WHAT IF OUR REPRESENTATIVE DEMOCRACIES ARE ELECTIVE ARISTOCRACIES?

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I

Political institutions are the devices we use for dealing with our collective problems. If political institutions succeed in doing so in a way satisfying our expectations, they will have to be adapted as well as possible to the nature of these collective problems. If this condition is not satisfied, it will be as if we tried to open our front-door with the key for our car.

Now, our collective problems vary tremendously from one place and time to another. In the third and second millennia before Christ the ancient Egyptians had to cope with problems quite different from those in Mesopotamia at that same time. And the absolutist monarchs of the seventeenth centuries wrestled with different challenges than their ancestors in the feudal Middle Ages. Each epoch has its own challenges and is, therefore, in need of its own time-specific answer to these unique challenges and, hence, of its own political institutions. Nevertheless, next to all these unique and time- and place-bound challenges, there is just one universal and permanent challenge, namely the challenge of always having to adapt the political system to ever-changing circumstances. That is the meta-challenge in, and of all politics, so to say.

It follows from these, admittedly, quite trivial observations, that there exists no such thing as The Final Political Truth giving us the

political system which is superior to any other under all conceivable circumstances. Not even democracy, as some people might think. Suppose democracy had been introduced in Mogul India. The result would have been chaos, confusion and the irreparable erosion of all social links. Similarly, democracy in the France of Saint Louis would have meant the country's immediate ruin. Democracy is not the best political system under all conceivable circumstances – even though this is still believed by some political philosophers for whom the fierce and unrelenting sun of the Enlightenment was never tempered by the mild *chiaroscuro* of historicism and romanticism.

But it is true, democracy is nowadays more popular than ever before. Monarchy, dictatorship and hereditary aristocracy have no advocates anymore. We do all rejoice in this, and quite rightly so. Indeed, it can and has been argued that democracy, and especially liberal democracy performs best in the global world order that came into being in the years after 1989. The adoption of American-style liberal democracy is then presented as the condition of sheer survival for any nation in our globalizing world-order. This was, of course, Fukuyama's argument in his famous *The End of History* of 1992.[1] However, twenty years later this liberal self-conceit has been unmasked as just one more philosopher's pipedream. And my argument of a moment ago may help explain the causes of Fukyuama's error. The political challenges and problems of China, Russia, India are wholly different from those of the USA or the countries of the EU. And as Michel Albert made abundantly clear already in 1993 even those of the USA and those of Europe differ more than they have in common.[2] Because of this it is a naive and dangerous illusion to believe that all the political systems of all countries in the world should collectively converge towards an American-style democracy.

Even more so, a quite different model for the foreseeable future came into being in the last few years, namely that of a shift from a unipolar to multipolar world. The so-called 'Washington-consensus' on democratic politics and economy is no longer the 'unipolar' source of all political and economic wisdom world-wide. Just as the unipolar world of the European Middle Ages definitely broke up into a number of individual sovereign nation-states with the Peace of Westphalia in 1648, so is our contemporary global society falling apart into a multipolar world containing several individual spheres of influence, such as the USA, Japan, China, Russia, the European Union,

India and Brasil. And just as Europe even after 1648 remained a Christian Europe, although containing Catholic, Calvinist, Lutheran, Russian-Orthodox and Anglican countries, so will the players in the future multipolar global word order agree about the basics of capitalism and democracy, while reserving at the same time for each of themselves the right to develop *that* version of democracy and capitalism which suits them best. China, Japan, Russia, Brasil and India will no longer have any patience with the West's increasingly hollow-ringing sermons on what democracy and capitalism is, or should be and will consider it as the last and impotent eructation of Western imperialism.

In sum, with the breathtakingly fast dissolution of American moral, political, military and economic supremacy that we have witnessed in the last few years, we shall move from a unipolar world to a multipolar world and in which each major player on the international field will adopt its own kind of capitalism and embrace its own variant of democracy. There will no longer be one, and only one ideal model of democracy. We will not have democracy, but democracies in the plural – and precisely this will be democracy's ultimate triumph. For it will give us the democratization of the notion of democracy and no longer democracy by decree.

II

However impressive the difference may be between the variants of democracy to be found all over the world – think, for example, of the difference between the USA and Russia – formally they will all be representative democracies. They will all have more or less free elections and in which political leaders are selected with some system-specific balance between openness and closedness to the people's demands. Put differently, there will be elections everywhere, but everywhere the outcome of elections will have a different impact on the actual operation of the political system. In each political system the voter will be granted the power to correct the inertia of the political system to some extent in agreement with his wishes and desires; but in each of them, the balance between the influence of the voter and that of who are in power will be set differently.

This justifies the claim that the democracies of the present and of the foreseeable future will all be representative democracies. For

a representative democracy can be just anything between Athenian direct democracy and one-party-dictatorship – with the exclusion, of course, of these two extremes themselves. All our political systems will rely on representation, in one form or another, in order to recruit people and political parties taking on themselves the responsibility for their nation's future. In this calm and perhaps even somewhat disillusioned way we may claim that representative democracy is still on the rise and will probably remain to be so for the foreseeable future.

That is, until we will meet worldwide with challenges for which representative democracy has no workable answers. And according to some people that moment is no longer so very far off; perhaps an eco-dictatorship will be necessary for preventing the collective suicide of mankind. We will then have to sacrifice the benefits of democracy for our sheer survival since democracy it is no less realistic to expect from democracy to deal with our ecological problems than to expect a camel to pass through a needle's eye. Worse still, up till now autocracies such as those of Russia and China have a worse track-record for dealing with ecological problems than democracies. So where to turn if neither democracy nor autocracy can help us out here? Anyway, whatever the future may have in store for us, it can never harm to have some more reflection than presently is the case about what kind of political machinery we will need for dealing with the social and political problems to be expected for the second half of this century. We should avoid being caught unawares by the challenges presented by these political problems. Perhaps this will urge us to move on to some political system still unknown, or, to mention another and more reassuring possibility, to some new variant of representative democracy that will allow our children and grandchildren to answer these so very threatening challenges of ecological change and of the depletion of natural resources.

