux besoins du peuple, et de proposer à la législature toute loi, règlement ou mesure qu'il jugera utile. Ses assemblées seront publiques. 2. Il y aura, sous le nom de gouvernement, un corps de représentants, au nombre de sept, avec mission spéciale de veiller aux besoins du peuple et à ceux de l'exécution des lois, et de proposer à la législature toute loi, règlement ou mesure qu'il jugera utile. Ses assemblées ne sont point publiques. 3. Il y aura, sous le nom de législature, un corps de représentants, au nombre de neuf fois celui des départemens, avec la mission spéciale de juger et prononcer sur les propositions du tribunaat et sur celles du gouvernement. Ses jugemens, avant la promulgation, porteront le nom des décrets'. Sieyès, Opinion de Sieyès, sur plusieurs articles des titres IV et V du projet de constitution, prononcé à la Convention le 9 thermidor de l'an troisième de la République, in id., (*Sieyès 1989: 22-23*). Some of Sieyès's ideas as expounded here were to be implemented in the Constitution of the year VIII.

- 30 It may be argued that Sieyès's system is 'democratic' since both the input and the output of that system has its exclusive source in what the people feeds into it. (Ankersmit 2011) This claim would even hold in cases where the people is divided against itself about a certain political issue. For the system guarantees that whatever choice then is ultimately made will be in agreement with at least part of the electorate's desires. So this is where Sieyès's proposal undoubtedly is – from the perspective of democracy – an improvement on our contemporary representative democracies where no such guarantees exist. But from the perspective of effective government this may well be seen as a disadvantage, since in politics one is often forced into compromises not having their antecedents in the political positions from which the compromise is born. (Ankersmit 2002: 206-213)
- 31 As Holmes put it: 'his [i.e. Constant's] writings, while never obscure, are slippery and difficult to summarize because they are responsive to sharply opposed aspects of the problems of his concern'. (Holmes 1984: 3)
- 32 'celui-ci (viz. the framer of the constitution) est le mécanicien qui invente la machine, celui-là n'est que l'ouvrier qui le monte et la fait marcher'. (Rousseau 1962: 260)
- 33 With his insistence that there should be limits to the power of the legislative Constant clearly treads in Locke's footsteps. (Wilson 1973: 38)
- 34 in the recent 2011 edition of his *Oeuvres complètes*
- 35 See B. Constant: www.earlymoderntexts.com/pdf/conslibe.pdf; 1b
- 36 Rousseau embraces here Sieyès's theory of representation who, in turn, had developed that theory by applying Adam Smith's theory of the division of labor to politics.
- 37 'il est vrai, la souveraineté est en vous et en vous seul; mais, sans la perdre, vous pouvez la déléguer. Vous le faites tous les jours, vous chargez votre intendant de la gestion de vos affaires, votre médecin de votre santé. Votre avocat de vos procès'. (Guizot 1851a: 83-84) A cynic will now be reminded of the proverb: 'qui délègue, abdique'.
- 38 "Les électeurs eux-mêmes ne disent pas d'avance à leurs députés 'Telle est notre volonté; que se soit la loi'". (Guizot 1851a: 74)
- 39 One is also reminded of Kelsen's observation 'darum ist der Relativismus die Weltanschauung die der demokratischen Gedanke voraussetzt'. (Kelsen 1946: 101)
- 40 'Toutes les combinaisons de la machine politique doivent donc tender (...) à extraire de la société tout ce qu'elle possède de raison, de justice, de vérité'. Guizot 1851b: 75. See also Guizot 1851a: 95.
- 41 'Société et gouvernement, ces deux s'impliquent l'un l'autre; il n'y a plus de société sans gouvernement qu'il n'y a de gouvernement sans société'. (Guizot 1851a)
- 42 Though it is undoubtedly true that in modern systems theory (Luhmann and Willke) and in contemporary theory of governance – arguably the political philosophy of our own time – both sovereignty and political representation have been spirited away in much the same way as the doctrinaire liberals succeeded in doing so two centuries ago.
- 43 'In völlig kritikloser Weise has sich Jurisprudenz mit Psychologie und Soziologie, mit Ethik und Politischer Theorie vermengt'. In his pure theory of law Kelsen attempts to emancipate legal thought from these influences. (Kelsen 1960: 1)

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