Introduction

Although we call contemporary Western governments democratic, their institutions were designed to contain rather than to encourage democracy. Alexis de Tocqueville rendered this paradox with a surgeon's precision when he described America as socially democratic and politically aristocratic (read "republican"). When Tocqueville arrived in the United States, about half a century after its founding, democracy's long, bad reputation among political leaders and thinkers on both sides of the Atlantic was still almost intact, its short but memorable appearance in Athens having made it more enemies and critics than friends. Athens might have been a democracy, but the best Athenian political theorists were sanguine about what they dismissed as "the rule of the poor."[1] Twenty-five centuries had to elapse before John Dewey appeared as the first consistently democratic philosopher and theorist.

Yet even in the democratic century par excellence and despite the contemporary rhetoric on the globalization of democracy, many modern institutions (representation in particular) are judged from the perspective of their eighteenth-century architects. The axioms held by the authors of *The Federalist Papers* and Emmanuel-Joseph Sieyes remain canonical, and universal suffrage has not altered the undemocratic nature of a system whose basic "arrangements have remained the same" since it emerged as a government of notables elected by a few privileged voters.[2] The government of the moderns is apparently unchanged, its identity having been frozen in the nondemocratic choices made by its founders.

Athens, which was a genuine democracy, is the touchstone for our thinking about democracy (and the undemocratic character of representative government). Born as a compromise between the newly empowered "common people" and the already powerful wealthy ("a strong shield around both parties"), it took several revolutions to become the rule of the many (poor or "ordinary"). Democracy meant that poverty was neither something the people had to be ashamed of, nor a reason for political and civil disempowerment.[3] Athens was a genuine democracy because it tried to break the continuity between the power of wealth and political power. It did so without imposing economic equality and making the equals equal, or without violating the voluntary nature of participation. Democracy meant that each and every citizen had an equal and meaningful chance to take part in lawmaking and to address the assembly. The citizen had the right to participate (*isonomia*) as well as to speak on matters of state importance (*isēgoria*). "In oligarchies, only he who rules (*ho dunasteuōn*) addresses the people, whereas in democracies whoever so wished (*ho boulomenos*) could speak whenever it seemed right to him."[4] Athenian democracy proved that political equality translates into liberty, yet not at the expense of individual distinction and competition between citizens' political skills and ideas.

Modern democracy falls short of Athenian standards.[5] The variety of stratagems that disempower the poor and empower wealth in politics points to the fact that Western constitutional democracies lack the legal resources to block the ever-mutating forms of soft political influence created by economic and social relations. Although formally more inclusive than in Athens, popular participation in contemporary democracies is episodic. Whereas Athens tried to discourage citizens' absenteeism, many of today's democracies make participation both costly and difficult.[6] One may legitimately say that the modern system is either something else (another type of regime) or another type of democracy. This thought has led some theorists to claim it is no democracy at all, and shouldn't be called such.[7] If it is indeed a democracy, it is fragmented and only approximately or intermittently democratic, when citizens vote, petition, demonstrate to voice their otherwise ignored or unheard opinions, and join social and political movements.

Political theorists account for this anomaly by positing contemporary democratic government as a mixed constitution (a kind of "machinery that combines democratic and undemocratic parts")[8] rather than a democracy per se. This is because modern democracy qualifies as legitimate if the elected representative setting publicizes its proceedings (is transparent) and subjects those proceedings to collective discussion;

legitimacy does not require citizens' participation in legislative deliberation. Properly speaking, modern democracy is a "government by discussion" in which public speaking and voting for representatives (rarely on issues) are the only direct formal rights adult citizens are always entitled to. It is paradoxical to call it democratic, for the only moment the citizens decide directly is when they delegate legislative power. Elections mean that popular sovereignty appears only "at fixed and rare intervals" much like a comet; citizens exercise it "always only to renounce it."[9] A Janus-faced institution, elections give representation a democratic face and democracy an aristocratic twist. Their function is "not to make a democracy more democratic, but to make democracy possible. Once we admit the need for elections, we minimize democracy for we realize that the system cannot be operated by the *demos* itself."[10]

I am not proposing to lower the normative value of direct participation in the name of the pragmatic feasibility of electoral democracy nor arguing for a resigned acceptance of the given. My intention is to understand those forms of *indirect* political presence that make contemporary government democratic. Thomas Paine's subversive idea—"Athens, by representation, would have surpassed her own democracy"—shall be my guide.[11] So, rather than focusing on Athenian institutions, I propose comparing Athens' two principles of political equality (*isonomia* and *isēgoria*) with the institutions of contemporary democracy and with representation in particular, which is the most unique institution of all. As a matter of fact, Tocqueville identified the American polity as a democracy *because* of political equality, regardless of the fact that it was representative or direct.[12] This identification is legitimate because it acknowledges the deliberative (as discursive and interpretative, not only decisional) character of democratic politics, which is common to both ancient and modern democracy. From this perspective, the distinction between direct and indirect politics opens up promising paths of interpretation rather than creating obstacles, since it frames the institutional and sociocultural spaces within which the various components of political action take shape—from opinion and will formation to voluntary participation in movements, contestation, voting, and decision-making. Focus on *presence through ideas and speech* reveals participation and representation not as alternative forms of democracy but as related forms constituting the *continuum* of political judgment and action in modern democracies.

Yet only a tiny minority of theorists assumes that representation is not alternative to but in fact supports democratic participation.[13] Most scholars argue instead that representation has been the most ingenious invention constitutional designers have created to neutralize

political participation by making the people a legitimizing force at the instant they renounce their ruling power.[14] Skeptics of both "pure" and "representative" democracy agree that representative democracy is an oxymoron.

This book explores (and defends) the arguments of the minority that believes democracy and representation are complementary rather than antithetical. Their arguments subvert both kinds of skepticism because they deny that representation is an expedient or second best, and assert that representation is primed to expand democratic participation and in fact is essential to democracy—in other words, that democratic representation is not an oxymoron. Sheldon Wolin suggests that the democratic interpretation of representation is truly subversive when he identifies the work of Paine, rather than that of the Federalists, as democracy's "theoretical moment of surrender." Indeed, it was "when democracy's sympathizers" like Paine accepted representation *in the name* of democracy, not as a second best or expedient, that modern democracy was able to assert itself on autonomous grounds in relation to both ancient (direct) democracy and modern representative (undemocratic) government.[15]

My goal is to inquire into the conditions under which representation *is* democratic—that is, a mode of political participation that can activate a variety of forms of citizen control and oversight. I argue that representative democracy is an original form of government that is not identifiable with electoral democracy. By the end of this introduction I hope to have clarified the reasons why I think this is a crucial and timely objective for politics and political theory as well.

Contemporary democratic theory encourages my proposed revision. Indeed, representation now engages democracy scholars more directly, a change from the traditional defense of representative institutions by the Schumpeterian and neo-Schumpeterian theorists of the circulation of elites and electoral democracy against the proponents of "participatory" or "strong" democracy.[16] The institution of representation is regarded as the source of the "moral distinctiveness" of modern democracy, and even the sign of its superiority over direct democracy.[17] Even more radical is the argument that in a representative democracy "the opposite of representation is not participation," but exclusion from representation. Rather than being inimical to participation, "political representation is both necessary and desirable," while the "elevation of direct democracy to the apex," as the only "real" democracy, "is mistaken."[18] As a matter of fact, the *direct* presence of all citizens did not prevent the Athenian

ekklēsia from being an assembly in which the large majority abstained from *fully active* participation. Periclean and post-Periclean reforms discouraged absence, not silence. Adult male citizens were paid to attend, not to speak: "There was no law requiring anybody to appear in the role of *ho boulomenos* [anyone who wanted to speak], and the orators found no fault with the fact that many Athenians never addressed their fellow citizens."[19]

The democratic *rediscovery* of representation is both interesting and compelling. However, a systematic and comprehensive defense of the normative core that makes it democratic is still lacking. I intend to fill this lacuna by claiming, first, that public discourse is one of the main features that characterize and give value to democratic politics, ancient and modern, direct and representative. Presence through voice, by which I mean the public exposure of citizens' political judgment, defines the indirect character of democratic politics both when citizens vote on laws and when they vote for representatives. Regardless of the form of the decision-making process, voice involves two kinds of active doing— *positive* as activating and propositive, and *negative* as receptive and surveilling. This idea is essential in order to understand the role of judgment and the nature of participation in representative democracy. Judgment is not alternative to action, nor is it mere post-action evaluation by those who did not act, as if only some act while the others observe passively and at most consent or rebuff.[20] Second, I argue that indirectness (and representation, which is the most important form of indirectness) plays a key role in forging the discursive democratic character of politics, and aids rather than obstructs participation. Third, I sustain that representation highlights the *idealizing* and *judgmental* nature of politics, an art by which individuals transcend the immediacy of their biographical experience and social and cultural belongings and interests, and educate and enlarge their political judgment on their own and others' opinions.[21]

In sum, political representation is far more than a system of division of labor and a state institution; it entails a complex political process that activates the "sovereign people" well beyond the formal act of electoral authorization. Representative politics has the power of unifying and connecting (through friction or concurrence) the "fluctuating" "atomic units" of civil society by projecting citizens into a future-oriented perspective.[22] It has the power of keeping the sovereign in perpetual motion, so to speak, while transforming its presence from formally sanctioning mechanism to exquisite political influence. Finally, it confers on politics an unavoidable *ideological* dimension insofar as it

instates ideas in the house of politics such that they can represent and shape citizens' sociopolitical identity and claims.

Representation is a comprehensive filtering, refining, and mediating process of political will formation and expression. It models the object, style, and procedures of political competition and action. It helps to depersonalize claims and opinions, which in turn allows citizens to mingle and associate without erasing the partisan spirit essential to free political competition or obscuring the majority/minority divide. Modern democratic society resembles a vast and webbed agora in which, to paraphrase Immanuel Kant, no deed or issue remains unheard, cast away from the peoples' eye of the mind and judgment. Representation is intrinsic to this world of attention and indirectness. It can never be truly descriptive and mimetic of social segmentations and identities because of its unavoidable inclination to transcend the "here" and "now" and to project instead a "would-be" or "ought-to-be" perspective that translates almost naturally into advocacy. Political equality—as a condition of legitimacy, a guide to judgment, and a promise to be fulfilled—is the reference point in relation to which the political process of democratic representation defines its goals and language, and projects and submits itself to the critical judgment of the citizens.

In this book I discuss representation in relation to the modern concept of popular sovereignty. Indeed, while Athens is the classical point of comparison in our thinking about democracy, the idea that representation is antithetical to democracy did not originate from a comparison with Athens. Although they stressed the modernity of their representative republic, the authors of *The Federalist Papers* did not assert a principled incompatibility between ancient democracy and representation; indeed, they even recognized that Athens employed representation in some state branches. By the same token, Paine the democrat rested his case for democracy on the continuity between ancient and modern democracy, rather than their incompatibility.[23] So where did the incompatibility theory come from?

The incompatibility theory (between democracy and representation) is the foster child of the modern conception of sovereignty. Its conceptual coordinates lay at the core of constitutionalism and the theory of government outlined by Montesquieu and Rousseau, the first theorists to explicitly argue (for divergent reasons) for an insoluble tension between democracy, sovereignty, and representation.[24] The former merged self-government (sovereignty) and direct government (democracy) in a formulation that has became paradigmatic: a government is

democratic if "the people as a body have sovereign power" *and* if "the people alone . . . make laws." The latter, who separated the political foundation of the state from the various forms of government, thereby distinguishing sovereignty from democracy, used Montesquieu's formulation to define the body politic or the republic.[25]

The two theorists approached problems of sovereign identity and the sovereign exercise of power differently and yet reached surprisingly similar conclusions. Montesquieu, the mentor of liberal representative government, separated representation from democracy; Rousseau, the mentor of direct legislation as the principle of political legitimacy, separated representation from sovereignty. Montesquieu argued that a state where the people delegated their "right of sovereignty" could not be democratic and must be classified as a species of mixed government, actually an elected aristocracy. Rousseau saw such a state as nonpolitical from the start and illegitimate because the people lost their political liberty along with the power to vote directly on legislation: unless all citizens were lawmakers, there was no such thing as a citizenry. In both cases, democracy and sovereignty excluded representation. These are the theoretical assumptions underlying the arguments of contemporary scholars who describe representative government as undemocratic and representation as an expedient or second best.

The incompatibility between representation and democracy has traditionally been defined from the perspective that democracy is *immediate*, a perspective that a priori excludes indirect forms of political action because it is entrenched in a voluntaristic and decisionist conception of sovereignty. Hence the conclusion that although representation may facilitate political decision-making in large states, it is not democratic because it displaces the sovereign will, which cannot be represented, and because it makes the people politically active only the day they make themselves slaves, as Rousseau tells us in *The Social Contract*.

Athens is not the source of the incompatibility doctrine. Proponents and critics of the incompatibility between representation and democracy presume direct sovereignty and sovereignty as will when they portray representative government as a breach of political autonomy.[26] From this perspective, the claim that representation does not necessarily break with people's presence seems at the very least counterintuitive and the conclusion that representation violates democracy both predictable and predetermined. Also predictable is the conclusion that the democratic evolution of the nineteenth and the twentieth centuries notwithstanding, a "represented democracy," although technically feasible, is an

oxymoron, while direct democracy, although the norm, is impractical. I am challenging this idea of democracy shared by skeptics of both "pure" and "representative" democracy.

The government of the moderns is not defined by election per se, but by the relationship between participation and representation (society and the state) instituted by elections. This relation is permeable to the transformations of society and, therefore, sovereignty. Besides, as Rousseau understood, direct sovereignty does not entail renouncing elections nor, conversely, restoring lottery, the system of selection that since the constitutional dialogue in Herodotus' *Histories* has been identified with democracy. The crucial factor of representation is the relationship between the inside of state institutions and the outside created by elections.