Two things are certain, however. We shall move to that new political system via representative democracy and its norms and values, so that the new system will only be considered a better one on condition that it respects these. And secondly, one of these norms and values is that a political system needs the approval of the people. So no new political system can be introduced without the people's consent. In this way our political history is truly irreversible.

When opting for such a practical attitude towards political systems a first requirement is that we have adequate knowledge of our existing political system – hence of representative democracy. If one wishes

to adapt an existing political systems to the challenges of the future, a minimal requirement is an adequate and unbiased understanding of that existing system.

III

There is, however, one serious obstacle, to a proper understanding of our present political system, namely that the characterization of our present political systems as 'representative democracies' seems to imply that these must be *democracies*. Adjectives, such as 'representative' can never – as we tend to assume - have the power of changing the meaning of the nouns to which they are added, such as 'democracy'. What adjective could we add to the noun 'house', so that it no longer stands for a house?[3]

But already since the second half of the 18th century the *communis opinio* amongst political philosophers is that a representative democracy is, in fact, an elective aristocracy chosen by the people. The moment we cast our vote at the polling station, the *moment suprême* of the people's exercise of its power, is paradoxically – thus runs the argument – also the moment at which we surrender our power in order to entrust it to someone else. Our exercise of power is, basically, nothing but the surrendering of power. And what the representatives elected by us will do with that power is constitutionally their business and no longer ours. Our opinion about that is no longer asked. The only thing we can do after having been disappointed by some representative for a period of four years is to vote someone else into office in the (often idle) hope that this one will perform better than a previous candidate. Now, if this is the case, you will have to conclude, from what ever perspective you look at the situation, that you are living in an *elective aristocracy*. The meaning of the words democracy and aristocracy simply leaves us with no other choice. Hence, according to most political theorists we are naive dreamers when believing to live in a democracy.

IV

Since we so self-evidently describe our political systems as democracies our first intuition will be that political philosophers seeing those

systems as (elective) aristocracies could not possibly be right and that they must have made somewhere some fatal mistake somewhere. So let's have a closer look at their argument. Our representative democracy, or rather elective aristocracy, came into being at the end of the 18th century, at a time when the advantages and shortcomings of various constitutions were discussed with more openness, precision and clarity than ever was the case since then. And this is certainly true for the period from 1780 to 1800 when the American and the French Revolution compelled to the most rigorous analysis of all possible options.

Customarily René Louis Voyer marquis d'Argenson (1694–1757) is seen as the first one to propose the notion of representative democracy though without ever using the term itself. In his essay *Considérations sur le gouvernement ancien et présent de la France* written in 1737, but published only in 1764 d'Argenson wrote the following:

> a bad democracy immediately degenerates into an anarchy. It is the government by the masses; it is the people in a brutal revolt against all law and reason. Its tyrannical despotism is obviously clear from the furor of its movements and the arbitariness of its decisions. In a true democracy, however, one relies upon chosen representatives; the mission of those who have been elected by the people and the authority supporting them constitutes public authority (…).[4]

Needless to say, this is what we presently understand by representative democracy. It is surprising, for that matter, that d'Argenson used here the term 'democracy'. For in the 1730s democracy still was a primarily technical concept without any concrete and practical significance and it was used only by scholars in erudite treatises on direct Athenian democracy.[5] Even theoreticians writing in what we now call the republican tradition and who were relatively closest to democracy had little patience with it. Thus Algernon Sydney (1623–1683):

> as to popular democracy in the strictest sense (that is pure democracy where the people in themselves, and by themselves perform all that belongs to government), I know of no such thing; and if it be in the world, I have nothing to say for it.[6]

Even more so, a renowned Godfather of democracy such as Jean Jacques Rousseau said almost literally the same about democracy in his *Contrat Social* of 1762.[7] We may also think of Montesquieu. In his

De l'esprit des lois of 1748 he distinguishes between three forms of government: republic, monarchy and despotism. And he then goes on to say that there are two sorts of republic. Are the persons in power chosen by the drawing of lots, then you have a democracy; but are they chosen by the people – as is the case in what we call a representative democracy – then you have, according to Montesquieu an aristocracy.[8] Or, rather, an *elective* aristocracy.

D'Argenson's decision to call what we understand by a 'representative democracy' a democracy is, therefore, a-typical of the 18th century political discourse and can probably be explained by the fact that he was a man of practice rather than of theory. He held several high posts under Louis XV and was even minister of foreign affairs from 1744 to 1747. Indeed, only at the end of the century did the term democracy, and the noun 'democrat' acquire currency and with generally positive connotations – the latter for the first time in the Netherlands, by the way.[9] And only then could the composite term make its entry into public discourse. Contemporary research has it that the term 'representative democracy' was first used in English by Alexander Hamilton in a letter he wrote in may 1777 to the Governor of Vermont and in French by Condorcet in his 'Lettre d'un bourgeois de New-Haven à un citoyen de Virginie' of 1787. Before then the term 'representative democracy' would have universally been rejected as an oxymoron with the argument that elected administrators can impossibly be reconciled with the meaning of the word democracy.

V

No political theorist was clearer and more convincing about this than Rousseau:

> sovereignty cannot be represented; for the same reason that it cannot be alienated; it consists essentially in the general will and the will does not permit of representation; it either remains what it was, or it does not, there is no third possibility. The people's deputies can therefore not be its representatives; they can only be its mandatories and there is nothing that they can freely decide'.[10]

And he added teasingly:

> The English people believes to be free. But it is badly mistaken about this. It is free only on election day; afterwards it is a slave, a nothing. And in the rare moments that it in the possession of its freedom it uses it in such a way that it deserves to lose it.[10]

The idea is as follows. Suppose that there exists such a thing as the will of the people. Then we need elections for electing the people's representatives who will articulate that will before actually enacting it. We then have two possibilities: either what is decided by the people's representatives agrees with the people's will, or it does not. In the first case all requirements of democratic government have indeed been fulfilled. But all actual decision-making will then be impossible in the nation's assembly as long there is no unanimous agreement on literally everything. Compromises would necessarily 1) expose the people will as self-contradictory and 2) if enacted be at odds with the will of part of the people. But if there is agreement, why have a national assembly at all? In that case consulting just one citizen will be enough for finding out about the people's will and a national assembly will only be a cumbersome redundancy.

The other option is that the people's representatives shall be free to decide what they believe to be in the public interest even when this would not be in agreement with the implicit or explicit wishes of their voters. Public decision-making is then indeed possible in the nation's assembly, even if there is disagreement in that assembly. In fact, you will then even need this national assembly if only to be able to find a compromise between conflicting parties. But then it is undeniably the national assembly and not the citizen or voter who has the last word. And in that case you do not have a democracy but an (elective) aristocracy. In short, representative democracy is either helpless, or superfluous, or a brutal lie. Here one cannot get in a word edgeways – and this then is where we can only agree with Rousseau.

Not surprisingly, almost all political theorists valuing conceptual precision agreed here with Rousseau: they all recognize that representative democracy is not a real democracy, after all, but an elective aristocracy.[11] And it is no different today. The most important and influential contemporary commentators on democracy such as Hannah Arendt, Sheldon Wolin, Benjamin Barber, John Dunn and Bernard Manin all openly acknowledge the aristocratic character of our representative democracies. Some others propose to speak with the nineteenth century statesman and political philosopher François

Guizot and with John Stuart Mill of 'representative government' or, with Robert Dahl, the *éminence grise* of American political science, of 'poly-archy'. For such alternatives allow us to avoid the troublesome word 'democracy'.[12] And one may add to this list all those who advocated so-called 'participatory democracy' and 'deliberative democracy' in order to correct the democratic deficit of representative democracy. Their effort is not to transform our present defective representative democracies into true *representative democracies* but rather to transform them into true *democracies*. And, as we should know by now, these are quite different things.

In this way a deep and threatening gap came into being between the technically proper use of the term 'democracy' and how the term is used in ordinary language and which determines how the majority of our nation's citizens conceive of their political system. The latter thus turns out to be just one big mystification: the average citizen is systematically deluded by an improper use of language about the true nature of the political system of which he is part. For no matter how often you may call that system a democracy, it is and will remain an aristocracy;[13] just as you may call ten-thousand times your ten-year old and worn-out Opel a Rolls-Royce, without it ever becoming a real Rolls-Royce because of that.

VI

All the more reason to focus on Professor Nadia Urbinati's recent *Representative democracy. Principles and genealogy*[14] whose erudite and elaborate study presently is nowadays beyond doubt the standard-work on representative democracy.[15] In this book it is Professor Urbinati's main purpose to remove the sting from Rousseau's argument as presented a moment ago. In this context Urbinati correctly emphasizes that the notion of sovereignty is crucial in Rousseau's argument, since it is Rousseau's aim to show that in a representative democracy sovereignty – that is the competency to make decision binding all a nation's citizens – resides, in the end, with the representative chosen by the people and with the people itself. Hence, it is Professor Urbinati's main strategy to rob the notion of sovereignty of its teeth so that it becomes vacuous if seen from a constitutionalist perspective. The writings by Thomas Paine (1737–1809) are Professor Urbinati's main source of inspiration in her attempt to demolish

Rousseau's argument. In his *The rights of man* of 1792 Paine had made the surprising move to identify sovereignty with the *res publica*, that is to say, with *all* of the public domain. Sovereignty was now spread out over all those people who, in whatever quality and on whatever level, are active in politics and in matters pertaining to the *res publica*.[16]

And, indeed, if sovereignty is redefined in this way, Rousseau's argument loses all force and cogency: for it then no longer makes sense to distinguish between citizen and representative, between the voter and whom is elected by him, since both are parts of the *res publica* comprising both of them alike. And if that distinction no longer makes sense, representative democracy can no longer be accused of being aristocratic. On the contrary, now that sovereignty has been dispersed so very 'democratically' over all of the public domain, we can justifiably speak of a 'representative democracy'. We now have a political system in which everybody has access to political power – this is the democratic aspect – and that functions, next, by means of political representation – which justifies, in its turn, the adjective 'representative'. Moreover, this true representative democracy is not indissolubly tied to direct democracy, nor necessarily unworkable in large territories. It is therefore even superior to classical Athenian democracy often regarded as the *nec plus ultra* of democracy. Hence Thomas Paine's proud declaration: 'Athens, by representation, would have surpassed her own democracy'.[17]

Above all, do Paine and Professor Urbinati not have all the relevant facts in their favour? Is it not simply the case that in our political systems the interaction between the people and its representatives continues unabatedly after election-day? So that the people continues to influence and to help define the political agenda and actual political decision-making? Think of public debate on TV, on the radio, in the newspapers, think of lobbies of opinion polls etc. Are the people's representatives not compelled to continue listening to their voter's desires and exhortations? Is, perhaps, one of the main weaknesses of our contemporary democracies not that they do just this just a bit too much and that this prevents politicians from seeing social and political problems with the distance required for all responsible decision-making? So was Rousseau not presenting us with a most misleading caricature when pathetically declaring that the voter or citizen should be 'a slave', 'a pure nothing', in the four years between two elections?

Who would wish to disagree here with Paine and Professor Urbinati? It is undeniably true that all political decision-making takes place within a very complex context and that does not permit of reduction to whatever constitutional matrix one might propose to that effect. However, after having admitted as much, I insist that this does not allow us to dissolve the notion of sovereignty into the infinitely complex web of factors deciding what actual decisions are taken within a political system such as ours. Sovereignty is a basically *normative* concept indicating to whom or what we ascribe the unique authority to take decisions that shall bind us all, so what we ought to see as the source of all legitimate political power. For example, ought that authority, or ultimate source, a monarch, an aristocracy or the people?