Contemporary studies of representation are characterized by three distinct approaches. On the one hand, scholars investigate the issue of representation as part of the broader analysis of identity politics, group rights, and multiculturalism. Representation is in this case a subset of theories of justice, and is discussed with a view to solving deficits of representativity in our advanced pluralist democracies, the visible fact that some portions of the citizenry are underrepresented or proportionally less represented than others. Hence the challenging debate over equal representative opportunity, fair representation, and the search for electoral systems that can make representation more expressive of the identities and claims of the represented.[27]

The second direction analyzes the origins, function, and the semantic and political transformations of representation in terms of the effect of its relationship to the modern constitutional state and to the democratic constitution in particular.[28] While the former direction is essentially evaluative, this one is fundamentally analytical and cognitive. Its goal is to attain a systematic definition that allows us to understand what representation actually does and is in relation to democracy and the norm of political autonomy or liberty. Its basic and obvious starting point is the ambiguity of representative democracy, which is vague in the sort of way H. L. Hart defined an ambiguous definition: "a definition which tells us that something is a member of a family cannot help us if we have only a vague or confused idea as to the character of the family."[29]

The third direction approaches representation from within, in order to understand how it shapes consent formation, political deliberation, and decision-making—in a word, how it relates to the overall practices of participation. The extremely rich debate over deliberative democracy

has encouraged this line of research and inspired my research.[30] I believe that the inquiry over the relation between representation and democracy, that is to say democratic society in its multifarious forms of presence and associational influence, is the key to the issue of justice in representation *insofar* as it is an issue of *democratic (as political)* justice or political equality.

Bernard Manin's *The Principles of Representative Government* and Hanna Fenichel Pitkin's *The Concept of Representation* are the main points of reference in relation to which I structure my argument. Manin's analysis attempts to combine the two contemporary approaches to democracy—the Schumpeterian or elitist one and the deliberative one—in order to argue that representative government is a unique form of government. Its uniqueness, however, derives from election, not representation. Representation plays no substantial role in Manin's work, whose main goal is to prove this system is not identifiable with democracy. Whereas democracy practices rotation, representative government practices election, a mechanism of selection that is inherently aristocratic because it discriminates and excludes. However, it can be realized through democratic means, such as universal suffrage and the public discussion of ideas, two necessary conditions for the candidates to compete on promises, and for the elected to be held accountable for what they have made of their promises. To make his point, Manin interprets the work of the French and American founders of constitutional representative government as driven by the deliberate choice of using elections as an alternative to democracy.

Manin concludes by collapsing representation into electoral authorization, which he sees as the outcome of an individual-to-individual relationship by which means the elector evaluates the personal skill and qualities of the candidate(s) in relation to her/his own skills and qualities and those of all other candidates. The political process consists in a psychosocial game of comparison between individuals—the candidate(s) by the elector(s)—with no intermediary institutions needed. (Manin sees the party as accessory and temporary—in any event, as not essential to representative government.) In the spirit of Montesquieu, he posits the aristocratic nature of elections as a way to choose someone because of his actual or imputed characteristics; election's democratic character is based on the traditional assumption that the many are better than the few in recognizing competent individuals but worse than them in acting competently.[31]

The individual-to-individual rendering of representation is the main obstacle to the reconciliation of representation and democracy. This is

the perspective that leads Manin to the conclusion that electoral suffrage has produced no change in the practice and institution of representation, which are substantially the same today as they were when only few citizens had the right to vote. According to this description, democratic representation is invariably an elected form of oligarchy or aristocracy.

In her seminal *The Concept of Representation*, Pitkin opens the door to the path I am taking here. She begins her study on representation with the acknowledgment that "through much of their history both the concept and the practice of representation have had little to do with democracy or liberty."[32] Her goal is to question this view and to illuminate the unique features of political representation in constitutional democracy. However, in the course of her research, Pitkin focuses essentially on the semantic and conceptual analysis of the category of representation. As for political representation—the subject of the last chapter of her book—she approaches it as a form of political agency but does not inquire into its relation to sovereignty and democracy or the kind of political participation that representation brings about in a democratic society. Pitkin brings together conceptual and semantic analysis and gives this combination a normative twist, but makes the examination of deliberative institutions and their relation to society peripheral.[33] In this respect, Manin's book is a welcome complement because it redirects our attention to the deliberative work of modern government.

I would like to reunite the normative aspect (what political representation putatively is supposed to be) with the institutions of democratic government (what representation produces or does). I argue, first, that representative democracy is neither an oxymoron nor merely a pragmatic alternative for something we, modern citizens, can no longer have, namely direct democracy; and, second, that it is intrinsically, and necessarily, intertwined with participation and the informal expression of "popular will." Whereas theorists of electoral democracy collapse democracy into the right to vote for representatives, I propose we stretch the meaning of representation and see it as a political process and an essential component of democracy. It is essential to reflect on the democratic aspects of political action and practice that representation puts in motion both to complete our conceptual understanding of representation and to apprehend the normative condition and the principles of representative democracy. Finally, as Pitkin argued, it is paramount that we understand government is representative "not by demonstrating its control over its subjects but just the reverse, by demonstrating that its subjects have control over what it does."[34]

I take Pitkin's words as a propaedeutic to chapter 1, whose main goal is to set out the normative guidelines of a democratic theory of representative government, which the ensuing chapters are meant to elucidate. The main argument of the first chapter is that democratic representation presumes a revision of the notions of both representation and sovereignty. As for the former, I make three main claims: that representation belongs to the history and practice of democratization; that different theories of representation are possible depending on the relationship between state and society; and that the political theory of representation is consistent with a democratic relation between state and society. As for the latter, I argue that representation challenges the idea of sovereignty as unrepresentable will by bringing judgment into the politics of the sovereign; this revision is visible through representativity and advocacy, the two basic characters of democratic representation. These are the normative guidelines of representative democracy as an articulated strategy of law formation *and* surveillance and revocation, and of democratic representation as a middle path between an unconditional delegation and the refusal of any delegation, or between electoral authorization of an aristocracy and direct democracy.

Chapter 2 discusses the objections to representation, which the theory of representative government has traditionally relied upon. My main theme here is a critical analysis of Rousseau's conceptions of sovereignty and representation. Rousseau denied representation a political role and confined it rigorously to a private relation of delegation. The point is that a decisionist sovereign is *not* necessarily democratic; and the people's unmediated presence in the assembly *does not* necessarily prefigure a truly participatory polis. In chapter 3, I engage Rousseau's arguments against representation through Immanuel Kant's revision of the sovereignty of the will. Kant was the first theorist to make indirect politics the norm rather than merely an expedient, and to capture the extraordinary potential that flows from judgment, an essential component of political liberty.

In the remainder of the book I explain how the sovereignty of the will and its revision by means of judgment can enhance certain results once we enter the realm of representative government. In chapter 4, I critically examine the main tenets of electoral democracy as formulated by Sieyes, the theorist and political leader who brought Rousseau's perspective into the representative context. From a theoretical viewpoint, the metamorphosis of the citizen into the elector corresponds to the application of the power of the sovereign-people to the sovereign-nation represented in the legislative assembly.

The outline of the constitution written by le Marquis de Condorcet in 1792–93 allows me to discuss an important alternative to both models of absolute sovereignty—direct and electoral—and the minimalist view of political participation they entailed. Thus in chapter 5 I clarify the differences between representative government and representative democracy as Thomas Paine first envisioned them in the course of his 1791 debate with Sieyes, and in chapter 6 I analyze the first comprehensive proposal of democratic representation as a norm of good government. The goal of Condorcet's constitutional plan was to regulate the creation of authority "from the bottom up" by means of a flexible and permanent relationship between participation and representation. Its aim was to prevent the "despotism" of the representative assembly, on the one hand, and the random fluctuation of the people between a state of depoliticized apathy and a state of extralegal mobilization, on the other.

Rousseau, Kant, Sieyes, Paine, and Condorcet were almost contemporaries and in a quasi-direct dialogue. Moreover, Rousseau's unrepresentable sovereign was the reference point in relation to which Sieyes and Condorcet developed their constitutional and representative designs in the years between 1789 and the beginning of the Terror. The differences between the political orders they devised prove that there have been important attempts to create, not only to theorize, a system of government within which the electoral and aggregative moment was not a substitute for democracy and a synonym for representative democracy. Furthermore, they exemplify the inner ramifications of the representative model in an undemocratic branch and a democratic one.

To strengthen my case for a democratic representation I pursue a genealogic strategy. Indeed, if Manin is correct that "representative government remains what it has been since its foundation" in the eighteenth century, then a challenge to its main tenets suggests that we return to its very foundation and test the idea that representative government had a simple and linear story. Despite its success, the electoralist rendering of representative democracy does not exhaust the meaning of representation and democracy, and the possibility of a different approach and different institutional solutions. Representative government is a far from homogenous category and can be best described as a complex and pluralistic family whose democratic wing is not the exclusive property of those who argued for participation against representation. Condorcet's vision and project were intended as guidelines for a democratic implementation of representative and deliberative procedures. They support my argument that despite the substantial uniformity of the paradigm of representative government in the last two centuries, the dualistic space

(citizens/representative institutions) created by elections has not always been seen as an ideal solution—certainly not when the demos became democratic in its composition.

Questions about the identity of representative government are normative or evaluative, not merely descriptive or nominalist. They are normative questions because the way we frame the answers indicates what we ask of our political institutions, how we judge their function and their consistency with democratic values and principles. After all, when we express our dissatisfaction with the way in which we are represented, we implicitly allude to some ideal of democratic representation. How could we make our criticisms otherwise?

This question allows me to clarify the reasons why the topic of democratic representation is also relevant to political theory. Undeniably, if we endorse democracy as the norm of a legitimate government and representation as its necessary denial we are left with little to say about our political regimes except that they are a mockery of the norm. The paradox being that since our condition is a fact this "science" confronts us with, we are fated to accept it while denying it the honorable status of the political. If our states are simply and necessarily elected aristocracies or oligarchies, political theory is stuck between the proverbial rock and a hard place. It can either capitulate to positivistic behaviorism and the science of public opinion surveys, or become a hopeless lament of our political condition. The former makes a critical vision literally inconceivable; the latter deprives a critical vision of any substance since there is nothing worth criticizing in a world congenitally lacking in politics. A de-normativized realism would invariably become the only theoretical dimension of our political discourse.

Yet its claim for a disenchanted objectivity notwithstanding, the electoralist paradigm reflects a political attitude that is not ideology-free or neutral. It suggests, quite explicitly, what citizens and political theorists either should do or should abstain from doing because it tacitly assumes that citizens should not judge representative institutions from the perspective of normative democratic premises since these are at best ideals with no connection to reality and at worst strategically deployed ideological discourses, and it tacitly assumes that political theorists should not go beyond an analytical understanding of the way institutional and electoral mechanisms function if they are to avoid slipping into ideology. How could we demand that our governments act in a way they were not designed for?

If it is true that the democratic evolution left the central institutions of representative government unchanged, then it is futile to speak of a

"crisis of political representation." It is just as futile to consider representation a betrayal of democratic promises, or even to express dissatisfaction with the way our government represents us because this would imply that we have an ideal of representation which is democratic for reasons that go beyond electoral consent. Yet, as the theory goes, the representative system can make no democratic promises beyond universal suffrage. Thus whether or not the government of the moderns is democratic depends on how elites are selected and how their selectable characteristics are formed. The extent to which representation is democratic relies on the extent to which these characteristics are not associated with inborn qualities but can be *de jure* acquired by all. Schumpeter's classical formulation still seems to be the best rendering of our system of government: what makes governments democratic is the equal right and possibility citizens have to elect and be elected, to dismiss and be dismissed.[35]

Elections simultaneously separate and link citizens and government. They create a gap between state and society at the same time as they allow each to communicate, and even conflict with one another, but never intermingle. As the only institutional site of popular will and the point of contact between the parliament and the extraparliament, elections can be seen from different political angles. They can be used to recreate the body of the sovereign at the symbolic and institutional level, thereby dampening social and political conflicts, and periodically restoring the balance between legitimacy and legality. They can also serve as a provisional truce between the institutional powers and the sovereign that keeps the conflict alive yet never creates a stable balance between the two. Or, as the history of European socialist parties shows, they can serve as a substitute for revolution, a legalized battle that, while de-radicalizing social claims, carry out the civic function of educating the formerly excluded to citizenship and making them identify with the nation.

Whatever the role elections have played in theory and practice, popular mobilization has always been, and still is, contingent upon the existence of exceptional political circumstances; it is not a precondition of the electoral procedure, whose aim is actually to make people's direct participation inessential to the performance of deliberative institutions. The deterrent power of elections lies in their ability to stimulate decisional activism in those who can be held accountable: the representatives, not the people. Elections make apathy, not agency, the main quality of popular sovereignty. A post factum strategy of control, they make citizens' participation during the period between elections superfluous, and in

this sense make democracy an accessory to representative government. Politicians are sufficiently constrained by their concern with polls.[36] Their ambiguous character explains why elections make representative government amenable to democratization but never truly democratic.

The dilemma remains. If elections alone qualify representative democracy then it is hard to find good arguments against the critics of contemporary democracy who, from the left and the right, set out from time to time to unmask the role of the people as a "mere myth." It would be just as hard to devise criteria to detect and obstruct the oligarchic degeneration and corrupting practices of representative institutions. The very proposal to extend the meaning of democratic deliberation to include the informal discursive character of a pluralistic public sphere of associations, political movements, and opinions risks looking like an ideological refurbishment, functional to the new communicative strategies for elite selection. Indeed, it is a fact that only the elected have both deliberative and decision-making power, unlike the citizens, whose freedom to discuss and criticize proposals and policies does not ensure that their opinions will affect the legislative setting. In addition, given the alleged undemocratic nature of representative government, the very attempt to resort to the model of mixed government in order to claim (contra its critics) that representative government has a democratic dimension is bound to fail. Indeed, unlike classical mixed government, in which the people had after all a direct although limited say in political deliberation, a government that relies only on electoral participation resembles an authorized oligarchy rather than a mix of democracy and aristocracy.