Whatever decision we prefer to take about this, it cannot be doubted that having to make that decision is, as such, inevitable. Without it the body politic disintegrates into anarchy and it would be impossible to say with unambiguous clarity who, or what committee of people, is ultimately responsible for decisions affecting us all. Without it there would be no restraint on the decisions of our rulers; the door would have been opened to arbitrariness and oppression. Insofar the free society of a free people requires absolute clarity about all functioning of public power, a clear definition of sovereignty is the necessary, though unfortunately not sufficient condition of the realization of the free society of a free people. It may well be that the politicians to whom we gave the authority to take decisions binding us all will carefully listen to the expression by the people of its desires and fears and that this will, to a large extent, determine their decisions. Nevertheless, it is *they* who take these decisions and who are responsible for them to the people. A politician can never dissolve himself from his responsibilities by saying that the fault was not his, but that of the people since he merely did what the people wanted him to do. This is what you lose when agreeing with Professor Urbinati's proposal to de-constitutionalize sovereignty.

One might say that Professor Urbinati historicized or sociologized – with Paine – the notion of sovereignty.[18] She shifts the emphasis from constitutional arrangements to a historical or causal explanation of how power was actually exercised. And, indeed, I have no difficulty with all the causal factors that, according to her and Paine, may explain or even predict public decision-making. To put it into one word, she does not give us a juridical or constitutional, but a sociological definition of sovereignty.[19] Even more so, she makes quite openly and admi-

rably clear that exactly this is what she wishes to do. My problem with this strategy is that decisive sovereign power is now located where, from a sociological point of view, the strongest and most decisive political agents happen to be. For focusing on them will enable us to give a convincing sociological explanation of how and why individual political decisions came into being. Constitutional rules defining how political decision-makers are accountable and responsible to the people (assuming we're talking about democracy here) then fall together with actual sociological fact about the exercice of power, regardless of whether this exercice sins against these constitutional rules or not. Put differently, the sociologization of sovereignty will hand over political power to those who are, *in actual fact*, most prominently present in the public domain. It is, therefore, an invitation to accept what exists, whatever that may be. 'Whatever is, is right', to put it in terms of Alexander Pope's cosmic Toryism.

In practice it means that political power is given to the most noisy and most loquacious elite of politicians, political commentators, media tycoons, economists and other influential people, whereas the anonymous silent citizen is condemned to impotence or, at best, presented as a passive mass dominated by more active and aggressive powers. He is impotent politically, and *therefore* ought to be so. This is the kind of view that was defended by mass-theoreticians such as Gaetano Mosca, Vilfredo Pareto and Robert Michels, and who also argued that however 'democratically' an organization or State may organize itself, it will, in the end, always be a tiny elite that actually rules the roosts, and who then jumped to the conclusion that apparently this is how things actually *ought* to be arranged in all human affairs.

It will be clear that the average citizen, such as you and me, is better served by Rousseau's elective aristocracy than by Professor Urbinati's representative democracy where the strongest will dominate the weak. For whereas Rousseau takes completely seriously the word spoken by the citizen during an election, this is, within the approach advocated by Professor Urbinati, an illusion unmasked by hard sociological fact.

VII

What now? Under these circumstances we can do two things – not necessarily mutually excluding each other, for that matter. In the first

place, we can try to change our representative democracies in such a way that they become *real* representative democracies, and will no longer merely be disguised aristocracies. The other possibility is to acquiesce in the fact that our political systems are, in fact, aristocracies in order to do, next, all that might be needed to prevent these aristocracies from degenerating into egoist oligarchies, dominated by cronyism, nepotism, cooptation and self-enrichment (I shall return to the latter option in a moment). All of them political evils thriving in our contemporary political systems, as every regular reader of the newspapers will know.

Obviously, the first option is to be preferred; that is the royal way for dealing with the shortcomings of representative democracy. As it happens the abbé Emmanuel Sieyès (1748–1836) – the constitutional Einstein of the decades around 1800[20] – developed a most ingenious proposal to that purpose.[21] In order to recognize and grasp the daring of that proposal, it must be recalled that with the fall of the monarchy in August 1792 all existing governmental structures in France were razed to the ground, so that a completely new system had to be invented on the spot. This was an unprecedented break with the past, an even ruder break than that in the England of 1649 or in Russia in 1917. The result was a true avalanche of constitutional proposals and in which all thinkable and unthinkable options were explored down to the bottom. There is therefore in the history of no Western country a period in which the organization of state and society and its relationship to the citizen was a matter of such supreme urgency and where this problem was discussed more openly, originally and fruitfully than the France of the great Revolution.[22] It need not surprise us, therefore, that at that time constitutional options were taken into consideration that would not occur to us now even in our wildest dreams. And there is a message in this. Now that our democracies tend to collapse under the burden loaded on them by the credit crisis of 2008 and by how that crisis unbalances our democracies[23], it may be most beneficial to rehearse these constitutional debates of the last decades of the 18th century with the greatest care and diligence. And, indeed, one will then discover there most useful suggestions for how to deal with political problems that we are nowadays wrestling with.[24]

So it is here. Sieyès shared with Rousseau[25] the absolutely correct insight that all the miseries of representative democracy have their ultimate source and origin in the tensions in a representative democracy

between a mandatory closely tied to his voters, on the one hand, and a people's representative having a certain discretionary autonomy with regard to his voters, on the other, as was already emphasized by Edmund Burke in the well-known letter he wrote to his constituents in Bristol in 1774.[26] The people's representative tied to his electorate by a binding mandate is, of course, wholly in agreement with both the letter and spirit of democracy in the proper sense of the word; but the representative having the freedom to decide without consulting his voters in *no* way. So the problem is how to introduce the representative tied by a mandate to his voters within a representative democracy so that it nevertheless remains a true democracy and does not discolour into an (elective) aristocracy. Sieyès's most ingenious proposal to that effect goes as follows.[27]