Yet notwithstanding the fact that the institutional history of representative government resembles a story that has not been substantially edited since the eighteenth century, the adoption of universal suffrage has produced radical changes that cannot be appreciated unless we review the overall political life generated by the representative process.[37] Democratic society reveals the limits of a conception of representation as an individual-to-individual relation between the candidate and the electors sealed by elections. Since leaders and institutions are susceptible to organized social influences more than to the influence of scattered individuals, the dualism between representative institutions and society hardly serves its intended role.[38] It is thus both timely and constructive to approach the subject of political representation from the perspective of democracy rather than as a betrayal of it.

A democratic theory of representation compels us to go beyond the intermittent and discrete series of electoral instants (sovereign as the

authorizing *will*) and investigate the continuum of influence and power created and recreated by political *judgment* and the way this diversified power relates to representative institutions.[39] While it is true that the will cannot be represented, it is also true that judgment, which is an essential faculty in a political order based on opinions, majority rule, and indirect politics, *can* be represented. Approaching representation and participation from the perspective of judgment rather than the will makes us fully appreciate the worth of indirectness in democratic politics. Indirectness (and speech as the highest form of indirectness) makes room for deliberation by encouraging the distinction between "deliberating" and "voting." A deliberative form of politics favors representation and meanwhile fosters a relationship between the assembly and the citizens that enables the demos to reflect upon itself and judge its laws, institutions, and leaders. In a word, representation can encourage political participation insofar as its deliberative and judgmental character expands politics beyond the narrow limits of decision and voting. It can be a mechanism of democracy's self-creation and improvement.

Representation
and Democracy

In that it is both an aspect of electoral behavior and a mechanism for determining government's responsiveness to the public, representation has acquired the status of a democratic institution in political science. This despite the fact that political representation is not associated exclusively with democracy (it predates modern democratic states and exists in states that are not democratic); in fact, its relation to democracy is permanently subject to debate. Yet the picture becomes more complicated when we move from political practice and survey analyses to political theory.

Indirectness in politics has never enjoyed much currency in democratic theory. Direct rule was generally seen as paradigmatic because it entails a fusion of "talking" and "doing" in political action and the full participation of all citizens in the decision-making process.[1] Rather than naming a political order, "today, in politics, democracy is the *name* of what we cannot have—yet cannot cease to want."[2] The modern "discovery" of representation has not seriously challenged this paradigm. Participatory democrats disdain representation because it justifies a vertical relation between the citizens and the state and promotes a passive citizenry and an elected aristocracy.[3] Procedural theorists of democracy give representation merely an instrumental justification and see it as a useful "fiction" that applies the division of labor to governmental functions.[4]

Democratic theorists give representation a cold reception because it refers to political processes that are internal

to the state, rather than to a form of democratic participation. Indeed, its democratic credentials come from election in *time1* and *time2*, events that tell us representation's inception and termination, not its life span. As a result, political theorists emphasize the nondemocratic nature of representation, notwithstanding the successful performance of representative democracy. "Democratic theory has little to gain from talking the language of representation, since everything necessary to the theory may be put in terms of (a) legislators (or decision-makers) who are (b) legitimated or authorized to enact public policies, and who are (c) subject or responsible to public control at free elections."[5] In other words, the main concern of theorists of democracy should be the citizens' "opportunity" "to practice direct democracy" in a representative system, rather than representation itself.[6] According to Jane Mansbridge, in order to successfully address the issue of the norms appropriate to a representative system, the first order of business is to "assume" that "representation is, and is normatively intended as, something more than a defective substitute for direct democracy."[7] The implication being that theorists intuitively assume the democratic norm as direct rule by the citizens rather than representation, the consolidation of representative institutions and the reliability of electoral behavior surveys notwithstanding.[8] It seems there is no way to make representation what it cannot be: a valid substitute for direct democracy.

Representation in Democratic Theory and History

Despite the fact that theorists have trouble squaring the circle of the ideal (direct presence) and the real (indirect action) in democracy, significant historical examples invalidate the "defective substitute" argument. I shall cite two cases where democratization took the path of representation, one pertaining to civil society, the other to state institutions. The first example, the social movements that swept Europe during the late 1960s, is relatively recent. Although they are generally associated with assembly-driven behavior and the call for direct democracy, issues of representation defined the democratic goal of those social movements, which in large part began by denouncing either the lack or the emptiness of representational rights in the workplace, the university, and the high schools. This was particularly true in Italy, where factory strikes followed the dismantling in the mid-1950s of the workers' representative structures, a management decision whose goal was to gain full control over the organization of the productive processes

(scheduling, hiring and firing criteria, wages, benefits, and environmental policy). When strikes began in the fall of 1969, Italian industrial relations were despotic in the classical sense of the word, and resembled European absolutist states before the parliamentary revolutions.[9] This made the workers' claim for inclusion in the factory system of representation foundational rather than simply instrumental. It implied a radical transformation of how collective objectives became issues of common interest and how people wanted to be recognized within the framework of extant power relations.[10]

The Italian case is reminiscent of the way the protagonists of the first constitutional revolution saw the struggle for political representation. Their demand that legislative power be transferred from the king to an elected parliament, and furthermore that seats in the House of Commons be assigned in proportion to the population of the counties of England, amounted to a claim for popular sovereignty. The Levellers foresaw the democratic implications of their call for representation when they claimed that the central problem of popular sovereignty (which they identified before any doctrine of popular sovereignty was formulated) was that of setting limits on a government that derived its authority from the people themselves, who, for this very reason, vindicated the right to a voice through free speech and the ballot.[11] The designation of representatives in recurrent elections was the basic requisite of sovereignty *or* the liberty of the people. "If therefore the knights, citizens and burgesses sent by the people of England to serve in parliament have a power, it must be more perfectly and fully in those that send them. But (as was proved in the last section) proclamations, and other significations of the king's pleasure, are not laws to us."[12] Algernon Sidney was arguing against Robert Filmer, whose defense of absolute monarchical sovereignty was based on the idea that the parliament should be consultative, not representative, thus explicitly linking representation to a popular (democratic) redefinition of sovereignty.

As Mark A. Kishlansky's painstaking analysis of the birth of the electoral process in seventeenth-century England shows, there was a chronological and functional link between the adoption of the electoral method to appoint lawmakers, the transformation of the elected from delegates to political representatives, and the emergence of ideological forms of grouping.[13] Although elections have been considered an aristocratic institution since classical times, in modern states the electoral process stimulated two movements that became crucial to the birth of democracy. On the one hand, it touched off a separation between society and politics, or better said a transition from *symbiotic* relationships between the

delegates and their communities to forms of unification that were thoroughly *symbolic* or *politically constructed*. On the other, the disassociation of the candidates from their social class foregrounded the role of speech and ideas in politics and finally the unifying function of representation. A similar process took place in France with the revolution of 1789. Here too, elections gave birth to entirely new cleavages and identifications made according to ideological criteria by deliberation and voluntary associations among legally equal voters. Clubs and political aggregations overtook the whole country, binding people who lived far away and severing neighbors.[14]

Clearly, representation activates a kind of political unification that can be *neither* defined in terms of a contractual agreement between electors and elected *nor* resolved into a system of competition to appoint those who are to pronounce the general interest of all, as the eighteenth-century framers of representative government thought. A political representative is unique *not* because he substitutes for the sovereign in passing laws, but precisely because he *is not* a substitute for an absent sovereign (the part replacing the whole) since he needs to be constantly recreated and dynamically linked to society in order to pass laws.[15] This renders the view of elections as a selection mechanism for the political leadership incomplete, although elections do produce a political class and initiate a division of labor within the polity. Elections always contribute to the formulation of the country's political direction, a process the citizens activate and sustain through multiple forms of political presence, neither just as electors nor through permanent mobilization.[16] On this ground, it is correct to say that democratization and the representative process share a genealogy.[17]

Three Theories of Representation

Kishlansky's analysis of the English case implies that elections and representation should be analyzed in terms of the *relationship* between state (the government) and civil society. Although the electoral structure of representation has not changed much in two centuries despite the extension of suffrage, theorists should not overlook the crucial changes the democratic transformation engendered in the functioning and meaning of representation.[18] The emergence of the "people" (the citizens) as an active political agent did not merely refurbish old institutions and categories. The moment elections became an indispensable and

solemn requirement of political legitimacy, state and society could no longer be severed and the drawing of the boundaries separating—and connecting—their spheres of action became an ongoing issue of negotiation and readjustment. Representation mirrors this tension. It could be said that it reflects not simply ideas and opinions, but ideas and opinions about citizens' views of the relation between society and the state. Any claim that citizens bring into the political arena and want to make an issue of representation is invariably a reflection of the struggle to re-draw the boundaries between their social conditions and the legislation.

Three theories of representation can emerge when we look at how representative government has operated throughout its two-hundred year history, from early liberal parliamentarism to its crisis and finally its democratic transformation after World War Two.[19] Alternatively, we can say that representation has been interpreted according to three perspectives: juridical, institutional, and political. They presuppose specific conceptions of sovereignty and politics and, consequentially, specific relationships between state and society.[20] All of them can also be used to define democracy (direct, electoral, and representative, respectively). Yet only the latter makes representation an institution that is consonant with a pluralistic democratic society.

These three conceptions are recognizable in the writings of the authors I have chosen to analyze (certainly Rousseau, Sieyes, and Condorcet). I must caution that they belong to a time when representative government had not yet become the object of sophisticated political science and practice, and society and state institutions had not yet undergone a democratic transformation. Yet in spite of their pristine straightforwardness, or perhaps because of it, their conceptualizations allow us to easily disaggregate the complex phenomenon of representation along the lines of the identity of the demos and the forms of their political presence.

The juridical and the institutional theories are closely interconnected. They are both grounded in a State-Person analogy and a voluntaristic conception of sovereignty, and they are rendered in formalistic language. The juridical theory is the oldest and requires more attention because it set the model for the institutional one, which was its gemmation. It predated the modern conception of state sovereignty and the electoral designation of lawmakers. It is called juridical because it treats representation like a private contract of commission (granting "license to perform an action by some person or persons who must possess the right to perform the given action themselves").[21] Delegation with binding

instructions and alienation with unbounded trust have traditionally been the two extreme poles of this model, the former epitomized by Rousseau and the latter by Hobbes (although he did not theorize a representative "trusteeship") and moreover Sieyes and Burke (although the latter did not ground representation on a contractual base).[22] Regardless which of the two poles it emphasizes, the juridical model configures the relationship between represented and representative along the lines of an individualistic and nonpolitical logic insofar as it presumes that electors pass judgment on candidates' personal qualities, rather than their political ideas and projects. According to this approach, representation is not and cannot be a process, nor can it be a political issue (implying for instance a claim of representativity or fair representation) to begin with for the simple reason that, in Pitkin's words, representation would be "by definition" "anything done after the right kind of authorization and within its limits."[23] As Anthony Downs has candidly conceded in commenting on the effects of the application of the private (as contractual) model of representation to democracy he endorsed, "there is nothing for representatives to represent."[24]

The juridical theory of representation clusters issues of state power and legitimacy within the logic of *presence/absence* (of the sovereign) and detaches representation from advocacy and representativity, the two political manifestations that spring from its unavoidable relation to society and citizens' political activity, as I will explain in this chapter. With Hobbes, its first modern interpreter, this approach developed into a technology of institution-building that became enormously influential for both the theorists of representative government (certainly Sieyes) and their critics. For instance, during the crisis of parliamentarism, at the beginning of the twentieth century, Carl Schmitt revived the constructivist function of representation conceived by Hobbes and Sieyes and used it to *make the absent present,* or to reconstruct the organic unity of the *volk* above (and against) the pluralism of social interests and through the personification of the sovereign (in the leader or *führer*). His goal was a more strongly unified state than was possible through the parliamentary compromise among interests or "government by discussion."[25] In its radicalism, Schmitt's case is a useful example of the incompatibility between representation as a technique for achieving a (mystical) unity of the community and political representation.

The juridical theory of representation opened the door to a functionalistic justification of political rights and representation, citizenship, and decision-making procedures. Its rationale became the backbone of liberal representative government and, later on, electoral democracy. It is based on a clear-cut dualism between state and society; it makes representation into a rigorously state-centered institution whose relation to society is left to the judgment of the representative (trustee); and it restricts popular participation to a procedural minimum (election as magistracy designation).

In sum, the state-centered perspective implied by the juridical and the institutional theories prefigures two possible scenarios. On the one hand, as Rousseau argued, representation has no place in the discourse of political legitimacy for the obvious reason that it means transferring the power authorizing the use of force (the sovereign power) from the commonwealth as a whole to its part(s). On the other hand, as Sieyes argued, representation can be a strategy of institution-building on the condition that the subjects are given only the job of selecting the lawmakers. In this case also, sovereignty is essentially voluntaristic, its will narrowed to the (electoral) will with the result (and conscious intent) that the sovereign nation speaks only through the voice of the elected. On this account, parliamentary sovereignty can be seen as an electoral transmutation of Rousseau's doctrine of the general will, although, paradoxically, once transferred to the represented Nation, that will becomes a strategy for "blocking the way to democracy."[26]

Both the juridical and the institutional theories of representation assume that the state (and representation as its productive and reproductive mechanism) must transcend society in order to ensure the rule of law; and that the people must hide their concrete and social identities to make public officials impartial agents of decision. As we shall see in chapter 4, the juridical identity of the elector/authorizer is empty, abstract, and anonymous, its function consisting in "designating" professional politicians who make decisions to which electors voluntary submit. Hence, "what we find in the system called representative is that it is not a system of *representing* the people and the will of the nation, but a system of *organization* of the people and the will of the nation."[27] The underlying assumption of the split between "the man" and "the citizen" that Karl Marx so famously denounced for its asinine hypocrisy was that the political sphere must be independent from the social sphere (and in particular economic interests and religious beliefs) in order for legal equality and the impersonal organization of the state to be obtained. This is the axiological premise common to both these theories of representation and the logical outcome of their constructivist approach to sovereignty.[28] They emerged and were shaped before the democratic transformation of society and the state and remained essentially impermeable to it.

The third theory breaks with these two models. It creates a new category altogether insofar as it considers representation dynamically rather than statically: representation is not meant to make a preexisting entity—i.e., the unity of the state or the people or the nation—visible; rather, it is a form of political existence created by the actors themselves (the constituency and the representative). This theory vindicates the specificity of political representation in relation to all other forms of mandate and in particular the private or contractual scheme of authorization. Representation does not just pertain to government agents or institutions, but designates a form of political process that is structured in terms of the circularity between institutions and society, and is not confined to deliberation and decision in the assembly. "It is the task of the popular representatives thus to coordinate and criticize. The necessary unity does not logically follow from the unity of the representer, as Hobbes would have it, but must be created and constantly re-created through a political process of dynamic activity."[29] Its gradual consolidation during the twentieth century along with the adoption of universal suffrage (although an earlier formulation can be found in John Stuart Mill's arguments for proportional representation) reflect the democratic transformation of both the state and society and the growth of the complex world of public opinion and the associational life that gives political judgment a weight it never had before. Depicted by Carl J. Friedrich in a chapter that is a masterpiece of clarity, we owe its most democratically oriented reformulation to Hannah Pitkin: "representation here means acting in the interest of the represented, in a manner responsive to them."[30]

The political conception of representation claims that in a government that derives its legitimacy from free and regular elections, the activation of a communicative current between civil and political society is essential and constitutive, not just unavoidable. Reversing the maxim held by the previous two theories, it claims that the generality of the law and the standards of impartiality implied by citizenship neither should nor need be achieved at the expense of the political visibility of "the man" (read, "social" identity as distinct from and opposite to "political" identity).[31] The multiple sources of information and the varied forms of communication and influence that citizens activate through media, social movements, and political parties set the tone of representation in a democratic society by *making the social political.* They are constitutive components of representation, not accessories. Will and judgment, immediate physical presence (the right to vote), and a mediated idealized presence (the right to free speech and free association) are inextricably intertwined in a society that is itself a living confutation of the dualism between the politics of presence and the politics of ideas since all presence is an artifact of speech.

The aim of this book is to elucidate the political conception of representation. It is a *democratic revision* of Rousseau's theory of popular sovereignty. This is not paradoxical. As we shall see, the democratic revision of Rousseau's absolute collective decisionism began the moment judgment (deliberation) challenged the monopoly of the will in the definition and practice of political liberty. I call it a "revision" of popular sovereignty rather than a demolition, because I argue that representation does not erase the center of gravity of the democratic society (the people). Political representation scorns the idea that electors rather than citizens hold this center, that the act of authorization is more important than the process of authorization. It marks the end of a yes/no politics and the beginning of politics as an open and common arena of contestable opinions and revisable decisions. It amplifies the meaning of presence itself because it makes *voice* its most active and consonant manifestation and *judgment* about just and unjust laws its content. One might say that political representation provokes the dissemination of the sovereign's presence by making it an ongoing and regulated job of reconstructing legitimacy.[32]

Continuity, Rupture, and People's Negative Power

When liberal constitutionalism set itself up as a conscious project of state-building in the eighteenth century, political leaders and theorists thought that the dualistic space of citizens and representative institutions produced by elections was the sine qua non of impartial and competent lawmaking because it protected the deliberative setting from both the tyrannical passions of the majority and the particular interests of factions. This belief permeated the writings of authors as diverse as Madison and Burke, who advanced an elitist rendition of Rousseau's public reason by making it the achievement of virtuous selected citizens. The problem, though, is that since leaders and institutions are vulnerable to, rather than impartially detached from, social influences, this dualism did not, and does not, function as intended. Only if representatives were impartial, virtuous, and competent *motu proprio* could insulating their will from the citizens solve the problem of partiality and corruption. If that were the case, though, elections would be pointless.

Yet the choice of election as a method of selection proves two things: first, neither the people nor the government can count on luck for good lawmakers; and second, there is no such a thing as a naturally selected and self-referential aristocracy. Although elections are a formally limited method of control because post factum and only indirectly anticipatory, they testify to the fact that in a democracy representatives should not and never can be insulated from society. Historically speaking, this was why elections were synonymous with democracy and why the call for representative institutions was synonymous with the people's claim for sovereignty. In amending the minimalist conception of democracy, I would say that electoral competition has two outstanding virtues, not one: while it teaches the citizens to rid themselves of governments peacefully, it also makes them participants in the game of ridding themselves of governments. "The apparent consensus that elections are significant conceals deep disagreements about whether and how they serve to link citizens to policymaker."

This is why the right to vote does more than just "prevent civil war."[33] The right to vote engenders a rich political life that promotes competing political agendas and conditions the will of the lawmakers on an ongoing basis, not just on election day. It encourages the broad development of extraelectoral forms of political action, although with no guarantee that political influence will be distributed equally or become authoritative. Furthermore, it highlights the paradox of the instrumentalist view of representation, which on the one hand refers to the people's opinion as the source of legitimacy and on the other claims that representatives make good and rational decisions as long as they shield themselves from "a forever-gullible popular opinion."[34]

The paradox of this nonpolitical (as competence-driven) approach to politics is that despite its claim to be the hallmark of economic and civil liberties and constitutionalism, it paves the way to a theory of institutions that is just as unsympathetic to representation as Rousseau's theory of direct government. It presumes that the representative must be deaf to public opinion in order to make good decisions. As I shall explain in the last section of this chapter, at the heart of this paradox lies the often unspoken formalistic view of citizens' participation as the electoral verdict of the sovereign (magistracy authorization) and a narrow view of democratic deliberation as a process that involves exclusively the elected and refers to authoritative decisions. The result is an "incomplete and distorted view" of what representatives are and how they should act.[35] The predictable conclusion is that election works to empower a professional class that deliberates over the heads of the citizens, whose only

function is to "accept" or "refuse" their leaders and never interfere with them while they go about their business since they "must understand that, once they have elected an individual, political action is his business and not theirs."[36]

Important attempts have been made to encourage a nonformalistic interpretation. As a matter of fact, since its constitutional inception, representative government has belonged to a complex and pluralistic family whose democratic wing was not the exclusive property of those who advocated for participation against representation. As this book argues, eighteenth-century American and French revolutionaries used two distinct terms to denote their innovative enterprises: *representative government* and *representative democracy*. Although both terms were sometimes used synonymously, the more perceptive political leaders were aware of the differences. For instance, Sieyes never used the latter, but Condorcet, who thought that the sovereign citizen should have the rights *and* the "legal means" to be active whenever he/she deemed it "useful or necessary," did. Appointing representatives was not the only way to participate or the only function attached to the *droit de cité*.

Retrieving Condorcet's insight, I argue that the specificity and uniqueness of modern democracy is necessarily based upon, although not confined to, the casting of "paper stones" by means of the ballot.[37] It lies in the *circularity* elections create between the state and society and the continuum of the decision-making process that links the citizens and the legislative assembly. This is also the rationale of the discourse theory of popular sovereignty, an important contribution to a democratic interpretation of representation. Yet the discourse theory provides only a partial picture of the political process of representation because while it stresses communication as "the socially integrating force" unifying the parliamentary and extraparliamentary moments, it is insufficiently attentive to the moments of *rupture* of that communication, moments of *circuitry* that bring to the floor by default the contribution of *representativity* to the democratic legitimacy of representation.[38]

In Hegelian style, Jürgen Habermas' model of mediation explains the organic relation between the state and society much better than its crises, when the continuity between the representatives and the citizens is interrupted and the latter are likely to generate extraparliamentary forms of *self*-representation; when forms of political spontaneity (new movements) break into the political scene and enrich the plurality of voices. The phenomenon that demands our attention lies between the state of organic normalcy and the extreme event of a violent and radical break of the legal order, when through their active and creative presence citizens

disclose and denounce the political distance between the "real" and the "legal" nation, but do not reclaim the decision-making power.

In a remarkable 1789 essay on types of despotism (discussed at length in chapter 6), Condorcet classified the type of arbitrary rule likely to arise in a government wherein lawmaking results from citizens' consent to be represented as "indirect despotism." *Indirect despotism* "occurs when the people are no longer truly represented or when it [the legislative body] becomes *too unequal*" to them.[39] It brings to the fore issues of *political* mandate and the sympathetic link between the elected and the electing citizens, two essential components of political representation that cannot be explained within the context of politics as will (nor that of electoral democracy) but rely heavily on the role of judgment in political deliberation outside and inside the legislative body. This chapter and the third one are meant to set up the main coordinates for the explanation of these components. Here I need simply to point to the fact that *this* new form of arbitrariness that representative government is primed to engender is not tyrannical in the traditional sense because it does not take the form of a violation of constitutional rules and legal norms. This is the reason why "indirect despotism" does not justify violent forms of disruption of the legal order or exceptional means. It does, however, justify forms of political practice that flag the need to overcome the division within the symbolically unified citizenry. The language of political discourse like that of moral discourse "must be stable enough so that what a man says really does constitute taking *a position,* really tells us something about him"; continuity through the electoral term is the norm we expect representatives to comply with so that we can recognize them, so to speak, or judge them always, not only at the end of their electoral mandate. Since in accepting their candidacy they have accepted to submit their ideas and actions to our judgment, it is not up to them *alone* to assess the significance of the positions they choose freely and responsibly to take; "it is not up to [them] *alone* to decide whether [they have] adequately supported and elaborated the initial claim [they have] entered."[40]

A democratic theory of representation should be able to explain the events of continuity as well as of crisis and moreover encompass the idea that the sovereign people retain a *negative power* that allows them to investigate, judge, influence, and censure their lawmakers. This power is negative for two important reasons: its goal is to stop, curb, or change a given course of action taken by elected representatives; and it can be expressed both via direct channels of authoritative participation

(anticipated elections, referendum, and also recall if wisely regulated so that it is not immediate and above all excludes imperative mandate or instructions) and through indirect or informal kinds of influential participation (social forums, movements, civil associations, media, street demonstrations).[41] The negative power of the people is neither independent from nor antithetical to political representation. Moreover, it is an essential ingredient of representation's democratic performance, ingrained as it is in the very character of this Janus-faced institution with one face turned toward the state and the other toward society. Representativity is, we shall see in a while, the ideal norm in relation to which citizens' negative power may be depicted both as an invigorating force and as an indicator that like a thermometer signals the status of the "integrating force" linking the elected and the assembly they seat with the society. As the symmetrical opposite of communication as a "socially integrating force," citizens' negative power matches the norms of deliberative communication (reciprocity and publicity) to the representative's representativity.

In sum, democratic theory needs to amend both the minimalist and the Habermasian deliberative conceptions in order to comprehend the complex world of representative democracy. In the case of the former, focusing on voting as the temporary resolution of political conflict tells us the location of the authorized "will" to make laws but does not provide us with the complete picture of the democratic game that puts that will in motion and shapes it. In the case of the latter, focusing on the "integrating force of communication" sheds insufficient light on the political frictions that representation's representativity brings about, a quality that is both a matter of degree and oscillation and an ideological construction that is always open to revision and reassessment.

This perspective prefigures some important changes in how representation has been interpreted vis-à-vis democracy and sovereignty. On the one hand, the idea of representation as a *political process* contradicts the static and privatistic or juridical paradigm of contract that has confined (and still confines) the relationship between representatives and represented to electoral authorization as a choice about the candidate's personal merits.[42] On the other, it challenges the modern doctrine of sovereignty that has facilitated the transfer of the language of the contract to political representation. Any analysis of the status and norms of representation (its democratic consistency) leads inevitably to the meaning of popular sovereignty (or the articulation of equality) and the kind of participation it presumes.

Discord and the Ballot, or Presence through Speech and Ideas

"A people of electors by itself is not capable of initiative, but at most of consent"; yet a representative democracy is not a "crowd of inorganic voters" and its citizens are capable of taking direct and indirect initiatives.[43] Political representation invalidates the opinion that society is the sum of disassociated individuals who compete and join together, vote and aggregate preferences by discrete acts of free choice and instrumental calculus. It counters a conception of democracy as a numerical multitude of single or associated units forced to delegate their power for the simple reason that a multitude cannot have a will, cannot exercise any power or be a government. A representational politics renders democratic society an intricate fabric of meanings and interpretations of citizens' beliefs and opinions about what their interests are—beliefs that are specific and differentiated and subject to variation along with people's actual lives. Democracy is unique because it extracts the strength for unity from differences ("people can bond together in difference without abstracting from their differences").[44] It is about the rules of the game but also the actors who play by them, the way they play and the means by which they play.

Rousseau used the argument of the "force of numbers" to counter the classical antiegalitarian appeal to the qualitative and inestimable force of competence. He had to make the popular sovereign into a body of formally identical units in order to accredit the collective with the same unitary will of the individual sovereign. His goal was not to defend democracy but to counter the traditional principle of competence (be it cognitive, moral, or religious) by which means post-Roman European societies had tackled the relation between power and norms. Theorists of representative government have used Rousseau's formalism as their guide and have made the right to vote the bottom line of a democratic legal order.[45] Their argument is that since representation is a vehicle of decision-making, deliberation (within the legislative body) and aggregation (of the votes electing the legislators) should be thought about together.[46] Yet although electoral authorization is essential in order to determine the limits and responsibility of political power, it does not tell us much about the actual nature of representative politics in a democratic society. "Although election 'makes' representation, nonetheless elections do not 'make' the representatives."[47] At a minimum, election defines *responsible* or *limited* government, yet not representative government.