There will be, in the first place, a Tribunate that is directly chosen by the people and that will candidly and with complete openness register all the needs, desires and fears of the people and translate these into proposals for legislation. Self-evidently, the people's representative still is here a mere mandatory of the people, so we safely remain here within the limits of democracy in the proper sense of the word. In the second place, there will be an executive power, also directly chosen by the electorate – and where Sieyès distinguishes strictly between 'délibération' and 'action' – so between what we might refer to as 'policy-making' and 'execution' properly so called – with the explicit purpose that the linking-up of the two of them will continuously be given all the attention that should be paid to it. This might help avoid the tendency to sacrifice execution to policy-making and which is one of the main threats to the well-functioning of our contemporary democracies. In the third place, there will be a legislative power, also chosen directly by the people. Deputies of the Tribunate will then plead before the legislative power the cause of these proposals for legislation that were developed by the Tribunate; deputies from the executive power will express their opinion about these proposals, a debate will ensue between the deputies of the Tribunate and those of the executive power, and the legislative will then finally take a decision about the proposals after having heard both parties. It will do so in much in the way that the judge pronounces his verdict after having heard a defendant's counsel and the public prosecutor. So the legislative power does not have the competence to propose new legislation itself – for that would re-introduce an aristocratic element in the constitution.[28]

In most existing representative democracies the people's representatives function on the one hand as a passive pass-through cupboard of the wishes and the feelings of the people – and, surely, this is where our political systems still are in agreement with pure or direct democracy. But on the other hand there is a continuous pressure on the people's representatives to renounce the people's wishes and feelings because the people's representatives are also part of the legislative power and, hence, have the duty to decide what shall be done with the people's will. And that gives us the aristocratic element in representative democracy, as we know it. In most countries having a written constitution that aristocratic element is codified in the constitutional stipulation that the people's representatives shall vote in the legislative free from any binding mandates from their voters. This is the stipulation which, from whatever perspective you look at it, makes our representative democracies into aristocracies, whether you like it or not.

The genius of Sieyès's proposal is that, with this institution of the Tribunate, he conceived of a constitutional construction enabling him to retain the purely democratic element of a people's representative, who is strictly tied to his voters by a binding mandate, and without thereby condemning public decision-making to impotence. And he succeeded in doing all this within a system based throughout on political representation. So here we have a constitutional arrangement that is a *veritable* representative democracy and where the term representative democracy no longer is the *contradictio in terminis* that it has always been since the 18th century.[29]

VIII

So a real and true representative democracy is possible. Of course, you might object now that you're not impressed by the daring of Sieyès's proposal for how to make representative democracies really democratic, that quite a few thing can be said in favour of aristocracy after all, that we often had better listen to what the experts have to tell us than to the people, that the introduction of a political system as devised by Sieyès would involve a lot of fuss preventing us from dealing with more important issues. OK, at your service, but then you should also stop parading as a true democrat to the backbone, and candidly

confess that you prefer aristocracy to democracy, or are just too lazy, too disinterested or too conservative to further the cause of democracy. One need not be an intolerable cynic to realize oneself that this is how most of our politicians will react – worldwide, for that matter. Self-evidently, a class having once gotten hold of political power is not likely to abandon it again.

And this brings us to a following question. Namely, the question of how to deal with the fact that we shall in all likelihood be living in an elective aristocracy for the foreseeable future. This is, in fact, my main aim with this paper. I mean, at first sight it seems to make no big difference whether we call our political system (representative) democracies or (elective) aristocracies. For what difference does it make to our political system when we label it as either democratic or aristocratic? Think of Shakespeare's 'what's in a name? A rose if called by any other name would smell as sweet'. But name-giving is absolutely decisive here. We shall assess the merits and demerits or our political system differently when deciding to see it as an aristocracy and not as a democracy. Just as you will deal differently with the round thing in your hand when you call it an apple and not a tennisball, or *vice versa*. Will you eat it or will you hit it instead? Hence, we have to make our mind about whether our political system is, basically, a democracy or an aristocracy before addressing the question of how that system had best be adapted to present needs and challenges. Any action we take may be disastrous as long as we are not sure about that. Just as you'd better not try to eat a tennisball or hit an apple with a tennis-racket.

Now, the crucial datum here is that political systems, like all other things in this world, are subject to the wear and tear of time. It's a universal law that everything wears down with time. And we do also know, already since the days of Aristotle and Polybius what that means for forms of government. Namely that as monarchies tend to degenerate into despotisms, democracies into ochlocracies (i.e. government by the street), aristocracies have an innate tendency to degenerate into egoist and self-serving oligarchies. And, indeed, oligarchization is arguably the most conspicuous feature of our contemporary societies and political systems. Oligarchization is the big and universal law ruling all political systems at the beginning of the 21st century. We never actually had ochlocracies in the West – not even the Nazi-regime could be described in that way since power emanated

there from Hitler and his henchmen. But oligarchization is and has always been a very real threat in Western 'democracies'. And I hasten to add that it truly needs the insight that our political systems are, basically, aristocracies, in order properly recognize and assess this fact. As long as you see our political system as a democracy, you will remain blind to it and to its real meaning.

In the first place we should think here of the deliberate effort in most representative democracies of the last ten to twenty years to blur the distinction between the public and the private domain, with the result that ever more public competencies fell into private hands so that no longer anyone could be held accountable for how these competencies have been used by those exercising them. As I have stressed at other occasions, this was, in fact, a return to the practices of feudal government – the political system whose very essence it is to delegate public competences to private parties, such as prince, dukes, abbots, tax-farmers and so on. Self-evidently, this stimulates cronyism, nepotism and self-enrichment in the public domain and the degeneration of that public domain into what is referred to in the Republican tradition as 'the unfree state'.[30] The demarcation-line between the public and the private domain thus developed into a disordered no-man's land bestrewn with numerous unsuspected foxholes manned by local little potentates exploiting the public domain for their own financial gain. This, indeed, meant the rise of a new oligarchy.

What comes to mind in the second place is the new caste of managers in public service and that comes closest to the *Ancien Régime's* nobility – albeit that the members of this new class sadly lack the good taste, manners and subtlety of the pre-revolutionary nobility. In comparison to them they are coarse and brutal vulgarians. When discussing the managerial plague in government effected by the ideology of the so-called New Public Management,[31] Lorenz most aptly comments

> 'within the discourse of the New Public Management the management itself always is beyond all control and 'accountability' (…) because by definition it incorporates both efficiency and accountability. This is the feature that the New Public Management shares with state-communism'.[32]

And with feudalism, one might add.

In the third place, in all contemporary political systems the emphasis shifted from the articulation of the people's will to the execu-

tion of political decision-making. The trajectory running from the citizen, via the political party to the state atrophies and dies off; this is no longer where the real decisions are being made. All that truly matters now takes place on the trajectory running from the State to society and the citizen. That is the trajectory of execution and where the citizen typically has no real role to play and where he faces the State as endowed with all its so very impressive powers. And however helpful and empathetic the State may present itself, power-relationships are most asymmetric here and systematically in favour of the State. The State holds all the trumps here; and this is why we should be sceptical about all theories about deliberative and participatory democracy that were recommended in the last few decades to compensate for the democratic deficit of representative democracy. Surely, these theories are most welcome; but their domain of action invariably is the trajectory from the State back to the citizen and that condemns these theories to practical futility. To expect any real improvements from them is like hoping to stop your cat from eating mice by granting mice the right to protest against being eaten by cats. Indeed, we have no real hold on the State apart from the first trajectory which runs from the citizen, via the political party to the State. Self-evidently, this near to universal shift from the first to the second trajectory provides the oligarchic tendencies of representative democracy with an ideal biotope.

IX

Finally, what should be done, if this is the situation in our representative democracies? Needless to say, much will depend on the peculiarities of each such representative democracy; and these will differ from one case to the other. Nevertheless, two general remarks can be made. In the first place, attempts to make existing representative democracies more democratic, either by relying on the models of deliberative and participatory democracy mentioned a moment ago or on some other model, will always fail to live up to expectations. This is because representative democracy is not a democracy and can therefore not be transformed into one, just as one cannot change a dog into a cat, or *vice versa* (unless, of course, one is ready to realize Sieyès's radical constitutional proposals that were mentioned above). Such islands of real democracy will therefore always remain a *corpus alienum* within a representative democracy, which has the

additional disadvantage of clogging the political system with something not belonging to it. Champagne certainly is a nicer and much more interesting fluid than just plain water, but if you feed it to your flowers they are likely to die.

But this does not leave us completely empty-handed in the struggle against the inevitable oligarchic tendencies of representative democracy. Nor do we have to acquiesce in them. On the contrary, this is a struggle that has to be fought continuously. And the main weapon in this struggle is the election by the people of those who exercize public competencies. Quite obviously so, for if our representative democracies are, in fact, elective aristocracies, it will be clear that election is the most effective antidote to oligarchic tendencies. In representative democracies the moment of election brings us closest to the promises of democracy. As Sieyès already recognized by his requirement that the members of the government, no less than those of the legislative body and of the Tribunate should all be elected by the people. Following the logic of Sieyès's argument invites two more conclusions. In the first place that elections should be direct. Any political entity placing itself between the people and those elected by the people will play in the hands of an oligarchic distortion of the people's will. And in the second place that for each public office in the executive power the problem arises whether it will be performed by someone appointed to the task or whether the official in question will be elected by the people. And then the general strategy will have to be, election: yes, unless, and appointment: no, provided that.

Finally, one last comment on the nature of the claims that I have made in this essay. It is true that I did sometimes refer to existing circumstances; such as the tendency towards oligarchy that can be observed in almost all existing representative democracies. Nevertheless, my argument has primarily been *apriori* here: it has above all been a reflection on (representative) democracy *as a form of government*. Many people have condemned such *apriori* reflections as useless. Think, for example, of the well-known lines from Pope's *Essay on Man* (1733):

> For forms of government let fools contest;
> Whate'er is best administer'd is best.
> For modes of faith let graceless zealots fight;
> His can't be wrong whose life is in the right.

Surely, there is a lot of useless abstraction in contemporary political philosophy; and I couldn't agree more with Pope's *obiter dictum* when read as a remorseless attack on the sad disregard of actual political reality in so much of contemporary political philosophy.[33] On the other hand, discussion of 'forms of government' are absolutely crucial if we wish to adapt our existing political systems to changing circumstances – a task that we can never afford to neglect for too long. For any such adaption requires an awareness of the nature of the political system we are presently living in. And then a discussion of 'forms of government' truly is a *conditio sine qua non*.

NOTES

1. F. Fukuyama, *The end of history and the last man*, London 1992.
2. M. Albert, *Capitalism Against Capitalism*, London 1993. In this book Albert opposed Anglo-Saxon style capitalist democracy to the so-called Rhineland-model adopted in most countries of the Western-European Continent. 'Capitalism, we can now see, has two faces, two personalities. The neo-American model is based on individual success and short-term financial gain; the Rhine model, of German pedigree but with strong Japanese connections, emphasizes collective success, consensus and long-term concerns' (p. 18). When describing the neo-American model and what is wrong with it, Albert comes uncannily close to what we all know about it model since 2008.
3. When saying this, this is an observation about our intuitions rather than stating an actual and undeniable fact about our use of language. For it might be pointed out that phrases such as 'xa' (combining the adjective 'x' to the noun 'a') can (sometimes) be rephrased in metaphors of the from 'a is x' and where – as is universally recognized by theorists of metaphor – the meanings of both a and x start to interact with each other.
4. 'La fausse démocratie tombe bientôt dans l'anarchie; c'est le gouvernement de la multitude; tel est un peuple révolté: alors le peuple insolent méprise les lois et la raison; son despotisme tyrannique se remarque par la violence de ses mouvements et par l'incertitude de ses délibérations. Dans la véritable démocratie on agit par des députés, et ces députés sont autorisés par l'élection; la mission des élus du people, et l'autorité qui les appuye constitue la puissance publique: leur devoir est de stipuler pour l'intérêt du plus grand nombre des citoyens, pour leur éviter les plus grands maux et les procurer les plus grands biens'. Quoted in H. Maier, Demokratie, in O.Brunner, W. Conze, R. Koselleck eds., *Geschichtliche Grundbegriffe. Band I*, Stuttgart 1972; 843, 844.
5. Maier, *op cit.*; 840–848. See also G. Silvestrini, Neither Ancient nor Modern: Rousseau's theory of democracy, in K. Palonen, T. Pulkkinen, J.M. Rosales eds., *The Ashgate Companion to the Politics of Democratization in Europe*, Ashgate 2008; 55–75
6. Q. Skinner, *Liberty Before Liberalism*, Cambridge 1998: 32.
7. 'à prendre le terme dans la rigueur de l'acception, il n'y a jamais existé de véritable démocratie, et il n'en existera jamais'. J.J. Rousseau, *Du contrat social ou principes du droit politique*, Paris 1962; 280.
8. 'le suffrage par le sort est de la nature de la démocratie; le suffrage par le choix est de celle de l'aristocratie'. Zie C.L de Montesquieu, *De l'esprit des lois. Tome I*, Paris 1973; 17.
9. 'Die Jahre 1780–1800 sind für das moderne Verständnis von Demokratie von entscheidender Bedeutung. (..) Vor allem in zwei Richtungen veränderte sich der Sprachgebrauch. 1) Einmal wurde 'Demokratie' jetzt aus einem Wort der Gelehrtensprache endgültig zu einem allgemein verwendeten (…) politischen Begiff (…) 2) Mit dieser Verbreiterung des Sprachgebrauchs ging Hand in Hand eine Erweiterung des Inhalts'. See Maier, *op cit..*; 848, 854.
10. 'La souveraineté ne peut être représentée, par la même raison qu'elle ne peut être aliénée; elle consiste essentiellement dans la volonté générale, et la volonté ne se représente point: elle est la même, ou elle est autre, il n'y a point de milieu. Les députés du peuple ne sont donc ni ne peuvent être ses représentants, ils ne sont que ses commissaires; ils ne peuvent rien conclure définitivement. (…) Le peuple anglois pense être libre; il ne l'est que durant l'élection des membres du parlement; sitôt qu'ils sont élus, il est esclave, il n'est rien. Dans les courts moments de sa liberté, l'usage qu'il en fait mérite bien qu'íl la perde'. Rousseau, *op. cit.*; 302.
11. A nice summary of all this can be found in the following statement in 1800 by the future Count Roederer: 'l'aristocratie élective, dont Rousseau a parlé il y a cinquante