In representative politics, votes are not mere quantities. They mirror the complexity of opinions and political influence, neither of which are arithmetically computable entities. When we translate ideas into electorate votes we sometimes tend to forget this complexity and to assume that votes reflect individual preferences rather than render opinions and beliefs. Much of the argument that the aggregation of votes does not exhaust the expression of opinion is familiar from critiques of social choice theory. Yet some further observations can be thrown in to amend a reading of democratic voting as a participation that serves to select decision-makers not policies. Contrary to votes *on* single issues (direct democracy), a vote *for* a candidate reflects the *longue durée* and effectiveness of a political opinion or a constellation of political opinions; it reflects citizens' judgment of a political platform, or a set of demands and ideas, over time (representative democracy has thus been regarded as a time-regime).[48] Direct voting (or, in Condorcet's words, "immediate democracy") can be represented as a discrete series of decisions (*pointillist sovereignty*). But when politics is scheduled according to electoral terms and the political proposals the candidate embodies, opinions create a narrative that links voters through time and makes ideological accounts a representation of the entire society, its aspirations and problems.[49] This explains why it is that opinions never have equal weight, not even in the hypothetical case of two different opinions receiving the same number of votes. If the weight of opinions were equal, the dialectics of opinions, and voting itself, would make little or no sense. Voting is an attempt to give ideas weight, not to make them identical in weight or with weight.[50]

This might help clarify why voting for candidates (elections) "prevents civil war," to paraphrase the argument of minimalist theorists of democracy. Deterrence is an important explanation that pivots on expectations of both the candidates (reelection) and the electors (future victory of their party). As Dahl suggested half a century ago, elections prevent civil war because losers know they will have another chance in the next election and it is worth forgoing certain bloodshed and chaos for the chance for power the next time around. Electoral authorization and periodical elections is all that is required here. Yet deterrence is a reasonable calculus also because votes reflect opinions only approximately. If those who lose an electoral competition or do not get reelected choose not to rebel and abide by the rules of the game it is *also* because they know their cause is not absolutely lost and can do better next time. (Most of the time an electoral defeat is followed by a process of critical self-analysis by which the losers try to understand what went wrong in their communication with the electors and what can be done to make their ideas better appreciated.) Both winners and losers know that votes

themselves never exhaust their thoughts and actions and there is always room for concern or for hope.

One might thus say that representative democracy reveals the "miraculous" work of opinions and ideological narratives in a way that direct democracy cannot because it compels citizens to transcend the act of voting in the effort to repeatedly reassess the correlation between the weight of ideas and the weight of votes (to preserve or achieve or increase consent). In direct democracy any vote is like a new beginning insofar as it consists in the counting of wills or preferences but is not, nor can it be, representative of ideas; hoping for "the next time" makes no sense when any decision is absolute because it makes *opinions identical with the will* and lacks any historical link to past and future chains of opinions and decisions.[51] In representative democracy the chain of opinions, interpretations, and ideas that seek visibility through voting for a candidate or a party consolidates the political order; discord becomes a stabilizing factor, an engine of the entire political process.[52] It becomes the bond that holds together a society that has no visible center and becomes unified through action and discourse (common experiences of interpretation that the citizens share, tell, recall, and remake incessantly as partisans-friends). As Paine understood, opinions and beliefs can convert power into an endless political process that representation actualizes because it exalts the public world of ideas and the medium of speech, both of which make our votes more meaningful than an infinitesimal portion of the general will. Very effectively, Claude Lefort has stressed the nonfoundational nature of modern (read "representative") democracy, which "by virtue of discourse . . . reveals that power belongs to no one; that those who exercise power do not possess it; that they do not, indeed, embody it; that the exercise of power requires a periodic and repeated contest; that the authority of those vested with power is created and re-created as a result of the manifestation of the will of the people."[53]

This highlights the difference between aristocracy and elected representatives, because although election serves to select those who rule, it disassociates rule from persons and disembodies it. The elected represent an "impersonal power," a power "in office" that is "substituted for personal power." Depersonalization is a crucial solution "to the problem of political power": it frees "the citizens from the *fear of the persons* to whom power is entrusted," no matter whether the persons are some or many.[54] On this assumption, I shall argue in this book that the association between representation and presence (of the sovereign) is misleading because it presumes a personification of power. The indirect character that

politics acquires in representative democracy contradicts the idea that there is something preexisting it, like for instance a single or collective sovereign that seeks pictorial representation through election.[55] Political representation is a political function, the highest in a democracy because it produces laws; it is not merely symbolic and should not be confused with the head of state's function of representing the unity of the nation. The ear is the sensory organ that corresponds to it rather than the eye because ideas are its form, not the physical being, and voice its visibility, not the standing presence.

Ideas and opinions are not like dispersed atoms or accidental entities that magically appear in the mind of the voters. As opinions or beliefs, they must have been formed and developed by men and women together who experience a combination of economic, cultural, or stereotypical factors. Association and communication—either scattered or organized—are essential in the formation of opinions, electoral issues, and the selection of candidates. The "counting of votes is the final manifestation of a long process" in which all participate in different ways and with different prospects of influence and impact.[56] Political representation is the *dynamic synthesis* of two forms of representation—electoral or formal, on the one hand, and virtual or ideological, on the other. It is the medium in the unifying work of opinion formation, radiation, and persuasion, and of the political action people perform in the most democratic sense—directly and publicly, by talking and listening, writing and reading, associating and demonstrating, petitioning and voting, and voting again.[57] To sum up, limited government requires elections, but it is advocacy and representativity (the link to society) that give the originally undemocratic institution of representation a uniquely democratic feature and raise, when they are defective, the specter of a "crisis."

Political representation illuminates and emphasizes the querulous nature of democracy. In the *Republic,* Plato described (and criticized) democracy not *merely* as a system of flat egalitarianism blind to individual specificity in which selection by lot and rotation operate instead of co-optation of the competent for function allocation. In Plato's description, democracy is first and foremost a system in which all citizens disagree over the control of government because all of them claim a say in dealing with and resolving that disagreement. However, like participation in election, rotation and lottery dissipate some disagreement but do not silence quarrel among citizens. But why do citizens quarrel if they know in advance they will all rule sooner or later or, in other words, that they will have another chance to get their representative elected and their party gain the majority?[58]

Democratic theorists overestimate the choice of persons and underestimate, so to speak, the choice of policies and ideas that the choice of persons indicates or represents.[59] Yet the character of democratic competition is shaped by the rules of the game and also the means the citizens use to express and resolve their disagreements—that is, speech—regardless of whether their presence is direct or electoral.[60] Not by chance, classical writers who described Athenian democracy stressed that all citizens had an equal chance not only to compete for power but also to propose a law and win a majority in the *ekklēsia*. The Pseudo-Xenophon's criticism of the Athenian constitution in the name of aristocratic competence is the first relevant document that attacks democracy because it applies lottery and rotation to all citizens indistinctly, not to the best of them only or the equals in kind. A system of government in which the equals are treated equally is not necessarily democratic, although it is certainly egalitarian. This is, for instance, what distinguished Athens from Sparta and why the former rather than the latter was known as a democracy although both used lottery and rotation to select magistrates, required the citizens' direct presence in the assembly, and finally confined citizenship to a relatively small pool of free native adult men.

It is interesting to see that Rousseau (an admirer of Sparta) scorned both representative and direct democracy on the same grounds because since both employed speech as a form of political action (or indirectness) they had to use competition to win consent (be it on issues directly or for a candidate). In his mind, this made democratic politics into a permanent trial of opinions and consent formation in which rhetoric and evaluative judgment—not presence per se and the will—were essential. Even more interesting is the case of Hobbes, who did not believe that electoral democracy and direct democracy were fundamentally different and that only the former had an aristocratic character. Hobbes understood that democracy is always a mixture of equality and aristocracy insofar as it consists both in the equal right to vote *and* in the equal right to speak; and speech is the vehicle for individual distinction, plurality, and quarrel that election regulates.[61]

Democratic society is built around conflict (or "discord" as Machiavelli so aptly called it), not organic unity or harmony.[62] This is also reflected in the type of influence or political presence it promotes. Democratic citizens know that uniformity in the distribution of the basic right to vote does not preclude the possibility that their ideas may not be equally influential. Speech and opinion are mediating tools that exalt individual specificity, interject individual differences in public performance into politics, and lift the veil of anonymity and unanimity from

political equality. Speech gives the vote meaning and stimulates evaluation and discussion of articulated beliefs as well as of those who present them. The distinctiveness of the Spartan assembly was based on the lack of individuation in its procedures. Standing, silent presence, and finally shouting yes/no, served to express assent or denial, not to articulate public judgment and raise debate through voting. "The shout was a ritual of affirmation and celebration. As a process, it was both anonymous and unanimous. It was the very opposite of voting."[63] Hence, whether by lottery, rotation, or election, the democratic presence is invariably rooted in the discursive and querulous nature of politics that votes only approximately render and weight.

Representation is an institution that celebrates the public role of speech and opinions as the means by which a multitude of concrete individuals overcome their irreducible singularity and converge into common political platforms and intents. It also characterizes the deliberative collective setting, which resembles neither a Platonic symposium of aloof interlocutors nor an impartial jury.[64] Citizens who enjoy an equal chance to address their political community (either by direct presence or by representation) invariably perceive the political sphere as an arena that allows them to resolve, and in this sense satisfy, their needs.[65] Although not directly instrumental to social interests, democratic politics cannot be a socially disconnected activity. Representation is supposed to reflect/interpret/idealize the nascent political identity of social claims in a society that should afford its citizens an equal right to advocate for their interest and acquire discursive visibility. In sum, the challenge of political representation in a democracy is to nourish the relationship between social conflict and the unifying process of politics so as to ensure that neither succumbs to the pressure of the other.

Partisanship as an Active Manifestation of the General

Democracy is "limited conflict" or "conflict without killing"; it is not consensus.[66] Yet in order for this to be the case, citizens must consent to certain values or principles, and winners and losers alike must *trust* their adversaries will give up the guns regardless of how the elections turn out. It would thus be more correct to say that democracy (in that it functions and lasts) requires some basic consensus *because* it pertains to discord and instrumental reasoning. No matter how minimal the definition of democracy, minimalism seems to come at the end of a more or less successful process that people themselves have undertaken.[67] "The fact that

we agree about how particular cases are to be decided...shows...that the members of the community bring to bear a common set of criteria. Without criteria, tacit or explicit, our verdicts would be jointly inconsistent and at odds with the verdicts of other members of the community.... So the possibility of playing the game ultimately rests on the brute fact that we agree."[68] Instrumental and strategic reasoning is sophisticated enough to be a late rationalization of a more or less problematic trial-and-error experience of learning by doing, to paraphrase a pragmatist maxim.[69]

It is not news to say that, although procedures can head off social disorder, their efficacy is largely dependent on ethical or cultural factors. This is true particularly in the case of representation because the mandate linking the representative to his or her constituency is essentially voluntary and politically constructed; it is not legally binding. Representation consists in a political praxis that "is not merely the making of arbitrary choices, nor merely the result of bargaining between separate, private wants."[70] Instrumental reasoning and compromise occur in the context of a common understanding about the political direction the country should or should not take, with the awareness that it is "not a reality that is objectively given to us in one way or another."[71] On this condition such reasoning is able to distinguish the total enemy and the political partisan, "the bullet and the ballot," to paraphrase Malcolm X. Most of the time, belief systems and even stereotypical values structure bargaining and strategic reasoning, so that although electors may appear or sincerely try to reason strategically they end up voting "against" or "for" constellations of ideas and beliefs when voting for an individual candidate.[72]

John Rawls described the "depth" and "breadth" of overlapping consensus—what Hegel would call the "constitutional ethos"—in the following terms:

...once a constitutional consensus is in place, political groups must enter the public forum of political discussion and appeal to other groups who do not share their comprehensive doctrine. This fact makes it rational for them to move out of the narrower circle of their own views and to develop political conceptions in terms of which they can explain and justify their preferred policies to a wider public so as to put together a majority.[73]

Political groups (or parties) articulate the "universal interest" from peripheral viewpoints. They are *partial-yet-communal* associations and essential points of reference that allow citizens and representatives to recognize one another, form alliances, and moreover situate ideologically the compromises they are ready to make.[74] "But in fact, one of the most important features of representative government is its capacity for resolving the conflicting claims of the parts, on the basis of their common interest in the welfare of the whole."[75] As I shall argue in chapter 3, the *dialectics between parts and whole* explains the complex function of the legislative setting in a representative government as a mediating body between state and society.[76] Representation is the institution that allows civil society (in all its components) to identify itself politically and to influence the political direction of the country. Its ambivalent nature—social and political, particular and general—determines its inevitable link to participation.

Political representation *transforms* and *expands* politics insofar as it does not simply allow the social to be translated into the political, but also facilitates the formation of political groups and identities. Moreover, it changes the identity of the social insofar as the moment social divisions become political or adopt a political language they acquire an identity in the public arena of opinions and become more inclusive or representative of a broader range of interests and opinions. This is necessary if they are to win a numerical majority. Yet strategy is only a partial explanation. The political process of representation filters and sorts out the irreducible partiality of social or cultural identities by making them issues of political alliances and programs. This makes it quite unique and the opposite of the corporatist representation advocated by theorists of "group participation" and pluralist management democracy.[77] The implicit assumption of a model of democracy as "decentralized small units" (individual or collective) seeking direct representation in the political arena is the idea that "the immediate co-presence of subjects" should purify politics of ideological manipulation held by parties. The result, however, is that by overcoming the mediated world of "voice and gesture, spacing and temporality," politics is "avoided" rather than purified.[78]

But a political party translates the many instances and particularities in a language that is general and wants to represent the general. No party claims to represent only the interests of those who belong to or side with it. Partisanship is an active manifestation of the general rather than an appropriation of the general by a particular; it is the opposite of patrimonialism. Hence Hegel could write that representation brings dissent into politics because in politicizing the social sphere it brings plurality and difference into the public, and Weber could accentuate that the political aspect of voting lies in the chance the citizens have to transcend their

social being *by their own doing,* that is to say to act independently of their social identity and become themselves representatives of their political community.[79]

It might be useful to recall Tocqueville's prescient diagnosis of the two forms of associations democratic citizens tend to create: civil associations that bind (and divide) individuals according to their specific and most of the time unidimensional interests or opinions; and party associations that bind (and divide) citizens along the lines of their evaluative interpretations of matters that are general, or of "equal importance for all parts of the country." The former produce fragmentation "ad infinitum about questions of detail" that can hardly have a general breadth since the life of civil associations depends on the relative closure of their borders. The latter interrupts fragmentation, not, however, by imposing homogeneity or concealing difference (making the whole society in the image of one party), but by creating new forms of "difference" between citizens. Political partisanship both brings people together and separates them on issues that are general in their reach and implications.[80] The function of parties goes well beyond the instrumental one of providing organization and resources for political personnel rotation and the peaceful resolution of succession claims. Their function is above all that of "integrating the multitude" by unifying people's ideas and interests and of making the sovereign permanently present as an agent of extrastate influence and oversight.[81]

It goes beyond the scope of this work to analyze the role of the party form of participation in modern democracy—its transformation from an organization of notables to a mass and total institution unified by a religious kind of political creed, to a costly electoral machinery relying upon media, political analysts, and private money.[82] The critical inquiry of the problems group leadership poses to democracy and the discussion of the Weberian argument that representative politics facilitates a proletarization of the rank-and-file by organized and organizational elite would require quite a different type of research. Suffice it to say that the declaration of the crisis of ideology and the ensuing cognitivist turn that discourse theory has impressed on democratic deliberation are largely responsible for contemporary political theory's silence and myopia about the place of the party and partisanship in democratic politics.[83] Yet the crisis of ideological parties Cold War–style has shown that pre-electoral fragmentation—candidates without parties—can be the source of even more endemic kinds of ideological radicalism rather than the sign of a more democratic and prejudice-free participation. Freed of old ideological identifications, electors may find themselves trapped by and within

the extraordinary power of other kinds of potentates, such as ethnic tribes and religious communities, private media tycoons and communitarian affiliations that repel or deeply compromise, rather than aid, deliberation.[84]

Selecting candidates as single competitors without a party or political group affiliation cannot be deemed an ideal of democratic representation, though it may indeed become a "departure from the principles of representative government."[85] As a matter of fact, if election were truly a selection between and of single candidates—between and of individual names rather than political group names—representation would vanish because each candidate would run for him or herself alone and in fact become a party of his or her own interests.[86] The legislative setting would be an aggregation of individual wills more or less like the assembly in a direct democracy, unable to make decisions through a large deliberative process and finally not representative, since only ideas and opinions (that is, judgment in the broader sense) can be politically represented, not individuals. For this reason also, representation in the legislative setting is not simply the outcome of elections. Better said, it is the outcome of elections insofar as elections occur within a political context that involves programs and ideas that are more or less organized and general, but certainly capable of attracting and unifying citizens' interests and ideas (that is to say, their votes). To vote for Mr. Smith always entails voting also for what Mr. Smith says and believes, and thus inevitably for what we believe and stand for.[87]

Political representation testifies to the fact that although democracy can be explained in terms of rules of the game, citizens' participation is not a neutral game but a concrete way of promoting views and identifying with those who support or make convincing claims to support them.[88] This is why representation is "problematic" when it is analyzed in relation to democracy. It is problematic because it can never be corroborated by and rendered in terms of the representative actually knowing about what people want and because peoples' expectations and their representatives' achievements will never correspond exactly.[89] While it defies cognitivism, democratic representation is contingent upon much more than simply electoral procedures. It requires robust local autonomy and freedom of speech and association as well as some basic equality of material conditions. As we shall see in chapter 3, it also demands an ethical culture of citizenship that enables both the represented and the representatives to see partisan relationships as not irreducibly antagonistic and their advocacy not as an unconditional promotion of sectarian privileges against the welfare of the whole.[90]

Proportional Fairness and the Dual Nature of Equality

Specificity and generality, partisanship and impartiality meet in democratic representative politics because although they are, and must be, identical as electors and in the formal weight of their vote, citizens do not vote as indistinct and neutral right holders, nor can their vote be, as we have seen, a direct rendition of their individual opinions. As a matter of fact, in a society in which citizens are free to express their ideas (and actually are required to express them about both lawmakers and sometimes laws), political representation becomes the special terrain in which individuals' social and cultural specificity surfaces rather than congeals under the legal status of citizenship. A citizen when "he comes to vote does not put off from himself, like a suit of old clothes, his character, his wealth, his social influence, his devotion to political interests, and become a naked unit."[91]

Applying the two kinds of equality practiced in Athens to representative democracy suggests that *isonomia* regulates the distribution of suffrage and *isēgoria* the distribution of voice. The former must be blind and absolutely equal because "voting is an imposition of a will over a will."[92] But the latter must not be blind to differences because its domain is that of judgment and interpretation and its aim is to make the deliberative space as complex and as rich as society. Quite convincingly, early proponents of proportional representation made this their central argument against majoritarianism and argued that proportionality is the norm of fair representation.[93]

Employing Aristotle's dual definition of equality, whereas election is a procedure that requires arithmetical equality (the right to vote), representation is a political process that operates in the domain of proportional equality because it is a means by which differences seek public visibility and advocacy. It is reasonable to say that any issue of "fair representation" is an issue that pertains to the dialectics between part and whole (minority/majority) or the relationship between arithmetical equality (one head/one vote) and proportional equality (all ideas should have a chance to be represented, not only those that get the majority of the votes). This is why although a normative theory of democracy does not specify any single system of representation it does give some clear indications about proportionality since it requires that fairness be defined in relation to the maxim of distributive justice (which is the realm of proportionality). It revives Aristotle's idea that the basis of democracy "is that each citizen should be in a position of equality," which means that the *position* of each citizen has to be considered.[94] The normative

distinctiveness of democracy is not that the majority—"a flock of sheep innocently nibbling the grass side by side"—rules, but that each citizen consciously shares in the life of the country. Democratic control must be vested in a collective body that ought ideally to profit from the voice of "every citizen."[95] So where universal suffrage guarantees that all citizens are treated indistinctively, proportional representation tries to ensure that their views are given an equal chance to be heard. The former must be faceless and blind to differences, the latter must acknowledge them. It is thus incorrect to posit a dualism between individualism (one head/one vote) and actually situated individuals (interest-group pluralism) and refer them to liberal and democratic representation respectively since democracy entails both. Indeed, in democratic representation two rights converge: the right to an equal voice and the equal right to be heard, or the electoral right and the right to be represented.[96] As we shall see in the last chapter, when Condorcet proposed filling the national space with local assemblies where the citizens could exercise their citizenship rights, he was making two claims: first, that democracy requires participation by citizens as individuals, not *en masse*; and second, that participation is always locally specific and performed by individuals who are differently situated or have different ideas. This means that the citizen always brings her or his specificity into politics, and never acts as an abstract member of an abstract nation.

The criterion of justice in representation is normative rather than conditional on the achievement of any specific outcome that the citizens may legitimately seek through it (i.e., reparation of past injustices such as discrimination and exclusion). It consists in the actual and concrete possibility that all citizens should be able to participate voluntarily as well as to be heard and to have effective advocates of their cause.[97] It supports political minorities not because it favors them or compensates them for being in the minority but because it does not give the majority more than its numerical due. Thus justice in representation is proportional and not reparative because it is a claim of quantitative accuracy, and thus rigorously consistent with democracy. The achievement of reparative justice may or may not be the outcome of the citizens' political presence. Yet whatever the outcome, it should certainly not be the reason that justifies *fair as proportional* representation. Even in the hypothetical case that no group of citizens suffers or has suffered discrimination, representation should still follow the norm of proportionality with the political opinions and partisan views the citizens develop and hold in society.[98]

This is the norm that provides for the democratic legitimacy of majority decision-making (which is not exclusively a democratic method

although a method that implies equality of the decision-making actors). The norm is that all the citizens should have the chance to express their views in order to influence and eventually repeal existing laws or decisions. Moreover, by making their voices heard, minorities remind the majority that it is just one possible majority. Proportionality provides citizens with an equal opportunity to participate in the race, or at least to be represented and to check the majority. In fact, election is not just a race, but a way of participating in the creation of the representative body, the way citizens "send candidates to the assembly."[99] This nicely captures the distinction between "the right of representation" and "the right of decision" (judgment and the will) since the equal prospect of success should refer primarily to the possibility of acquiring representation. A representative assembly that functions as a mediating body requires proportionality in representation because it presumes that democracy is a system whose political process, as I shall explain in chapter 3, must be judged from the point of view of "all"—both the majority and the minority—and because it presumes that decisions are reached through a debate whose participants present the "whole" of "every opinion which exists in the constituencies" and which "obtains its *fair share of voices.*"[100]

Thus the issues of justice raised by representation are issues of *isēgoria,* or the equal chance to have one's voice heard or represented, not as a concession or compensation for past or present exclusions but as a means of effective participation here and now in the making of the legal order. This is why I suggest we call justice in representation *democratic.*[101] Democratic representation is fair or just representation insofar as it involves issues of advocacy and representativity; issues of a meaningful presence, not simply presence alone, in the game of discord and agreement that is democracy.

This entails that representation is not only not hostile to political equality; moreover, it reflects *both* public forms of equality: legal equality (equality before the law) and equality as the citizen's right to support or oppose laws or government policies (largely in order to redress what they perceive to be real or potential inequalities and hence injustices). Since its inception in Athens (particularly the revolutionary movement of the Athenian demos in the age of Cleisthenes), democratic participation has attempted to balance these two equalities.[102] Modern democracy has made this goal the controversial object of the complex relationship between representation and participation. Of the two equalities, the former belongs to the rule of law and the state of right (technically speaking); democracy does not have sole claim to it. Although it is legitimate to doubt that the rule of law can be maintained if the subjects of the law are

not citizens, the guarantee of the rule of law is not necessarily contingent on the adoption of universal suffrage. Hobbes' Leviathan, a decent authoritarian state in Rawls' sense, or simply Montesquieu's predemocratic "commercial republic," can meet the requirement of equality before the law. Historically, this was the type of constitutional government that institutionalized representation and the theoretical framework that hosted the juridical and institutional conceptions of representation I sketched above.

The other form of equality concerns the opportunity and the means citizens have to express their views in the public arena and be effectively heard.[103] This equality is exquisitely political *and* democratic; in fact, it exists only in democracy. The best way to grasp its relevance is to describe it in the words of one of its earlier liberal critics: Guizot thought that representation should reflect the opinions "of those who are capable," not "all individuals, merely because they exist."[104] Democratic representation reflects the opinions of all citizens "merely because" citizens exist.

Almost all contemporary democratic constitutions and political practices, judicial and legislative, reflect these two perspectives on equality. Every constitution inscribes the legal equality of individuals and citizens regardless of gender, economic status, race, religious affiliation, or belief. Most constitutions also contain articles *claiming* to promote equality by removing obstacles that de facto impede or disfigure it.[105] One possible interpretation of these two perspectives on equality is that democratic constitutions acknowledge the fact that, although formally equal, citizens are not, and perhaps will never be, actually equal. As such, they endorse a politics of antagonism over and for the realization of the democratic promises engrained in the constitution. In other words, "achieving membership within a political community is not necessarily the same thing as achieving *equal* membership."[106] As Condorcet (the first theorist to identify democracy with "equal liberty") realized, constitutions of representative democracies do two things: they legislate (and thereby limit) political agency and government activity, and they define goals (enhancing and preserving equality) that stimulate political agency and participation. Furthermore, they use norms of legal equality to regulate political action. In that they inscribe politics as the terrain that protects and promotes equality, constitutions anticipate political conflict. A democratic constitution predefines the norms that regulate political action *because* it presumes political activism and contestation.

The double register of equality—as a legal norm and a moral norm—distinguishes the democratic process of political representation and is

the main reason why juridical and institutional theories do not apply to democracy. Democratic equality highlights the incompleteness of the classical free-mandate model that representative democracy has inherited from liberal representative government. Equality as legal status means that the representatives must represent the entire nation and that their will is not bound to instructions by their electors. So long as the demos was restricted to social equals (property owners, adult males, Christians), the free-mandate paradigm did not conflict with claims of representativity. In fact representativity was never an issue; when it became one it could legitimately be accused of promoting factionalism.[107] As we shall see, Sieyes' "nation" (like Madison's and Burke's) was just as homogeneous as Rousseau's "people"; the representatives of the former were supposed to be just as blind to the interests and opinions of their electors as were the latter's citizens to their private interests and opinions. In other words, all a homogeneous demos needs is legal equality if it is to be reconciled with formalistic types of representation.[108]

The moment democratic constitutions define equality as a goal, they admit inequalities as a permanent threat to be detected and judged, voiced and amended. This makes the legal ban on imperative mandate *politically* empty although *legally* necessary and in fact enforced in most constitutions (except for the United States).[109] Indeed, in order for the citizens to enjoy an effective equal chance to influence the political life of their country they have to insist that their representatives listen to their (diverse and also conflicting) claims. So on the one hand, representatives are legally forbidden to become the agents of their constituency and are asked to rely only upon their reason to judge according to the general interest, rather than according to their electors' interests alone. On the other hand, however, since citizens are socially not equal and culturally diverse or are patently unequal and seek equality through political action and the law, representatives cannot ignore their voices and claims. One kind of equality commands representatives to transcend their constituency; the other demands that they adhere to their claims.[110]

Advocacy

The fact that equality as a moral value and project reveals concrete cases of discrimination and prompts citizens to demand to be placed on the political agenda shows how incorrect it is to think that inequality seeks representation. Inequality seeks advocacy in order to be rectified. This tells us why both descriptive and symbolic notions of representation

are problematic if taken in isolation; why, in other words, the dualism between pure delegation and trusteeship is too abstract and too narrow.[111] Representative democracy needs a conception of representation that gives constituents the power to participate in the selection of their representatives while leaving representatives a degree of independence from their constituents. It needs to leave room for autonomous activity on the part of both representatives *and* constituents while still ensuring some connection between their respective (autonomous yet interdependent) actions. The idea of representation as advocacy satisfies these demands.

Although it implies that constituents choose their representatives on the basis of who will be the best advocates for the issues of greatest concern to them, representation as advocacy still allows them genuine choice in deciding the issues for which they need advocates. Similarly, in giving them this choice, it allows them greater control over their representatives than the traditional trustee view of representation. Moreover, it encourages deliberation within the legislature (encouraging representatives to evaluate the best strategy and act autonomously) and as an ongoing activity of reflection and judgment on the actual condition of constituents and the country as a whole. Finally, it defies the rationalistic and cognitivist assumption underlying some recent models of deliberative democracy and withstands the conventional critique of proportionality as a descriptive "mirror" that simply reproduces existing social segmentations.[112] While capturing the complex character of representation—its *commitment to* as well as its *detachment from* a cause— the analogy between the advocate and the representative can be an interesting attempt to transcend the two extremes of partiality and an objectivist vision of the general interest that have been traversing modern representative democracy since its inception. Moreover, such an analogy helps to highlight the two main political functions of representation, as a means both for expressing individual opinions and choices and therefore exercising self-government and for resisting exclusion and therefore achieving security.