ans, est ce que nous appelons aujourd'hui démocratie représentative. (…) Que signifie le mot élective joint au mot aristocratie? Il signifie que ce petit nombre de sages qui sont appelés à gouverner ne tiennent leur droit que du choix, de la confiance de leurs concitoyens; en un mot, d'une élection entièrement libre et dégagée de conditions de naissance. Et bien! N'est-ce pas justement ce que signifie le mot démocratie joint à celui de représentative? Aristocratie élective, démocratie représentative sont donc une seule et même chose'. Quoted in P. Rosanvallon, *La démocratie inachevée*, Paris 2000; 114, 115.

12. H. Arendt, *On Revolution*, Londen 1977; B. Barber, *Strong Democracy: Participatory Politics for a New Age*, Berkeley 1984; S. Wolin, *Politics and Vision. Expanded ed.*, Princeton 2004; J. Dunn, *Western political theory in the face of the future*, Cambridge 1993; B. Manin, *The principles of representative government*, Cambridge 1997, F. Guizot, *Histoire des origines du gouvernement représentatif en Europe*, Brussels 1851, J.S. Mill, Representative Government, in id., *Utilitarianism, Liberty, Representative Government*, London 1972; 175–395, R. Dahl, *Polyarchy: participation and opposition*, New Haven 1971.

13. One of the few people prepared to face the nasty facts is P.H.A. Frissen. See his *Gevaar verplicht. Over de noodzaak van aristocratische politiek*, Amsterdam 2009.

14. N. Urbinati, *Representative Democracy. Principles and Genealogy*, Chicago; Chicago Univeristy Press 2008. See also her Representative Democracy and Its Critics, in S. Alonso, J. Keane and W. Merkel (eds)., *The Future of Representative Democracy.* Cambridge: Cambridge University Press 2011, 23-49.

15. A regrettable shortcoming of the book is, however, that it nowhere offers a reflection on the concept of 'representation'.

16. 'Paine deduced the representative form of government from the definition of sovereignty as *res publica*. Or the general interest of the individuals making up the people. But his *res publica* lost all physical and existential connotation; it was not located in any determinate time (…) and was not something possessed, personated or 'figurated' by any actual beings, individual or mass. The magistrats did not possess it but exercize it in the form of a temporary office they were invested with by the people. The people as a collective did not possess it either because sovereignty was neither an act of the will nor something that predated the political constitution'. See Urbinati, *op. cit.*; 168.

17. T. Paine, Rights of man, in id., *The Writings of Thomas Paine. Collected and Edited by Moncure Daniel Conway. Vol. II*, New York 1967; 424.

18. See especially Urbinati, *op. cit.*; 168, 169. Professor Urbinati adopts here, in fact, the same strategy followed by Althusius with regard to Bodin's conception of sovereignty. It had been Bodin's immortal merit to have been the first to offer in his *Les six livres de la République* of 1576 a juridically and constitutionally wholly sound and workable definition of the concept of sovereignty and that would be of an inestimable significance for the evolution of the modern Western nation-state – whose heirs we still are, in spite of all the high-pitched stories of the death of the nation-state, because of the 'dislocation of politics' and the dominant role of supra-national organizations, such as the United Nations or the EU. But in his *Politica methodice digesta* of 1603 Althusius sociologized Bodin's concept of sovereignty so that it could no longer be of any help with the solution of the constitutional problems occasioned by the seventeenth-century European state. Sovereignty was now just anywhere; and what is anywhere, is nowhere. It was, in fact a return to the Aristotelian theory of the state. See E.H. Kossmann, *Politieke theorie in het zeventiende eeuwse Nederland*, Amsterdam 1960; 79.

19. As she *expressis verbis* argues herself. See Urbinati, *op. cit.*; 20–25. It is of interest to note that Condorcet, in Professor Urbinati's account of his political thought, translated Paine's sociological analysis back again into constitutional terms. That certainly

was most recommendable, but the result was a democracy (in the true sense of the word) putting unrealistically high demands on the citizen, or voter. See Urbinati, *op. cit.*; 197–205.