As a *point d'appui*, representation as advocacy increases the citizens' power to make their claims heard and, it is hoped, effectively answered because it encompasses two components: the representative's "passionate" link to the electors' cause and the representative's autonomy of judgment. On the one hand, advocacy gives representatives firm convictions and thus nurtures a spirit of controversy (sympathy of ideas and views joins "friends" and "partisans" against their "opponents"). On the other hand, it steers partisan convictions down the path of deliberation

and, ultimately, toward decision. Advocacy testifies to the structural tension of democratic deliberation: diverse (and seldom rival) interests, subjective visions, and aspirations compete in an open political space in order to reach a decision that is not supposed to serve partisan interests or put an end to deliberation. Electors do not seek an existential identification with their representatives; they seek an identity of ideals and projects because representation entails agency or power and its function is not merely symbolic.[113] This is even more the case with citizens belonging to social and cultural minorities, who want an advocate, not a rubber stamp, given that their goal is resistance to the tendencies of the ruling power to silence their claims and violate equal consideration. This confirms the future-oriented nature of representation in an electoral system—and the unavoidably ideological character of political competition it implies and promotes. It also explains why it can never be a mere registration of a given social configuration. Its *political* and *idealizing* function frames the character of advocacy that entails the representatives' need, on the one hand, to share the visions and ideals of their constituencies and, on the other, to enjoy a certain degree of autonomy because they are supposed to prefigure courses of action and project their deliberation in the future, which is, unavoidably, a dimension inhabited by *things* that have only a hypothetical or fictional nature.[114]

Yet the most interesting aspect of this political view of representation is that it conceives of deliberation in a broad sense and as taking place at both the legislative and the societal levels and, as such, creates the possibility that constituent and representative opinions can be reconnected between elections. In defining representatives as advocates, we have to see them not merely as partisans but as deliberators and democracy as an agonistic space. Even though representatives do not deliberate when acting as advocates (one could say that representatives are advocates and deliberators in turn when they act in the legislative assembly), nevertheless they consciously speak with deliberation in mind. Without deliberation (namely, arguments conceived in view of a decision), there would be no reason for advocacy. Indeed, advocacy is not blind partisanship; advocates are expected to be passionate and intelligent defenders. An advocate who is exclusively a partisan is not an advocate. And deliberators who are exclusively rationalizers are not deliberators—even if they produce rational justifications. A good representative democracy needs neither fanatical representatives nor rubber stamps nor philosopher-kings but, rather, deliberators who judge others' causes and in turn plead causes "passionately" in accordance with the principles and procedures of democratic government.

To anticipate the issue of the place of judgment in representative government which will be discussed in chapter 3, an "advocate" is not asked to be impartial like a judge, or to reason in solitude like a philosopher. Unlike a judge, advocates have ties to their "clients." Their setting does not institutionalize impartiality, and in fact the actors who advocate their cause in the assembly are the same ones who pass judgment. Impartiality is at most a prescriptive maxim and a moral duty that depends mainly on the actors' motivations and moral commitment to reciprocity.[115] Moreover, the advocates' job is not to enforce or apply the law but to define how the facts fit or contradict norms in order to propose new laws or change existing ones—that is to say, to decide whether the existing law conforms to principles that society shares or a "good" government should adopt. Unlike a philosopher (and like the politician), advocates have "to conform to the wishes of an electorate in order to win." The philosopher owes a justification only to his principles. He is not seeking external consensus: "A philosophical justification cannot refer to the interests and passions of a particular group"; it "must be rational, or at least reasonable." On the contrary, the relationship between candidate and electors does "not require the electors to consent to be represented by one who intends to govern them in opposition to their fundamental conviction."[116]

Advocacy casts light on the nature of political deliberation. Far from transcending the specific situation of citizens, deliberative reasoning rests on the premise that specificity needs to be known and acknowledged. Therefore, "understanding" and "hearing" are the faculties at work in deliberative speech just as they are in forensic speech. They express the complex nature of the work of the representative, which should *adhere* to her cause but *not be driven* by it. Advocates believe in their cause but understand the reasoning of others to the point of being able to reconstruct it in their minds. They must "feel" the force of others' arguments in order to envision the path toward the best possible outcome.[117] This explains the competitive nature of democracy, which relies heavily on personal ability and character. So although every citizen can become a representative in theory and *de jure,* citizens select those whom they judge to be better advocates. They do not choose randomly or feel it is enough that the candidate belongs to their group (they, in fact, discriminate within their own group), although they do not want someone who shares ideas that are the opposite of theirs.[118]

The natural conclusion of the foregoing section would be that representation brings the views of the citizens to the assembly and the decisions of the assembly to the citizens, simultaneously separating

and linking these two sources of action and opinions that make representative democracy such a unique form of government. For political representation to work, societal deliberation must take place alongside that of the legislature: advocacy in the representative assembly requires and stimulates advocacy in society. Political advocacy, which is implied in the dual conception of equality, suggests a partial resolution of the problem of allowing representatives to act autonomously while also maintaining some constituent control over them. The idea of representativity expresses this resolution, which is elastic and always incomplete.

Representativity is entwined with advocacy because, like an advocate, the representative who believes in and shares the views of her constituents will presumably be more motivated and determined to advocate their cause in the assembly.[119] Hence I argue that *representativity* and *advocacy* are the two irreducible features that characterize democratic representation. They are an expression, not a violation, of the democratic equality implied by electoral representation; they are based upon a type of equality that yields the democratic promise that we shall live in a legal and social order in which all of us are treated as equals although (and because) we are different, and in which we all have a chance to make our voices heard and heard effectively. In fact, in order to act as a member of the nation both the citizens and the representatives need to engage in fictional reasoning, as we shall see in chapter 3. This exemplifies the tension between commitment to the electors' cause and a representative's autonomous judgment, which stimulates advocacy. Indeed, democratic "advocacy" requires steadfast commitment to agreed-upon procedures; it does not favor outcomes that are "true" or "definitive" in their content but congruent with the shared principles of political equality presupposed by deliberation. The constitutive character of these principles limits advocacy, whose rationale is that no decision is sheltered from disagreement. Making the interpretation of the general interest mutable in order to make it more consistent with democratic principles binds it to a cooperative process of investigation and judgment that unifies the whole citizenry. Advocacy and representativity challenge both the juridical and institutional theories of representation and the relationship between sovereignty and representation that was codified in liberal predemocratic representative governments. This is why I have insisted that democratic equality has transformed the practice and the meaning of representation and that issues of justice in representation are issues of democratic equality.

Representativity

Seen through the lens of the relationship between state and society, representation oscillates between the two poles of either *transcendence* of social differences or *adhesion* to them.[120] The juridical and institutional conceptions of representation gave birth to the former, the political conception to the latter. Let me clarify this extremely important point.

A political as democratic conception of representation tends naturally toward the pole of adhesion rather than transcendence. Yet adhesion is a complex idea and can be interpreted in at least two distinct ways, depending on whether the adhesion of the representative to the represented is *reflected* or *direct*—that is, whether it is produced and mediated (through political language), on the one hand, or reproduced and unmediated (through presence or an existential sample), on the other. In the latter case, reference is explicitly made to a corporate or factional conception of representation insofar as it requires that the substance of representation match the specific identity of the represented with no political filtering or idealization. It is as though the citizens' social identities (such as class, profession, and cultural and religious affiliations) exhaust their identities such that their political identity simply replicates their prepolitical identities; or as if citizens' social identities defy political interpretation, an activity that implies a form of judgmental detachment from the empirically given or, as I would prefer to call it, an idealizing work of judgment.[121] In that case, representation would preserve a kind of naturalness or irreducible social determinism that exists prior to political action. At best, political action could mirror but not interpret or change this naturalness; a "natural" (as prepolitical) identity can only mingle with other identities for strategic reasons of parliamentary alliance.[122]

This is the theoretical background of an *apolitical* view of adhesion (and representation), wherein the political arena resembles a container of countless substantial identities that do not communicate with one another—separate enclaves that strive for their specific goals at the expense of others and the whole, more or less like interests in the marketplace. Direct adhesion is usually studied in the classical terms of ancien régime estate representation; contemporary theories of group representation tend somehow to replicate this view of representativity.[123]

Reflective adhesion, though, exemplifies a thoroughly political creation of the relationship of representation that allows the citizens themselves and their representatives to interpret and idealize their social

specificity. (The theoretical significance of this view will emerge better in chapter 3 when I discuss Kant's notion of judgment as "productive" representation). Neither a dualism between inside and outside state's institutions (as in the case of transcendence) nor an existential adhesion (as in the case of corporate or group representation), political representation emerges as a *continuing* and *mediated relation* between situated citizens and representatives. Of course, far from transcending the specific situation of citizens, deliberative political reasoning is based on the premise that specificity must be disclosed and acknowledged.

Deliberative judgment, like forensic speech, activates the faculties of "understanding" and "seeing," although, unlike the latter, it projects them in the temporal dimensions of the future, not the past. These faculties express the complex nature of the representative-advocate, who, as we just saw, should adhere to her cause but also be able to understand the reasoning of others and reconstruct the deliberative scenario in her mind. So I prefer the term *representativity* to adhesion (of the representative to apparently politically preexisting social segmentations). Representativity suggests a condition that lies in between transcendence and adhesion, and defines relationships of control (on the part of the represented) and responsibility (on the part of the representatives) that are eminently political and moral but not juridical and legal.

The issue of a *reflective adhesion* of the representative to her constituency sheds some light on the limits or incompleteness of a reading of representation as aristocratic selection. I shall come back to this issue at the end of chapter 4. Here I need simply to argue that the political theory of representation (characterized by representativity and advocacy) implies that two evaluative criteria determine the choice of a candidate: the personal or unique characteristics of the candidate, and the characteristics that the candidate shares in common with the voters or that are representative of them. It is crucial to note that the latter makes the former meaningful since a candidate's individual distinctiveness and "competence" is significant only *within* the communal distinctiveness of the constituency she represents.[124] However distinctive and electable many candidates may be, we perceive a particular trait in the words and behavior of some or one of them that makes us sympathize with them and define *our* constituency through them or him. In this sense, representation is a mediating process that creates a community of ideas and political orientations that the contractual or juridical paradigm cannot explain.

I propose the concept *ideological as perspectival similarity* to explain the medium that illuminates the specificity of the electoral race and makes voters seek out the best candidate. In a representative government, most political questions are determined by elected officials whose attitudes upon a variety of issues are public knowledge, while most of their constituents' views remain anonymous and cannot be identified individually. Constituents are generally identified in terms of their representatives; they are identified by reflection. Hence, representativity is essential because it allows the citizens' opinions to be identified and known. This explains why, when voters elect representatives, they tend *not* to elect candidates who differ from them in some important respects; why ideological cleavages are unavoidable in representative politics; and why the end of representation is not merely to designate representatives or mandataries (selecting neutrally competent agents) but to give parts a political individuality in the whole and in this way create the condition for political dialectics and friendly partisanship. It is certainly true that "we can only talk about representation where there is difference—and *not* an identity between the representative and the person represented."[125] Yet it is not the existential presence that should be our parameter of representative relation but presence through ideas. Representatives and represented are certainly not identical, but they can and actually should have some relevant similarity at the level of discourse and ideas, a similarity that they construct, transform, or interrupt.

The complex interplay between the three theories of representation I sketched above in relation to the dialectics of unity/difference between representatives and represented should be clear by now. By analyzing the ideas of Rousseau, Sieyes, and Condorcet, I attempt to establish that reflective adhesion (perspectival similarity) is the most consistent expression of the dialogue between society and the state that democracy activates and requires. This dialogue is essential and unavoidable if legitimacy is to be conferred upon institutions—that is to say the legal means for the organization of authority—by democratically generated consent. The electoral investiture of lawmakers is essential but not sufficient because representation is a process that operates during the intraelection time, or beyond the moment in which the electoral decision occurs.[126]

Benjamin Constant depicted the two levels constituting representation in a way that is still extremely captivating and timely: *representation of people*'s opinion (the will regularly expressed in elections) and *representation in the durée*, or the permanent attention and receptivity of the representatives to "those changes in public opinion that might [occur] between one election and the next."[127] The former defines the legal act of electoral authorization. The latter defines representation as reflective

adhesion over time. It defines the permanence of the *presence* of the sovereign people in forms of *judgment and political action* that accompanies yet transcends the actual manifestation of the will.

Rethinking Popular Sovereignty

The democratic transformation of constitutional representative government has changed sovereignty, as well as representation. Historically, representative government has been superimposed on a conception of democracy that predated both political representation and electoral selection. This conception was entrenched in a voluntaristic view of sovereignty that excluded a priori indirect forms of political action and identified political autonomy with immediacy—immediacy being the time dimension wherein the political event (decision) and the political actor (the people) mingle.[128]

The fact is that Rousseau's paradigm leads to unintended consequences—namely, state-led professionalized politics and the impoverishment of political citizenship. As Hannah Arendt well understood, if the postulation is that "the people" are a singular and univocal entity (a "body"), then "the people" in a representative government will simply be a collection of individuals united by an artificial and potentially dreadful myth such as "the nation," or by the economic logic of interest seeking promotion through the electoral process and parliamentary bargaining.[129] As the history of nationalism proves, these two possibilities are not necessarily mutually exclusive. At any rate, using Rousseau's paradigm of popular sovereignty to define democracy dooms the possibility of a democratic theory of representative government.

Along with the obvious critiques of representation in the name of strong participatory democracy, the voluntaristic conception of sovereignty has also indirectly served the cause of the critics of the "ideology of democracy" and has strengthened their case for a *pure procedural interpretation of democracy*. I include within this rich and distinct category both the *democratic elitists*, who defend democratic minimalism and an electoral definition of democracy, and the *democratic formalists,* who argue for a definition of representative democracy that gives priority to objective (legal) norms over subjective (moral) ones and locates deliberation essentially within the parliamentary setting. Despite their significant differences, both types of proceduralism share the mythology of formalism and positivism, an approach that has utilized Rousseau's

classical view of sovereignty to disprove the very possibility of a democratic theory of representation.[130]

Elitist theorists have made Rousseau's conception of sovereignty the norm of modern democracy discourse in order to trap democracy in the cul-de-sac dualism of either the "unrealistic" "classic doctrine" of the general will or the "realist" rendering of the will of the people as the factual will of an elected class. They claim that sovereignty is an ideological creation whose aim is to conceal the fact that political decisions are value relative anyway and that democracy is a method to select an elite, not an end in itself or a value.[131] Critiques of representative government reflect the extraordinary impact of this Schumpeterian trend in the post–World War II renaissance of liberal democracy. The mixed-government model that elitist theorists adapted to contemporary society, Arendt wrote in *On Revolution,* is actually "an oligarchic form of government" based on the gratuitous assumption that the passion of the many not to be ruled is worse than that of the few to rule.[132] Arendt thought that if politics was to be protected from attempts to identify it with state apparatuses (Hobbes) or economic instrumentality (liberalism and Marxism), it must be disassociated from sovereignty, a category she saw as irredeemably ontological and identical with the coercive power of the state, and moreover inherently inclined toward the functionalist view of politics implied by the Schumpeterian theory of representative government.

The discourse of the exhaustion of the sovereign state as an effect of globalization has given new momentum to the antisovereignty argument. In recent years, both democratic theorists attempting to reconcile democracy with representation and radical theorists identifying democracy with movement-led multitudes and antirepresentation politics have proposed disassociating sovereignty from democratic theory. The most representative of the former group, Iris Marion Young, has argued that democratic representation can be explained without any reference to sovereignty. As a matter of fact, insofar as it amends politics of the metaphysical residue of the "will of the people," representation matches the self-legitimizing and self-reflecting character of the democratic process. Authorization is the key to a democratic view of representation *provided* we do not reduce it to an isolated act (the election) as liberal-elitists or Schumpeterians do, but see it as "a relationship between the constituency and the representative" that creates us (our constituency) as a political unity. Representation has inspired the democratic turn that can be described as the process of authorization versus authorization as

a simple act of decision. The result is that since "there is no constituency prior to the process of representation, no people who form an original unity they then delegate onto the derivative representative," there is actually no such thing as popular sovereignty.[133]

Yet a democratic theory of lawmaking requires reference to popular sovereignty for the important reason that the democratic demands of representativity and advocacy risk fragmenting the political order if is not connected to a commonly shared criterion of political judgment.[134] I argue that the idea that representation is a "defective substitute" for democracy is the product of a conception of sovereignty that is both context-specific and anachronistic. *This idea,* not popular sovereignty, is the source of the problem political theory faces when it links representation to democracy. It was coined before the development (and positive evaluation) of democracy and was intrinsically unequipped to accommodate itself to the political inclusion of the universality of citizenry in the political process.

The deficiency of the modern conception of sovereignty is reflected in a definition of democracy as a practice that is essentially reduced to a simple act of decision (casting the ballot) and *The Social Contract*'s conventional image of citizens flying to assemblies (or the electoral booth) whether the actors are individuals or parties.[135] This is the hidden rationale of the paradox that while political scientists and analysts continue to devise models of electoral behavior, representation is still conceived within the shadow of Rousseau's argument that the people renounce their sovereignty when they elect representatives.[136]

Two centuries ago Constant explained why the identification of popular sovereignty with the will is inimical to representative democracy. In his attempt to counter the democrats, he co-opted Rousseau when he argued that elections are a strategy to defy democracy because they bring forth a government that can make legitimate laws without activating the sovereign. Thus if Rousseau's paradigm becomes the foundation of democratic legitimacy, representative government cannot but be non- or undemocratic because the (sovereign) people makes "its appearance" only "at fixed and rare intervals" like a comet and "always only to renounce" itself.[137] Rousseau's decisionist sovereign can only be reconciled with delegates or representatives who are "commissaries" or "agents" or "proxies" since nobody can act entirely in its place without simultaneously replacing it and thereby annihilating the very relation of representation. The point is that a decisionist sovereign does not necessarily prefigure a participatory polity.

The second form of proceduralism is more subtle and captivating. It was coined in the first half of the twentieth century along with, and to defend the democratic transformation of, continental constitutional states. Its main interpreter and advocate was Hans Kelsen, pioneer of the science of the juridical norm and, in his early career, an astute supporter of constitutional democracy against the assault on equal liberty coming from both new socioeconomic corporate interests and old authoritarian state apparatuses. Kelsen used the weapons of formalism and rationalism to counter those threats. In particular, he tried to disaggregate the principle of political equality from the doctrine of popular sovereignty, which he deemed a "political fiction," a term that in his vocabulary denoted lack of normative clarity because of an unwarranted mix of "ought" and "is" assertions, descriptive and evaluative arguments.[138]

Kelsen saw representative democracy as an exemplary case of ideological construction when it was defined in relation to popular sovereignty, rather than simply as a functionalist strategy of governance. He countered the "ideology of democracy" with the clever strategy of limiting representation to the legal theory of contract, as Rousseau implicitly suggested, but reached the very different conclusion that representation was acceptable. Formally a violation of both the democratic norm ("equality of all citizens") and the contractual norm (legal dependence of the elected upon the electors), representative government could be justified, Kelsen thought, by relying upon exogenous factors (functionalism and organizational division of labor) but not democratic principles: "the legislative power is better organized when the democratic principle, according to which the people should be the legislator, is not carried to extremes."[139]

Revisiting Kelsen's goal, we can derive an important lesson from this argument: representative democracy is an oxymoron *whenever* we extend the rules of juridical representation (the legal theory of contract) to political representation. Let us follow Kelsen's reasoning.

Kelsen synthesized the "true relationship of representation" in the following three norms, wherein the last two derive logically from the first one: (a) the representative must be appointed or elected by the represented (principle of autonomy); (b) the representative must be "legally obliged to execute the will of the represented" (rule of imperative mandate); and (c) the fulfillment of the representative's obligation must be "legally guaranteed" (rule of recall). These three norms do not merely denote the democratic form of representative government. They also denote the institution of representation in the public sphere and

mean that for a government to be democratic and representative at the same time it is not enough that elected officials during their tenure "reflect the will of the electorate" and that elections make them "responsible" to the electors. Indeed, these are simply "political" kinds of binding, and in this sense "fictional" and illusionary, not formally normative.

Simply "political" binding (or representativity and advocacy) is *fictional or ideological* because it rests merely on the will or intention or the voluntary commitment of the actors, but is not legally enforceable. It is an *imperfect binding* like moral duty is imperfect in relation to legal obligation. Political binding can be subjected to ethical norms, like honesty or prudence on the side of the elected and disinterested participation or civic virtue on the side of the electors, which are however only mere instructions and a matter of good will. Hence Kelsen's conclusion: "Legal independence of the elected from the electors is incompatible with legal representation," the only legitimate, nonfictional form of representation. In sum, Rousseau was correct to argue that unless the sovereign employs delegates with instructions it is no longer sovereign. Representation sanctions the death of sovereignty.

The dualism between "legal norm" and "political fiction" requires further investigation, if only because it is the key to the recovery of judgment in sovereignty theory. Kelsen used the expression "political fiction" for critical purposes, in order to denote any formula that cannot be translated into legal language. Political fictions refer to inferences of merit or demerit, opinions and ideologies—that is to say judgment of values; when used to describe reality (how things work), they are fatally destined to produce deceptive conclusions because they mystify or confuse the world of the "ought" with that of the "is." According to Kelsen (and Habermas after him,) political fictions or value judgment designate ideology in Marx's sense—the attempt either to give rational appearance to something that does not actually exist or to unmask a reality that is other than it appears.[140] They presume the existence of an objective truth that is constitutively autonomous from the actors' interpretation and opinion (the projection of desires or aversions coming from some subjective preference or interests); but they also presume a range of symbols and beliefs that political actors use to justify their choices to the public and that the public uses to (mis)judge public officials' deeds and political agendas. Clearly, whether or not it is made in the name of the general will (Rousseau), the economic structure (Marx), or the legal norm (Kelsen), the anti-ideology claim points to a rationalistic (Platonist) conception of knowledge that is as hostile to representation as it is to politics.

Rationalism is the subtext of an understanding of representative democracy as oxymoronic. "The function of this ideology [representative democracy] is to conceal the real situation, to maintain the illusion that the legislator is the people, in spite of the fact that, in reality, the function of the people—or, more correctly formulated, of the electorate—is limited to the creation of the legislative organ."[141] In other words, representation can be deemed a democratic institution *only if* the representative does not have a political function but is simply a delegate or a legal procurator, as Rousseau said. The ontology of the juridical norm—Kelsen's belief in the legal dimension as the only "real" dimension—leads to the same conclusion as the ontology of presence and the sovereign will. Politics is the dimension that escapes both.

The mythology of formalism and positivism in its elitist as well as its democratic version indicates that *the root of the problem* is the extension of the paradigm of the will to politics (the source of the juridical model of contract), not the idea of popular sovereignty per se and democracy. Representation as a contract (delegation) is in itself a *denial* of political representation. A democratic theory of representation cannot benefit from it, and in fact needs to emancipate itself from it.

Representation opens up exceptionally interesting possibilities questioning the extension of the contract paradigm to politics.[142] The place of contractarianism in the theory of political power exceeds the scope of this book. It is enough to say that, to put it schematically, whereas the contractual consensus argument can be an effective tool of persuasion in the constituting phase of the political order when the issue of legitimacy is at stake, it cannot help us to understand the political processes that occur in a constitutionalized polity. As Condorcet clarified, from a legal point of view only the elected members of the constitutional assembly are, and must be, pure delegates because making the constitution is the only true act of the sovereign will. Delegates in the constitutional assembly are not and cannot be representatives for some important reasons: first, because their role must be strictly confined within the limits of their specific function (framing the foundational laws); and second, because they cannot be (and are not) electorally accountable (they are not subject to reelection) if the people are to remain sovereign. The constitutional assembly is an *una tantum* assembly, a "one-shot deal." Yet representation presumes continuity in the relationship between the representatives and the represented, or permanence over time as we have seen in our descriptions of representativity and advocacy.

Unlike lawmakers, "the framers" are representatives only in a symbolic or ethical rather than a political sense. As pure delegates, they are

representative in the sense that Rousseau's Legislator was representative: they synthesize both the ethical tradition of their country and the general principles of justice and liberty that guide them in drafting the constitutional text for their country. In relation to the actual and contingent interests and partisan views that permeate the political arena, lawgivers are and must be neutral and disinterested, not representative. One might say that they deliberate *für ewig*.[143] This allows citizens to use the outcome of their work (the constitution) as a general criterion to judge, evaluate, and interpret political issues and leaders, and to resolve disputes and solve problems.

As I have tried to argue throughout this chapter, the representative is supposed to and is actually expected to have a double identity, one that is general and one that is partisan. Representation engenders a relation that is public and cannot be treated as contractual.[144] Yet the fact that representation cannot have the same checks as a "contract" does not mean that its checks are confined to elections. The fact that the representative has not legally tied her will to the will of her electors does not mean that her will is sovereign and politically unchained—such that what we ordinarily call representative democracy is either an oxymoron or an elected aristocracy.

Representative power is *responsible* power that allows for two interpretations of responsibility: in relation to the law (the representative must be an autonomous agent in order for her deeds to be subjected to the civil and criminal laws, like those of any other citizen); and in relation to the legitimate source of his public role (the representative is elected by the people according to the people's will; he is not selected on the basis of merit or competence like a bureaucrat and according to neutrally evaluated requirements because his function is not administration but lawmaking). The power of the political representative is constitutively a *dependent power* whose performance *demands* that the actor be able to make autonomous choices *in order* to be judged by his voters.

In sum, democratic theory requires that both the legislative function and representation be dependent upon "the will of the people." It requires us to abandon the juridical and contractual logic of delegation and acknowledge representation as a political process. It presupposes that we emancipate politics from both the deterministic language of interests and the legalistic language of the juridical norm or the will. Representation is a political process first and foremost because the representatives vote on laws and are neither mere law redactors nor commissioners of the voters, and second because the relationship between representatives and represented does not end at the moment of electoral authorization.

As Hannah Pitkin wrote so splendidly almost forty years ago, "Political representation does have something to do with people's irrational beliefs and affective responses, and it is important to ask when people are satisfied by their representatives and under what circumstances they feel they are not being represented."[145]

Thus, in reversing Kelsen's logic, I would say that the point of departure for any democratic theory of representation needs to be precisely *the fictional world of beliefs and judgment*—a world that eludes proceduralist and legalistic language as well as true/false claims. Since politics cannot be entirely reduced to the creation of sanctioning norms (and state authority), so representation can be reduced neither to the formal client-agent relation nor to electoral authorization or an act of the will.

A coda is needed at this point. Just because sovereignty (and democracy) should be seen in relation to the entire spectrum of political activities brought about by representation in its dynamic relation to society does not mean that the role of suffrage or the correct implementation of voting procedures should be ignored or are irrelevant. Authoritative procedures are substantial, not accessory, although most of the time we realize this when procedures are violated and manipulated. However, it should be clear that violations or manipulation of voting procedures signal a deeper crisis in the democratic process than a deficit of representativity. They must thus be treated as grave exceptions rather than ordinary issues in democratic theory. This is because the achievement of universal suffrage—which entails a combination of factors, namely one person/one vote, equal counting of votes, simultaneous national voting, and secrecy until the moment all ballot boxes have been closed—signals the beginning rather than the end of the history of democracy.[146] The constellation of activities that create political representation signals instead that democracy is actively in place. This work focuses on that stage.