20. To mention one thing, he was the inventor of the idea of ministerial responsibility and that was to be adopted in most nineteenth-century constitutional monarchies.

21. E. Sieyès, Opinion de Sieyès, sur plusieurs articles des titres IV et V du projet de constitution, prononcé à la Convention le 9 thermidor de l'an troisième de la République, in id., *Oeuvres de Sieyès. Vol. 3*, nr 40 (23 pp).

22. See for this what Rosanvallon writes about the French Revolution in P. Rosanvallon, *Le sacre du citoyen. Histoire du suffrage universel en France*, Paris 1992, id., *Le peuple introuvable. Histoire de la représentation démocratique en France*, id., *La démocratie inachevée. Histoire de la souvereineté du peuple en France,* Paris 2000. For a survey of Rosanvallon's magisterial *oeuvre*, see F.R. Ankersmit, Representative democracy: Rosanvallon on the French experience, In K. Palonen, T. Pulkkinen, J.M. Rosales eds., *The Ashgate Companion to the Politics of Democratization in Europe*, Farnham 2008; 17–37.

23. I have mainly in mind here how the margins of our realistic political option have been narrowed down since our governments took over the deficits that were 'too big to fail'. This has created an emergency situation in our political systems which is, as we know, always bad for democracy. Autocratic decisions can now be wrested from the people, with the argument that we simply have no other option.

24. One example: Condorcet, Brissot and Hérault de Séchelles observed as early as in 1793 that the members of legislative assemblies rarely have much interest for controlling the executive and that they much prefer to devote all their time and energy to cooperation with the government on legislation. And their absolutely correct conclusion was that Montesquieu's *Trias Politica* required emendation and that we are in need of still a fourth power, namely the power of control, along the three powers discerned by Montesquieu.

25. Fralin most aptly characterizes Rousseau's position here as follows: 'representation and participation are in fact inversely related, two sides of the same coin. The more a people rely on representatives, the worse their situation becomes, while the more they participate in political life, the healthier the body politics'. See R. Fralin, *Rousseau and representation. A Study on the Development of His Concept of Political Institutions*, New York 1978; 102.

26. 'Certainly, Gentlemen, it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and most unreserved communion with his constituents. Their wishes ought to have great weight with him; their opinions high respect; their business his unremitted attention. It is his duty to sacrifice his repose, his pleasure, his satisfactions, to theirs, – and above all, ever, and in all cases, to prefer their interest to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure, – nor from the law and the Constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion. (...) To deliver an opinion is the right of all men; that of constituents is a weighty and respectable opinion, which a representative always ought to rejoice to hear and which he always ought most seriously to consider. But *authoritative* instructions, *mandates* issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience, - these are things utterly unknown

to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our Constitution'. See E. Burke, Speech at the conclusion of the polls in id., *The works of Edmund Burke. 12 Vols. Vol. 2*, Boston 1866; 95, 96.

27. See Sieyès, *op. cit.*; 11–20.

28. Sieyès summarized all this in the following three articles in the constitution: '1. Il y aura, sous le nom de tribunat, un corps de représentans, au nombre de trois fois celui des départemens, avec mission spéciale de veiller aux besoins du peuple, et de proposer à la législature toute loi, règelement ou mesure qu'il jugera utile. Ses assemblées seront publiques. 2. Il y aura, sous le nom de gouvernement, un corps de représentans, au nombre de sept, avec mission spéciale de veiller aux besoins du people et à ceux de l'exécution des lois, et de proposer à la legislature toute loi, règlement ou mesure qu'il jugera utile. Ses assemblées ne sont point publiques. 3. Il y aura , sous le nom de législature, un corps de représentans, au nombre de neuf fois celui des départemens, avec la mission spéciale de juger et prononcer sur les propositions du tribunat et sur celles du gouvernement. Ses jugemens, avant la promulgation, porteront le nom des décrets'. Sieyès, *op. cit.*; 22, 23. The model of the so-called 'theme-commissions' proposed by L.E.M. Klinkers comes uncannily close to what Sieyès had in mind more than two centuries before with his Tribunate. See F.R. Ankersmit, L.E.M. Klinkers, *Rapport Nationale Conventie. De Reformatie van de Staat; parlement en regering*, The Hague 2007.

29. Sieyès' proposal has still other advantages. In our present representative democracies the people's representatives are continuously tempted to participate in the governments' prerogatives ('co-government'). The danger can only be avoided in case of a strict separation of powers as in the USA. But in parliamentary systems, as opposed to presidential systems such as that of the USA, there is a balance of powers rather than a separation of powers. This may explain the monistic tendencies of parliamentary systems and why the dualism of parliament and government is basically unnatural in these systems. With the result that of the three tasks of the people's representative - representation, control and legislation – only the latter is retained. It is not easy to see how to get rid of this in our representative democracies. Self-evidently, this must further reinforce the oligarchic tendencies already inherent in existing representative democracies. By radically pulling apart representation and legislation Sieyès's corrects this flaw of our type of representative democracy.

30. 'Free states like free persons, are thus defined by their capacity for self-government. A free state is a community in which the actions of the body politic are determined by the will of the members as a whole'. Zie Skinner, *op. cit.*; 26. See also P. Pettit, *Republicanism. A Theory of Freedom and Government*, Oxford, 1997, chapter 2. And I add that the ideal of the 'free state' should be seen, above all, as the unconditional rejection of any form of corruption in the civil service as might be occasioned by the introduction in it of the incentives obtaining in civil society and the market. For then the general interest will have to surrender to the private will of the corrupted civil servant. So from the perspective of republicanism the privatization and marketization of public competencies inevitably reduced us to the corrupt and 'unfree state'.

31. D. Osborne, T. Gaebler, *Reinventing Government. How the Enterpreneurial Spirit is Transforming the Public Sector*, New York 1993.

32. C.F.G. Lorenz, De universiteiten en het New Public Management, in id. ed., *If You're So Smart, Why Aren't You Rich? Universiteit, markt en management*, Amsterdam 2008; 176.

33. See my 'Waarheid is nodig maar niet voldoende in de Republiek der Letteren', *De Gids 2010* (forthcoming).